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# Policing the Black Woman's Body in an Urban Context

Hazel V. Carby

The problem of the unemployed negro woman in New York city is probably more serious than that of any other class of worker. She is unquestionably shut out from many lines of occupation, and through her increasing inefficiency and desire to avoid hard work, the best households and hotels and restaurants are gradually supplanting her with whites. This means in many instances that she must rely upon odd jobs and employment in the questionable house. . . .

Negro women who are led into immoral habits, vice and laziness, have in too many instances received their initiative from questionable employment agencies. . . . Some preventive measure must be taken for the colored girl going to work for the first time, and for the green helpless negro woman brought up here from the South—on promises of “easy work, lots of money and good times.”

—FRANCES A. KELLOR, “Southern Colored Girls in the North”

The migration of black people to cities outside of the Secessionist states of the South in the first half of the twentieth century transformed America socially, politically, and culturally. Of course, the migration of black people is not a twentieth-century phenomenon. In the antebellum period the underground railroad was the primary conduit out of the slaveholding states; in the late 1870s there was significant black migration to Kansas and in the 1880s to Oklahoma. Before 1910 there were major changes in the distribution of the black population between rural and urban areas within the South. The proportion of black people in southern cities more than doubled between 1870 and 1910 and, consequently, the

proportion of the black population that continued to live in rural areas decreased significantly from 81 to 70 percent.<sup>1</sup> Historians and demographers seem to agree that what is now called the Great Migration needs to be viewed in the context of these earlier migratory patterns and in light of the fact that black people were becoming increasingly urbanized before they left for northern cities.

When considering the complex cultural transformations that not only accompany but are an integral part of these demographic shifts, it is important to challenge simplistic mythologies of how a rural black folk without the necessary industrial skills, untutored in the ways of the city, "green" and ignorant, in Frances Kellor's opinion, were exploitable fodder for the streets of New York, Chicago, Detroit, Cleveland, Philadelphia, and Pittsburgh.<sup>2</sup> Certainly, male and female black migrants suffered economic and political exploitation, but it is important to separate the structural forces of exploitation from the ways in which black migrants came to be regarded as easily victimized subjects who quickly succumbed to the forces of vice and degradation.

I am going to argue that the complex processes of urbanization had gender-specific and class-specific consequences for the production of African-American culture, in general, and for the cultural representation of black women, in particular. The movement of black women between rural and urban areas and between southern and northern cities generated a series of moral panics. One serious consequence was that the behavior of black female migrants was characterized as sexually degenerate and, therefore, socially dangerous. By using the phrase "moral panic" I am attempting to describe and to connect a series of responses, from institu-

1. See Daniel M. Johnson and Rex R. Campbell, *Black Migration in America: A Social Demographic History* (Durham, N. C., 1981).

2. Carole Marks argues two important points in her recent book. The first is that the majority of migrants at this stage of migration were from urban areas and left not just to "raise their wages but because they were the displaced mudsills of southern industrial development." Second, the level of a laborer's skill was less important "than institutional barriers in determining migrant assimilation and mobility." While there is a dispute about whether the majority of migrants were from rural or urban areas in the South it is clear that a significant number of migrants were urbanized and had previous experience of wage labor, skilled and unskilled, and that a number were professionals following their clients (Carole Marks, *Farewell—We're Good and Gone: The Great Black Migration* [Bloomington, Ind., 1989], p. 3). See also Johnson and Campbell, *Black Migration in America*, p. 79.

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tions and from individuals, that identified the behavior of these migrating women as a social and political problem, a problem that had to be rectified in order to restore a moral social order.<sup>3</sup> These responses were an active part of a 1920s bourgeois ideology that not only identified this moral crisis but also produced a language that provided a framework of interpretation and referentiality that appeared to be able to explain for all time the behavior of black women in an urban environment. Kellor's indictment of the sexual behavior of black migrant women registers the emergence of what would rapidly become a widely shared discourse of what was wrong with black urban life.

Frances Kellor was the general director of the Inter-Municipal Committee on Household Research in New York City, and her "Southern Colored Girls in the North" appeared in *Charities*, "A Review of Local and General Philanthropy." Her article provides important evidence that as early as 1905 the major discursive elements were already in place that would define black female urban behavior throughout the teens and twenties as pathological.<sup>4</sup> The subjects of Kellor's article are migrating black women who are looking for work, and she implicitly assumes that these women are alone, either single or, at least, without men. Therefore, according to Kellor, they need "protection." On the surface, it looks as if Kellor is inciting moral alarm in defence of the rather abstract quality of female virtue, but it is quickly evident that she does not believe that black women have any moral fiber or will of their own that can be mobilized in the defence of their own interests. On the contrary, she believes that they become prostitutes because they are unable to protect themselves. Kellor's report makes a strong case for the creation of an alternative set of institutions to police the actual bodies of migrating black women. While Kellor is apparently condemning the existence of employment agencies that create a situation of economic dependency and exploitation in order to channel black women into houses of prostitution, she is actually identi-

3. See Stuart Hall et al., *Policing the Crisis: Mugging, the State, and Law and Order* (London, 1978), pp. 16–20. Hall and his coauthors draw on the work of Stanley Cohen, who argues that

societies appear to be subject, every now and then, to periods of moral panic. A condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests; its nature is presented in a stylized and stereotypical fashion by the mass media; the moral barricades are manned by editors, bishops, politicians and other right-thinking people; socially accredited experts pronounce their diagnoses and solutions; ways of coping are evolved or (more often) resorted to; the condition then disappears, submerges or deteriorates and becomes more visible. Sometimes the object of the panic is quite novel and at other times it is something which has been in existence long enough, but suddenly appears in the limelight. [Stanley Cohen, *Folk Devils and Moral Panics: The Creation of the Mods and Rockers* (London, 1972), p. 9]

4. See Frances A. Kellor, "Southern Colored Girls in the North: The Problem of Their Protection," *Charities*, 18 Mar. 1905, pp. 584–85.

fying the "increasing inefficiency and desire [of black women] to avoid hard work" as the primary cause of the "problem."

Kellor has three major recommendations to make in addition to the establishment of more respectable and law-abiding agencies. First, she suggests the use of "practical and sympathetic women," like those on Ellis Island "who guide and direct the immigrant women," to "befriend" and act as "missionaries" toward black women when they arrive from the South. Second, she advocates the institution of a controlled system of lodging houses where black women can be sent at night and kept from going off on their own into the streets. Finally, she argues for the creation of training schools to make black women "more efficient."<sup>5</sup> This discourse, however, establishes a direct relationship between the social supervision of black women migrants and the control of their moral and sexual behavior, between the morally unacceptable economics of sex for sale and a morally acceptable policing of black female sexuality. In other words, Kellor characterizes the situation not as the lack of job possibilities for black women with the consequent conclusion that the employment market should be rigorously controlled, but, on the contrary, as a problem located in black women themselves, who, given the limited employment available to them and their "desire to avoid hard work," will sell their bodies.<sup>6</sup> Therefore, the logic of her argument dictates that bodies, not economic markets, need stringent surveillance.

The need to police and discipline the behavior of black women in cities, however, was not only a premise of white agencies and institutions but also a perception of black institutions and organizations, and the black middle class. The moral panic about the urban presence of apparently uncontrolled black women was symptomatic of and referenced aspects of the more general crises of social displacement and dislocation that were caused by migration. White and black intellectuals used and elaborated this discourse so that when they referred to the association between black women and vice, or immoral behavior, their references carried connotations of other crises of the black urban environment. Thus the migrating black woman could be variously situated as a threat to the progress of the race; as a threat to the establishment of a respectable urban black middle class; as a threat to congenial black and white middle-class relations; and as a threat to the formation of black masculinity in an urban environment.

Jane Edna Hunter, who was born in 1882 on the Woodburn plantation in South Carolina and trained as a nurse in Charleston and then at the Hampton Institute, arrived in Cleveland in May 1905 with little money. In an attempt to find accommodations she mistakenly arrived at a brothel, and her search for a place to live, she says, gave her an insight into the con-

5. *Ibid.*, p. 585.

6. Another unspoken assumption here, of course, is that selling sex is not hard but easy work.

ditions that a black girl, "friendless and alone," had to face.<sup>7</sup> Hunter reflects that at home on the plantation she was well aware that some girls had been seduced, but she was totally unaware of what she calls a "wholesale organized traffic in black flesh" (*NP*, p. 68). When she goes to a dance she is shocked to see that the saloon on the first floor of Woodluff Hall is "the resort of bad women," and that the Hamilton Avenue area is the home of "vice." Hunter's discovery of what she identifies and criticizes as organized vice is interspersed with a description of her own difficult search for legitimate employment. Although highly trained she cannot find a doctor who wants to employ a black nurse, and she depends on a cousin to find cleaning jobs for her.<sup>8</sup> Eventually, Hunter alternates work as a domestic with temporary nursing assignments until she finds a permanent position in the office of a group of doctors.

In her autobiography, *A Nickel and a Prayer*, Hunter states that her experiences led her to conclude that "a girl alone in a large city must needs know the dangers and pitfalls awaiting her" (*NP*, p. 77). While Hunter never situates herself as a helpless victim she carefully creates a narrative that identifies and appears to account for the helplessness of other black migrating women, and as she does so she incorporates Kellor's analysis, strategies, and conclusions. Hunter turned the death of her mother, from whom she had become estranged, into a catalyst to devote her life to political and social activity on behalf of the black women she designated as helpless. As a young woman Hunter was forbidden to see the man she loved, and she blamed her mother for forcing her into marriage with a man forty years older than herself. However, she walked out of the marriage fifteen months later and went to Charleston to find work, declaring that "a great weight rolled from my mind as I left him, determined to find and keep the freedom which I so ardently desired" (*NP*, p. 50). Hunter's mother died in 1911, after Hunter had lived in Cleveland for four years, and the realization that reconciliation was now impossible occasioned deep despair. In the midst of contemplating suicide Hunter found herself asking the question: "how could I best give to the world what I had failed to give her?" (*NP*, p. 81). Hunter's self-interrogation resulted in her making her mother, rather than herself, a symbol for the helplessness of all migrant women. Hunter characterized her mother as both "immature and impulsive" and imagined that her mother would have been totally helpless if she had been a migrant. What Hunter cannot explicitly acknowledge is that a figure of such helplessness stands in direct contrast to the way she writes with confidence and self-determination about her own need to gain and

7. Jane Edna Hunter, *A Nickel and a Prayer* (Cleveland, 1940), p. 67; hereafter abbreviated *NP*. I am very grateful to Darlene Clark Hine for telling me about Hunter, her autobiography, and her papers.

8. Hunter maintains that she was one of only two black professional nurses in Cleveland. See *NP*, p. 87.

retain her freedom through urban migration. But the designation of her mother as helpless enables Hunter to occupy the absent maternal space. The daughter becomes mother as Hunter listens to the strains of a spiritual and is moved by the words, "ah feels like a motherless child." At this moment she decided on her "supreme work," dedicating her life to helping "the young Negro girl pushed from the nest by economic pressure, alone and friendless in a northern city; reduced to squalor, starvation; helpless against temptation and degradation" (*NP*, p. 83).

The fruit of Hunter's labors and the institutionalization of her maternal role into that of a matriarch is the formation of the Working Girls' Home Association, which later became the Phillis Wheatley Association, with Hunter as president. The Phillis Wheatley Association was the equivalent of the "controlled system of lodging houses" that Kellor recommended in her report, but under black not white control. In cooperation with the National Association of Colored Women other similar institutions were established in cities across the country with Hunter as chair of the Phillis Wheatley department of the NACW. The board that was established in 1913 to oversee the home included white as well as black patrons, and Hunter argued that the Phillis Wheatley Association was "one of the strongest ties between the Negro and white races in America" (*NP*, p. 165). It was not only at the level of management, however, that Hunter was proud of the association as a model of interracial cooperation. The home was a training ground to prepare young black women for domestic service, and one of Hunter's aims was to improve relations between white mistress and maid by producing a happy and efficient servant. As Hunter states:

The most important factor in successful domestic service is a happy and human relation between the lady of the house and the maid—on the part of the maid, respect and affectionate regard for her employer; on the part of the employer, sympathy and imagination. Perhaps it is not going too far to say that the lady of the house should stand in the relation of a foster mother to the young woman who assists her in the household tasks. . . .

The girl who is fairly well-trained and well-disposed will become interested in the life of the family that she serves, and will be devoted to its happiness. [*NP*, pp. 161–62]

Hunter asserted that the Phillis Wheatley Association was "an instrument for [the] social and moral redemption" of young black women (*NP*, p. 157). A prerequisite for this redemption, Hunter maintained, was surveillance over all aspects of the lives of the girls in the home:

In fact it was necessary at all times to guard our girls from evil surroundings. I kept a vigilant ear at the switchboard in my office to catch conversations of a doubtful character, and to intercept assigna-



tions. No effort we made to restrict tenancy to girls of good character could exclude the ignorant, the foolish, and the weak, for these had to be protected as well. In the company of a policeman whom I could trust, I would sometimes follow couples to places of assignation, rescue the girl, and assist in the arrest of her would-be seducer. [*NP*, pp. 128–29]

There are extraordinary contradictions present in this narrative reconstructing the life of a woman who when young had declared her independence from both the patriarchal power of her husband and the maternal power of her mother by walking away from both of them to “find and keep the freedom [she] so ardently desired,” only to find herself in her mature years thwarting the desires of other young women by lurking in hallways to eavesdrop on their telephone calls and marching off into the night accompanied by the police to have their lovers arrested. And, yet, Hunter clearly tries to establish a maternal framework to disguise and legitimate what are actually exploitative relations of power. Exploitation becomes nurturance when Hunter describes the white mistress acting as a “foster mother” to a young black domestic worker and when she herself dominates the lives of her charges in the Phyllis Wheatley Association. Hunter, remembering her own mother as weak and helpless, created the association as a matriarchy that allowed her to institutionalize and occupy a space of overwhelming matriarchal power over younger black women.

Although Hunter is uncritical of and, indeed, manipulates and abuses the possibilities of matriarchal power, she is explicit in her criticism of the ways in which an abusive patriarchal power becomes embedded in the corrupt legal and political machinery of city governance. Hunter is trenchant in her analysis of the mutually beneficial relations between “unscrupulous politicians,” the “rapacity of realtors,” the creation of the segregated ghetto, and organized vice in Cleveland. But urban blacks are situated as merely the victims of the forces of corruption: the politicians, Hunter felt, played “upon the ignorance of the Negro voter to entrench themselves in office, and then deliver[ed] the Negro over to every force of greed and vice which stalked around him” (*NP*, p. 121).

Hunter utilizes the forces of matriarchal power to declare war on what she feels to be her most formidable enemy, “commercialized vice.” She describes her battle in the most epic of biblical language, a battle in which she joins with a “dreadful monster . . . spawned by greed and ignorance . . . hideous to behold. ‘Out of its belly came fire and smoke, and its mouth was as the mouth of a lion . . . and its wages were death’” (*NP*, p. 120). Corrupt city politics enables and maintains the monstrous network that feeds on the young female souls in Hunter’s charge, but at its heart is a single patriarchal figure whom she refers to only as “Starlight.”<sup>9</sup> If

9. This figure was Albert D. “Starlight” Boyd, whom Katrina Hazzard-Gordon refers

Hunter sees herself as the matriarchal savior of young black women, she describes "Starlight" as the "'Great Mogul' of organized vice." He is the epitome of the seducer of young black women whom he manipulates, betrays, and then drags as "prisoners" down into the depths of "shame and degradation" (*NP*, p. 122). But, although the war is figuratively between these forces of patriarchal power and maternal influence, Hunter's matriarchal power is aimed directly at other women. Black female sexual behavior, because according to Hunter it is degenerate, threatens the progress of the race: threatens to "tumble gutterward," in her words, the "headway which the Negro had made toward the state of good citizenship" (*NP*, p. 126).

Dance halls and nightclubs are particular targets of Hunter's reformist zeal, and she identifies these cultural spaces, located in the "heart of [the] newly created Negro slum district[s]," as the site of the production of vice as spectacle: "Here, to the tune of St. Louis voodoo blues, half-naked Negro girls dance shameless dances with men in Spanish costumes. . . . The whole atmosphere is one of unrestrained animality, the jungle faintly veneered with civilized trappings" (*NP*, pp. 132–33). Places of amusement and of recreation for black people are condemned as morally dangerous and described as being filled with "lewd men and wretched women" (*NP*, p. 132). Nightclubs where black women perform for a white audience threaten the very foundations of Hunter's definitions of acceptable interracial relations:

Interracial co-operation built the Phillis Wheatley Association and is carrying on its work; a co-operation of Negroes and whites for worthy purposes; which can gauge the spiritual contribution the Negro has made to American life, since his arrival in America. But in the meeting of blacks and whites in night clubs . . . there is to be found only cause for regret and head-hanging by both races. On the one side an exhibition of unbridled animality, on the other a blase quest for novel sensations, a vicarious gratification of the dark and violent desires of man's nature, a voluntary return to the jungle. [*NP*, p. 133]

There are deep fears being expressed in this passage in which the exploitation of black women is only one concern among many. These fears haunt the entire narrative and are also embedded in Kellor's account of young, black migrating women: fears of a rampant and uncontrolled female sexu-

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to as a "political strongman." He owned and operated Woodluff Hall, the dance hall that Hunter felt was so disreputable, and the Starlight Café. Boyd had numerous estate holdings and links to prostitution and gambling and helped to deliver the black votes of the Eleventh Ward to the Republican boss Maurice Maschke (Katrina Hazzard-Gordon, *Jookin': The Rise of Social Dance Formations in African-American Culture* [Philadelphia, 1990], p. 127; see also pp. 128, 130–32, and 136–37).

ality; fears of miscegenation; and fears of the assertion of an independent black female desire that has been unleashed through migration. If a black woman can claim her freedom and migrate to an urban environment, what is to keep her from negotiating her own path through its streets? What are the consequences of the female self-determination evident in such a journey for the establishment of a socially acceptable moral order that defines the boundaries of respectable sexual relations? What, indeed, is to be the framework of discipline and strategies of policing that can contain and limit black female sexuality? These are the grounds of contestation in which black women became the primary targets for the moral panic about urban immorality.

St. Clair Drake and Horace Cayton in their history of Chicago, *Black Metropolis*, describe how the existence of residential restrictive covenants made middle-class neighborhoods in Bronzeville “the beach upon which broke the human flotsam which was tossed into the city streets by successive waves of migration from the South.”<sup>10</sup> They also describe the deep ambivalence in the attitudes of the black middle class toward the black working class who, as Drake and Cayton insist, perform “the essential digging, sweeping, and serving which make Metropolitan life tolerable” (*BM*, p. 523). This ambivalence, they argue, caused the black upper class to live a contradictory existence. On the one hand they defined their social position by emphasizing their *differentness* from the lower class:

But, as Race Leaders, the upper class must [also] identify itself psychologically with “The Race,” and The Race includes a lot of people who would never be accepted socially. Upper-class Negroes, too, depend upon the Negro masses for their support if they are business or professional men. The whole orientation of the Negro upper class thus becomes one of trying to speed up the processes by which the lower class can be transformed from a poverty-stricken group, isolated from the general stream of American life, into a counterpart of middle-class America. [*BM*, p. 563]

Hunter, clearly, lives this contradiction: her self-definition and her right to control her own behavioral boundaries are beyond question. But, by positioning herself as part of the emergent black bourgeoisie, Hunter secures her personal autonomy in the process of claiming the right to circumscribe the rights of young black working-class women and to transform their behavior on the grounds of nurturing the progress of the race as a whole.

What Drake and Cayton fail to recognize, however, is the extent to which the behavioral transformation of this lower class was thought to be

10. St. Clair Drake and Horace R. Cayton, *Black Metropolis: A Study of Negro Life in a Northern City* (New York, 1946), p. 577; hereafter abbreviated *BM*.

about transforming the behavior of black working-class women. Hunter's accounts of the women who represented the success stories of the Phillis Wheatley Association, for example, are narratives of the transformation of the behavior of migrant working-class black women to conform to middle-class norms of acceptable sexual behavior while actually being confirmed in their subordinate, working-class status as female domestics. These success stories represented the triumphant fulfillment of the mission of the Phillis Wheatley Association, a mission that declared itself to be "to discover, protect, cherish, and perpetuate the beauty and power of Negro Womanhood," but which was primarily concerned with shaping and disciplining a quiescent urban, black, female, working-class population.

The texts that draw on aspects of this discourse of black female sexuality as a way to respond to northern urban migration are multiple and varied. In two important novels about Harlem during the twenties, Carl Van Vechten's *Nigger Heaven* (1926) and Claude McKay's *Home to Harlem* (1928), both authors use their female characters as the terrain on which to map a relation between the sexual and class politics of urban black life.<sup>11</sup> While neither author appears to be overtly interested in prescribing a program of social engineering, both novels are fictions of black urban classes in formation. Central to the success of the emergent black middle class in these two novels is the evolution of urban codes of black masculinity. In each text representations of urban black women are used as both the means by which male protagonists will achieve or will fail to achieve social mobility and as signs of various possible threats to the emergence of the wholesome black masculinity necessary for the establishment of an acceptable black male citizenship in the American social order.

The first part of *Nigger Heaven* focuses on Mary Love, a figure of virginal purity. The failure of Byron Kasson, the male protagonist, to recognize the worth of Mary to the social security of his own future leads directly to his social disintegration. Van Vechten, a white patron of black culture and black artists, describes Mary as "cold":

She had an instinctive horror of promiscuity, of being handled, even touched, by a man who did not mean a good deal to her. This might, she sometimes argued with herself, have something to do with her white inheritance, but Olive [her friend], who was far whiter, was lacking in this inherent sense of prudery. At any rate, whatever the cause, Mary realized that she was different in this respect from most of the other girls she knew. The Negro blood was there, warm and passionately earnest: all her preferences and prejudices were on the side of the race into which she had been born. She was as capable, she

11. See Carl Van Vechten, *Nigger Heaven* (New York, 1926), hereafter abbreviated *NH*; and Claude McKay, *Home to Harlem* (1928; New York, 1987), hereafter abbreviated *HH*.

was convinced, of amorous emotion, as any of her friends, but the fact remained that she was more selective. Oh, the others were respectable enough; they did not involve themselves too deeply. On the other hand, they did not flee from a kiss in the dark. A casual kiss in the dark was a repellent idea to Mary. What she wanted was a kiss in the light. [*NH*, p. 54]

Van Vechten appears to dismiss, or put in doubt, the classic nineteenth-century literary explanation of blood “admixture” for these opposing aspects of Mary’s fictional personality in favor of using a more contemporary, and urban, explanation that uses Mary’s “horror of promiscuity” as a sign of her secure class position.

Mary’s middle-class existence is initially defined through her job; she works as a museum curator gathering together collections of African art. But Van Vechten also carefully defines her differentness from migrant and working-class black women in a variety of more complex ways. When Mary attends a rent party, for example, she is figuratively defiled by the gin and juice that is spilled over her and stains her clothes. When she regretfully wonders why she danced at this party until two in the morning Van Vechten has her mentally discipline herself by reflecting on a long, directly quoted passage from Gertrude Stein’s “Melanctha.” The passage is an extended reflection on the dangers of “colored people” getting excited and “running around and . . . drinking and doing everything bad they can think of” instead of “working hard and caring about their working and living regular with their families and saving up all their money, so they will have some to bring their children up better” (*NH*, p. 57). Mary carefully differentiates herself culturally and ideologically from the black working class. On the one hand, she defines spirituals, which deeply affect her, as a cultural form produced from “real faith,” which has the power to “touch most of us . . . and make us want to cry or shout.” But on the other hand, she sees the culture of “servant girls and the poor” as being very different. The latter, she is convinced, don’t really “feel faith—except as an escape from the drudgery of their lives. They don’t really stop playing Numbers or dancing on Sunday or anything else that their religion forbids them to do. They enjoy themselves in church on Sunday as they do in the cabarets on week-days” (*NH*, pp. 60, 59). Mary’s disdain of sexual promiscuity is firmly embedded, by Van Vechten, in a middle-class ideology of endlessly deferred gratification.

The counterpoint to Mary is a character called Lasca Sartoris, who uses her sexuality to negotiate her way through her life. Unlike Mary, who has never even been to the South, Lasca, the daughter of a country preacher, “began by teaching school in the backwoods down in Louisiana” and then migrated north when an uncle left her an inheritance. In the city Lasca is said to “cut loose” dancing, playing the piano, and singing in Harlem clubs all night (*NH*, pp. 83–84). Lasca’s sexuality ensnares a rich

and much older husband whose death leaves her a rich heiress. Van Vechten uses Lasca as a figure of overt and degenerate sexuality whose behavior is absolutely outside of all moral boundaries. She attracts, then physically and emotionally destroys and discards a series of male lovers, including Byron Kasson, having embroiled them in an intense bacchanalia of alcoholic, drug, and sexual abuse. For Byron, the would-be intellectual and writer, his choice of the influence of Lasca, rather than Mary, brings a certain end to all his hopes and ambition.

Claude McKay has a rather more subtle but, for women, an equally damning approach to the relation between black sexual politics, masculinity, and the securing of social position. McKay's protagonist, Jake, is ultimately saved by Felice, the woman he loves, in an interesting narrative sleight of hand that transforms Felice from the position of prostitute to a figure of wholesome sexuality. Jake arrives in Harlem and meets Felice in a bar. He spends the night with her, pays her, and leaves the following morning thinking he will never see her again. Wondering if he can afford breakfast Jake discovers that Felice has returned all his money to his pocket, thus proving that her sex is not for sale. This gesture convinces Jake that he must return to Felice, but he is quickly lost in the unfamiliar city streets, and it takes the whole course of the novel for him to find her again. On the journey back toward this "true" woman, however, Jake has to negotiate the vice and temptations of the city, which are embodied in a series of other women that he meets.

McKay has a much deeper, richer, and more complex understanding of the cultural forms of the black urban landscape on which he draws than Van Vechten. But, despite this formal complexity, McKay situates his female figures in a very simplistic manner in various degrees of approximation to an uncontrolled and, therefore, problematic sexual behavior. For Jake's journey is not just a journey to find the right woman; it is, primarily, a journey of black masculinity in formation, a sort of *Pilgrim's Progress* in which a number of threatening embodiments of the female and the feminine have to be negotiated. The most significant of these female figures is Rose, a nightclub singer at a cabaret called the Congo. As its name implies, the Congo is "a real throbbing little Africa in New York. It was an amusement place entirely for the unwashed of the Black Belt. . . . Girls coming from the South to try their future in New York," McKay stresses, "always reached the Congo first" (*HH*, pp. 29–30). These "chippies [that] come up from down home," a male friend of Jake's advises him, represent "the best pickings" in Harlem (*HH*, p. 35). Felice, of course, is never seen there. At the heart of what McKay describes as the "thick, dark-colorful, and fascinating" Congo, he situates the blues and Rose, the blues singer (*HH*, p. 36). As far as Jake is concerned, Rose is "a wonderful tissue of throbbing flesh," though he neither loves nor feels "any deep desire for her" (*HH*, pp. 42, 114). The assumption of the novel is that male love and desire could not be generated for, or be sustained by,

a woman like Rose, who is characterized as bisexual because she lacks the acceptable feminine qualities of “tenderness . . . timidity . . . [and] aloofness.” Indeed, Rose’s sexual ambiguity is positioned as a threat to the very existence of black masculinity, reducing Jake to the role of a “big, good slave” (*HH*, pp. 42, 41). McKay proposes that only a pathological and distorted form of masculine power could exist in such a relationship when Rose makes masochistic demands that Jake brutalize her, confirming his belief “that a woman could always go further than a man in coarseness, depravity, and sheer cupidity” (*HH*, p. 69). Jake’s refusal to beat Rose is a triumph of wholesome masculinity over the degenerate female element and allows Jake to proceed on his journey to become a man.

The dance hall and the cabaret, in the texts that I have been discussing, are the most frequently referenced landscapes in which black female promiscuity and sexual degeneracy were described. In William H. Jones’s sociological study of black urban recreation and amusement (1927), the dance hall was a complex and a contested social space. Jones could not condemn the dance hall as an “essentially antisocial institution” because it was possible that a dance hall could be a place in which “romantic love of the most idealistic type” could blossom. But dance halls encouraged a quick intimacy that could also lead the young “on the downward path to crime.”<sup>12</sup> What Jones condemned without compromise was the dancing that took place in the dance halls. He saw modern dances as nothing more than “sexual pantomimes. They are similar to many of the ancient and primitive methods of publicly arousing human passions in preparation for lascivious orgies.” He asserted that the results of his “careful investigation disclosed the fact that . . . a large amount of illicit sex behavior is unquestionably the natural sequence of certain modern forms of dancing” (*RA*, p. 122).

Jones reserved his greatest vehemence for the cabaret, where

excess in dancing, jungle laughter, and semi-alcoholic beverages are characteristic features of their life. Here, jazz music is carried to extremes. In general, there is more abandon achieved by the dancers than in the formal dance hall, and more of a tendency toward nakedness on the part of the female entertainers. [*RA*, p. 131]

What Jones particularly feared was what he called “social demoralization.” He designated these recreational social spaces as places where “the most powerful human impulses and emotions are functioning,” impulses and emotions that threatened the deterioration of the fragile social fabric of the black urban community (*RA*, p. 122).

12. William H. Jones, *Recreation and Amusement among Negroes in Washington, D. C.: A Sociological Analysis of the Negro in an Urban Environment* (Washington, D. C., 1927), p. 121; hereafter abbreviated *RA*.

The existence of dance halls and cabarets was particularly dangerous to the moral health of the black middle class, Jones maintained, because of “the rapidity and ease with which the anti-social forms of dancing spread upwards into and engross the so-called higher classes.” He viewed the social fabric of the black urban community as fragile because of the lack of “adequate bulwarks against the encroachment of such behavior forms upon the life of the more advanced groups of Negroes” (RA, p. 122). “Class stratification” within the black community, Jones continued, only “seems to be strong.” If black middle-class public opinion could generate disapproval of “the vulgar, sexually-suggestive modern dances . . . they would be compelled to confine themselves to the lower anti-social cultural groups in which they originated” (RA, p. 123). His appeal to the mobilization of social disapproval appears to be as much about generating a black middle-class ideology of solidarity and coexistence as about challenging threats to the social mores of that group. If middle-class hegemony could be established in the black community it could more effectively discipline the black working class through the implementation of what Jones refers to as “mechanisms of control whereby forces which tend to disintegrate and demoralize the higher forms of culture may be excluded or annihilated” (RA, p. 123).

Between Kellor’s report for *Charities* and Jones’s book the moral panic about the lack of control over the sexual behavior of black women had become absorbed into the fundamental assumptions of the sociological analysis of urban black culture, which thus designated many of its forms of entertainment and leisure “pathological” and in need of greater institutional control.<sup>13</sup> Kathy Peiss, in her recent analysis of white working-women’s leisure and recreation in New York, describes how white reformers in the early decades of the twentieth century believed that “the primary purpose of reform for working women was to inculcate standards of respectable behavior.” Perceptions of “a rising tide of promiscuity and immorality” and panics over “white slavery and commercialized prostitution,” she argues, motivated Progressive reformers whose prime target was increasingly “the growing menace of commercial amusements.”<sup>14</sup> But the black urban community was constructed as pathological in very specific ways. Black urban life was viewed as being intimately associated with commercialized vice because black migrants to

13. Jones acknowledged his greatest debt to Robert E. Park and others of the Department of Sociology at the University of Chicago.

14. Kathy Peiss, *Cheap Amusements: Working Women and Leisure in Turn-of-the-Century New York* (Philadelphia, 1986), pp. 178–79. The focus of my analysis is rather different than Peiss’s. She describes her book as “a study of young working women’s culture in turn-of-the-century New York City—the customs, values, public styles, and ritualized interactions—expressed in leisure time” (p. 3). Not only am I concentrating on black women rather than white women, but also I am most interested here in the black women for whom the site of leisure was a place of work rather than recreation.



cities were forced to live in or adjacent to areas previously established as red-light districts in which prostitution and gambling had been contained. The existence of restrictive covenants enforced black residential segregation and limited the expansion of what became identified as black urban ghettos.<sup>15</sup> It was within the confines of East St. Louis, the south side of Chicago, the tenderloin in Kansas City, and Harlem in New York that an entertainment industry that served both a white and a black clientele was located and from which an urban blues culture emerged.

On the eve of the depression black women who had migrated to urban areas were still overwhelmingly limited to employment in domestic service and as laundresses. In Chicago, for example, between the First World War and the onset of the depression, over 40 percent of white women workers but only 5 percent of black women workers who entered the labor force obtained "clean" work (see *BM*, pp. 220–29). The category "clean" work referred to jobs like office secretary and department store clerk; "clean" work was the type of employment from which black women were rigorously excluded. From the biographies and autobiographies of the black women who eventually became entertainers it is clear that joining a touring vaudeville troupe or tent show was an important avenue of geographic mobility for young black women who were too poor to pay for train fares and for whom hopping a freight car was dangerous. In addition, being a member of a vaudeville show or performing in a nightclub was not attractive primarily because it offered a mythic life of glamor but because it was a rare opportunity to do "clean" work and to reject the life of a domestic servant.

When she was eight years old Josephine Baker started her first job and discovered that working as a maid for a white mistress was not "the happy and human relation" that Jane Edna Hunter maintained it should be. Baker was assured by her mistress, Mrs. Keiser, that she loved children, and she promised Baker the shoes and a coat that her own family were too poor to provide. However, Baker had to start to work at five in the morning so she could be at school by nine, and when she arrived home in the afternoon she had to work again until ten o'clock at night when she was sent to bed in the cellar to sleep with the dog. One day when Baker made a mistake Mrs. Keiser punished her by plunging the little girl's arms into boiling water. This story and Baker's account of how she watched white people murder and torture her relatives and neighbors during the East St. Louis riot of 1917 are situated in her autobiography as the preface to her decision to leave St. Louis when she was thirteen years old and get on a train with a vaudeville troupe called the Dixie Steppers.<sup>16</sup>

15. See William Barlow, *"Looking Up at Down": The Emergence of Blues Culture* (Philadelphia, 1989), pp. 240–43 (on Kansas City), 250–51 (on St. Louis), and 287–92 (on Chicago). See also *BM*, pp. 174–213.

16. See Josephine Baker and Jo Bouillon, *Josephine*, trans. Mariana Fitzpatrick (New

Alberta Hunter left Memphis when she was thirteen because she had heard that young girls in Chicago were being paid ten dollars a week to sing.<sup>17</sup> In 1912 she started working in a club called Dago Frank's, singing to an audience of pimps and prostitutes, and then moved to Hugh Hoskins, a club for "confidence men and their girls who were pickpockets." In many ways Alberta Hunter's story of her early years in Chicago epitomizes the life from which Jane Edna Hunter wanted to save young black women in the name of maternal protection. But Alberta Hunter emphasizes how she found maternal care and nurturance from the prostitutes in her audience and describes how "the prostitutes were so wonderful, they'd always make the 'Johns' give me money you know. . . . They'd go out and buy me little dresses and things to put on me so I'd look nice."<sup>18</sup>

Ethel Waters agreed to join the act of two vaudevillians she met in a Philadelphia saloon because she was offered ten dollars a week playing the Lincoln Theatre when she was "getting three fifty a week as a scullion and chambermaid [at the Harrod Apartments] and a dollar and a quarter more for taking home some of the guests' laundry."<sup>19</sup> Waters grew up in the red-light districts of Philadelphia, and in her autobiography she asserts that she "always had great respect for whores" (*H*, p. 17). Like Alberta Hunter she utilizes the language of maternal nurturance when she describes how her friendship with a young prostitute blossomed:

Being hardly more than a child herself, Blanche often played with me, read me stories, and sang little songs with me. Her beauty fascinated me. I loved her. There was a great camaraderie between us, and that young prostitute gave me some of the attention and warm affection I was starving for. Whenever I tipped off the sporting world that the cops were just around the corner I felt I was doing it for Blanche and her friends. [*H*, p. 18]

Waters reveals a consciousness of being part of a world in which women were under surveillance and has little hesitation in declaring her allegiance. The images and figures of the sources of both exploitation and nurturance in the lives of these young black women are in direct contrast to and, indeed, in direct conflict with the attempts of the black middle class to police and discipline female sexuality.

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York, 1977), pp. 3–4. See also Phyllis Rose, *Jazz Cleopatra: Josephine Baker in Her Time* (New York, 1989), p. 12.

17. See Frank C. Taylor and Gerald Cook, *Alberta Hunter: A Celebration in Blues* (New York, 1987), pp. 20–23.

18. Alberta Hunter, quoted in Stuart Goldman (producer), *Alberta Hunter: My Castle's Rockin'* (1988).

19. Ethel Waters and Charles Samuels, *His Eye Is on the Sparrow* (New York, 1951), p. 72; hereafter abbreviated *H*.

Black women blues singers, musicians, and performers dominated the black recording industry and vaudeville circuit throughout the twenties, and they are the central figures in the emergence and establishment of an urban blues culture. However, in order to acknowledge their roles as the primary cultural mediators of the conditions of transition and the producers of a culture of migration we have to challenge the contemporary histories of the formation of a black urban culture as a history of the black middle class. The dominance of the conceptual paradigm of the Harlem Renaissance with its emphasis on the practices of literature and fine art relies on a belief that the black middle class did, in fact, accomplish and secure its own cultural and political dominance within black America. However, as Houston A. Baker, Jr., argues, what is called the Renaissance actually marks the historical moment of the failure of the black bourgeoisie to achieve cultural hegemony and to become a dominant social force.<sup>20</sup>

The contradictory nature of the culture that was produced in black urban America between the teens and the depression has not been retained or absorbed within black urban cultural histories. The twenties must be viewed as a period of ideological, political, and cultural contestation between an emergent black bourgeoisie and an emerging urban black working class. The cultural revolution or successful renaissance that did occur stemmed from this terrain of conflict in which the black women who were so central to the formation of an urban blues culture created a web of connections among working-class migrants. The possibilities of both black female liberation and oppression were voiced through a music that spoke to the desires which were released in the dramatic shift in social relations that occurred in a historical moment of crisis and dislocation.<sup>21</sup>

Women's blues was not only a central mechanism of cultural mediation but also the primary means of the expression of the disrupted social relations associated with urban migration. The blues women did not pas-

20. See Houston A. Baker, Jr., *Modernism and the Harlem Renaissance* (Chicago, 1987).

21. Virginia Yans-McLaughlin argues that the new scholarship in immigration and migration studies has moved away from questions about

individual and group agency toward the social relations of exchange. So, instead of individuals assimilating or achieving, we have group strategies and networks. What we might call a network-exchange theory seems to be emerging as a potential alternative to assimilation and human-capital theory. In network-exchange theory, an ethnic group's human capital is not simply transported from one place to another by individuals who fold their riches into the American system. Although it is true that the groups are sometimes portrayed as holders of assets, these are transformed to new purposes; indeed, immigrant groups seem capable of creating new advantages for themselves. The network structure that originally functioned as the grid connecting Old World kin might, for example, transform itself in ethnic subeconomies to provide jobs, housing, or even business opportunities. [Virginia Yans-McLaughlin, introduction, *Immigration Reconsidered: History, Sociology, and Politics*, ed. Yans-McLaughlin (New York, 1990), p. 12]

Using such a methodology Suzanne Model argues that because of their very limited access

sively reflect the vast social changes of their time; they provided new ways of thinking about these changes, alternative conceptions of the physical and social world for their audience of migrating and urban women and men, and social models for women who aspired to escape from and improve their conditions of existence. I have already described how hopping freight cars, because of the inherent dangers associated with that form of travel, was not a viable option for women and that travelling tent shows and vaudeville on the Theater Owner's Booking Association circuit (TOBA) offered an alternative way to achieve mobility for young women—Mamie Smith, for example, started dancing when she was ten, and Ida Cox left home to join the Black and Tan Minstrel Show when she was fourteen. This increase in their physical mobility parallels their musical challenges to sexual conventions and gendered social roles. However, the field of blues history is dominated by the assumption that “authentic” blues forms are entirely rural in origin and are produced by the figure of the wandering, lone male. Thus the formation of mythologies of blues masculinity, which depend on this popular image, have obscured the ways in which the gendering of women was challenged in the blues. The blues women of the twenties, who recorded primarily in urban centers but who employed and modified the full range of rural and urban blues styles, have come to be regarded as professionalized aberrations who commercialized and adulterated “pure” blues forms. But as Chris Albertson insists, the blues “women were all aggressive women [who] knew what they wanted and went after it.”<sup>22</sup> The blues women brought to the black, urban, working class an awareness of its social existence and acted creatively to vocalize the contradictions and tensions of the terrain of sexual politics in the relation of black working-class culture to the culture of the emergent black middle class.<sup>23</sup> In doing so they inspired other women to claim the “freedom [they] so ardently desired.”

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to the job market black migrants were unable, or failed to establish such a system of mutual assistance. Although it is clear that networks of exchange did indeed exist within black urban migrant enclaves my argument here is that network-exchange theory is unnecessarily limited if it is applied only to access to the labor market and to alternative economies that existed within migrant communities. I would argue that urban blues culture could profitably be regarded as a network of exchange or web of connection rather than as a conglomeration of individual achievement. See Suzanne W. Model, “Work and Family: Blacks and Immigrants from South and East Europe,” in *ibid.*, pp. 130–59. It would seem to me that the role of the *Chicago Defender* would be important in writing a history that documented the system of mutual exchange in black communities that provided information about and access to the job market. See, for example, Emmett J. Scott, “Letters of Negro Migrants of 1916–1918,” *Journal of Negro History* 4 (July 1919): 290–340, and “Additional Letters of Negro Migrants of 1916–1918,” *Journal of Negro History* 4 (Oct. 1919):412–65.

22. Chris Albertson, quoted in Carole van Falkenburg and Christine Dall (producers), *Wild Women Don't Have the Blues* (1989).

23. See my forthcoming book, *Women, Migration, and the Formation of a Blues Culture*.

# **Black Women's Prison Narratives and the Intersection of Race, Gender, and Sexuality in US Prisons**

Breea C. Willingham

## **Abstract**

The purpose of this article is to describe the meaning of incarceration for African American women as depicted in the narratives of incarcerated and formerly incarcerated African American women. This article uses black feminist thought as the primary theoretical framework to provide the relevant context for understanding the race, sexual, and gender oppressions that contribute to African American women's experiences with imprisonment. I argue that black women's prison narratives offer a unique insight into interlocking patterns of oppression that contribute to their incarceration, and how discrimination based on race, gender, and sexuality extends into prison.

To imprison a woman is to remove her voice from the world, but many female inmates have been silenced by life long before the transport van carries them from the courthouse to the correctional facility. ... Their essays, then, are victories against voicelessness – miracles in print.  
Wally Lamb, *Couldn't Keep It To Myself*<sup>1</sup>

The increasing incarceration rates of African American women reflect the history of their social exclusion in US society. This growth alone suggests a need for a closer study of intervention and policy changes in the criminal justice and corrections systems, and as the black women's prison population continues to rise, it becomes especially important to hear their stories to increase our understanding of their prison experience. Previous research, including Donna Rowe's 2004 study on women's prison writing, has indicated that writing in prison helps all inmates heal from and cope with the emotional issues that brought them to prison and to re-imagine a new life.<sup>2</sup> Although scholars have begun to address issues of literacy in women's prisons, there is room

for more work analysing how African American women interpret the meaning of their prison experience through writing. Therefore, the purpose of this article is to describe the meaning of incarceration for African American women as depicted in the narratives of incarcerated and formerly incarcerated African American women. This article uses black feminist thought as the primary theoretical framework to provide the relevant context for understanding the race, sexual, and gender oppressions that contribute to African American women's experiences with imprisonment. I argue that black women's prison narratives offer a unique insight into interlocking patterns of oppression that contribute to their incarceration, and how discrimination based on race, gender, and sexuality extends into prison.

### **Black Women in Prison**

The US prison population has grown from 300,000 in the 1970s to more than two million today. The war on crime, the war on drugs, mandatory drug sentencing laws, and the belief that society has become more punitive have all been blamed for the exponential rise in the nation's prison population. Incarceration rates for African American women have increased more quickly than they have for black men, and though the rates have levelled off, incarceration rates for black women remain higher than for their white and Hispanic counterparts. One in every 300 black females is incarcerated, compared to about one in every 1,099 white females and one in every 704 Hispanic females.<sup>3</sup>

Despite their sustained presence in prisons and jails, the voices of black women are often excluded from discussions about the criminal justice and corrections systems.<sup>4</sup> Mainstream ideas about prisons are usually those of men, and any references to women in prison are usually those of white women, as Victoria Law notes in her essay 'Invisibility of Women Prisoner Resistance'. Law adds:

The stereotype of the male felon makes invisible the growing number of women imprisoned under the various mandatory sentencing laws passed within the past few decades. Because women do not fit the media stereotype, the public does not see them and are not then aware of the disturbing paradoxes of prisoners as mothers, as women with reproductive rights and abilities, and as women in general.<sup>5</sup>

Whereas white women prison writers are 'doubly marginal', being female and a writer in prison, black women suffer threefold – as a woman, prisoner, and African American.<sup>6</sup> Black women's prison narratives offer a different perspective and approach to analysing black women's experiences with race, gender, and sexual oppressions. These narratives represent a unique form of activism and a continued struggle for freedom. Their stories fracture the stereotypical images of all women behind bars and reveal the mothers, sisters, wives, daughters, and friends who are often forgotten once the iron bars close. Their stories help us to see them as they are *now*, not defined by their crimes or past.

Learning about imprisonment from the people experiencing it raises key issues that go beyond an immediate concern with the institution of the prison, as prisoner writing interrogates notions of captivity, racism, classism, and oppression. Writing allows imprisoned women to create their own discourse within an oppressive system and in an oppressive space. Though their writings may not dismantle the system, they create a space where the women find their voice and educate themselves. While writing in prison may not be behaviour that is always seen as explicitly political, it can become important to the resistance to structures of privilege, exploitation, and power. On an individual level, writing can be transformative for the women, especially when it is done in a space where creativity, self-expression, and literacy are typically not encouraged.

H. Bruce Franklin argues that the power of prisoners' writing, 'comes from their lives as dropouts, rejects, criminals and rebels in American society, and as inhabitants of America's prisons'.<sup>7</sup> The power of African American women's prison writing derives from their struggles as a subclass of people who no longer want to be ostracised, abandoned, or labelled as deviant. The significance of their writing is grounded in black women's continuing struggle to find and maintain their identity in a racist and sexist society and prison system.

## **Black Feminist Thought and Criticism**

This article uses black feminist thought to provide a relevant context for understanding the intersections of race, class, gender, and sexuality in black women's prison narratives and the role these oppressions play in the incarceration of African American women.

Black women's experience is at the core of black feminist thought; the overarching theme of black feminist theories is the desire to find a voice that can express a self-defined black woman's standpoint. Patricia Hill Collins defines black feminist thought as specialised knowledge created by black women, which clarifies the 'experiences and ideas shared by black women and provides a unique angle of vision on self, community and society' and which is situated in black women's struggle against systems of oppression.<sup>8</sup>

Black feminist criticism grew, in part, from the notion that black women's experiences were seen as deviant, while those of black men, white men, and white women were regarded as the norm. In this context, as feminist scholars such as Deborah E. McDowell have illustrated, black women were traditionally not seen as deserving of literary attention.<sup>9</sup> In response to such marginalisation, black female scholars became 'justifiably enraged by the critical establishment's neglect and mishandling of black women writers' and sought to develop a black feminist criticism which would take black women's literature as its focus.<sup>10</sup> However, in an important qualification, Collins contends that while black women may share similar challenges resulting from 'living in a society that historically and routinely derogates' them, this does not mean that they have all had the same experiences. Simply acknowledging that a legacy of struggle exists does not make the meaning of the struggle the same for all black women, Collins adds.<sup>11</sup> What black women's literature does, though, is authenticate those shared challenges and allows a forum for black women to relate their experiences to the world, whether shared by other black women or not. In the view of critics such as Collins, active black feminism will always be needed as long as black women continue to face intersecting oppressions of race, gender, and sexuality.

I contend that black women's prison literature constitutes a part of this active black feminism because it seeks to respond to race, gender, and sexual oppressions of black women, as well as address political and social topics. Therefore, some of the literature produced by black female inmates deserves to be included in the larger critical discourse on black women's literature because incarcerated black women are able to reflect their own black feminist standpoint through writing when they find, represent, and liberate themselves through the written word. The emerging black women's literature community, according to Collins, offers another 'safe space' where black women



can articulate a self-defined standpoint.<sup>12</sup> Black women's prison literature is arguably creating another safe space, giving the inmates a vessel through which to express their new found voice within a collective environment.

Although typically perceived as part of the state's repressive structures, prisons, thus, are paradoxically also examples of what Collins calls 'alternative institutional locations' where black feminist thought can be located and become sites of black feminism.<sup>13</sup> Though black female inmates are not commonly perceived as intellectuals, they contribute to black feminist thought from a unique perspective. As Assata Shakur suggests, 'it is imperative that we, as black women, talk about the experiences that shaped us; that we assess our strengths and weaknesses and define our own history'.<sup>14</sup> If women in prison do not write their own stories, then they will continue to be pushed to the side as an afterthought, instead of positioned at the forefront of, and included in, discussions about incarcerated women.

### **Black Women's Voices**

One of the common themes in black women's prison writings is the abandonment and neglect experienced once women are incarcerated. Joyce Ann Brown, who spent nearly ten years in a Texas prison for a murder committed by another woman named Joyce Ann Brown, writes about the double standard she witnessed during her incarceration. If a man and woman are both sentenced to fifty years, the man will be paroled two or three times while the woman would not even get one chance to speak to the parole board.<sup>15</sup> Furthermore, imprisoned women often experience a lack of support from their families and partners. When men are incarcerated, women are usually the ones 'holding them down', supporting them and taking care of their children, on the outside. The woman will regularly visit her man and promise to wait for him. But when these women become inmates themselves, they rarely get that same kind of support. A good example is the visiting room scene described by Ida P. McCray, who served nearly ten years in Pleasanton, California, after being convicted of hijacking an airplane. Pleasanton was originally a co-ed prison named 'Dublin' when McCray was incarcerated. The visiting rooms were packed with women and their children visiting the male inmates, McCray writes, but when the male inmates were moved and

the prison became women only in 1989, 'the visiting room was barely ever full, ever. We're replaced in society. Black women are replaced. If you're in a relationship, nine times out of ten, you will be replaced within a year, if that long'.<sup>16</sup>

Black women are already often stereotyped as being promiscuous crack-whores not capable of taking care of their children. These images are only perpetuated in prison. Donna Hubbard Spearman, who spent twenty-four years in prison on drug-related offences, writes:

African American women are already subjected by a society that places us at the bottom of the totem pole. Within the prison system, not only are we placed at the totem pole, but we are considered less than the average inmate. We have a stigma of going back into a community where African American men are almost made martyrs and heroes when they come out of prison ... but when we go back into our communities, we are not only unfit people, now we're unfit mothers, and it's hard to trust us.<sup>17</sup>

In short, though physically free after being released from prison, black women are still being held captive by the continued social injustices committed against them. Patrice Gaines, who was briefly incarcerated in 1970 on drug-related charges, notes that when women go to jail or prison, they become part of an ostracised community that no one expects to hear from: 'The intent is to put them so far away to where they're not heard, but engaging in a dialogue with and listening to these women can only enrich the community at large'.<sup>18</sup> When there are thousands of women silenced, only a partial perspective of the community is left, Gaines insists. According to Gaines, once incarcerated, a woman is 'forced to be still and forced to be quiet'.<sup>19</sup> As a result, she has time to focus on herself and (re)discover herself through writing. Gaines adds, 'Discovering that people can appreciate what you have to say can change you. They never had a place to say anything, and to not have to write for a grade and be able to write for your living and survival is healing. They really develop a passion for (writing) when they realise what they say is appreciated'.<sup>20</sup> Through writing, women create a safe space in which they can recover from and reflect on the issues that brought them to prison, giving them some sense of freedom and ownership over their lives.

Sexual abuse is another common theme in the women's writings. Sexual assaults are familiar to many women prior to their incarceration, but such attacks are also committed by male guards

in women's prisons. The women are further victimised when some of the prison guards are not punished. This violent sexualisation of women's prison life only perpetuates the degrading images of black women as 'unnatural, dirty, sick and sinful'.<sup>21</sup> Prison becomes a site of continual terror for some women and, as Angela Davis argues, 'a space in which the threat of sexualized violence that looms in the larger society is effectively sanctioned as a routine aspect of the landscape of punishment behind prison walls'.<sup>22</sup> Contemporary prison regimes thus reproduce the sexual oppression that was characteristic of slavery. Slave owners often used the concept of seduction as a source of power. Rape was defined in the nineteenth century as the illegal 'forcible carnal knowledge of a female against her will without consent', but as Saidiya Hartman explains, this law did not apply to female slaves. Instead, the concept of seduction was used to mask the actual violence committed against female slaves. Any sexual relations between master and slave were assumed to be consensual bonds of affection, not crimes.<sup>23</sup>

Shakur describes another form of sexual abuse – strip searches:

The internal search was as humiliating and disgusting as it sounded. You sit on the edge of this table and the nurse holds your legs open and sticks a finger in your vagina and moves it around. She has a plastic glove on. Some of them try to put one finger in your vagina and another one up your rectum at the same time.<sup>24</sup>

If women refused the search they were locked in solitary until they agreed to the search, Shakur adds. This regular practice illustrates how the woman's body is often violated once she is incarcerated and subjected to abuse that is disguised as routine practice.

Women develop different coping strategies to deal with the threat of sexual abuse and the lack of ownership over their body, but during that process some end up perpetuating their own sexual oppression. Gaines offers an example in her memoir *Laughing in the Dark* when she describes the 'stroll' she and other inmates took on their way to the prison's vending machines: 'We passed those orderlies strutting our ashy legs. The orderlies ... were just happy to see female legs and they whistled their admiration. None of us seemed to realize what we were doing, that even in jail we were performing for men, hoping to please them and exalting in our ability to do so'.<sup>25</sup> Some women will often use their body to survive on the streets – engaging in prostitution to support their drug habit – and once in prison, some of them still use

their bodies for attention, struggling to overcome internalised forms of sexual oppression.

### **Writing as Recovery**

For some women, prison becomes a place of recovery; a place to escape the harsh life on the streets. In the free world, many black women are imprisoned by the effects of drugs or the inner turmoil stemming from physical and sexual abuse. It is not until their bodies are physically imprisoned that their souls are set free. Tabatha Rowley, who was convicted of first-degree assault in 1996 and sentenced to seven years, describes prison as a chance for her to get to know herself and become a physically, mentally, and spiritually stronger woman: 'In prison, I detoxed from a ten-year binge, entered recovery, and little by little, began to understand who I was beneath all those bad habits and bad decisions'.<sup>26</sup> Michelle Jessamy, sentenced to twenty years for manslaughter, says writing gives her a 'sense of peace': 'The prison environment causes you to shut down and distrust other people, but writing has the opposite effect. By exploring my past through autobiographical fiction and sharing it with others, I am learning how to come to terms with the whys of my past actions and how to release my spirit from its prison'.<sup>27</sup>

Writing allows women to seek their own understanding of why they are in prison and confront any other personal demons they may have. Ann Folwell Stanford regards writing as a way for incarcerated women to build bridges 'to the self, to family, lovers and friends, to each other and to the community of readers who have no idea who the writers are, but may be changed a bit through reading their words'; incarcerated women, Stanford adds, are 'doing dangerous things with words: they are resisting the narratives that society has scripted for them'.<sup>28</sup>

The story of Cynthia Berry, an inmate in Bedford Hills, New York, serves as a good example in this context. Berry recounts how having been molested by her uncle at an early age continues to haunt her. Drugs and prostitution became Berry's escape from the pain and the excuse for her destructive behaviour. By the time Berry realised her life had spiralled out of control, it was too late:

Thinking of the sweat of my uncle on my face as he molested me made it easy for me to believe I was a whore and that the only way to even

the pain was to literally make men pay. I never grew up until it was too late and when I did, it was in the courtroom learning what I had allowed myself to believe and a man now was dead.<sup>29</sup>

Berry, who is serving a sentence of twenty-five years to life for the murder of her seventy-one-year-old John, describes how the guilt of her crime weighs heavily on her conscience and the only way to make it right is to die:

I remember stabbing (him) three times. A forensics report said I stabbed this man twenty-eight times in his throat. Only three wounds were fatal, which leaves me the horror of 'did I continue to stab a dead man?' I'm guilty of my refusal to face self and grow out of the walls of my pain. There are days I wish my number would punch up in God's computer so I can stop the bloodstain on my hands and in my heart ... stop everyday of being haunted by what I did.<sup>30</sup>

Berry notes that prison has allowed her to feel for herself and others. She no longer has to mask her feelings behind drugs and prostitution.

Megan Sweeney suggests African American women use creativity to negotiate their experiences before and during prison by focusing on their reading practices. Reading in prison 'can counter forces of isolation, abandonment, and dehumanization by serving as an opening to other people, ideas, and the world outside prison'.<sup>31</sup> Sweeney explores the ways reading enables some incarcerated women to 'gain self-knowledge' and 'contextualize their experiences' before, during, and after incarceration.<sup>32</sup> Both writing and reading in prison allows some incarcerated women to explore their own understanding of why they are in prison, and this process, as Sweeney argues, 'generates possibilities for prisoners to reenvision and rescript their lives – to view their experiences in relation to broader social and historical contexts and to glimpse different horizons as they engage with others' stories'.<sup>33</sup>

## **Conclusion**

Women's prison writing is not a new phenomenon, but as Judith Scheffler writes in *Wall Tappings*, 'The writing of women prisoners continues to reside in the margins of the literary canon – a curiosity, an anomaly, an oversight'.<sup>34</sup> What is even more troubling is that despite the fact that African American women make up the largest

percentage of incarcerated women, they are also the most invisible prison population, because their voices are often ignored. As a result, literature on African American women's prison writing is even scarcer, due to lack of access or knowledge. But black women's prison narratives are deserving of more attention by critics because these texts add a significant voice to this voiceless segment of the prison population. Most importantly, they address broader social problems with race, gender, and sexual oppressions. African American women share a history of persistent racial and sexual oppression, but what is different about the incarcerated black woman's story is that it allows some of these women to express themselves and define their existence – to tell us that they still matter despite their absence. Joyce Logan, who spent fifteen years in prison for aggravated robbery, reminds us that incarcerated black women may 'have been separated, but we are not gone. We may be distant, but we are very much present'.<sup>35</sup>

Too often when women are sent to prison, many people are quick to label them as rejects or simply bad women. Many of them have powerful stories to tell, but because of the stigma attached to them, oftentimes people are not willing to listen. Through their poems, memoirs, and commentaries, inmates show us that despite being held physically captive, their minds are free, and through their liberated words they remind us that prisoners are people too.

## Notes

1. Wally Lamb, ed., *Couldn't Keep It To Myself: Wally Lamb and the Women of York Correctional Facility (Testimonies from our Sisters)* (New York: Harper's Collins, 2004), 9. Lamb's anthology features the testimonies of ten women incarcerated in the York Correctional Institution in Niantic, Connecticut. Some of the women have since died or been released. Lamb was a volunteer instructor in the prison's weekly writing workshop in which he challenged the women to write about some of the most personal aspects of their lives. The book is a result of some of the writings produced during those workshops.

2. Donna Rowe, 'From the Inside Out: Women Writers behind Prison Walls' (PhD dissertation, University of Maryland College Park, 2004). Rowe analyses the writings of women in a creative writing class at the District of Columbia Detention Center, texts written by women prisoners and activists in an underground prison newsletter in Seattle, WA, and oral narratives by former prisoners. Rowe argues that prison writing that is 'self-reflected for sharing or publication often contains important life-altering information about the writer, her life, and her circumstances that are essential to creating successful relationships between her past, her present, and her future' (21).

3. Bureau of Justice Statistics, *Prison Inmates at Midyear 2009*. <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=2272>. Accessed 26 October 2011.
4. In the US, jails are run by the county and house people who are awaiting trial or have been convicted of misdemeanours. A jail sentence usually does not exceed two years. People who are tried and convicted of more serious crimes, such as murder, serve time in prison. People who commit state crimes are held in state prisons; those who commit federal crimes are held in federal prison.
5. Victoria Law helped start Books Through Bars, New York City, a group that sends free books to prisoners nationwide. In 2000, she began concentrating on the needs and actions of women in prison, drawing attention to their issues by writing articles and giving public presentations, culminating in her book *Resistance Behind Bars: The Struggles of Incarcerated Women* (Oakland, CA: PM Press, 2009). I am quoting her essay 'Invisibility of Women Prisoner Resistance' that appears on the Women and Prison website at [http://womenandprison.org/social-justice/view/invisibility\\_of\\_women\\_prisoner\\_resistance/](http://womenandprison.org/social-justice/view/invisibility_of_women_prisoner_resistance/). Accessed 26 October 2011.
6. Judith Scheffler uses the phrase 'doubly marginal' in the introduction of *Wall Tappings: An International Anthology of Women's Prison Writings 200 to the Present* (New York: Feminist Press, 2002), xxii.
7. H. Bruce Franklin, *Prison Writing in 20<sup>th</sup> Century America* (New York: Penguin, 1998), 13.
8. Patricia Hill Collins, *Black Feminist Thought: Knowledge, Consciousness and the Politics of Empowerment* (New York: Routledge, 2004), 22.
9. Deborah E. McDowell, 'New Directions in Black Feminist Criticism', *Black American Literature Forum* 14 (Winter 1980): 153–59.
10. *Ibid.*, 154.
11. Collins, *Black Feminist Thought*, 25.
12. Collins, *Black Feminist Thought*, 110. Collins explains that safe spaces were 'safe' because they 'represented places where black women could freely examine issues that concerned us. Such spaces become less safe if shared by those who were not black and female'. These spaces 'were never meant to be a way of life. Instead, they constitute one mechanism among many designed to foster black women's empowerment and enhance our ability to participate in social justice projects' (110).
13. Collins, *Black Feminist Thought*, 14. She writes: 'Developing Black feminist thought also involves searching for its expression in alternative institutional locations and among women who are not commonly perceived as intellectuals'.
14. Assata Shakur, 'Women In Prison: How It Is With Us', *The Black Scholar* 9 (1978): 8–15.
15. Joyce Ann Brown in Paula C. Johnson, *Inner Lives: Voices of African American Women in Prison* (New York: New York University Press, 2003), 154. Brown refers to women as 'the forgotten creatures in prison'.
16. Ida P. McCray in Paula C. Johnson, *Inner Lives*, 180.
17. Donna Hubbard Spearman in Paula C. Johnson, *Inner Lives*, 203.
18. I conducted a phone interview with Patrice Gaines on 26 October 2010. According to her website ([patricegaines.com](http://patricegaines.com)), in the summer of 1970, when Gaines was twenty-one, she spent several weeks in jail as she faced charges for possession of heroin. She was a drug abuser speeding toward addiction. Today, Gaines returns monthly to the jail where she was held to teach an all-day workshop for women. The workshop is run through a non-profit

organisation, The Brown Angel Center, founded by Gaines and her friend Gaile Dry-Burton to assist women as they transition from jail or prison back to the community.

19. Ibid.
20. Ibid.
21. Collins, *Black Feminist Thought*, 129.
22. Angela Davis, *Are Prisons Obsolete?* (New York: Seven Stories Press, 2003), 78.
23. Saidiya Hartman, *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth-Century America* (New York: Oxford University Press, 1997), 86.
24. Assata Shakur, *Assata: An Autobiography* (Chicago: Lawrence Hill, 1987), 83–84.
25. Patrice Gaines, *Laughing in the Dark: From Colored Girl to Woman of Color – A Journey From Prison to Power* (New York: Anchor Books, 1994), 116.
26. Tabatha Rowley in Lamb, *Couldn't Keep It To Myself*, 98.
27. Michelle Jessamy in Lamb, *Couldn't Keep It To Myself*, 265.
28. Ann Folwell Stanford is the founder and director of the DePaul Women, Writing and Incarceration Project. I am quoting her essay 'Where Love Flies Free: Women, Home and Writing in Cook County Jail' that appears on the Women and Prison website at [http://womenandprison.org/social-justice/view/where\\_love\\_flies\\_free\\_women\\_home\\_and\\_writing\\_in\\_cook\\_county\\_jail/](http://womenandprison.org/social-justice/view/where_love_flies_free_women_home_and_writing_in_cook_county_jail/). Accessed 26 October 2011.
29. Berry's story is featured in the 2003 documentary *What I Want My Words To Do To You*. It features fifteen women inmates participating in a writing programme at Bedford Hills Correctional Facility in Westchester County, New York, led by playwright Eve Ensler. Through a series of writing exercises, the women confront the realities of their crimes and explore their paths to prison. The Writing Group of Bedford Hills Correctional Facility, *What I Want My Words To Do To You*, directed by Gary Sunshine, Judith Katz, Madeleine Gavin (Borrowed Light LLC, 2003), DVD.
30. Ibid. In this exercise, the women were asked to write a letter to the person who has most influenced their life. Berry chose to write to her mother-in-law, who she says is like a mother to her.
31. Megan Sweeney, *Reading Is My Window: Books and the Art of Reading in Women's Prisons* (Chapel Hill: University of North Carolina Press, 2010), 3.
32. Ibid., 6.
33. Ibid., 3.
34. Scheffler, introduction to *Wall Tappings*, xxii.
35. Joyce Logan, foreword to Paula C. Johnson, *Inner Lives*, viii.



## PRESENTATION

# The Resilience of the Written Off: Women in Prison as Women of Change

*Kathy Boudin\**

During the twenty-two years that I spent in prison and in the time following my release, I have reflected on the ways that individuals who are engaged in advocacy, research, teaching, or providing services for incarcerated women speak about women in prison. It is often acknowledged that the identity and role of a mother is key for women in prison,<sup>1</sup> the majority of whom are mothers.<sup>2</sup> Beyond this point, I usually hear two broad categories of description. First, with increasing awareness of the social crisis of mass incarceration, women in prison are described as “victims.” They are especially defined as victims of physical and sexual abuse — either in their childhood or adulthood. They are also described as victims of an

unjust set of socio-economic conditions: race combined with class create conditions of poverty which lead to lack of education, lack of employment, lack of respect and lack of opportunity. Statistics certainly support this definition and framing. For example, women who end up incarcerated are often victims of abusive family members and/or battering relationships. According to some studies, as many as 80% of incarcerated women were abused either as children or adults.<sup>3</sup> Estimates suggest that somewhere between 25% to 60% of the women in prison need mental health support.<sup>4</sup> Race, class and disintegrating urban neighborhoods intertwine to become the defining elements of who ends up in prison. In New York State,

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1. See generally PHYLLIS JO BAUNACH, *MOTHERS IN PRISON* (1985) (exploring imprisoned mothers' perceptions of the separation from their children and its effect on them, their children, and the relationship). In my experience, the role of mother was equally important to women in prison who did not have children of their own.

2. CHRISTOPHER J. MUMOLA, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, *INCARCERATED PARENTS AND THEIR CHILDREN 2 tbl.1* (2000), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/iptc.pdf>. One study found that

over 75% of women incarcerated in New York were mothers. JULIE MARGOLIES & TAMAR KRAFT-STOLAR, CORR. ASS'N OF N.Y., *WHEN “FREE” MEANS LOSING YOUR MOTHER: THE COLLISION OF CHILD WELFARE AND THE INCARCERATION OF WOMEN IN NEW YORK STATE 3* (2006), available at [www.njjsj.org/pubdocs/2006/red\\_031606\\_mother.pdf](http://www.njjsj.org/pubdocs/2006/red_031606_mother.pdf).

3. Stephanie S. Covington, *A Woman's Journey Home: Challenges for Female Offenders*, in *PRISONERS ONCE REMOVED: THE IMPACT OF INCARCERATION AND REENTRY ON CHILDREN, FAMILIES, AND COMMUNITIES 79* (Jeremy Travis & Michelle Waul eds., 2003).

4. Barbara Owen, *Women and Imprisonment in the United States: The Gendered Consequences of the U.S. Imprisonment Binge*, in *THE CRIMINAL JUSTICE SYSTEM AND WOMEN: OFFENDERS, PRISONERS, VICTIMS, & WORKERS 195-206* (Barbara Raffel Price & Natalie J. Sokoloff eds., McGraw Hill 3d ed. 2004).

54.6% of the women in prison are Black, 28.9% are Latina and 15.8% are white.<sup>5</sup>

The second broad definition identifies women in prison solely in negative terms, by their problems or by their crimes. An example of a common problem is that of drug addiction. Close to 75% of women in prison were using drugs regularly before their arrest, and 40% of women in the state prisons report being under the influence of drugs when they committed the crime for which they were last arrested.<sup>6</sup> Another problem is lack of education. Less than 50% of the women in prison graduated from high school or have a General Educational Diploma.<sup>7</sup> Economic survival has also been a major problem for most women in prison: 30% of incarcerated women were receiving welfare assistance before their arrest.<sup>8</sup> Most women in prison have committed an act that violated a law, some more serious than others, and frequently women are reduced to labels such as "ho," "monster," "man-hater," or "mule."

A drawback to focusing on "woman as victim" or "woman as problem" is that both paradigms tend to render women passive; these views focus on a woman's weaknesses or limitations rather than on her strengths. From this perspective, an incarcerated woman is a victim who needs to be helped. She needs to be rehabilitated or habilitated. Yet, a greater truth exists about women in prison. Women in prison are filled with ideas, energy, dreams and possibilities. Women in prison can be critical agents of their own change. They can and must own responsibility for their acts and the damage done. They can inspire and help other women to change; they can tackle the social problems that they confront inside the prison, and upon going home, they can help change the social

conditions problematic for society. They can redirect their lives.

Unfortunately, prisons are not the best place for those things to happen. Prisons are primarily oriented around security, control and punishment, and therefore it is very difficult to take initiative, develop self-reliance, or act collectively. Yet, within those constraints, I had the opportunity, in the years I spent at Bedford Hills Correctional Facility, to work with many other incarcerated women; we served our community and ourselves.<sup>9</sup> Together, we faced responsibility for acts that led us to prison, and inspired others throughout the country, both in and out of prison, to tackle social issues. That is the focus of this presentation. It is very difficult for people on the outside to actually see beyond the construct of "women as victims" or "women with problems." By shifting the paradigm, women in prison, or even better, women in alternatives to incarceration<sup>10</sup> can be seen as people who can make a difference.

When the AIDS epidemic rapidly expanded during the 1980s, the women in the New York State prison system were at the center of the crisis. In a blind study carried out in 1987, almost 20% of the women entering the correctional system tested positive for HIV.<sup>11</sup> The scope of the crisis extended beyond the HIV-positive women in the system. The crisis included family members at home who were dying of AIDS: children, sisters, brothers, aunts, and uncles. Those who had used IV drugs were terrified. The prison population, where people live in such close contact, was enveloped with stigma, fear and ignorance. The HIV epidemic created a divided and silent cruel reality for women in prison.

5. MICHELE E. STALEY, DEP'T OF CORR. SERVS., STATE OF N.Y., MEN AND WOMEN UNDER CUSTODY: 1987-1998, at 81 (1999), available at <http://www.nysl.nysed.gov/scandoc/links/ocm45061924.htm>.

6. CHRISTOPHER J. MUMOLA, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, SUBSTANCE ABUSE AND TREATMENT, STATE AND FEDERAL PRISONERS, 1997, at 7 (1999), available at <http://www.ojp.gov/bjs/abstract/satsfp97.htm>.

7. TRACY L. SNELL, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, SURVEY OF STATE PRISON INMATES, 1991: WOMEN IN PRISON 2 (1994), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/wopris.pdf>.

8. Jeremy Travis & Michelle Waul, *Prisoners Once Removed: The Children and Families of Prisoners*, in PRISONERS

ONCE REMOVED: THE IMPACT OF INCARCERATION AND REENTRY ON CHILDREN, FAMILIES, AND COMMUNITIES 7 (Jeremy Travis & Michelle Waul eds., 2003).

9. As an inmate I worked with women in our communities outside prison as well as women in prison.

10. These alternatives include drug treatment programs, drug court, and community service, among others.

11. AIDS ADVISORY COUNCIL, N.Y. STATE DEP'T OF HEALTH, MANAGEMENT OF HIV INFECTION IN NEW YORK STATE PRISONS 8 (1989), available at <http://www.health.state.ny.us/diseases/aids/workgroups/aac/docs/hivinfectioninnysprisons.pdf>.

In 1987, at the request of a group of inmates at Bedford Hills Correctional Facility, prison authorities brought doctors in to provide educational sessions about HIV/AIDS; one hundred and fifty women showed up to the first session.<sup>12</sup> These educational sessions were a start. However, prison authorities were not adequately meeting women prisoners' needs. For example, this type of outreach did not provide women the opportunity to have follow-up discussions because they did not want to ask sensitive questions in front of such a large group. This meant that some women remained uninformed about HIV/AIDS. Meanwhile other women were dying silently, without any community support. At the end of 1987, five women submitted a proposal to the superintendent, which essentially stated that we, as women living in prison, needed to be able to deal with the AIDS epidemic. Brief visits from professionals could not meet the demands and needs of almost 800 women.<sup>13</sup> We needed to be educated. We needed permission to educate one another, to care for each other in sickness and death, to prevent our sisters from becoming infected, and to build support systems for women going home.

While the Superintendent considered the proposal, we received permission to carry out a quilt-making project honoring the fifteen women at Bedford who had already died of AIDS. Over President's Day weekend in 1988, close to forty women made quilts for their friends who had died of AIDS. At that time, people were not talking openly about AIDS. AIDS was shameful, stigmatized, and as a result, no one wanted to draw attention to the problem. However, by making quilts, we honored the people we lost and acknowledged what had happened to them. With permission from the prison administration, we displayed the quilts in various parts of the facility. After making their way around the facility, the quilts remained on display in the gym. Over the course of several weeks, hundreds of women were able to view these quilts acknowledging their friends who

had died in the previous two to three years. AIDS was no longer hidden or whispered about. It was suddenly something we could talk about.

Prison personnel around the country generally did not want people in prison to be educated or become educators about AIDS. First, an educated population is more likely to ask more from the medical departments. Second, AIDS requires talking about sex and drugs both of which are illegal in prison, and corrections personnel did not want to acknowledge that they both happen in prison. When the Superintendent finally agreed to allow HIV/AIDS educators into the facility, thirty-five of us signed up to attend eight afternoon sessions with volunteers from Montefiore hospital. We were a cross-section of the 800 women in the prison. Some of us were HIV positive, and others of us were not. We were Black, Latina, White, gay, straight, college educated, street smart. Some were former drug users, terrified that they were infected, and others were family members of infected people. Our ability to stand together to do something to help our community, transformed us into a symbol, a microcosm, for what we hoped could happen in the entire prison. We wanted to create a community within the prison; we wanted to take care of our sisters who were dying in front of our eyes, and prevent others from getting sick. We, women prisoners, drove this process.

Within months of the creation of our organization, AIDS Counseling and Education ("ACE"), the AIDS Institute of the New York Department of Health designated funds for the program. The AIDS Institute recognized that AIDS was creating a crisis inside prisons and saw that prisoners could make a difference. Nonetheless, it took more than two years before the funding actually became available. Our program and organization went through many ups and downs; ACE was shut down several times by the prison administration, but ultimately, we became a funded program with an office. Over the years, ACE trained hundreds

12. The details of the story recounted in this essay come from my personal involvement with this effort. In 1998, a collective of the women published this inspiring story. See AIDS COUNSELING AND EDUCATION PROGRAM, *BREAKING THE WALLS OF SILENCE: AIDS AND WOMEN IN A NEW YORK MAXIMUM SECURITY PRISON* (1998).

13. Kathy Boudin & Judy Clark, *A Community of Women Organize Themselves to Cope with The AIDS Crisis: A Case Study from Bedford Hills Correctional Facility*, 1 COLUM. J. GENDER & L. 47, 56 (1991).

of women to be counselors and peer educators. Every living unit in the prison had ACE members to ensure someone was available to care for those who became sick, which included making sure sick prisoners ate and were taken to the prison infirmary if necessary.

Four years after we created the program we started walk-a-thons in the prison yard. Family members, prison correction officers, and prison administrators contributed money, which was donated to the Incarnation Children's Center, a children's hospice. Hundreds of women, wearing red shirts, walked around the yard all afternoon. At night, after count time, we went back to the yard and stood together to form a human red ribbon. There under the stars, we called out the names of the women who had died. Holding onto one another, arms over each others' shoulders, we sang our theme song "Sister:" "Lean on me, I am your sister. Believe in me, I am your friend."<sup>14</sup>

So, at the height of the AIDS epidemic the atmosphere in the prison changed, as we ourselves became educators, counselors, and caregivers to one another. An outsider could never have achieved what we achieved. We had to do it. It was our community.

Over the next 15 years, women left prison after serving their sentences, and they continued in their commitment to helping others. They were able to get jobs with programs and agencies that helped their communities cope with AIDS. Women, who had come to prison without a GED, went back to the street, with college degrees and work experience with ACE. They had not only grown themselves, but they had also made a difference in other peoples' lives.

Just before leaving prison, Katrina Haslip,<sup>15</sup> a leader of ACE and a person with AIDS, wrote about her experience and the role of women in the prison:

Somewhere behind a prison wall in Bedford Hills a movement or community was being built. It was a diverse group of women teaming together to meet the needs and fears that had developed with this new epi-

dem, AIDS. These women believed that none of their peers should be discriminated against, isolated, or treated cruelly merely because they were ill. They believed that it was necessary for this prison to build an environment of support, comfort, education, and trust. I was a part of this process. In the center of its establishment I stood, struggling with my own personal issues of HIV infection. While held in some sort of limbo, I felt as if the women of ACE had built a cocoon around me, for me. I felt warmed by them and so totally understood. These were the women who understood my silence and yet felt my need to be heard. They gave me comfort when I needed it and an ear when I needed a listener. They helped me to grow stronger with hopes that one day I would be able to stand alone and still feel as safe. Empowered! I took from them all that they were capable of putting out. I gave back to them what I was given. It was as if I mirrored back what they put out. I had never before noticed in my peers this ability to care so deeply. For I, too, had labeled them prisoners, cold and uncaring. Yet they had managed to build a community of women: black, white, Hispanic, learned, illiterate, robbers, murderers, forgers, rich, poor, Christian, Muslim, Jewish, bisexual, gay, heterosexual—all putting aside their differences and egos for a collective cause, to help themselves. I could not believe my eyes. Right before me lay a model of how we, as a whole, needed to combat all the issues AIDS brought, and we were building it from behind a wall, from prison. We were the community that no one thought would help itself. Social outcasts, because of our crimes against society, in spite of what society inflicted upon some of us.

We emerged from nothingness with a need to build consciousness and to save lives. We made a difference in our community behind the wall, and that difference has allowed me to sur-

14. CRIS WILLIAMSON, *Sister, on THE CHANGER AND THE CHANGED* (Olivia Records 1975).

15. Katrina died less than two years after leaving prison. However, in her short time home she was a leading advocate

for women with HIV/AIDS; she demanded that particular women's illnesses be included in the CDC's definitions of opportunistic infections. See *Katrina Haslip Dies; AIDS Worker was 33*, N.Y. TIMES, Dec. 3, 1992, at D20.

vive and thrive as a person with AIDS. To my peers in Bedford Hills Correctional Facility, you have truly made a difference. I can now go anywhere, and stand openly, alone without the silence.<sup>16</sup>

The Children's Center at Bedford Hills is another powerful example of women in prison working together to solve their own problems. In 1981, Sister Elaine Roulet created The Children's Center; it included children and mothers programs centered on the guiding principle that the programs had to be "inmate centered."<sup>17</sup> Almost 75% of the women in prison are mothers, and most of them say that being separated from their children is the most painful part of being in prison.<sup>18</sup> Being in prison is a crisis and an opportunity for women to grow as people, mothers, and individuals. In prison women struggle with the consequences of their acts, acts that led to imprisonment and separation from their families. Women work on their own issues of being a mother and trying to make visits with their children a positive experience. They take parenting classes and also focus energy on their relationships with their children's caregivers. Frequently, after getting help in these areas, those same women want to help other mothers. The Children's Center provides women with opportunities for truly meaningful prison jobs. Jobs include being an inmate caregiver in the children's center visiting area. Women with this job provide games and projects for visiting children and their mothers; they work in the nursery caring for babies while their mothers are in class; they learn to teach a parenting class; or they study foster care law from other women who already are knowledgeable about foster care law. Women learn that they are capable of being teachers and counselors, of developing programs, and the Children's

Center has given them the opportunities to develop these skills.

The last example I would like to discuss is higher education for women in prison. Federal Pell Grant funds made higher education possible in prisons throughout the country from 1970 through 1994.<sup>19</sup> In New York State, Tuition Assistance Program ("TAP") grants supplemented the Pell Grants.<sup>20</sup> Then, in 1994, under a provision of an omnibus crime bill, federal funding was no longer given to people in correctional facilities.<sup>21</sup> Subsequently, New York State no longer provided TAP grants for those who were incarcerated.<sup>22</sup> Higher education programs in prisons throughout the country were closed down.<sup>23</sup> In June 1995, Mercy College ran the last graduation of a successful program at Bedford Hills. Nationally, all but eight of the 350 college programs in prison were discontinued.<sup>24</sup> The day the college program closed at Bedford Hills, the tutors and administrators of the Learning Center packed all the books into boxes and carted them away, along with the word processors. There were no dry eyes on that day, and a feeling of hopelessness spread over the prison. College offered women a chance to redirect their lives, an opportunity to imagine a new life and a new person. For those working toward their GED, the possibility of college was an inspiration, a motivating factor. When the college program was eliminated, a blow to hope was dealt.

During the subsequent year, women throughout the prison asked each other what they could do. Once again, a group of women started talking about possibilities. Since Bedford Hills is in Westchester, New York, the women imagined that they could develop a privately funded college, one not dependent on government funds, but rather supported by private individuals in Westchester County and the

16. AIDS COUNSELING AND EDUCATION PROGRAM, *supra* note 12, at 9-10.

17. Kathy Boudin, *The Children's Center Programs of Bedford Hills Correctional Facility*, in *MATERNAL TIES: A Selection of Programs For Female Offenders* 55-86 (Cynthia L. Blinn ed., 1997).

18. *Id.*

19. MICHELLE FINE ET AL., *CHANGING MINDS: THE IMPACT OF COLLEGE IN A MAXIMUM SECURITY PRISON* 4-5 (2001), available at [http://web.gc.cuny.edu/che/changing\\_minds.html](http://web.gc.cuny.edu/che/changing_minds.html). Pell Grants are only available to low-income undergraduate and post baccalaureate students. U.S. Depart-

ment of Education, Federal Pell Grant Program, <http://www.ed.gov/programs/fpg/index.html> (last visited Mar. 12, 2008). The stated goal of these grants is "to promote access to post-secondary education." *Id.*

20. *Id.*

21. Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-332, 108 Stat. 1796, § 20411 (codified in 20 U.S.C. § 1070a(b)(7)).

22. MICHELLE FINE ET AL., *supra* note 19, at 4-5.

23. *Id.*

24. *Id.*

state of New York. With the support of the prison administration, people from the community, academic institutions and the women in prison came together to brainstorm a solution. The drive came from the inmates, but the process was collaborative. The collaboration led to a new a privately funded structure, where each participating college would donate one professor to teach one course. Marymount College coordinated the effort that provided the associate and bachelor's degrees.<sup>25</sup> There were several successful fundraising efforts, such as performances of works written by women who participated in a writing group lead by Eve Ensler. Donations from foundations and private individuals raised the money to pay for a college coordinator and a counselor. People from the Westchester community donated the first computers and helped to set up a library.<sup>26</sup> By spring of 1997, a new program that granted a degree in sociology had begun. The college at Bedford Hills became a model; now throughout New York and other states, different prisons are figuring out ways to reinstitute college programs without the help of the federal government.<sup>27</sup>

The women at Bedford Hills felt the need for education and initiated the process of obtaining a college. Once the Learning Center was reestablished, women prisoners became tutors and an "each one teach one" ethos developed. As inmates we could not do many things, but we fueled the project with our dreams, hopes, and energy. We made it happen with the collaboration of community volunteers and prison staff. Women in prison are not just victims and they are not just problems. Understanding this is critical to a discussion about what is possible for women in prison.

The second topic I will discuss concerns women serving long sentences for violent crimes. Among the rising numbers of women in prison, approximately 20% were convicted of violent crimes in 1999.<sup>28</sup> When I was incarcer-

ated, we met with many guests who came into the prison to learn about the programs discussed in this presentation. The prison staff members introducing the programs often stated that most women are in prison for nonviolent crimes, yet most of the women meeting with the guests were actually in prison for violent crimes. When I came home I heard and continue to hear the same thing: most women are in prison for nonviolent crimes. While this may be true statistically, it should be noted that women in prison for violent crimes (with the more recent exception of battered women who killed their abusers) are not acknowledged in the conversation. Women who have been convicted for violent offenses and have the longest sentences are often the most demonized by the public. Ironically, in my experience, they are also the greatest contributors to helping other women get through their prison time.

The programs described in this presentation were primarily initiated by women who were serving long sentences, a large portion of whom had committed violent crimes.<sup>29</sup> Perhaps, these women in particular have an interest in such programs because they are serving long sentences, and therefore they are committed to and invested in prison life. Maybe it is because they must serve long sentences in prison giving them the opportunity to undergo a maturation process involving self-reflection and access to education. Perhaps it is because have struggled to give their lives meaning in light of facing fifteen, twenty, forty, seventy-five years in prison. Frequently, the meaning that they find is expressed in their generosity and desire to help other women.

Women who finally get to the parole board after serving the minimum sentence of fifteen, twenty, or twenty-five years are usually denied parole because of the seriousness of the original crime. Some of these women serve two to ten years more than the minimum sentences originally ordered by a judge.<sup>30</sup> Yet, the recidivism

25. *Id.* at 5.

26. This was a collaborative effort by the prison community, the academic community and the community at large. COLLEGE BOUND TASK FORCE, *College Bound Programs: Preserving Higher Education In Prison* 12 (1997).

27. MICHELLE FINE ET AL., *supra* note 19, at 36-39.

28. ALLEN J. BECK, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, *PRISONERS IN 1999*, at 10 (2000), available at [www.ojp.gov/bjs/pub/pdf/p99.pdf](http://www.ojp.gov/bjs/pub/pdf/p99.pdf).

29. Those serving long sentences for nonviolent crimes were usually those sentenced under the Rockefeller Drug Laws. MICHELLE FINE ET AL., *supra* note 19, at ii.

30. *The Future of Sentencing in New York State, Hearing before New York State Commission on Sentencing Reform* 10 (2007) (statement of Michelle Fine, Professor at City University of New York), available at <http://www.criminaljustice.state.ny.us/legalservices/sentencingreform.htm> (follow "November 13, 2007 Public Hearing, New York City Compilation

rate for women who have been convicted of murder is close to zero in New York State.<sup>31</sup> One study followed thirty-eight women who were convicted of murder and released from prison between 1986 and 2003.<sup>32</sup> None of the thirty-eight women returned to prison for a new commitment within a thirty-six month period. That is a zero return rate to prison on new crimes for women released for murder in a study that included 19-years of releases from New York State prisons.<sup>33</sup> In another study, we focused on the “length of sentence” rather than “original conviction.”<sup>34</sup> The study followed 128 women who served a minimum of eight years in prison and were followed over a 24-month period after their release: It found that after serving fifteen years or more, none of the women returned to prison within two years following their release.<sup>35</sup> And, none of the forty-two women who served ten to fifteen year sentences were recommitted to the Department of Corrections for a new offense;<sup>36</sup> only one woman (2.3%) was returned to prison for a parole violation.<sup>37</sup> Out of the sixty-one women who served eight to ten years, one woman was returned to Department of Corrections after being convicted of a new offense (1.6%) and four were returned for parole violations (6.6%).<sup>38</sup>

Women serving long sentences for violent crimes are often role models for young women coming into prison. These women are respected because they figured out how to survive by building a life of meaning; it gives other incarcerated women a sense of possibility. Therefore, when the parole board repeatedly turns down these women it not only hurts the individual, her children and family, it hurts the morale of other prisoners. Unfortunately, in

my experience, the fact that a woman has actually changed while in prison often does not seem to matter to the parole board because to the parole board she is forever frozen in her crime.

Only by telling the stories of the women who are in prison for violent crimes will it become possible to break through the fear and the dichotomy of the “us versus them paradigm, which allows long sentences and parole denials keeping women locked up for decades. Moreover, to understand the experience of a woman in prison one must go beyond the situation of women. More than 2.3 million United States citizens are currently in prison.<sup>39</sup> More than seven million or one in ten of our nation’s children has a parent under criminal justice supervision; this includes parents who are incarcerated on probation or on parole.<sup>40</sup> The expansion of the penal system over the past three decades has become what one researcher termed “mass imprisonment,” a social crisis affecting communities, families and our entire nation.<sup>41</sup>

Although overall, women represent about 6% of state prisoners,<sup>42</sup> the incarceration rate for women has outpaced that of men since 1990.<sup>43</sup> Too many women are in prison. Women with convictions for nonviolent crimes are being imprisoned instead of finding alternatives to incarceration. Women in prison for violent crimes cannot get out, despite demonstrating change and a lack of public risk. I ask you to learn the stories of women in prison. These stories can alter the narratives of screaming newspaper headlines about women arrested, sent to prison, or trying to come home. I ask you to visit women in prison, get to know their potential, help create conditions that develop their

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of Written Testimony” hyperlink) [hereinafter *Future of Sentencing in New York State*].

31. Special computer search analysis conducted by the New York State Department of Correctional Services Division of Program Planning, Research & Evaluation staff in January 2008. The results of this study are on file with Dr. Michelle Fine, Distinguished Professor of Psychology and Urban Education, Graduate Center, City University of New York.

32. *Id.*

33. *Id.*

34. Since the study focused on “length of conviction,” the study observed women who were convicted of both nonviolent and violent crimes.

35. *Future of Sentencing in New York State*, *supra* note 30, at 9.

36. *Id.*

37. *Id.*

38. *Id.*

39. WILLIAM J. SABOL ET AL., BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, PRISONERS IN 2006, at 3 (2007), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/p06.pdf>.

40. NELL BERNSTEIN, ALL ALONE IN THE WORLD: CHILDREN OF THE INCARCERATED 2 (2005).

41. INVISIBLE PUNISHMENT: THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT 1 (Marc Mauer & Meda Chesney-Lind eds., 2002).

42. BECK, *supra* note 28, at 1

43. *Id.* at 5. See also WILLIAM J. SABOL ET AL., *supra* note 39, at 3.

potential, and recognize women whose potential has been realized.



# Punishing Pregnancy: Race, Incarceration, and the Shackling of Pregnant Prisoners

Priscilla A. Ocen\*

*The shackling of pregnant prisoners during labor and childbirth is endemic within women's penal institutions in the United States. This Article investigates the factors that account for the pervasiveness of this practice and suggests doctrinal innovations that may be leveraged to prevent its continuation. At a general level, this Article asserts that we cannot understand the persistence of the shackling of female prisoners without understanding how historical constructions of race and gender operate structurally to both motivate and mask its use. More specifically, this Article contends that while shackling affects female prisoners of all races today, the persistent practice attaches to Black women in particular through the historical devaluation, regulation, and punishment of their exercise of reproductive capacity in three contexts: slavery, convict leasing, and chain gangs in the South. The regulation and punishment of Black women within these oppressive systems reinforced and reproduced stereotypes of these women as deviant and dangerous. In turn, as Southern penal practices proliferated in the United States and Black women became a significant percentage of the female*

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*prison population, these images began to animate harsh practices against all female prisoners.*

*Moreover, this Article asserts that current jurisprudence concerning the Eighth Amendment, the primary constitutional vehicle for challenging conditions of confinement, such as shackling, is insufficient to combat racialized practices at the structural level. Current doctrine focuses on the subjective intentions of prison officials at the individual level and omits any consideration of how race underlies institutional practices. Instead, this Article suggests an expanded reading of the Eighth Amendment and the “evolving standards of decency” language that undergirds the “cruel and unusual punishments” clause. Specifically, this Article argues that evolving standards of decency should be guided by other constitutional provisions, such as the Thirteenth Amendment. This expanded reading, which this Article refers to as the “antisubordination approach,” draws upon Justice Harlan’s oft-cited dissent in *Plessy v. Ferguson* and his underappreciated reading of the Thirteenth Amendment therein. Under such a reading, conditions of confinement that result from or are related to repudiated mechanisms of racial domination should be deemed “cruel and unusual punishments.” By challenging race and gender subordination at the structural level, this Article suggests that we can move from an aspiration to the actualization of humane justice.*

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## INTRODUCTION

One might have hoped that, by this hour, the very sight of chains on Black flesh, or the very sight of chains, would be so intolerable a sight for the American people, and so unbearable a memory, that they would themselves spontaneously rise up and strike off the manacles. But, no, they appear to glory in their chains; now, more than ever, they appear to measure their safety in chains and corpses.<sup>1</sup>

Olivia Hamilton, a Black<sup>2</sup> woman, was held in a Georgia jail.<sup>3</sup> She was pregnant at the time of her conviction.<sup>4</sup> Despite her pregnancy, she often found it difficult to see a doctor because of the indifference of the guards and the overcrowding in the prison.<sup>5</sup> When the pains of labor harkened the arrival of

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1. James Baldwin, *An Open Letter to My Sister Angela*, in *IF THEY COME IN THE MORNING* 13 (Angela Davis ed., 1971).

2. I capitalize Black because as Kimberlé Williams Crenshaw explains, it “reflect[s] my view that Blacks, like Asians, Latinos, and other ‘minorities,’ constitute a specific cultural group and, as such, require denotation as a proper noun.” Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1332 n.2 (1988).

3. *INSIDE THIS PLACE, NOT OF IT: NARRATIVES FROM WOMEN’S PRISONS* 29–31 (Robin Levi & Ayelet Waldman eds., 2011).

4. *Id.* at 28–29.

5. *Id.* at 30 (“I was [in jail in Georgia] about a month before I actually saw a doctor.”).

her baby, the shackles placed around her wrists compounded her agony.<sup>6</sup> Despite being admitted to the hospital for a cesarean delivery, the birth of her child imminent, she remained under the close supervision of armed prison staff and was shackled throughout the procedure.<sup>7</sup>

Nearly one hundred years earlier, Elvira, also a Black woman, was sentenced to Eastham State Farm,<sup>8</sup> a prison camp in rural Texas populated by Black men and women, for a minor offense.<sup>9</sup> Although Elvira was pregnant at the time she was sentenced, her status as an expectant mother received no consideration.<sup>10</sup> While incarcerated, prisoners, including those who were pregnant, were forced to engage in arduous labor to maintain the prison's expansive physical plant and were also leased out to local industries to perform backbreaking labor.<sup>11</sup> When Elvira complained of pregnancy pains and the possible onset of labor, she was not provided any assistance and was instead given a heavy workload on the prison yard.<sup>12</sup> In the midst of this pain, Elvira gave birth, delivering the child herself, under a magnolia tree near the prison barracks.<sup>13</sup> Elvira remained under the tree, her baby beside her, until another prisoner heard her cries and rendered assistance. Because of the lack of medical assistance, the baby contracted pneumonia and died a few days after his birth.<sup>14</sup>

Olivia and Elvira have similar stories. Both are poor African American women. Both were subject to dehumanizing and degrading conditions of

6. *Id.* at 34 (“But she made me keep the shackles on me when I went in for the c-section.”); see also AMNESTY INT’L USA, “NOT PART OF MY SENTENCE”—VIOLATIONS OF THE HUMAN RIGHTS OF WOMEN IN CUSTODY 11 (1999), available at <http://www.amnesty.org/en/library/asset/AMR51/019/1999/en/7588269a-e33d-11dd-808b-bfd8d459a3de/amr510191999en.pdf> (detailing the use of restraints on female prisoners during labor and childbirth in California as well as other prisons in the United States).

7. INSIDE THIS PLACE, NOT OF IT: NARRATIVES FROM WOMEN’S PRISONS, *supra* note 3, at 34.

8. ANNE M. BUTLER, GENDERED JUSTICE IN THE AMERICAN WEST, 165–66 (1997) (citing testimony regarding Elvira’s experience from a Texas legislative committee investigating conditions at Eastham Camp).

9. In the post–Civil War South, African Americans were often arrested for offenses that were fabricated or on charges that would have been ignored if committed by whites. See, e.g., DOUGLAS A. BLACKMON, SLAVERY BY ANOTHER NAME: THE RE-ENSLAVEMENT OF BLACK AMERICANS FROM THE CIVIL WAR TO WORLD WAR II 5–7 (2009); BUTLER, *supra* note 8, at 5 (noting that women served their sentences in men’s institutions).

10. When sentencing Black women, pregnancy was not taken into consideration as a mitigating factor. See *infra* notes 159–68.

11. According to a Texas State Archives and Library exhibit on Texas prisons, “[i]n 1908, the African-American women were moved to a camp at Eastham Farm, about 20 miles north of Huntsville, where they were subject to whippings and sexual misconduct by the guards.” See Tex. State Library and Archives Comm’n, *Fear, Force and Leather: The Texas Prison System’s First Hundred Years, 1848–1948*, <http://www.tsl.state.tx.us/exhibits/prisons/convictlease/women.html> (last visited July 14, 2012) (“Several pregnant women were forced to work up until the time of delivery and to give birth in the fields.”).

12. BUTLER, *supra* note 8, at 165–66.

13. *Id.*

14. *Id.*

confinement that devalued their pregnancies. Both were also subject to particularized forms of state violence inasmuch as the women's pregnancies were occasions for profound humiliation and abuse. Yet their experiences are separated by more than one hundred years. How is it, then, that there are so many continuities in their treatment?

In this Article, I explore this question, with a particular focus on the historical constructions of Black women, the denigration of their reproductive capacities, and their relationship to the practice of shackling pregnant prisoners during labor and childbirth. In the contemporary context, some feminist scholars have argued that shackling of pregnant prisoners stems from the unthinking exportation of "prison rules . . . to a hospital setting."<sup>15</sup> Others argue that the practice is based on a male-centric approach to corrections that has not been adapted to fit the needs of female prisoners. For example, criminologist Meda Chesney-Lind suggests that "[l]ittle or no thought was given to the possibility of a female prisoner until she appeared at the door of the institution. It was as though crime and punishment existed in a world in which gender equaled male."<sup>16</sup> To contest the unthinking or androcentric use of shackles on pregnant women in prisons across the country, advocates have turned to the Eighth Amendment's "cruel and unusual punishments" clause as a remedy. The clause's lenient standard seeks to determine whether a guard was indifferent to the medical needs of a prisoner. I contend, however, that these frames posited by feminist scholars are insufficiently attentive to the structural role of race and gender in women's prison practices and overestimate the ability of current Eighth Amendment jurisprudence to halt, at an institutional level, the use of shackles during labor and childbirth as a condition of confinement.

I argue in this Article that race and gender are at the heart of the practice of shackling female prisoners during labor and childbirth. The intersection of race and gender explains why female prisoners are at once masculinized, yet uniquely punished as women during pregnancy and childbirth. More specifically, the examination of the intersection of race and gender in the context of stereotypes about Black women demonstrates how the mechanisms of subordination, including criminalization and incarceration, have evolved since the era of chattel slavery to facilitate the marginalization of racialized<sup>17</sup> women. When framed in this manner, the shackling of pregnant prisoners

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15. Dana L. Sichel, *Giving Birth in Shackles: A Constitutional and Human Rights Violation*, 16 AM. U. J. GENDER SOC. POL'Y & L. 223, 235 (2007).

16. INVISIBLE PUNISHMENT: THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT 79 (Marc Mauer & Meda Chesney-Lind eds., 2002).

17. I use the term "racialized" to capture the "discursive process by which particular groups have been classified as non-white, specific meanings have been attached to those groups, and those meanings have been used to support the hierarchical distribution of power, land, and resources." Addie C. Rolnick, *The Promise of Mancari: Indian Political Rights as Racial Remedy*, 86 N.Y.U. L. REV. 958, 965 n.31 (2011) (citing MICHAEL OMI & HOWARD WINANT, RACIAL FORMATION IN THE UNITED STATES: FROM THE 1960S TO THE 1990S (2d ed. 1994)).

appears as a manifestation of the punishment of “unfit” or “undesirable” women for exercising the choice to become mothers.<sup>18</sup> Within the prevailing punishment regime, undesirability is synonymous with race, as the impulse to punish such women is rooted in the stereotypical constructions of Black women.

The widespread use of shackles on pregnant prisoners is premised on constructions of Black feminine deviance that were outgrowths of earlier regimes of punishment, such as post–Civil War era convict leasing<sup>19</sup> and chain gangs.<sup>20</sup> It is well understood that contemporary crime and punishment policy and stereotypes about Black men are both informed by the criminalization of Black men during the post–Civil War era.<sup>21</sup> Scholars, such as Michelle Alexander, have argued that the criminalization of Black men in this era

18. See, e.g., Lisa Ikemoto, *The In/Fertile, Too Fertile and Disfertile*, 47 HASTINGS L.J. 1007, 1045–53 (1997) (discussing deviant motherhood); Dorothy Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right to Privacy*, 104 HARV. L. REV. 1419, 1424 (1991) (noting that in the context of the prosecution of drug-addicted mothers, “[p]oor Black women have been selected for punishment as a result of an inseparable combination of their gender, race, and economic status. Their devaluation as mothers, which underlies the prosecutions, has its roots in the unique experience of slavery and has been perpetuated by complex social forces”).

19. Convict leasing was a system of penal labor practiced predominately, though not exclusively, in the Southern United States. The system emerged following the Civil War and was almost exclusively applied to newly freed slaves, who were often convicted of minor crimes on the basis of little or no evidence. Those convicted of crimes were leased from the state to private individuals, businesses, and corporations in all manner of industries, including agriculture, mining, and railroad and levee construction. Payment for the labor of those leased was made to the state. See, e.g., BLACKMON, *supra* note 9, at 4 (noting that convict leasing was a “system in which armies of free men, guilty of no crimes and entitled by law to freedom, were compelled to labor without compensation, were repeatedly bought and sold, and were forced to do the bidding of white masters through the regular application of extraordinary physical coercion”); DAVID OSHINSKY, “WORSE THAN SLAVERY”: PARCHMAN FARM AND THE ORDEAL OF JIM CROW JUSTICE 40–41 (1996).

20. Following the abolition of convict leasing in many Southern states, the chain gang was established as a new system of exploitative labor promulgated by prisons and local county jails. See generally Alex Lichtenstein, *Good Roads and Chain Gangs in the Progressive South: “The Negro Convict is a Slave,”* 59 J. S. HIST. 85 (1993) (discussing the development of chain gangs in Southern states after the abolition of convict leasing, and noting that chain gangs were originally viewed as a positive, progressive reform). Rather than leasing prisoners for the benefit of private industry, jail and prison administrators forced prisoners—who were almost all Black—to labor on plantations, roads, and other public works projects. See, e.g., MILFRED C. FIERCE, *SLAVERY REVISITED: BLACKS AND THE SOUTHERN CONVICT LEASE SYSTEM, 1865–1933*, at 11–13, 194 (1994). Prisoners were worked in public and chained to one another as they engaged in coerced labor. See *Jamison v. Wimbish*, 130 F. 351, 355 (D.C. Ga. 1904) (“The sufferers wear the typical striped clothing of the penitentiary convict. Iron manacles are riveted upon their legs. These can be removed only by the use of the cold chisel. The irons on each leg are connected by chains.”). The chains remained fastened around the ankles of prisoners even as they rested. See Tessa M. Gorman, *Back on the Chain Gang: Why the Eighth Amendment and the History of Slavery Proscribe the Resurgence of Chain Gangs*, 85 CALIF. L. REV. 441, 452 (1997) (“The convicts were usually harnessed together with chains at all times, even while eating or sleeping.”).

21. See, e.g., MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 26–35 (2009); Dorothy Roberts, *Race, Crime, and Reproduction*, 67 TUL. L. REV. 1945, 1954–61 (1995).

formed the bedrock for the modern phenomenon of mass incarceration.<sup>22</sup> Less well understood, however, is the way in which Black women's subjugation during slavery and punishment regimes in the post-Civil War era shaped stereotypes of Black women, views of female prisoners, and modern prison policy. This Article seeks to fill this discursive gap. Drawing upon Black feminist and intersectionality theory,<sup>23</sup> I argue that post-Civil War era punishment regimes served to define the boundaries of womanhood and those boundaries were in turn used to identify which women should be labeled as "criminal." While Black men were seen as physically violent, Black women were seen as dangerous through a sexualized lens, one that often focused on reproduction. The way in which Black women and female prisoners became synonymous over time reveals the mutually constitutive relationship between Black women and prison.<sup>24</sup>

While the prison system has expanded as a mechanism for the governance of economically and racially marginalized populations,<sup>25</sup> incarcerated women's reproductive capacities have remained a site of subordination. What began as a mechanism to control and demean Black women has become the prevailing mechanism for the treatment of all female prisoners. Indeed, the formative years of the women's penal system in the United States occurred at a historical moment in which crime was deployed to maintain racialized and gendered boundaries.<sup>26</sup> Those boundaries now constitute the institutional parameters in which modern women's prisons operate.<sup>27</sup> This is particularly true given the ways in which Southern prison practices informed practices nationwide as the

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22. See generally ALEXANDER, *supra* note 21 (arguing that mass incarceration, although race neutral, relies on assumptions of Black criminality and functions as a mechanism of racial subordination).

23. See, e.g., Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Law*, 1989 U. CHI. LEGAL F. 139 (1989).

24. See, e.g., Kim Shayo Buchanan, *Beyond Modesty: Privacy in Prison and the Risk of Sexual Abuse*, 88 MARQ. L. REV. 751, 789 (2004) (noting that judicial perceptions of female prisoners are informed by stereotypical constructs of Black women).

25. See, e.g., RUTH WILSON GILMORE, *THE GOLDEN GULAG: PRISONS, SURPLUS, CRISIS AND OPPOSITION IN GLOBALIZING CALIFORNIA* (2007).

26. See, e.g., Jenni Vainik, *The Reproductive Rights of Incarcerated Mothers*, 46 FAM. CT. REV. 670, 672–74 (2008) (noting that starting in the 1870s, "a woman's race dictated the type of penal institution where she would serve her sentence," and that "[t]he type of punishment used at each institution implicitly reinforced the racist and sexist stereotypes of the time"); ANGELA Y. DAVIS, *From the Prison of Slavery to the Slavery of Prison: Frederick Douglass and the Convict Lease System*, in THE ANGELA Y. DAVIS READER 75–89 (Joy James ed., 1998) (tracking the racialization of specific crimes and of the penal system in post-Civil War America).

27. The claim advanced in this Article is not that shackling is applied to pregnant Black female prisoners in a racially disproportionate manner (though there is certainly evidence that it is). Rather, this Article seeks to interrogate the ideological and structural underpinnings of shackling practices that impact all female prisoners, but that rest on stereotypical racial and gender constructions of Black women. Using shackling as a metaphor in the service of a broader claim regarding the social meaning of particular forms of punishment, this Article will also explore the ways in which the social meanings of punishment practices contribute to their normalization within prison environments.

United States turned to a more retributivist philosophy of incarceration in the 1970s.<sup>28</sup> Consequently, the punitive orientation toward female prisoners, who were nearly all Black in the post-Civil War era,<sup>29</sup> has become the standard operating procedure in contemporary prisons.<sup>30</sup> Therefore, the presumed race and gender identity of female prisoners has played an essential role in normalizing the use of shackles on pregnant prisoners, not only in formal incarcerative spaces, such as prisons, but also in institutions, such as detention centers, that have come to resemble prisons in critical respects.<sup>31</sup>

A racial and gendered analysis of the use of shackles on pregnant prisoners reveals fundamental deficiencies within Eighth Amendment doctrine given its inability to engage in a race-conscious and historically contextualized analysis of conditions of confinement. As Sharon Dolovich and Alice Ristroph have noted, Eighth Amendment jurisprudence, and the “deliberate indifference” standard announced by the Supreme Court in a line of cases beginning with *Estelle v. Gamble*,<sup>32</sup> is insufficiently structural in its scope.<sup>33</sup> Rather, the doctrinal framework for “cruel and unusual punishments” is focused on the harmful intent of individual actors rather than institutions, and views conditions of confinement from the perspective of the perpetrator instead of the prisoner.

This Article adds to these critiques by arguing that Eighth Amendment jurisprudence is inadequate, not only because of its focus on individual actors, but also because of its inability to uproot the structural dynamics around race and gender that facilitate the continuation of harsh practices such as shackling during labor and childbirth.<sup>34</sup> Moreover, it elides any discussion of race and

28. See, e.g., MONA LYNCH, *SUNBELT JUSTICE: ARIZONA AND THE TRANSFORMATION OF AMERICAN PUNISHMENT* 2–3 (2010).

29. See *infra* notes 131–143 and accompanying text.

30. The structural argument advanced here is in many ways analogous to recent scholarship suggesting that workplaces can be “racialized over time” and that all workers within the racialized workplace are subject to degrading treatment, even if they are not members of the racialized group. In other words, this scholarship demonstrates that racialized occupational categories shape both the workplace environment and the public perceptions of all of the employees. See, e.g., Leticia Saucedo, *Three Theories of Discrimination in the Brown Collar Workforce*, 1 U. CHI. LEGAL F. 345 (2009); Leticia Saucedo, *The Employer Preference for the Subservient Worker and the Making of the Brown Collar Workforce*, 67 OHIO ST. L.J. 964 (2006).

31. See, e.g., *ACLU Challenges Prison-like Conditions at Hutto Detention Center*, ACLU (Mar. 6, 2007), <http://www.aclu.org/immigrants-rights-racial-justice-prisoners-rights/aclu-challenges-prison-conditions-hutto-detention>; Rafael Romo & Nick Valencia, *ACLU: Lawsuit Alleges 3 Immigrant Women Assaulted While in ICE Custody*, CNN (Oct. 21, 2011, 1:53 AM), <http://www.cnn.com/2011/10/21/justice/us-detainees-assault-suit/index.html>.

32. 429 U.S. 97 (1976).

33. See, e.g., Sharon Dolovich, *Cruelty, Prison Conditions, and the Eighth Amendment*, 84 N.Y.U. L. REV. 881 (2009); Alice Ristroph, *State Intentions and the Law of Punishment*, 98 J. CRIM. L. & CRIMINOLOGY 1353, 1357–60 (2008) (suggesting that an intent-based theory of state action is inappropriate in the Eighth Amendment context).

34. See, e.g., Robin Levi et al., *Creating the “Bad Mother:” How the U.S. Approach to Pregnancy in Prison Violates the Right to Be a Mother*, 18 UCLA WOMEN’S L.J. 1 (2010) (discussing the shackling of pregnant women in prison and placing the practice in the context of eugenics and



gender in structuring the environment in which the practice takes place and ignores historical antecedents to contemporary shackling practices. In short, the current Eighth Amendment conditions of confinement jurisprudence is unable to contest the racial and gender stereotypes of female prisoners that render them vulnerable to shackling practices. Nor is the current doctrinal framework able to recognize the historical role of prisons in regulating the reproductive autonomy of women,<sup>35</sup> particularly Black women, and the role of such control in maintaining racial subordination and hierarchy.<sup>36</sup> Cases that have considered the constitutionality of shackling practices, such as *Nelson v. Correctional Medical Services*<sup>37</sup> and *Brawley v. Washington*,<sup>38</sup> bear out this point. In both cases, the doctrinal framework for “cruel and unusual punishments,” which is narrowly focused on individual actors rather than institutions, functions to obscure race and ignores historical antecedents to contemporary shackling practices.

The invisibility of Black women within juridical discourse frustrates our ability to engage in a structural critique of prison practices, such as the shackling of pregnant women during childbirth, and to understand the social meanings attached to such practices. The absence of a race- and gender-conscious structural critique of shackling practices might explain why reports

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welfare supervision. The authors argue for a remedy derived from a human rights framework rather than the Eighth Amendment. While the authors note the disproportionate number of women of color in prisons, they do not discuss the role that race plays in normalizing those practices); Elizabeth Alexander, *Unshackling Shawanna: The Battle over Chaining Women Prisoners During Labor and Delivery*, 32 U. ARK. LITTLE ROCK L. REV. 435 (2010) (provides a summary of the proceedings in *Nelson v. Correctional Medical Services* and briefly describes the harms associated with shackling, but it does not situate the practice within the overall devaluation of the reproductive capacities of female prisoners generally or of Black women in particular); Sichel, *supra* note 15 (arguing that shackling pregnant women during labor violates both the Eighth Amendment and international human rights standards but does not discuss race or racialized aspects of the practice); Heather L. McCrary, *Pregnant Behind Bars: Chapter 608 and California’s Reformation of the Medical Care and Treatment of Pregnant Women*, 37 MCGEORGE L. REV. 314 (2006) (summarizing the trend of shackling pregnant prisoners and the changes to California law regarding the treatment of pregnant women in prison). One article argues that shackling violates human rights norms and notes that Black women have been particularly impacted. Dana Sussman, *Bound by Injustice: Challenging the Use of Shackles on Incarcerated Pregnant Women*, 15 CARDOZO J.L. & GENDER 477 (2009). The author also demonstrates that contemporary shackling “parallels” slavery in many respects. *Id.* at 482. While the article usefully notes the parallel between contemporary shackling and slavery, it does not interrogate the relationship between the history of racial subordination of Black women and the normalization of these practices. Rather than merely paralleling slavery, I argue that the practice of shackling exists *because* of slavery and the punitive practices that emerged in its wake.

35. See ESTELLE B. FREEDMAN, *THEIR SISTERS’ KEEPERS: WOMEN’S PRISON REFORM IN AMERICA, 1830–1930*, at 96 (1984) (noting that early women’s reformatories implemented “new feminine methods stress[ing] the other parts of inmates’ female identities: their nonsexual, maternal, sentimental sides”); *id.* at 101 (documenting the imprisonment of women for the crime of having “sexual relations”).

36. Vainik, *supra* note 26, at 672–74.

37. 583 F.3d 522 (8th Cir. 2009).

38. 712 F. Supp. 2d 1208 (W.D. Wash. 2010).

of shackling continue to emerge even in jurisdictions that have either limited or outright banned the use of shackles on pregnant prisoners. For example, in Illinois, the first state to ban the use of shackles on pregnant prisoners during labor and childbirth, female prisoners filed a class-action lawsuit alleging the continued use of shackles on pregnant prisoners in a manner prohibited by state law.<sup>39</sup>

A more robust reading of the Eighth Amendment can address the overlapping systems of subordination that operate within the contemporary carceral regime. In order to develop a doctrinal framework that can capture the historical construction and subjugation of Black womanhood, the Court must move beyond its narrow moorings to subjective intent in Eighth Amendment doctrine and instead embrace a broader approach that is centered on “evolving standards of decency” and a race- and gender-conscious definition of cruelty.

The Court often looks to legislative trends and jury deliberations in defining “evolving standards of decency.” I suggest however, that to ascertain those evolving standards of decency, the Eighth Amendment’s “cruel and unusual punishments” inquiry should be guided by the values underlying the Thirteenth Amendment and its prohibition against the “badges and incidents of slavery.”<sup>40</sup> This approach, which I will call the “antibordination approach,” would interpret the Eighth Amendment to take into account the intent of the Framers of the Reconstruction Amendments not only to eliminate slavery as a formal matter, but also to eradicate the racial hierarchy upon which the system rested. In making this argument, I draw upon Justice Harlan’s expansive reading of the aims of the Thirteenth Amendment in his oft-cited dissent in *Plessy v. Ferguson*.<sup>41</sup> While his antibordination framing of the Constitution has had particular traction in the context of the Fourteenth Amendment,<sup>42</sup> his articulation of the Thirteenth Amendment has gone largely unexamined. A move toward an antibordination reading of the Eighth Amendment not only allows for a robust structural critique of practices in prison, but also encourages

39. See *infra* notes 251–57.

40. See, e.g., *Plessy v. Ferguson*, 163 U.S. 537, 555–58 (1896) (Harlan, J., dissenting); *Bailey v. Alabama*, 219 U.S. 219, 227, 241–44 (1911).

41. *Plessy*, 163 U.S. at 555–58 (Harlan, J., dissenting) (arguing that racial segregation constituted a badge or incident of slavery that is prohibited by the Thirteenth Amendment).

42. See, e.g., Owen M. Fiss, *Groups and the Equal Protection Clause*, 5 PHIL. & PUB. AFF. 107 (1976); Reva B. Siegel, *Discrimination in the Eyes of the Law: How “Color Blindness” Discourse Disrupts and Rationalizes Social Stratification*, 88 CALIF. L. REV. 77, 106 (2000); J.M. Balkin, *The Constitution of Status*, 106 YALE L.J. 2313, 2358 (1997); Reva B. Siegel, *Why Equal Protection No Longer Protects: The Evolving Forms of Status – Enforcing State Action*, 49 STAN. L. REV. 1111, 1143–45 (1997); Kenji Yoshino, *Assimilationist Bias in Equal Protection: The Visibility Presumption and the Case of “Don’t Ask, Don’t Tell,”* 108 YALE L.J. 485, 558 (1998) (noting that the equal protection inquiry should emphasize “classes over classifications, antibordination over formal equality”); Charles R. Lawrence III, *Race, Multiculturalism, and the Jurisprudence of Transformation*, 47 STAN. L. REV. 819, 824–25 (1995) (characterizing equality as a “substantive societal condition rather than as an individual right”).

a normative orientation in defining “cruelty,”<sup>43</sup> which would prohibit punishments that are rooted in or facilitate racial dominance. This normative orientation, however, is not only protective of Black women; rather, it seeks to disrupt racialized practices that animate the punitive practices that impact all incarcerated women. In this way, the antisubordination approach is attentive to the ways in which penal practices rooted in racial dominance undergird the treatment of all people within carceral spaces.

In Part I, I describe the contemporary phenomenon of the shackling of pregnant prisoners during childbirth and situate the practice within the broader context of attempts to control the bodily integrity of incarcerated Black women. In Part II, I discuss the historical antecedents of the contemporary practice of shackling pregnant women. I describe the ways in which racism was expressed through the degradation and exploitation of Black women’s reproductive capacities during slavery. I also highlight the centrality of Black women in the use of the convict lease system and the chain gang, both of which emerged during the post-Civil War era as a mechanism to maintain white racial dominance.<sup>44</sup> In Part III, I discuss the ways in which the racial blindness of Eighth Amendment jurisprudence has rendered the ideological foundations of shackling practices invisible. To make this point, I discuss *Nelson v. Correctional Medical Services*<sup>45</sup> and *Brawley v. Washington*,<sup>46</sup> two cases that have considered the constitutionality of the shackling of pregnant prisoners. I also argue that shackling practices endure, despite formal prohibitions, partly because of race blindness within doctrinal discourses. Lastly, in Part IV, I offer an antisubordination reading of the Eighth Amendment. Such an approach requires reading the Eighth Amendment’s “cruel and unusual punishments” clause in light of the Thirteenth Amendment. Under the antisubordination approach, historical constructions and treatments of Black women within the context of slavery, convict leasing, and chain gangs are essential to a determination that the shackling of pregnant prisoners during childbirth is constitutionally and normatively infirm. My intent is to disrupt the normalization of practices that have functioned to shackle not only the physical bodies of women in prisons, but central expressions of their humanity as well.

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43. Dolovich, *supra* note 33, at 907.

44. See Sarah Haley, *ENGENDERING CAPTIVITY: BLACK WOMEN AND CONVICT LABOR IN GEORGIA, 1865–1938*, at 3–4, 10 (May 2010) (unpublished Ph.D. dissertation, Yale University) (on file with author); Cf. ANGELA Y. DAVIS, *Surrogates and Outcast Mothers: Racism and Reproductive Politics in the Nineties*, in *THE ANGELA Y. DAVIS READER* 218 (Joy James ed., 1998) (arguing that women’s prisons have historically functioned to police the boundaries of feminine deviance).

45. 533 F.3d 958, 961 (8th Cir. 2008), *vacated*, 583 F.3d 552 (8th Cir. 2009).

46. 712 F. Supp. 2d 1208, 1211 (W.D. Wash. 2010).

## I.

INCARCERATION AND THE SHACKLING OF FEMALE  
PRISONERS DURING PREGNANCY

“It is not fair to treat a person like this. I did a crime . . . but I’m not willing to be treated like a dog. I was treated like I wasn’t human.”<sup>47</sup>

Over the past thirty-five years, the prison system in the United States has grown at a dramatic rate, capturing an ever-increasing segment of the population in its midst.<sup>48</sup> This growth, however, has largely been driven by the disproportionate criminalization and incarceration of poor people of color, particularly from Black and Latino communities.<sup>49</sup> These outcomes are not mere happenstance of an occasionally biased system of justice; rather, theorists have suggested that prisons have become a mechanism for the regulation of racially and economically marginal populations.<sup>50</sup> Regulation of these populations has been accomplished through a broad set of punitive social policies, including the “War on Drugs” and the “tough on crime” rhetoric that undergirds contemporary drug laws, as well as the divestment from the social safety net.<sup>51</sup>

Prison expansion has resulted in significant increases in the number of women incarcerated. As of 2009, more than 114,979 women were incarcerated in women’s prisons across the country.<sup>52</sup> This represents a sharp increase from the 5600 women who were incarcerated in 1970.<sup>53</sup> In addition to women held in prisons or jails, approximately 800,000 were on probation or parole in 2010.<sup>54</sup> Roughly 33 percent of women under these various forms of criminal supervision are Black,<sup>55</sup> despite the fact that Black women comprise roughly 7

47. Colleen Mastony, *Childbirth in Chains*, CHI. TRIB., July 18, 2010, [http://articles.chicagotribune.com/2010-07-18/news/ct-met-shackled-mothers-20100718\\_1\\_shackles-handcuffs-labor](http://articles.chicagotribune.com/2010-07-18/news/ct-met-shackled-mothers-20100718_1_shackles-handcuffs-labor) (quoting Latiana Walton, a Black woman challenging the use of shackles during childbirth by Cook County Sheriff’s Deputies in a class-action lawsuit).

48. See, e.g., JONATHAN SIMON, *GOVERNING THROUGH CRIME: HOW THE WAR ON CRIME TRANSFORMED AMERICAN DEMOCRACY AND CREATED A CULTURE OF FEAR* 13–31 (2007) (discussing the overall impact of crime on the United States from the 1960s to present).

49. Lawrence D. Bobo & Victor Thompson, *Racialized Mass Incarceration: Poverty, Prejudice, and Punishment*, in *DOING RACE: 21 ESSAYS FOR THE 21ST CENTURY* 330–36 (Hazel R. Markus & Paula Moya eds., 2010).

50. See, e.g., ALEXANDER, *supra* note 21; Ian Haney López, *Post-Racial Racism: Racial Stratification and Mass Incarceration in the Age of Obama*, 98 CALIF. L. REV. 1023, 1040–52 (2010).

51. See HEATHER C. WEST, *PRISON INMATES AT MIDYEAR 2009*, BUREAU OF JUSTICE STATISTICS 7 (2009).

52. *Id.*

53. See Julia Sudbury, *Women of Color, Globalization and the Politics of Incarceration*, in *THE CRIMINAL JUSTICE SYSTEM AND WOMEN* 13 (Barbara Rattel Price and Natalie Sokoloff eds., 2003).

54. WEST, *supra* note 51, at 7; LAUREN E. GLAZE & THOMAS P. BONCZAR, U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, *PROBATION AND PAROLE IN THE UNITED STATES, 2010*, at 34, 44 (2011), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/ppus10.pdf>.

55. WEST, *supra* note 47, at 19.

percent of the overall population.<sup>56</sup> Indeed, Black women are eight times more likely to be incarcerated than their white counterparts.<sup>57</sup> Between 1980 and 2003, drug-related arrests of Black women increased by 888 percent, as compared to approximately 400 percent for white women.<sup>58</sup> All told, Black women represent the fastest growing segment of the prison population.<sup>59</sup>

As the number of incarcerated women has increased, so too has the rate of pregnancy and childbirth in jails and prisons.<sup>60</sup> Studies estimate that roughly 5 to 10 percent of all female prisoners are pregnant and that approximately 2000 children per year are born to incarcerated mothers.<sup>61</sup> Within prisons, shackling is often standard operating procedure for the transport of women in labor and is also used as a mechanism to control and demean them during childbirth.<sup>62</sup> Over the past decade, numerous reports have documented this practice, finding that restraints are used without regard to flight risk or dangerousness.<sup>63</sup> The contemporary practice of shackling in prisons results in the pervasive abuse of women's bodily integrity and reproductive capacity. Although this practice may seem anachronistic to those outside of the prison context, on the inside, it is routine.<sup>64</sup>

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56. As of the most recent available census data from the year 2000, there were approximately 18 million Black women in the United States. This represented roughly 7 percent of the total U.S. population of 272 million. See RENEE E. SPRAGGINS, U.S. DEP'T OF COMMERCE, U.S. CENSUS BUREAU, CENSUS BRIEF: WOMEN IN THE UNITED STATES: A PROFILE 1 (2000), available at <http://www.census.gov/prod/2000pubs/cenbr001.pdf>.

57. PAULA C. JOHNSON, *INNER LIVES: VOICES OF AFRICAN AMERICAN WOMEN IN PRISON* 6 (2003).

58. See LENORA LAPIDUS ET. AL., ACLU, BRENNAN CTR. FOR JUSTICE & BREAK THE CHAINS, *CAUGHT IN THE NET: THE IMPACT OF DRUG POLICIES ON WOMEN AND FAMILIES* 345 (2005).

59. *Id.*

60. See KATHERYN WATTERSON, *WOMEN IN PRISON: INSIDE THE CONCRETE WOMB* 211 (1996) (noting the number of pregnant female prisoners).

61. *Id.*; Adam Liptak, *Prisons Often Shackle Pregnant Inmates in Labor*, N.Y. TIMES, Mar. 2, 2006, at A16 (noting the number of children born to incarcerated mothers).

62. See, e.g., AMNESTY INT'L, *WOMEN IN CUSTODY* 30–33, available at <http://www.amnestyusa.org/pdf/custodyissues.pdf> [hereinafter *WOMEN IN CUSTODY*]; Amnesty Int'l USA, *supra* note 6, at 10–12.

63. See, e.g., *WOMEN IN CUSTODY*, *supra* note 62, at 30–33, Amnesty Int'l USA, *supra* note 6, at 10–12; see also KAREN SHAIN, LEGAL SERVS. FOR PRISONERS WITH CHILDREN, *STOP SHACKLING: A REPORT ON THE WRITTEN POLICIES OF CALIFORNIA'S COUNTIES ON THE USE OF RESTRAINTS ON PREGNANT PRISONERS DURING LABOR* (2010), available at [http://www.prisonerswithchildren.org/pubs/stop\\_shackling.pdf](http://www.prisonerswithchildren.org/pubs/stop_shackling.pdf).

64. See Anna Enisa Carpenter, *Memorandum: State Shackling Policies* (Aug. 20, 2008), [http://www.rebeccaproject.org/images/stories/policypapers/state\\_shackling\\_policies\\_memo.pdf](http://www.rebeccaproject.org/images/stories/policypapers/state_shackling_policies_memo.pdf) (discussing half of the states' policies on shackling pregnant inmates); *Shackling of Pregnant Women in Custody*, THE REBECCA PROJECT FOR HUMAN RIGHTS, [http://www.rebeccaproject.org/images/stories/factsheets/ShacklingFactSheet\\_7-12-10.pdf](http://www.rebeccaproject.org/images/stories/factsheets/ShacklingFactSheet_7-12-10.pdf) (noting that only ten states had laws prohibiting the use of shackles on pregnant prisoners during labor and childbirth).

Black women are not alone in experiencing these harmful impacts at the intersection of race, gender, and incarceration. Increasingly, undocumented Latinas have been targeted for arrests stemming from structural inequalities in the economy and in the immigration system. Tanya Doriss,

*A. Control over the Exercise of Women's Reproductive Capacity in the Criminal Justice System*

Constraints upon reproductive health and choices are a paradigmatic experience for incarcerated women. The constraints that have come to be the hallmark of women's incarceration are part of a larger trend of reproductive subordination that has impacted racially marginalized women within the carceral apparatus. Indeed, the reproductive capacities of Black women have historically served as a primary site for punishment within the criminal justice system. The intersection of race and gender in the lives of women of color, and Black women in particular, render them vulnerable to a host of ideological constructions—including sexual promiscuity and bad mothering—that portray them as lacking fundamental aspects of feminine gender identity.<sup>65</sup> Because of these ascribed failings, women who have been criminalized or incarcerated are subject to the prevention of or punishment for their choice to reproduce, often as a formal part of their sentences. In 1996, for example, women were given the “option” of taking birth control in lieu of a lengthy sentence in a California state prison.<sup>66</sup> Other women have been criminalized for the choice to become mothers while addicted to drugs.<sup>67</sup> Under recently proposed statutes in Georgia

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*Fact Sheet: Immigration Policy and Reproductive Justice*, CTR. FOR AM. PROGRESS (July 10, 2007), [http://www.americanprogress.org/issues/2007/07/womens\\_rights\\_factsheet.html](http://www.americanprogress.org/issues/2007/07/womens_rights_factsheet.html) (“Female immigrants, both documented and undocumented, often work in industries that are low-wage and do not offer health insurance.”). Undocumented Latinas are increasingly arrested and prosecuted for immigration violations, particularly during workplace raids and drug offenses. See Nina Rabin, *Unseen Prisoners: Women in Immigration Detention Facilities in Arizona*, 23 GEO. IMMIGR. L.J. 695, 702–03 (2009). While detained during removal proceedings, undocumented Latinas have been shackled during childbirth and denied basic medical necessities. See HUMAN RIGHTS WATCH, *DETAINED AND DISMISSED: WOMEN'S STRUGGLES TO OBTAIN HEALTH CARE IN UNITED STATES IMMIGRATION DETENTION* (2009); Christina Costantini, *Arizona Sheriff Joe Arpaio Sued by Undocumented Woman Shackled During Labor*, HUFFINGTON POST (Dec. 21, 2011, 3:59 PM), [http://www.huffingtonpost.com/2011/12/21/sheriff-joe-arpaio\\_n\\_1163490.html](http://www.huffingtonpost.com/2011/12/21/sheriff-joe-arpaio_n_1163490.html). Furthermore, like formerly incarcerated Black women, they are vulnerable to sexual and physical abuse while incarcerated. See HUM. RTS. WATCH, *Detained and at Risk: Sexual Abuse and Harassment in United States Immigration Detention*, (Aug. 25, 2010), <http://www.hrw.org/en/reports/2010/08/25/detained-and-risk>.

65. See, e.g., LEITH MULLINGS, *ON OUR OWN TERMS: RACE, CLASS, AND GENDER IN THE LIVES OF AFRICAN AMERICAN WOMEN* 109–31 (1997).

66. ANDREA SMITH, *CONQUEST: SEXUAL VIOLENCE AND AMERICAN INDIAN GENOCIDE* 89 (2005); see also *People v. Johnson*, No. F015316, 1992 WL 685375 (Cal. Ct. App. Apr. 13, 1992) (unpublished) (requiring a criminal defendant to use a Norplant birth control implant as a condition of probation). See generally Janet F. Ginzberg, Note, *Compulsory Contraception as a Condition of Probation: The Use and Abuse of Norplant*, 58 BROOK. L. REV. 979 (1992) (discussing the ways in which the judicial system has mandated that women have to undergo birth control treatments as part of their probation requirements); Rachel Roth, “No New Babies?": *Gender Inequality and Reproductive Control in the Criminal Justice and Prison Systems*, 12 AM. U. J. GENDER SOC. POL'Y & L. 391, 407 (2004) (discussing the required use of birth control in lieu of jail or prison time).

67. See, e.g., *Commonwealth v. Welch*, 864 S.W.2d 280 (Ky. 1993) (vacating the trial court's determination that a drug-addicted mother criminally abused her child for using drugs during her pregnancy); see generally Roberts, *supra* note 21.

and Utah, some women could be subject to prosecution for having miscarriages.<sup>68</sup> In these states, the specter of criminal prosecution is raised to discipline women who have miscarriages that result from “reckless” behavior. In each instance, Black women have been disproportionately impacted by these policies.

Once incarcerated, women routinely endure the abuses and hardships of state-inflicted violence. Locked in cells behind the high walls of prison, women generally, and Black women in particular, have little recourse against the onslaught of brutality facing them when confined. Kim Buchanan has written persuasively about the pervasive violence Black women are subject to, as well as the dignity and privacy harms that accompany a formal prison sentence.<sup>69</sup> These harms reinforce and reproduce the same constructions of Black women as aggressive, domineering, deviant, and sexually available.<sup>70</sup> In prison, punishments are meted out through a number of mechanisms, including sexual abuse and sterilization.<sup>71</sup>

The sexualized violence directed at female prisoners has been well documented.<sup>72</sup> Premised on notions of sexual deviance and violability of prisoners,<sup>73</sup> female prisoners have been subjected to a range of sexual abuses, including vaginal, anal, and oral rape; sexual assault; inappropriate touching during searches; and surveillance by male guards while in various states of undress.<sup>74</sup> Male guards often use their positions of authority or outright physical force to coerce female prisoners into sex.<sup>75</sup> In a 1996 report, Human

68. Brandon Loomis, *Measure on Illegal Abortions Heads to Governor*, SALT LAKE TRIB., Feb. 18, 2010, [http://www.sltrib.com/news/ci\\_14429070](http://www.sltrib.com/news/ci_14429070); Jen Qudraishi, *Ga. Law Could Give Death Penalty for Miscarriages*, MOTHER JONES (Feb. 23, 2011, 5:32 AM), <http://www.motherjones.com/blue-marble/2011/02/miscarriage-death-penalty-georgia>.

69. See, e.g., Kim Shayo Buchanan, *Impunity: Sexual Abuse in Women's Prisons*, 42 HARV. C.R.-C.L.L. REV. 45 (2007) (hereinafter Buchanan, *Impunity*); Buchanan, *supra* note 24.

70. Cassandra Shaylor, *It's Like Living in a Black Hole: Women of Color and Solitary Confinement in the Prison Industrial Complex*, 24 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 385, 395 (1998).

71. See, e.g., Human Rights Program at Justice Now, *Prisons as a Tool of Reproductive Oppression*, 5 STAN. J. CIV. RTS. & CIV. LIBERTIES 309 (2009); Cynthia Chandler, *Death and Dying in America: The Prison Industrial Complex's Impact on Women's Health*, 18 BERKELEY WOMEN'S L. J. 40 (2003).

72. See, e.g., Amnesty Int'l USA, *supra* note 6; HUMAN RIGHTS WATCH, ALL TOO FAMILIAR (1996), available at [http://www.hrw.org/legacy/reports/1996/Us1.htm#\\_1\\_2](http://www.hrw.org/legacy/reports/1996/Us1.htm#_1_2).

73. See Buchanan, *Impunity*, *supra* note 69, at 53 (“Racial stereotypes of black women as promiscuous, criminal, and prone to violence make it more difficult for law and society to recognize their victimization and more likely that they will be scrutinized as sexual deviants and potential criminals.”).

74. *Id.* at 57; Gabriel Arkles, *Safety and Solidarity Across Gender Lines: Re-thinking Segregation of Transgender People in Detention*, 18 TEMP. POL. & CIV. RTS. L. REV. 515 (2009); Brenda V. Smith, *Watching You, Watching Me*, 15 YALE J.L. & FEMINISM (2003).

75. See Buchanan, *Impunity*, *supra* note 69, at 55–57 (discussing how prison guards often extend unofficial accommodations to favored inmates while using illegal forms of intimidation and force on others).

Rights Watch noted that women have very little recourse within prisons or in court to combat these abuses.<sup>76</sup> Consequently, prison guards who assault women are rendered immune from accountability for the brutality they inflict upon female prisoners.<sup>77</sup>

While sexual abuse is premised on ideological constructions of Black women as inherently violable and sexually available, another practice, sterilization, is premised on a historically related construct of incarcerated Black women: the “bad mother.”<sup>78</sup> Sterilization can be seen as an attempt to eliminate the biological threat presented by incarcerated women as well as a representation of society’s judgment that incarcerated Black women are unworthy heirs to the mantle of motherhood.

Women incarcerated in institutions are unable to adhere to white middle-class normative standards of “womanhood” and are therefore deemed unfit to be mothers as a result of the intersection of their race, gender, class, and incarcerated status. In *Poe v. Lynchburg Training School and Hospital*, for example, institutionalized women brought suit against the state of Virginia for coercing women to undergo sterilization.<sup>79</sup> More recently, Justice Now, an Oakland-based civil rights organization that advocates on behalf of female prisoners, has documented “a number of cases which suggest hysterectomies or oophorectomies have been used as the first response to problems such as uterine fibroids or ovarian cysts, when far less invasive remedies were available.”<sup>80</sup> The organization has also documented cases where women were pressured to consent to sterilization based on a misdiagnosis or while sedated.<sup>81</sup>

The reproductive and sexual violence female prisoners experience, however, does not abate because an incarcerated woman is pregnant. Rather, particularized punishments of pregnant women have become standard practice in penal institutions across the country.<sup>82</sup> For example, pregnant prisoners are

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76. See HUMAN RIGHTS WATCH, *supra* note 72, at 57.

77. See Buchanan, *Impunity*, *supra* note 69, at 64–82 (describing the ways in which contemporary rules of prison law block nearly all claims against institutions for custodial abuse).

78. See, e.g., Ikemoto, *supra* note 18, at 1045–53 (discussing deviant motherhood and women of color).

79. 518 F. Supp. 789 (W.D. Va. 1981).

80. CYNTHIA CHANDLER, JUSTICE NOW, TESTIMONY OF JUSTICE NOW SUBMITTED TO THE UNITED NATIONS SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN 4 (2011); see also Human Rights Program at Justice Now, *supra* note 71, at 321–25 (noting the disproportionate use of inappropriate hysterectomies on women of color in California women’s prisons). See generally *Poe v. Lynchburg Training Sch. & Hosp.*, 518 F. Supp. 789 (W.D. Va. 1981) (challenging involuntary sterilization procedures in a Virginia correctional institution).

81. See Human Rights Program at Justice Now, *supra* note 71, at 322 (“We also have learned of several cases of people being asked to consent to sterilization without full information or when under sedation.”).

82. See Ellen Barry, *Pregnant, Addicted and Sentenced: Debunking the Myths of Medical Treatment in Prison*, 5 CRIM. JUST. 23 (1991).



often denied medical treatment during labor.<sup>83</sup> In one case, a mentally ill African American woman was arrested for trespass in the state of Washington.<sup>84</sup> After being ignored by guards when she told them she was in labor, she gave birth to her baby on the floor of her jail cell.<sup>85</sup> In another case, an African American woman held in a York, Nebraska, jail was forced to give birth alone, over the toilet in her cell, and was assisted only after the baby was born with the umbilical cord around its neck.<sup>86</sup> She was denied the ability to go to the hospital after she was accused of “faking” labor pains.<sup>87</sup> Even when pregnant prisoners are provided medical assistance during labor and childbirth, it is often at the expense of their dignity and basic humanity.

*B. Shackling of Pregnant Women in Prison and the Attendant Psychological and Physical Harms*

As noted above, a significant number of female prisoners are pregnant at some point during periods of incarceration. Prison, however, does not change the basic laws of nature. Like all women, pregnant prisoners experience significant pain and discomfort during labor and childbirth.<sup>88</sup> As labor commences, pregnant women have difficulty walking because of the weight of the baby, swollen feet, and the pain of contractions.<sup>89</sup> During active labor, women may experience “strong pressure in the lower back and rectum, nausea, fatigue, tightness in the throat and chest area, shakiness, chills, or sweats.”<sup>90</sup>

Despite the pain women experience while giving birth, many pregnant prisoners are subjected to some form of shackling during labor or childbirth. Indeed, at least thirty-six states permit the practice.<sup>91</sup> A recent national study

83. See, e.g., *Staten v. Lackawanna Cnty.*, No. 4:07-CV-1329, 2008 WL 249988, at \*2 (M.D. Pa. Jan. 29, 2008) (African American woman denied medical care by jail staff and forced to deliver the baby alone in her jail cell); Barry, *supra* note 82, at 23 (describing two pregnant, drug-dependent women who were forced to detoxify without adequate medical care or supervision, even during labor).

84. Chris Legeros, *Lawsuit over ‘Horrible’ Jail Cell Birth Moves Forward*, KIRO EYEWITNESS 7 NEWS (Apr. 28, 2011, 4:44 PM), <http://www.kirotv.com/news/27710266/detail.html>.

85. *Id.*; see also *Pope v. McComas*, No. 07-cv-1191-RSM-JPD, 2011 WL 1584213 (W.D. Wash. Mar. 10, 2011).

86. *Ex-Inmate Sues Prison over Giving Birth in Toilet*, OMAHA WORLD-HERALD, Oct. 16, 2011, at 2B.

87. Charles Schillinger, *Woman Who Gave Birth at Prison: No Justice Yet*, TIMES-TRIB., Aug. 15, 2010, <http://thetimes-tribune.com/news/woman-who-gave-birth-at-prison-no-justice-yet-1.949114>.

88. See HEIDI MURKOFF & SHARON MAZEL, *WHAT TO EXPECT WHEN YOU’RE EXPECTING* 367–91 (2008).

89. *Id.*

90. *Phases of Labor*, *WHAT TO EXPECT: PREGNANCY & PARENTING EVERY STEP OF THE WAY*, <http://www.whattoexpect.com/pregnancy/labor-and-delivery/childbirth-stages/three-phases-of-labor.aspx> (last visited July 14, 2012).

91. See *WOMEN’S PRISON ASS’N: INSTITUTE ON WOMEN AND CRIMINAL JUSTICE, LAWS BANNING SHACKLING DURING CHILDBIRTH GAINING MOMENTUM NATIONWIDE*, available at [http://www.wpaonline.org/pdf/Shackling%20Brief\\_final.pdf](http://www.wpaonline.org/pdf/Shackling%20Brief_final.pdf). States prohibiting the use of shackles during labor or childbirth include California, New York, Illinois, New Mexico, Nevada, Vermont, Texas, Washington, Rhode Island, Colorado, Hawaii, Idaho, Pennsylvania, and West Virginia.

confirms the widespread use of shackles on pregnant prisoners.<sup>92</sup> The study found that approximately a third of prisons that responded use chains and handcuffs during prenatal visits or labor.<sup>93</sup> Several facilities reported that they cuff women's hands or ankles during labor.<sup>94</sup> One prison indicated that it leaves handcuffs on during delivery, while four stated that they shackle women at the ankle during delivery.<sup>95</sup> These studies demonstrate that the shackling of pregnant women is routine in women's prisons across the country.

Instead of approaching the pregnancy and childbirth of incarcerated women with dignity and respect, the childbirth process is often an occasion for particularized punishment, degradation, and humiliation. Prison officials frequently justify the use of shackles on pregnant prisoners by citing concerns for the safety of correctional officers and the public.<sup>96</sup> Advocacy groups, however, have demonstrated that shackles are used on all women, regardless of security threat, even when alternative security mechanisms are available. For example, Amnesty International has found that women are shackled "regardless of whether they have a history of violence (which only a minority have) and regardless of whether they have ever absconded or attempted to escape (which few women have)."<sup>97</sup> In one instance described in the report, a hospital ward where incarcerated women gave birth was locked and guarded by four armed men. Despite the presence of these guards, "every inmate [was] chained by a

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92. Andrea Hsu, *Difficult Births: Laboring and Delivering in Shackles*, NAT'L PUB. RADIO (July 16, 2010), <http://www.npr.org/templates/story/story.php?storyId=128563037>.

93. *Id.*

94. *Id.*

95. *Id.*; see also *Abuse of Women in Custody: Sexual Misconduct and Shackling of Pregnant Women*, AMNESTY INT'L, <http://www.amnestyusa.org/violence-against-women/abuse-of-women-in-custody/key-findings-use-of-restraints-on-pregnant-women-in-custody/page.do?id=1108300> (last visited Aug. 7, 2012) (finding that thirty-eight state departments of corrections may use restraints on pregnant women in the third trimester, while another twenty-three state departments of corrections allow the use of restraints during labor).

96. See Hsu, *supra* note 92. Some have suggested that the policy simply treats women like incarcerated men, who are similarly shackled during transport to noncustodial settings such as hospitals. *Id.* The equality rationale for the use of shackles is in some respects accurate, but not entirely. In jurisdictions that permit shackling, prison officials promulgate regulations requiring the use of shackles when prisoners are moved from the prison setting to a noncustodial facility such as a hospital. Restraints are often used on male prisoners during treatment, including chemotherapy, consultation with doctors, and even when individuals are nonambulatory following a treatment. Generally, however, individuals are not shackled during surgical procedures, which might be the most analogous to childbirth. See, e.g., CAL. CODE REGS. tit. 15, § 3268.2(b)(1) (2011) (noting that restraints must be used when transporting a prisoner between locations); LA. STATE UNIV. HEALTH SCIS. CTR., HOSPITAL POLICY MANUAL 2 (2009), available at [http://www.sh.lsuhsu.edu/policies/policy\\_manuals\\_via\\_ms\\_word/hospital\\_policy/h\\_2.20.0.pdf](http://www.sh.lsuhsu.edu/policies/policy_manuals_via_ms_word/hospital_policy/h_2.20.0.pdf) (requiring prisoners to be shackled during hospital stay, unless inconsistent with medical care); GA. CODE ANN. § 42-5-58 (2006) ("Handcuffs, leg chains, waist chains, and waist belts may also be used in securing violent or potentially dangerous inmates within an institution and in public and private areas such as hospitals and clinics; but in no event may handcuffs, leg chains, waist chains, and waist belts be used as punishment . . .").

97. Amnesty Int'l USA, *supra* note 6, at 10.

leg to her bed.”<sup>98</sup> Women are often handcuffed to bedrails even as they nurse or hold their children after they are born.<sup>99</sup> Moreover, children are generally removed from women within twenty-four hours of giving birth.<sup>100</sup>

The degradation represented by the use of shackles during pregnancy and childbirth inflicts significant psychological harm on female prisoners. One pregnant woman incarcerated at a women’s institution in Michigan, Kebby Warner, described the shackling experience this way:

Every time I went for a “medical” run, I had to get a humiliating strip-search when I left and returned to prison. Prisoners are placed in belly chains and our hands are cuffed for the duration of the visit unless the doctor asks that they be removed. At about the sixth month of pregnancy, the strip-searches become difficult. By this time, my emotional state was up and down, and most of the time I left the “strip room” in tears from shame and humiliation.<sup>101</sup>

In addition to the psychological harms associated with shackling, the practice also has profound physical consequences, including restricting the ability of women to move into appropriate positions during childbirth. Indeed, shackling increases the probability of falls because

[t]he pregnant uterus shifts a woman’s center of gravity. Anything that throws her further off balance or makes walking more difficult can increase her risk of falling. A fall in pregnancy is no small matter, as it can potentially harm the baby as well as the mother, and in serious cases, can cause stillbirth.<sup>102</sup>

Moreover, shackling can cause trauma to the mother and child, and can result in significant delays in treatment in the event of a medical emergency. As one doctor reported, women and their children could face significant health risks should a complication arise during childbirth: “If there were a need for a [cesarean] section, the mother [would] need[] to be moved to an operating room immediately and a delay of even five minutes could result in permanent brain damage for the baby.”<sup>103</sup> Despite the psychological and physical harms that result from the use of shackles on pregnant women, many prisons across the country adhere to the practice.

98. *Id.*

99. See, e.g., Maria Kayanan, *Ending Florida’s “Dirty Little Secret,”* FLORIDA BLOG OF RIGHTS (Mar. 15, 2012), <http://aclufl.wordpress.com/page/3/>.

100. Malika Saada Saar, *Mothering as a Reproductive Right*, RH REALITY CHECK (Dec. 11, 2007, 10:18 AM), <http://www.rhrealitycheck.org/blog/2007/12/11/mothering-as-a-reproductive-right>.

101. Kebby Warner, *Pregnancy, Motherhood and Loss in Prison*, in INTERRUPTED LIVES: THE EXPERIENCES OF INCARCERATED WOMEN IN THE UNITED STATES 90 (Paula Johnson et al. eds., 2010).

102. Carolyn Sufirin, *End Practice of Shackling Pregnant Inmates*, S.F. CHRON. (Aug. 26, 2010), [http://articles.sfgate.com/2010-08-26/opinion/22235348\\_1\\_pregnant-inmates-pregnant-women-labor](http://articles.sfgate.com/2010-08-26/opinion/22235348_1_pregnant-inmates-pregnant-women-labor).

103. Sichel, *supra* note 15, at 226 (quoting Amnesty Int’l, *supra* note 95).

The use of restraints on pregnant prisoners rests on an assumption that incarcerated women are dangerous as individuals and as mothers. This presumption rests on stereotypes of female prisoners informed by prior regimes of racialized punishments that viewed Black women as lacking in maternal instincts, driven by sexual desires, and physically threatening.<sup>104</sup> The comments of one female prison guard reflect these stereotypes: "I'm a mother of two and I know what that impulse, that instinct, that mothering instinct feels like. It just takes over, you would never put your kids in harm's way. . . . Women in here lack that. Something in their nature is not right, you know?"<sup>105</sup> This comment emphasizes the contempt with which incarcerated mothers are viewed. Female prisoners are cast as "bad mothers" by virtue of their incarceration. Thus, the use of shackles during labor and childbirth can be understood as one way of punishing women for choosing to become mothers while incarcerated.

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104. See *infra* Part II.

105. JODY RAPHEAL, *FREEING TAMMY: WOMEN, DRUGS, AND INCARCERATION* 42 (2007).



# “There Is NO Justice in Louisiana”: Crimes against Nature and the Spirit of Black Feminist Resistance

Laura McTighe 

Deon Haywood 

*In the wake of Hurricane Katrina, the leaders of the quarter-century-old Women With A Vision (WWAV) collective launched a coordinated campaign to expose and challenge the criminalization of Black cisgender and transgender women working in New Orleans’ street-based economies. For the simple act of trading sex for money to survive, hundreds were convicted of a felony-level Crime Against Nature by Solicitation (CANS) and forced to register as sex offenders for periods of fifteen years to life. After five years of organizing, WWAV successfully overturned the statute, thereby securing the removal of more than 800 people from the Louisiana sex offender registry list. This article brings a fine-grained analysis to WWAV’s process of organizing against CANS in order to trace the making of this criminalization crisis and to clarify the terrain of the organization’s victory. It argues that WWAV organized through a distinct southern Black feminist tradition in order to disrupt the use of CANS as a technology of post-Katrina predatory policing. By refusing their erasure from the city of their birth, WWAV staff and participants not only rendered visible the mundane terror of targeted criminalization against Black women; they also opened new horizons for Black feminist struggle and collective liberation.*

*Keywords: Black feminism, criminalization, Hurricane Katrina, New Orleans, predatory policing, resistance, sex work*

On March 30, 2012, the energy at Women With A Vision (WWAV) was electric. A “small but mighty” community of staff, participants, and volunteers piled into the front meeting room of the Black feminist collective’s offices in Mid-City New Orleans. Down the central hallway, several folding tables for street outreach

had been lined up end-to-end to form a long banquet table. The whole expanse was draped in purple cloth and decorated with bright yellow flowers and small baskets of sweets. At the center, a sheet cake proclaimed: “We Won!!!!”

That victory had been years in the making. In the wake of Hurricane Katrina, the leaders of WWAV took to the streets to find the women for whom they had been the primary safety net for decades: Black women living and working in the city’s street-based economies. With the housing projects set for demolition, the schools dismantled, and the return rates still waning, their city was a shadow of its pre-Katrina self. Still, little could have prepared them for the first time they saw one of their participants with her new license. In the bottom right corner, immediately below her picture, the words “SEX OFFENDER” were stamped in block orange letters. All she knew was that she had been charged with a “crime against nature.” What was a “crime against nature”? Where did the statute come from? What was happening to women in their city? As one story became ten and ten became twenty, the WWAV leaders did what they have always done: they reached out with immediate aid and support; they held space for people to come together; and they rallied behind women’s own visions for social change and healing.

WWAV’s conversations with some of the first women to be placed on the sex offender registry after Hurricane Katrina helped to uncover the criminalization crisis underway. For the simple act of trading sex for money to survive, hundreds of Louisiana cisgender and transgender women, nearly eighty percent of them Black, had been convicted of a felony-level Crime Against Nature by Solicitation (CANS) and forced to register as sex offenders for periods of fifteen years to life. CANS charges were often piled on top of prostitution charges, and so were the debilitating penalties. As women convicted under the statute saw it, “There Is NO Justice in Louisiana.”<sup>1</sup> Their words became the organizing call. Together, WWAV staff and participants assembled a chorus of local, national, and international allies to mount a challenge of CANS within a comprehensive project to transform the web of injustices that women moved through daily in post-Katrina New Orleans. After a more than five-year fight, this WWAV coalition, led by people directly impacted by the statute, had secured a federal judicial ruling. On March 29, 2012, U.S. District Judge Martin Feldman found that nine plaintiffs, all WWAV participants, “have been deprived of equal protection of the laws in violation of the Fourteenth Amendment to the U.S. Constitution.”<sup>2</sup>

The next day, as slices of cake were passed around the table, Deon Haywood, WWAV’s Executive Director, affirmed for all gathered the truth of the NO Justice Project. “Today, we celebrate with the women and men who courageously stood up to combat the criminalization of their lives—and *won*. Today, we celebrate a victory for *all* people who have told their truths that justice might be done. WWAV has always just been a catalyst for women affected by this.”<sup>3</sup> Zina Mitchell, a longtime WWAV participant-turned-staff-member, articulated what so many of the women WWAV provided safe haven for were feeling: “I’ve never been to court and had a judge side with me. We did it. *We* won. *We* made history.”

This article brings a fine-grained analysis to WWAV’s process of organizing against the CANS statute in order to trace the making of this criminalization crisis

in the wake of Hurricane Katrina and to clarify the victory that the organization claimed in March 2012. In so doing, it argues that WWAV organized through a distinct southern Black feminist tradition to successfully disrupt the use of CANS as a technology of predatory policing and targeted criminalization. By refusing their erasure from the city of their birth, WWAV staff and participants not only rendered visible the violence against Black women in the wake of the storm; they also opened new horizons for struggle and for liberation.

The history of WWAV is central to this article; so, too, are the relationships that drive its telling. As the WWAV founding story goes, in 1989 Danita Muse and Catherine Haywood, both Black women raised in multigenerational New Orleans families, linked eyes across a crowded Health Department conference room in the height of the AIDS epidemic. Maps of the city had been inked with proposed routes for a new condom distribution blitz. *None* of the majority Black neighborhoods in the city—and *none* of the city's housing projects—were to be targeted. That day, Ms. Catherine and Danita walked out with boxes of condoms and the zip codes to their uptown neighborhoods and got to work, with the support of Ms. Catherine's daughter, Deon, and a handful of other Black women in New Orleans. Together, they built a model of community-driven outreach that continues to guide public health research today. By day, they packed harm reduction packets on stoops, and by night, they walked the streets to deliver them. Their presence in and with community meant they had a rare understanding of the institutions that mattered to the people they served. They turned neighborhood bars into underground needle exchanges, so they could keep forgotten and dying Black addicts alive as the AIDS epidemic ravaged their community. And they built a network of gatekeepers, so they could disseminate resources to those they could not touch directly.

In the wake of Hurricane Katrina, this commitment brought WWAV into contact with some of the first people who were forcibly placed on the sex offender registry list because of a CANS conviction. At this time, the organization's foremothers asked Deon Haywood to become the executive director of the organization in which she had been raised. Over the next decade, Deon would oversee the expansion of WWAV—from the organization her mother, Catherine, and dear friend, Danita, had founded, through to its present as one of the leading national voices on Black women and criminalization in the South. Even with this significant growth in scale, Deon ensured that WWAV remained rooted in the patterns of relational care that drove the organization's founding. Staff were fully in and of the same communities as WWAV participants; they worked together to provide mutual aid and support so that women with CANS convictions could be at the helm of the organizing. It was during this time of expansion that I became a partner to the WWAV family. Deon and I first began working together closely in 2008, when WWAV was starting to piece together the disaster that the post-Katrina enforcement of CANS had wrought. In 2009, she invited me to New Orleans to facilitate the launch meeting for the WWAV-led coalition that took on the CANS statute. Over the next three years, I journeyed to New Orleans at least every other month. In between, Deon and I debriefed by phone: she would talk; I would type. She used this practice to apprentice

me to WWAV's method of organizing. Since the CANS victory, I have returned to New Orleans as an ethnographer and oral historian, working with WWAV staff and participants to document their decades of labor to craft a legible past and a commonly foreseeable future for their community. This article unfolds in the intimacy of these relationships.

This research brings together a range of sources: the testimonies, policy briefs, educational materials, and legal analysis amassed throughout the NO Justice Project; my own personal notes and reflections transcribed in conversation with Deon; the oral history interviews and ethnographic fieldwork I have conducted with WWAV staff and participants since the 2012 victory; careful work in WWAV's own organizational archives;<sup>4</sup> and further work in state archives and secondary literature to contextualize the CANS statute and WWAV's NO Justice Project. By reading across these sources, I work to describe and connect a series of responses—from institutions and from individuals—through which Black cisgender and transgender women were identified as a social and political problem in post-Katrina New Orleans, the incarceration capital of the world.<sup>5</sup> Moreover, by extending the temporal frame of analysis *before* August 2005, this article also refuses the exceptionalization of the storm. Importantly, for WWAV—and for any post-Katrina researchers worth their salt<sup>6</sup>—decades of divestment predated the *event* of Hurricane Katrina, facilitated the immediate lack of response to the levee breaches, and prefigured the crisis in the storm's wake. More than a decade after the storm, the biggest losers have been Black native New Orleanians, and most specifically Black women.

Throughout the fight against CANS, WWAV leaders and participants documented how the fantasy of a *new* New Orleans was being built through the evisceration of Black women—and they worked to render themselves visible against the violence of their simultaneous invisibilization and hyper-visibility. This article illuminates how WWAV staff and participants artfully exposed and evaded the interpretive and self-referential framework of this post-Katrina criminalization strategy. Grounded in their own lived experience, WWAV mapped the reinforcing nature of the interlocking systems of oppression that gave the law meaning in the wake of Hurricane Katrina. Then, they threw the whole of their lives up as the precondition for social change; they countered social death with a defiance of living.<sup>7</sup> Ultimately, WWAV's longstanding southern Black feminist tradition of relational care, which birthed their grassroots story-driven model of community organizing, not only disrupted the logics of the interlocking systems of oppression that sought their erasure; it also spun into life new possibilities: the horizons of a radical otherwise. As such, this article argues that WWAV's work provides an invaluable example of the lasting impact and influence of the vision for political movement work outlined in the Combahee River Collective statement—and of the power and potentiality of Black feminist resistance to effect lasting social transformation.

Finally, a brief roadmap: This article begins with an historical exposition of Louisiana's Crime Against Nature statute. I then complicate this legal history with WWAV's work in community to map the everyday implications of CANS sex offender registration. This quotidian violence of CANS, I argue, pressed WWAV



to reframe CANS criminalization through a Black feminist analysis of carceral control, in which staff and participants connected their struggles to the policing of Black women in the Jim Crow South and Great Migration North. I then show how this historically-informed Black feminist analysis shaped WWAV's narration of the post-Katrina CANS crisis and their organizing in the NO Justice Project. To conclude, I examine the aftermath of WWAV's victory and the organization's ongoing work for Black women's lives and wellbeing.

### Creating a Crime against Nature

Crime Against Nature by Solicitation. The statute had an unmistakably religious ring to it. The subject of "nature," as well the crimes against it, has prompted centuries of theological and legal argumentation around sex and sexuality, and also around race. WWAV's own research into the solicitation of "*peccatum illud horribile, inter christianos non nomnandum* [that horrible crime not to be named among Christians]" picked up in the 19th century.<sup>8</sup> In 1805, Louisiana enacted its first criminal code, which included an explicit prohibition of the "abominable and detestable Crime Against Nature, committed with mankind or beast."<sup>9</sup> The Supreme Court and Legislature refused to specify what conduct constituted a Crime Against Nature until the turn of the century, when the state's Black Codes were being made law after the violent disassemblage of Radical Reconstruction and these questions of "crime," "nature," and "sex" were further inflected with a racialized genealogy.<sup>10</sup> In 1896—the same year that the U.S. Supreme Court enshrined the "separate but equal" doctrine into law through *Plessy v. Ferguson*—Louisiana amended its Crime Against Nature statute to read, "Whoever shall be convicted of the detestable and abominable Crime Against Nature committed with mankind or with beast with the sexual organs, or with the mouth, shall suffer imprisonment at hard labor for not less than two years and not more than ten years."<sup>11</sup> The Louisiana courts further clarified in 1913 that the statute prohibited anal and oral sex, irrespective of consent, the sex of participants, and their marital status.<sup>12</sup>

In 1942, the Louisiana legislature undertook a comprehensive revision of the state's criminal code, with specific attention to the raced and gendered boundaries of sex. All previous Miscegenation acts and rulings were consolidated into a single statute in the state's "criminal neglect of family" articles.<sup>13</sup> Prior statutes around "sexual immorality" were also consolidated, to include a series of articles prohibiting prostitution and related offenses, as well as an additional series of articles aimed at "stamping out" sex work around army camps in Louisiana. The Crime Against Nature statute was amended to read, "Crime Against Nature is the unnatural carnal copulation by a human being with another of the same or opposite sex or with an animal. Emission is not necessary, and, when committed by a human being with another, the use of the genital organ of one of the offenders of whatever sex is sufficient to constitute the crime."<sup>14</sup> The maximum sentence was reduced from ten years to five, and a fine of up to \$2,000. The solicitation of such acts was *also* explicitly discussed in 1942.<sup>15</sup> The legislature claimed that "the sexual pervert who

frequents parks and other public places and *solicits* abnormal sexual practices” exhibited “a very reprehensible conduct.” They also affirmed that this conduct “had given the police department in New Orleans and other large cities considerable trouble.”<sup>16</sup> However, the legislature deemed that this conduct did *not* constitute a Crime Against Nature. Instead, it was added as a sub-article of the state’s misdemeanor obscenity statute, which included “the sale or display of any indecent material.”

Forty years later, in 1982, the New Orleans Police Department (NOPD) advocated again for a felony-level addendum to the state’s Crime Against Nature statute, claiming that they needed a tool to clamp down on a “growing problem in male prostitution.”<sup>17</sup> Nationally, sex workers and gay men were being scapegoated and criminalized in a mounting AIDS panic. There were calls for quarantines, for mandatory testing, for contact tracing, and for public registration of all prostitutes and licensed brothels.<sup>18</sup> Conservative religious leaders such as Donald Wildmon of the Mississippi-based American Family Association famously bolstered his lobbying efforts through direct-mail appeals that warned, “These disease-carrying deviants wander the streets unconcerned, possibly making you their next victim.”<sup>19</sup> In this climate, the NOPD could argue that the solicitation of oral and anal sex had become more than just an obnoxious *practice* (an “Obscenity” in the state’s own language); it was now a *deviance* that threatened the moral social order. They presented the expansion of the “Crime Against Nature” statute to include solicitation as a concrete step that the legislature could take to protect the health and wellbeing of its citizens.<sup>20</sup> On July 6, 1982, the Louisiana legislature relented, adding the felony-level Crime Against Nature by Solicitation law to the criminal code, punishable by a term of imprisonment of up to five years, with or without hard labor, and/or a fine of not more than \$2,000. Additionally, a single CANS conviction mandated fifteen years sex offender registration; two CANS convictions required lifetime sex offender registration. Nationwide, CANS was exceptional among registerable offenses, as it was “just a talking crime.”<sup>21</sup>

### **Mapping a Criminalization Crisis<sup>22</sup>**

The role of the police in advocating for the adoption of the Solicitation clause in 1942 and again in 1982 is critical for understanding how the CANS statute was quickly extended beyond the “male problem” it was designed to address. Police had sole discretion over whether to charge someone with CANS or prostitution. Through their patrolling and booking practices, they mapped the CANS statute onto the gendered and racialized bodies of Black women working in street-based economies. By 2011, when WWAV’s challenge of the CANS statute was in full force, ninety-seven percent of women registered as sex offenders were mandated to do so because of a CANS conviction.<sup>23</sup> Consistent with the United States Department of Justice’s 2011 finding that “NOPD engages in a pattern or practice of discriminatory policing” that is “so severe and so divergent from nationally reported data” that it constitutes “a violation of constitutional and statutory law,” seventy-nine percent of those registered because of CANS were Black.<sup>24</sup>

That analysis took time to come into focus. In 2008, what Deon and the WWAV foremothers were bearing witness to was the sheer number of people in the WWAV network who had suddenly been placed on the sex offender registry list. That truth raised a lot of questions for WWAV—staff and participants alike. What was going on in their city? Were these new charges? If not, why had women not had to register before? What had changed? How were these women found? Who was next? What was happening in their city? Even while the contours and genesis of this crisis remained uncertain, the need for WWAV to do *something* was not.

As more of WWAV's participants were able to return to New Orleans after the storm, the implications of the CANS licenses became clear. WWAV drop-in hours had become a vital time for crafting what would become the strategy to end criminalization under CANS. Sometimes WWAV participants would meet one-on-one with staff.<sup>25</sup> Other times weekly regulars would be joined by as many as ten to fifteen more. Together, women shared stories of the everyday violence of living with a CANS conviction: of completely losing any sense of privacy, of not being able to walk their kids to school or go to their children's graduations, of having people use the sex offender registry to track them down and harass them at home. "It was like my life just stopped," one woman explained. Women shared stories of being called "rapist" whenever they got carded while buying cigarettes. Some had stories of being denied access to drug treatment programs because "we don't serve your kind." Others started carrying around envelopes stuffed with all of their court paperwork when applying for jobs, so that they could prove that they had histories of drug addiction and sex work, not of child molestation.

Then there were the photos printed in the local paper, and the court-mandated postcards they had to buy and mail to neighbors alerting them that "This violent predator lives in your community."<sup>26</sup> One WWAV participant explained that when her probation officer told her she had to pay \$500 for these postcards, she laughed in his face in disbelief: "Where am I supposed to get that kind of money when I just got out of jail? What are you telling me, I gotta go turn tricks?"<sup>27</sup> The debilitating impacts of CANS sex offender registration hardly stopped with the financial burden. Another WWAV participant explained, "It's like the Scarlet Letter. I am trying to put that in my past—but it's not gonna be in my past because it's in my present, and it's going to be my future for the next 13 years."<sup>28</sup> That truth reverberated through the WWAV space as participants assembled a careful framing of how this kind of labeling worked: "Once you been labeled as a convict, or a prostitute, or a drug addict, or some type of criminal. ...The minute they find out, they ostracize you. You know what I mean?"<sup>29</sup>

While the everyday terror of being on the sex offender registry was prohibitive, WWAV staff and participants alike were also clear that it was *not* especially shocking. For the vast majority of people with CANS convictions, this modern-day "Scarlet Letter" was but the latest in a long line of small and great injustices to be weathered. Indeed, the CANS crisis after Hurricane Katrina followed the neoliberal violence against Black women playbook to a tee: first, Black women were isolated from necessary social services, then they were blamed for the abuse they survived, and then

they were criminalized for this victimization.<sup>30</sup> As women with CANS convictions saw it, “There Is NO Justice in Louisiana.” Their words became the organizing call.

### **Policing Black Womanhood**

To frame the complexities of CANS enforcement in the NO Justice Project, WWAV relied on a longstanding Black feminist hermeneutic fashioned at the intersections of art, protest, and scholarship: the excavation of Black women’s simultaneous *invisibility* and *hyper-visibility*.<sup>31</sup> Doing so brought into focus a very different historical genealogy than that of the Crime Against Nature statue’s own genesis. In the long and unbroken state of emergency in the United States, it is impossible to understand the contours of anti-Black violence and of Black people’s resistance without reckoning with the history of how Black womanhood has been produced as a “paradox of non-being.”<sup>32</sup> WWAV staff and participants each had their own way of explaining the effects of being both “out of the frame” and “in the spotlight.” When invisible, no one saw the work Black women did, the violence they endured, and what it took to survive that violence every day. And when Black women were not seen, it was easy for them to be devalued, to never get the support they needed, to never get credit for work they did. But when hyper-visible, those very same things that went unseen become reasons to stigmatize Black women—and identify them as objects of fear or targets of further violence. WWAV staff and participants saw it every day: “Do you know how many times women call the cops because they’re being beaten by their partners and there are no services, no nothing in their communities, and then *they’re* the ones who end up in the back of the cop car?”

This was the analysis that WWAV staff and participants used to render the intimate, communal, and state violence in the quotidian terror of CANS criminalization visible. The intimate and reinforcing nature of different systems of gendered and racialized oppression alternately made Black women invisible in the public eye, or hyper-visible and in need of hyper-control. This analysis gave shape and language to WWAV’s everyday political work; it also placed WWAV’s fight against CANS in the post-Katrina moment in conversation with a whole body of literature on the history of Black women’s criminalization before imprisonment became “mass incarceration.”<sup>33</sup> For these scholars, too, invisibility and hyper-visibility provided an unparalleled analytical tool for naming and tracking a story of Black life and anti-Black violence under slavery and after emancipation that was at once racialized *and* gendered.

Recent work on the postbellum South, much of which was still being written while the NO Justice Project was underway, has shone a vital spotlight on how Black women’s bodies became the invisible, unnamed grist for the mill of criminalization.<sup>34</sup> As the system of modern state racism crystalized under Jim Crow, the southern criminal justice system was fully Black-washed. White women became a protected class; Black women (and men) filled the courts.<sup>35</sup> The few white women who did stand trial were most often charged with Miscegenation. Black women, however, were assembled in droves, booked mostly for petty crimes such as larceny and selling

whiskey. At sentencing, they were steadily funneled into the convict lease system (and then later into chain gangs and the domestic carceral sphere after the convict lease system was outlawed state-by-state), often as the sole woman among a band of a hundred male convicts, forced to live with the mining boss or prison manager.<sup>36</sup> In her work on Jim Crow Georgia, historian Sarah Haley argues that this carceral complex became a key infrastructure for producing and reinforcing the impossibility of the postbellum Black female subject.<sup>37</sup> Even when state law specifically prohibited sending *women* to work on chain gangs after the convict lease system was outlawed in 1908, white women were diverted, while Black women were sent by the thousands.

If the Jim Crow carceral sphere was the site in which Black women became invisible in the new South, then the street-based economies of survival sex work were the sites in which their hyper-visibility demanded disciplining. One year after the signing of the Emancipation Proclamation, with the Civil War still raging on, white female northern missionaries increasingly made places for themselves in prison-like encampments for redirecting Black prostitutes to “the paths of virtues.”<sup>38</sup> In the postbellum South, even this so-called “maternalism” was suspended.<sup>39</sup> Black women were depicted as naturally licentious and prone to prostitution, and irredeemably criminal should they be convicted of any number of gendered crimes.<sup>40</sup>

As more Black people fled the racialized terror of the South during the decades of the 20th century now known as the Great Migration, a not dissimilar idea began to take root in cities such as New York, Philadelphia, Chicago, Detroit, and Cleveland.<sup>41</sup> In her field-defining essay, “Policing the Black Woman’s Body in an Urban Context,” Hazel V. Carby argues that it was precisely this movement of Black female bodies—between rural and urban areas and between southern and northern cities—that made Black womanhood a hyper-visible threat, capable of generating “a series of moral panics.”<sup>42</sup> To build this argument, Carby looks both at the agents of white maternalism and the self-appointed saviors within the churched Black middle class and the Black bourgeoisie. In these communities, Carby finds people who were alarmed by the changes afoot in their cities, and who identified Black women migrants’ definitions of and searches for freedom as innately criminal and sexually deviant.<sup>43</sup> From their posts at various institutions and agencies, they manufactured reams of reports and retraining programs. In concert, this corpus of work produced an interpretive framework that seemed to explain poor Black women’s behavior in cities for all time. Because of the emphasis placed on poor Black women’s so-called vulnerability to vice and failing moral character, this work also dramatically expanded the surveillance and criminalization of Black women and girls.<sup>44</sup>

Decades and miles separated these southern migrants from their post-Katrina kin. Nonetheless, an enduring Black feminist commonsense about how movement triggered the policing of Black women’s bodies also undergirded WWAV’s analysis of the CANS crisis in post-Katrina New Orleans. People were displaced, homes were lost, businesses had not reopened, and services were gone. All of this made the women that WWAV had long worked with even more vulnerable to violence, to poverty, and to having to make ends meet however they knew how. Those survival strategies put them in the streets; they also put them in the crosshairs of local and federal

surveillance—formal kinds like New Orleans Police Department and the U.S. Marshals Service, as well as informal kinds like white rescue missions and Black pastors’ associations. There was, for example, the judge, who ran a diversion program out of her court for young women and girls, in which she court-mandated them to things like etiquette classes and beauty pageants. Or, there were the hundreds of Black pastors citywide who banded together when the local jail was on the verge of going into federal receivership; they held a pray-in outside the Orleans Parish Prison asking God to give Sheriff Marlin Gusman eight million dollars in Federal Emergency Management Agency (FEMA) money so he could build another new jail, because “Rome wasn’t built in a day.” And there were the good white ladies with all their money and their big house for “victims of human trafficking” and not a single trafficked person inside.

These were the webs that the women that WWAV stood with were entrapped in. Criminalization was the constant background noise. More jail beds were being built, which meant these beds would be filled. Meanwhile, the options for staying out of jail required women to perform narratives of their own moral failing in order to be worthy of something other than imprisonment. If they were young enough, they could choose the finishing school and manners route. If they were not, they would have to spin a fantastical tale of violation that hit the notes of the trafficking script. In these ways, WWAV knew that CANS was but one tool being used to control nearly every aspect of Black women’s lives. The work of the NO Justice Project, thus, was to continually make visible not only the violence women were enduring, but also the framework of discipline and the strategies of policing that made CANS make sense.

### **Making a Post-Katrina Criminalization Crisis**

Doing so helped to put the curiosities of CANS policing and enforcement into place. The pre-Katrina enforcement of the statute emerged within a social and political climate in which Black women had long been defined as inherently criminal and sexually deviant. The everyday policing of Black cisgender and transgender women working in the street-based sex trades, thus, was unremarkable. So, too, were the coercive strategies that police officers used to arrest women. As one of the Black women who would become a leader in WWAV’s challenge of the CANS statute explained:

I have been selling sex since I was 13 years and the police are always stopping me. ...I have done had the police tell me: “If you give me head I’ll let you go.” So I do it and they still bring me to jail.<sup>45</sup>

After being entrapped into selling oral sex at the behest of their arresting officers, Black women were increasingly charged with both prostitution and CANS, an over-booking practice that police use nationally to strong-arm arrestees into entering guilty pleas in exchange for sentencing leniency. In this way, Black women were being erased through a project of stringent gendered and racialized criminalization, much like in the days of Jim Crow terror.



However, there had been an ironic loophole in this system of justice by expulsion. In the absence of an integrated electronic database that could facilitate cross-reporting among the various branches of the New Orleans criminal justice system, the sex offender registration requirement had often been, in practice, too tedious to enforce. In fact, many women in the WWAV network who were placed on the registry after the storm did not even know that they had to register. For them, CANS had become just another charge accumulated in the course of everyday survival. And then suddenly survival itself became uncertain. It was late August 2005. Tropical Storm Katrina had strengthened to a Category 5 hurricane. Black women were on the move—gathering their families, finding shelter, making ends meet by whatever means they could.

In the wake of Hurricane Katrina, with tens of thousands of people still displaced, Black cisgender and transgender women became the hyper-visible threat to be rectified in order to restore moral social order in the city. Immediately after the storm, the Department of Justice made more than twenty million dollars available to New Orleans to rebuild the city's criminal justice system, which included a mandate for targeting and apprehending "violent felony fugitives" such as registered sex offenders.<sup>46</sup> In the state of Louisiana at this time, those charged with CANS comprised nearly half of the people required to register as sex offenders and nearly all of the people who had failed to do so. And so, in the wake of the storm, with the assistance of the United States Marshals Service, CANS "fugitives" were tracked down and *placed* on the sex offender registry list, often with increased penalties for failure to register previously.<sup>47</sup> By 2011, ninety-seven percent of the women on New Orleans' sex offender registry had a CANS conviction; seventy-nine percent of these women were Black.<sup>48</sup>

Thus, it was the post-Katrina enforcement of CANS—made possible with federal dollars and a federal mandate—that gave this draconian AIDS-era relic new life and new moral urgency. Black women had been the invisible targets of New Orleans policing since the CANS statute was made law in 1982. After the storm, Black women became a hyper-visible threat to be rectified if New Orleans was to have, in developer Joseph Canizaro's words, "a clean sheet to start again."<sup>49</sup>

### **Organizing to Win**

Ending criminalization, for WWAV, did not simply mean challenging the police or the *new* New Orleans developers. It meant tackling the interlocking systems of racial, sexual, gendered, and class oppression that gave these particular actors license to orchestrate their expulsion.<sup>50</sup> It meant uprooting the framework of discipline and the strategies of policing that made CANS make sense. For that reason, the WWAV staff and participants affirmed that any challenge of CANS needed to unfold within a comprehensive project to transform the web of injustices that women moved through daily in New Orleans. Striking down the law would not matter if they could not also change the climate that made their criminalization thinkable. The police would just find another tool, another tactic, and the complicity of parole officers,

job interviewers, and store clerks would remain unchecked. However, if WWAV could disrupt the totalizing surveillance of Black women, even in small ways, then they could begin to frame and actualize a vision for Black women's survival.

Doing so changed the horizon of struggle for the NO Justice Project. This was no campaign, in which the repeal of the CANS statue was lingering as a lofty goal on the horizon. Rather, the work of NO Justice was stitched in the everyday fabric of social life. Women with CANS convictions needed immediate relief. And so, WWAV staff and participants called on (and dropped in on) local service providers and advocates in health, housing, and legal aid fields to help them build an emergency response and referral network for people on the sex offender registry.<sup>51</sup> The referral network gave women with CANS convictions a bit of breathing room. What becomes possible when you can catch your breath? And when you can catch it again and again? What happens the first time you can safely let out a long and deep sigh? For the women of NO Justice, they began to dream about—and then to strategize towards—more lasting transformation beyond their immediate survival. They talked about campaigns for combating the drug testing of welfare recipients; about microfinance projects for expanding their employment possibilities; about health education courses for addressing disease disparities in their communities; and about trauma healing circles for sustaining their community with one another.<sup>52</sup> In so doing, they began to articulate (and live into) the conditions and contours of justice in the future, even while this justice felt impossible to realize in the present.<sup>53</sup>

From this visioning space, WWAV staff and participants began the hard work of building community consensus around CANS. They reached out to grassroots organizers, health care advocates, public defenders, reporters, community-based researchers, funders, and people of faith across the city of New Orleans. On July 22, 2009, WWAV gathered these stakeholders for a daylong strategy meeting on the NO Justice Project, which successfully launched a citywide coalition to buttress WWAV's efforts. After the meeting, WWAV staff and participants agreed that they needed to systematize drop-in hours into a regularly scheduled "Women's Empowerment Meeting" for cisgender and transgender sex workers in New Orleans. In this meeting, participants worked together to document stories of CANS-related hardships, especially legal and police abuse. These stories, in turn, further grounded and guided WWAV's own work to raise awareness of the CANS crisis through independent media, national movement circles, and community leaders closer to home.<sup>54</sup> WWAV then provided their coalition partners with tried and tested organizing materials and talking points to expand community education throughout their own networks.

In individual meetings, community teach-ins, conference keynotes, and media interviews, WWAV's outreach approach began by explaining plainly and simply the paths that led women with CANS convictions into sex work, as well as the futures they were prohibited from realizing during their sex offender registration periods. The challenge in every conversation and every presentation, however, was to make people *feel* those paths and *feel* those prohibitions. And so, WWAV staff and participants would ask the audience members to think about how many times people have to show their photo identification in the course of a day. Sometimes people



would call out the places they had gotten carded already that day. Then, WWAV would show a mock-up of CANS licenses with the “SEX OFFENDER” label. They would recount stories of being denied jobs, of being excluded from drug treatment, of being kicked out of emergency housing. They would explain what it felt like to have to carry stacks of paperwork with them at all times in order to clarify the real circumstances of their arrests to store clerks and housing gatekeepers alike. It was a rare meeting that did not end in a collective expression of shock and outrage. And that mattered to the WWAV staff and participants. In one of the most conservative states in the country, they were actively crafting a messaging strategy that could mobilize broad-based community support for striking down the CANS statute and for advancing Black women’s health and wellbeing.

Heartened by this mounting community consensus, WWAV staff and participants began to explore the viability of bringing a constitutional challenge of the CANS statute. In Spring 2010, they recruited and vetted multiple local and national attorneys, ultimately deciding on a consortium of Andrea J. Ritchie, Esq., the Center for Constitutional Rights (CCR), and the Stuart H. Smith Law Clinic & Center for Social Justice at Loyola University New Orleans College of Law.<sup>55</sup> This network of attorneys was selected because of their deep commitment to the practices of “social change lawyering,” through which lawyers take their direction from activists because they “start with the idea that history shows us that systemic social change comes not from the courts or heroic lawyers or law reform or impact litigation, but from social movements.”<sup>56</sup> While the legal team was being assembled, WWAV staff and participants also organized meetings with New Orleans political candidates, the city’s new police chief, and potential allies throughout the state of Louisiana.

This multi-layered relationship-building work was essential for envisioning a pathway for undertaking a constitutional challenge of the CANS statute within the broader transformative vision of the NO Justice Project.<sup>57</sup> It also helped to clarify the legal argument the case would use. Based, in part, on WWAV’s success in building community outrage around the everyday impacts of having to register as sex offenders, the NO Justice legal team proposed filing an Equal Protection Claim: had arrests for sex work been prosecuted under the state’s Prostitution statute, those convicted would not have been required to register as sex offenders.<sup>58</sup> It was a legal argument that could be proven in court. More importantly, it was a strategy that would bolster, not detract from, the work WWAV was already doing to expose the violence of CANS criminalization and control in order to posit the possibility of a different way of doing justice. That transformative, community-building work needed to be intensified and supported, even and especially while the NO Justice Project shifted into a more public, legalistic mode. And so WWAV doubled down on the four-part model that had gotten the NO Justice Project thus far: building power with women directly affected, reaching out to strategic allies citywide for relief and support, carefully cultivating stories through national networks, and maintaining WWAV’s own online archive of the project.

On February 15, 2011, WWAV and the legal team filed a case in the Eastern District of Louisiana Court on behalf of nine of the more than 800 people who

had been forcibly placed on the sex offender registry because of a CANS conviction.<sup>59</sup> The next day, WWAV was back on outreach and strategy-crafting. WWAV knew that if they had any hope of winning the case, they would have to continue to build a climate in which the judge could safely rule against the state of Louisiana. And so the state itself became the next target of advocacy efforts. Barely a month later, the NO Justice team persuaded Rep. Charmaine Marchand-Stiaes—who represented the most flood-battered district in Louisiana, the New Orleans 9th Ward and Lower 9th Ward—to introduce a bill, which would make CANS penalties equal to those for prostitution. On May 24, 2011, the Louisiana House Committee on the Administration of Criminal Justice unanimously approved HB 141 following testimony from WWAV and the legal team.<sup>60</sup> One month later, the bill had passed the House, the Senate, and the Governor’s desk. No one convicted of CANS would ever have to register as a sex offender again. However, the bill was not retroactive.

In the wake of what had only been a partial victory at the state level, WWAV and the legal team redoubled efforts on the federal lawsuit.<sup>61</sup> The legislative change made a favorable ruling in the lawsuit seem obvious: if people would not have to register as sex offenders for new CANS convictions, why should those previously convicted remain on the registry? WWAV staff and participants were concerned, however, that without ongoing community pressure the urgency of this lawsuit might not be obvious. They needed to again build community awareness and outrage about the women still on the sex offender registry; they had to ask their community of supporters to insist that the CANS statute itself be declared unconstitutional and every person on the registry be removed.

### **“Our Win”**

Nine months later, on March 28, 2012—before a courtroom filled with WWAV staff and participants, local community activists, New Orleans faith leaders, and legal allies from across the Deep South—U.S. District Judge Martin Feldman heard oral arguments on the Louisiana state’s reasoning for the CANS/Prostitution distinction. The next day he concluded that Governor Bobby Jindal and his co-defendants “fail[ed] to credibly serve up even one unique legitimating governmental interest that can rationally explain the registration requirement imposed on those convicted of Crime Against Nature by Solicitation. The court is left with no other conclusion but that the relationship between the classification is so shallow as to render the distinction wholly arbitrary.”<sup>62</sup>

The next morning, on March 30, 2012, a letter entitled “OUR WIN” began to make its way through social media networks before the Friday morning East Coast commute was underway. In it, Deon Haywood centered the stories of the cisgender and transgender women who led fight against CANS and the southern Black feminist organizing tradition of which they are a part.

At a time in this country right now when we feel like justice is not on the side of the people, the people most affected spoke their truths—not some abstract “speak

truth to power,” but their truths from their hearts—and that is what made the difference...

This was not a legal fight or a legislative fight. This was a fight for women’s lives and wellbeing. This was a fight, simply put, about everything. ...Especially in the South, most people feel like we come in last. But this is where the Civil Rights Movement started. And today it continues in the South.<sup>63</sup>

Later that day, the WWAV office was a mess of open eyes, tear-streaked eyes, and eyes that could not look up.<sup>64</sup> Most women had not believed that they would see their sex offender registration periods end so abruptly. Indeed, many had never been to court and had a judge side with *them*.<sup>65</sup> Ms. Michelle expressed what so many of the women with CANS convictions experienced: “I can taste my FREEDOM!”<sup>66</sup> All at WWAV were also clear that this victory was but one step in realizing the transformative healing they had envisioned in the context of the NO Justice Project. And so, they concluded, “Today we celebrate. And still we rise.”<sup>67</sup>

Over the coming days and weeks, WWAV staff and participants were consumed in almost constant conversation about *how* they had been able to win. Some insisted that they won because the people most affected spoke *their* truths from *their* hearts. For others, what mattered most was that *no one* had been left out: they organized from the experiences of the people most marginalized under CANS so no one could be left out or picked off. Still others waxed prophetic about the history of the long Black freedom struggle. Amid all of these interpretations, Deon insisted that WWAV needed to do more than just claim “Our Win.” WWAV needed work with every person who had been part of the NO Justice Project to document the steps in the organizing process.<sup>68</sup>

As Deon and I talked more about the *how* of “Our Win,” it became clear just how important it was to specify *what* victory was being claimed. The federal ruling in the CANS case was far from an unfettered pronouncement of justice. In the name of equal protection under the Fourteenth Amendment, Judge Feldman *limited* the degree of criminalization that women arrested in Louisiana’s street-based sex trades could legally be subjected to: women had the “right” to be treated as no more (*and no less*) than prostitutes. It was significant, then, that WWAV claimed the NO Justice Project “was not a legal fight or a legislative fight”; it “was a fight for women’s lives and wellbeing.”<sup>69</sup> The decision to counter social death with a defiance of living had grown out of a wholesale rejection of both the logic of organized expulsion enacted through CANS and the strategies advocates typically used to effect piecemeal policy change. Grounded in their own lived experience, WWAV staff and participants arrived at a novel strategy for challenging this criminalization crisis. Their approach, with its own rich historical consciousness and Black feminist analysis, exposed and disrupted the interlocking systems of oppression that produced the post-Katrina crisis. Moreover, it enabled WWAV staff and participants to distinguish *their* victory from the legal reinscription of their contingent equality. While the federal ruling on CANS was a moment to be celebrated, it was also a moment that only made sense in community—in a process of becoming—through which women began to heal, to rebuild, and to renew with one another. The victory being claimed was WWAV’s refusal to shoehorn their

struggle into the neatness of individual rights claims and to, instead, throw the whole of their lives up as the precondition for social change. How did that victory become possible? As Deon explained, “We just stayed the course and fought the fight.”<sup>70</sup>

### **Like a Phoenix**

Women With A Vision was never supposed to win a victory on this scale. The WWAV staff and participants knew it. Governor Jindal knew it. Even the federal government knew it. Those afforded first-class citizenship within the United States’ own borders were supposed to emerge as saviors after the storm. Black women were supposed to fade into the background, criminalized further as state capacity expanded. That, of course, is not what happened. However, that is how the local media chose to tell the story. In their reporting, CANS was “pinkwashed” and reframed as a threat to lesbian, gay, bisexual, transgender, and queer (LGBTQ) rights.<sup>71</sup> Judge Feldman was championed as a visionary; the NO Justice attorneys were lauded for their determination.<sup>72</sup> WWAV staff and participants were not even mentioned. They were written out of the story of their own win, their struggles again made invisible, their humanity again rendered illegible.

Two months later, this narrative violence turned physical. On May 24, 2012, as the clock approached midnight, WWAV’s offices were firebombed and destroyed by unknown arsonists.<sup>73</sup> First, they whittled the deadbolt off the backdoor. Then they moved through the space, setting small fires in the meditation alcove, singeing the faces off Black women in posters, and tossing WWAV’s awards into the alleyway. Inside the outreach office, they stacked WWAV’s educational breast models three-high, covered them in accelerant, and ignited a blaze strong enough to melt the blades off the ceiling fan fifteen feet overhead. Decades of client files, harm reduction supplies, and outreach materials were reduced to ashes. It was a vile act of hate intended to exterminate WWAV’s efforts once and for all. The pain of walking through the charred rubble was gut-wrenching. No one, of course, was ever charged.

Days later, at a local fundraiser, Deon Haywood addressed WWAV’s community for the first time. She affirmed that everyone was deeply shaken, but recovering. Most of all, WWAV founders and staff were worried about how they were going to provide for their participants during the rebuilding. WWAV was still so far from realizing the transformative healing that had been envisioned in the context of the NO Justice Project. To make matters worse, women with CANS convictions had recently been dealt yet another blow. The state decided to interpret Judge Feldman’s ruling as conservatively as possible: only the nine people directly named in the lawsuit were removed from the sex offender registry. For several weeks, women with CANS convictions had been meeting at WWAV to teach each other how to file petitions for being removed from the sex offender registry list one-by-one. With the arson attack, they had lost more than a meeting space; they lost their *home*, filled with memories of the slow conversations and pained exchanges and joyful celebrations they shared with women who had come together through grassroots organizing to change the conditions of their lives. The coming weeks would bring much

uncertainty. And WWAV's work *would* continue. "Fire has long been used as a tool of terror in the South," Deon explained, "but it can also be a powerful force for rebirth." That night Deon spoke WWAV's rebirth into existence.

Methodically, WWAV turned the NO Justice victory into a systematic challenge of the criminalization of poor Black women and girls. On October 28, 2013, WWAV and the legal team secured the removal of every person still on the sex offender registry due to a "Crime Against Nature by Solicitation" charge.<sup>74</sup> With City Council support, WWAV then established a multipronged racial justice partnership to redirect people arrested for street-based sex work out of the criminal justice system and into the WWAV organizing community. Inside the Orleans Parish Prison, staff further worked to support the release of hundreds of women who were locked up because they were too poor to make bail. In so doing, they amassed rare and intimate testimonies, observations, and glimpses of a system in crisis. On the tenth anniversary of Hurricane Katrina, August 29, 2015, they began unveiling their analysis of how the *new* New Orleans has been built through the evisceration of Black women, including themselves.

Two months later, WWAV walked into their first home since the arson attack. The site is still temporary, but it is a *home* nonetheless. It is near impossible to overstate the significance of reopening this home for Black feminist survival, struggle, and renewal, and the labor that made it possible. The *new* New Orleans is actively being built through the organized abandonment and expulsion of Black New Orleanians. But the end has not been written yet. After an arson attack that could have been fatal, at a time when 92,348 Black New Orleanians have not been able to return, the WWAV community rose to take space and have a place.<sup>75</sup> On this contested land, the futures they have seeded are just beginning to come into bloom.

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## Notes

1. Statement made by one of the first WWAV participants to be forcibly placed on the sex offender registry because of CANS.
2. *Audrey Doe, et al. v. Bobby Jindal, et al.*, "Order and Reasons," 29.
3. See also Women With A Vision, "OUR WIN—Letter from Executive Director Deon Haywood," March 30, 2012, <http://wwav-no.org/our-win-letter-from-executive-director-deon-haywood> (accessed March 1, 2017).

4. Much of this organizational archive, which included interviews and testimonies completed with women charged with CANS, as well as meeting notes, outreach materials, and flyers, was destroyed in the May 2012 aggravated arson attack on WWAV's offices. The quotes that are included in this article were largely drawn from the few electronic records and public presentations that survived the attack.
5. Louisiana earned the title "the world's prison capital" because it incarcerated more people, *per capita*, than any other U.S. state. First in the U.S. means first in the world. Cindy Chang, Scott Threlkeld, and Ryan Smith, "Louisiana Incarcerated: How We Built the World's Prison Capital—8-Part Series," *Times Picayune*, May 13–20, 2012, <http://www.nola.com/prisons/> (accessed March 1, 2017).
6. See Cindi Katz, "Bad Elements: Katrina and the Scoured Landscape of Social Reproduction," *Gender, Place and Culture* 15, no. 1 (2008): 15–29; Katherine McKittrick and Clyde Woods, "No One Knows the Mysteries at the Bottom of the Ocean," *Black Geographies and the Politics of Place*, edited by McKittrick and Woods (Cambridge: South End Press, 2007), 1–13; and Jordan T. Camp, "'We Know This Place': Neoliberal Racial Regimes and the Katrina Circumstance," *American Quarterly* 61, no. 3 (2009): 693–717.
7. See Lisa Marie Cacho, *Social Death: Racialized Rightlessness and the Criminalization of the Unprotected* (New York: New York University Press, 2012), 1–9; and Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Cambridge: Harvard University Press, 1982), 38–45.
8. Some of the first research on the statute and its history was conducted by interns working at WWAV and the organization's partners at Voice Of The Ex-offender (VOTE), where longtime WWAV board member Rosana Cruz was on staff. This research was expanded and systematized in conversation with the campaign's legal team, Andrea J. Ritchie, Esq., the Center for Constitutional Rights (CCR), and the Stuart H. Smith Law Clinic and Center for Social Justice at Loyola University New Orleans College of Law. Together with WWAV, they co-published the policy brief, "*Just a Talking Crime*": *A Policy Brief in Support of the Repeal of Louisiana's Solicitation of a Crime Against Nature (SCAN) Statute*. After the CANS victory, CCR built an online archive of the Crime Against Nature by Solicitation litigation, which includes a case timeline with links to the *Doe v. Jindal* complaint and the amicus brief filed in support of plaintiffs: <http://www.ccrjustice.org/home/what-we-do/our-cases/ Crimes-against-nature-solicitation-cans-litigation> (accessed March 1, 2017). Additionally, attorneys Alexis Agathocleous and Andrea Ritchie published analyses of the case through Loyola University. See Agathocleous, "When Power Yields to Justice: *Doe v. Jindal* and the Campaign to Dismantle Louisiana's Crime Against Nature Statute," *Loyola Journal of Public Interest Law* 14, no. 2 (2013): 331–54; and Ritchie, "Crimes Against Nature: Challenging Criminalization of Queerness and Black Women's Sexuality," *Loyola Journal of Public Interest Law* 14, no. 2 (2013): 355–74. Also see Agathocleous, "Building a Movement for Justice: *Doe v. Jindal* and the Campaign against Louisiana's Crime Against Nature Statute," in *The War on Sex*, edited by David M. Halperin and Treacor Hoppe (Durham: Duke University Press, 2017).
9. Louisiana Acts chap. I, § 2. LA. REV. STAT. § 788.
10. Sylvester Johnson, *The Myth of Ham in Nineteenth-Century American Christianity: Race, Heathens, and the People of God* (New York: Palgrave Macmillan, 2004); and Curtis J. Evans, *The Burden of Black Religion* (Oxford: Oxford University Press, 2008).
11. Acts of the State of Louisiana 1896, page 102, § 1, Act 69.
12. *State v. Long*, 133 La. 580 (1913).
13. Maurice J. Naquin, Jr., "Criminal Law—Miscegenation—Definition of 'Cohabitation,'" *Louisiana Law Review* 19, no. 3 (1959): 700–05.
14. La. Crim. Stat. Ann. § 43:89 (1943).
15. In the CANS campaign archive, attention was paid to the revision of the Crime Against Nature statute text in 1942, but not to the discussion of solicitation, nor to the legislature's



decision that solicitation did not constitute a “Crime Against Nature.” I uncovered this detail in the course of my research on sex in the Louisiana criminal code.

16. Dale E. Bennett, “The Louisiana Criminal Code: A Comparison with Prior Louisiana Criminal Law,” *Louisiana Law Review* 5, no. 1 (1942): 44 (emphasis mine).
17. The NO Justice Project narrated the expansion of the Crime Against Nature statute to include Solicitation through a focus on the criminalization of homosexuality in the second half of the twentieth century. It did not center the role of the New Orleans Police Department (NOPD) in advocating for the adoption of the Solicitation clause in 1942 and again in 1982. I uncovered this detail in the course of my research on *State of Louisiana v. Michael Smith*, “Majority Opinion,” <http://www.glapn.org/sodomylaws/usa/louisiana/lasmith01.htm> (accessed March 1, 2017).
18. See Melinda Chateauvert, *Sex Workers Unite: A History of the Movement from Stonewall to Slut Walk* (Boston: Beacon Press, 2014), especially chapter 4.
19. Cited in Cindy Patton, *Sex and Germs: The Politics of AIDS* (Boston: South End Press, 1985), 85.
20. Georgia Attorney General Gary Bowers bolstered the state’s role in managing the country’s mounting fears when he appealed the *Bowers v. Hardwick* criminal sodomy case all the way to the United States Supreme Court, insisting, “the law would help reduce the spread of AIDS.” Cited in Chateauvert, *Sex Workers Unite*, 104 (emphasis mine).
21. For a concise history of sex offender laws and registration, see Karen J. Terry and Alissa R Ackerman, “A Brief History of Major Sex Offender Laws,” in *Sex Offender Laws: Failed Policies, New Directions*, edited by Richard G. Wright (New York: Springer Publishing Company, LLC, 2015). The WWAV fact sheet on the NO Justice Project was named “Just A Talking Crime” for this reason.
22. My attention to the everyday is informed by Saidiya Hartman’s work in *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth-Century America* (New York: Oxford University Press, 1997), most especially her focus on the mundane over the spectacle: “By defamiliarizing the familiar, I hope to illuminate the terror of the mundane and quotidian rather than exploit the shocking spectacle” (4). I also draw on Veena Das, *Life and Words: Violence and the Descent into the Ordinary* (Berkeley: University of California Press, 2006), especially chapter 4.
23. Louisiana State Sex Offender and Child Predator Registry. Cited in “Just a Talking Crime.”
24. United States Department of Justice, *Investigation of the New Orleans Police Department*, Civil Rights Division, 2011, [http://www.justice.gov/crt/about/spl/nopd\\_report.pdf](http://www.justice.gov/crt/about/spl/nopd_report.pdf) (accessed September 1, 2014).
25. WWAV maintained an active log of all participants who spoke with staff informally about their CANS convictions or filled out formal NO Justice surveys on the circumstances of their convictions and the issues they were dealing with subsequently. All of the interview and survey files were destroyed in the aggravated arson attack. The logs, however, had been stored off-site in a binder of NO Justice Project materials, so they survived the fire.
26. Each of these components of sex offender registration had become standardized and tracked with the federal passage of the Adam Walsh Act in 2006. Adam Walsh Child Protection and Safety Act of 2006, 42 U.S.C. § 16901 et seq. (2006).
27. Quoted in “Just A Talking Crime.”
28. Ibid.
29. Interview, Zina Mitchell, August 2013.
30. See Beth E. Richie, *Arrested Justice: Black Women, Violence, and America’s Prison Nation* (New York: New York University Press, 2012), especially chapter 5.

WWAV emerged on the national stage for combating the criminalization of street-based sex work after Hurricane Katrina. Criminalization, however, has only been one site for producing this post-Katrina fiction of Black womanhood. Education activist Ashana

Bigard testified on July 18, 2015, at Breaking the Silence: A New Orleans Townhall Hearing on Women of Color: “To buy into the narrative of the [charter school] experiment, you need to buy into the idea that Black women are complicit in the under-education of Black children.” To emphasize the leadership of women of color in correcting these fictions, Alisa Bierria, Mayaba Lieventhal, and other members of INCITE! Women of Color Against Violence document the issues and analysis of women of color after Hurricane Katrina to ensure that any community plan for rebuilding had a gender analysis and a demand for community accountability in “To Render Ourselves Visible: Women of Color Organizing and Hurricane Katrina,” in *What Lies Beneath: Katrina, Race, and the State of the Nation*, edited by South End Press Collective (Cambridge: South End Press, 2007).

31. I understand this Black feminist hermeneutic in the tradition of the Combahee River Collective focus on “interlocking” oppressions and of the framework of “intersectionality” later coined by Kimberle Crenshaw in “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics,” *University of Chicago Legal Forum* 1, Art. 8 (1989): 139–67, and further developed in “Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color,” *Stanford Law Review* 43 (1991): 1241–99. See also Patricia Hill Collins, *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment*. 2nd ed. (New York: Routledge, 2004); Beverly Guy-Sheftall, *Words of Fire: An Anthology of African-American Feminist Thought* (New York: The New Press, 1995); Evelyn Brooks Higginbotham, “African-American Women’s History and the Metalanguage of Race,” *Signs: Journal of Women in Culture and Society* 17, no. 2 (1992): 251–74; and Hortense Spillers, “Mama’s Baby, Papa’s Maybe: An American Grammar Book,” *Diacritics* (Summer 1987): 65–81.

What the NO Justice Project described is how race and gender intersect in Black women’s lives and through historically changing systems of power to at times render state and interpersonal violence against Black women wholly invisible, and at other times mark Black women’s movement as a hyper-visible threat to be disciplined.

32. Hortense J. Spillers, “Interstices: A Small Drama of Words,” in *Pleasure and Danger: Exploring Female Sexuality*, edited by Carole S. Vance (Boston: Routledge & Kegan Paul, 1984), 78.
33. I use “mass incarceration” in quotes here to not only signal its specificity as a term initially intended to name the dramatic expansion of the carceral state since the 1970s, but also how this term introduced a sense that the problem with incarceration was simply the “mass,” not the incarceration. Here, I follow the work of Black feminist abolitionists on prisons and racial capitalism, most especially Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (Berkeley: University of California Press, 2007); and Angela Davis, *Are Prisons Obsolete?* (New York: Seven Stories Press, 2003). Editors Deborah E. McDowell, Claudrena N. Harold, and Juan Battle provide essential historical, political, economic, and sociocultural roots of “mass incarceration” in their collected work, *The Punitive Turn: New Approaches to Race and Incarceration* (Charlottesville: University of Virginia Press, 2013). Michelle Alexander’s *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2010) remains the most popular and widely disseminated text on how “mass incarceration” and post-prison restrictions created a racial caste in America.
34. Foundational texts in studies on the intersections of race, gender, and criminalization during Jim Crow include Sarah Haley, *No Mercy Here: Gender, Punishment, and the Making of Jim Crow Modernity* (Chapel Hill: University of North Carolina Press, 2016) and Talitha LeFlouria, *Chained in Silence: Black Women and Convict Labor in the New South* (Chapel Hill: University of North Carolina Press, 2015). For examinations of this intersection in Black women’s worlds in turn-of-the-century northern cities, see Kali N. Gross, *Colored Amazons: Crime, Violence, and Black Women in the City of Brotherly Love, 1880–1910* (Durham: Duke University Press, 2006) and Cheryl Hicks, *Talk with You Like a Woman: African American*



- Women, Justice and Reform in New York, 1890-1935* (Chapel Hill: University of North Carolina Press, 2010).
35. In northern cities, Black people were also incarcerated at disparate rates, though rates would not reach Jim Crow-era racial disparities until the explosion of incarceration in the 1980s under the auspices of the war on drugs. Still, in Illinois between 1890 and 1930, African American women averaged only 2.4 percent of the state's female population, but represented two-thirds of the daily population at Joliet women's prison. See L. Mara Dodge, *Whores and Thieves of the Worst Kind: A Study of Women, Crime and Prisons, 1835-2000* (Dekalb: Northern Illinois University Press, 2006), 72-73, 84.
  36. Victoria Law, *Resistance Behind Bars: The Struggles of Incarcerated Women* (Oakland: PM Press, 2009), 161-62.
  37. Sarah Haley, "'Like I Was a Man': Chain Gangs, Gender, and the Domestic Carceral Sphere in Jim Crow Georgia," in *Signs: Journal of Women and Culture in Society* 39, no. 1 (2013): 55-56.
  38. Leon F. Litwack, *Been in the Storm So Long: The Aftermath of Slavery* (New York: Vintage Books, 1970), 457.
  39. "Maternalism" is a scholarly category through which historians have traced white middle class and elite women's extension of their domestic practices of care, nurturing, and morality into public works. See Seth Koven and Sonya Michel, "Womanly Duties: Maternalist Politics and the Origins of the Welfare States in France, Germany, Great Britain, and the United States, 1880-1920," *American Historical Review* 95, no. 4 (1990), 1079; and Gwendolyn Mink, *The Wages of Motherhood: Inequality in the Welfare State, 1917-1942* (Ithaca, NY: Cornell University Press, 1995).
  40. To quote historian Mary Ellen Curtin, "The image of the fallen woman in the South had everything to do with race. Black women prisoners were seen as inherently immoral, while white women prisoners convicted of sex crimes lost their racial privilege." See Mary Ellen Curtin, *Black Prisoners and their World: Alabama, 1865-1900* (Charlottesville: University of Virginia, 2000), 114-15. See also LaKisha Michelle Simmons, *Crescent City Girls: The Lives of Young Black Women in Segregated New Orleans* (Chapel Hill: University of North Carolina Press, 2015), especially chapter 5.
  41. See Hicks, *Talk with You Like a Woman*, especially part II on: "Urban Reform and Criminal Justice."
  42. Hazel V. Carby, "Policing the Black Woman's Body in an Urban Context," *Critical Inquiry* 18 (1992): 739.
  43. Carby poses the following questions to clarify this point: "If a black woman can claim her freedom and migrate to an urban environment, what is to keep her from negotiating her own path through its streets? What are the consequences of the female self-determination evident in such a journey for the establishment of a socially acceptable moral order that denies the boundaries of respectable sexual relations? What, indeed, is to be the framework of discipline and strategies of policing that can contain and limit black female sexuality? These are the grounds of contestation in which black women became the primary targets for the moral panic about urban immorality" (248).
  44. Carby, "Policing the Black Woman's Body," 739-40.
  45. As noted above, the interviews and surveys that WWAV staff and founders completed with participants on the everyday impacts of a CANS conviction were among the materials destroyed in the aggravated arson attack on WWAV. Some of these quotes have been salvaged through pictures that were taken of testimonies for WWAV's community outreach presentations. This WWAV member was quoted in CCR, *"Just A Talking Crime."*
  46. United States Department of Justice, "Fact Sheet: Department of Justice Law Enforcement Efforts in New Orleans, Louisiana," August 21, 2006, [http://www.justice.gov/opa/pr/2006/August/06\\_opa\\_564.html](http://www.justice.gov/opa/pr/2006/August/06_opa_564.html) (accessed March 1, 2017). The DOJ is not responsible for NOPD

arrest practices. However, I do think it is worth pondering why a local judicial system became the self-evident institution for investing federal rebuilding dollars in the wake of a catastrophic hurricane. This issue has been substantively engaged within the body of post-Katrina literature. See especially the 2009 Special Issue of *American Quarterly* edited by Clyde Woods, “In the Wake of Katrina: New Paradigms and Social Visions.”

47. The timing of Hurricane Katrina and post-storm United States Marshals Service intervention coincided with the passage of the Adam Walsh Act (AWA) in June of 2006, which established three tiers for sex offender registration and retroactive penalties for people who had failed to register previously. To build a uniform system of registrant classification, AWA also triggered the reclassification of thousands of people who had previously been classified as low-risk into higher-risk categories, thereby expanding the duration and severity of sex offender surveillance. See Andrew J. Harris, Christopher Lobanov-Rostovsky, and Jill S. Levenson, “Widening the Net: The Effects of Transitioning to the Adam Walsh Act’s Federally Mandated Sex Offender Classification System,” *Criminal Justice and Behavior* 37, no. 5 (2010): 503–19. On January 1, 2008, the same year WWAV saw a surge in participants being placed on the sex offender registry, Louisiana legislature amended the state’s existing sex offender registration laws to bring them into conformity with the provisions of the AWA. The amendments mandated that a central registry of sex offenders be maintained by the Bureau. The Bureau is also mandated to participate in the National Sex Offender Registry.
48. Louisiana State Sex Offender and Child Predator Registry. Cited in “*Just a Talking Crime.*”
49. Gary Rivlin, “A Mogul Who Would Rebuild New Orleans,” *New York Times*, September 29, 2005, <http://www.nytimes.com/2005/09/29/business/a-mogul-who-would-rebuild-new-orleans.html> (accessed September 1, 2016).
50. See Beth E. Richie, *Arrested Justice: Black Women, Violence, and America’s Prison Nation* (New York: New York University Press, 2012), especially chapter 5; Joey L. Mogul, Andrea J. Ritchie, and Kay Whitlock, eds., *Queer (In)Justice: The Criminalization of LGBT People in the United States* (Boston: Beacon Press, 2011); and Patricia Hill Collins, *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment* (New York: Routledge, 1991).
51. The list of “Organizational Outreach Targets” for this emergency response and referral network included domestic violence programs, emergency shelters, rent/utility assistance programs, health outreach programs, HIV/AIDS education programs, mental health programs, job training programs, job placement programs, food banks, substance use treatment facilities, youth shelters, transitional housing programs, and an array of faith-based missions and houses. This list was regularly maintained and updated, to allow for organizations that did not survive after the storm, as well as the new ones that popped up.
52. For WWAV’s public messaging of these projects, see “Join WWAV in Fighting Drug Testing for TANF Recipients,” <http://wwav-no.org/drug-testing-for-tanf> (accessed March 1, 2017); and “Micro-Enterprise, WWAV Style,” <http://wwav-no.org/micro-enterprise-wwav-style-creating-beauty-ending-poverty> (accessed March 1, 2017).
53. Wendy Brown, “Suffering the Paradoxes of Rights,” in *Left Legalism, Left Critique*, edited by Janet Halley and Wendy Brown (Durham: Duke University Press, 2002), 432.
54. Programs included in the emergency response and referral network were also key base-building and outreach sites, as staff and participants in these programs needed to be made aware of the challenges facing people with CANS convictions if they were going to be able to also assist with referrals.
55. In her article on the CANS legal fight, Andrea Ritchie outlines the story of how she first learned about the CANS crisis from me, while she was working as the Director of the Sex Worker Outreach Project (SWOP) at the Urban Justice Center and I was working as the Director of Project UNSHACKLE at the Community HIV/AIDS Mobilization Project

- (CHAMP). Ritchie was familiar with WWAV through INCITE! Women of Color Against Violence's work on policing of women and transgender people of color. See Andrea J. Ritchie, "Crimes Against Nature: Challenging Criminalization of Queerness and Black Women's Sexuality," *Loyola Journal of Public Interest Law* 14, no. 2 (2013): 357.
56. In our July 2013 interview, attorney Bill Quigley, former CCR Legal Director and Loyola University Law Professor, explained how his practice of "social change lawyering" is modeled on the principles of legal aid during the Black Freedom Struggle. See also Quigley, "Ten Questions for Social Change Lawyers," in *Loyola University College of Law Legal Studies Research Paper Series*, <http://ssrn.com/abstract=2272227> (accessed March 1, 2017).
  57. Essential to building and executing this campaign strategy were several longtime allies of WWAV, including the Women's Health and Justice Initiative (WHJI), Voice Of The Ex-Offender (VOTE), and the LGBT Youth Project at Juvenile Justice Project of Louisiana (which would become BreakOUT!). In the spring and Summer of 2010, Shana griffin of WHJI and Rosana Cruz of VOTE, both WWAV board members, joined staff in crafting the NO Justice organizing strategy from the founding project objectives established the summer before: (1) Engage, support, empower women most at risk; (2) Influence key players in the criminal justice system to immediately reduce and/or halt further prosecutions; and (3) Secure systematic challenge to the statute through the courts. Each of these objectives was broken down into tangible short-term and long-term goals. At this point, WWAV explicitly named public advocacy, community engagement/education, and media campaign/advocacy as goals.
  58. Agathocleous, "Building a Movement for Justice."
  59. Center for Constitutional Rights, "*Doe v. Jindal* complaint." The day the lawsuit was filed, WWAV and the legal team held a press conference that included Bill Quigley, CCR Legal Director; Alexis Agathocleous, CCR Staff Attorney; Andrea J. Ritchie, Esq., private attorney focusing on police misconduct and co-author of *Queer (In)Justice*; Davida Finger, Loyola University New Orleans College of Law Law Clinic; Deon Haywood, Women With a Vision Executive Director; Wes Ware, Lead Youth Advocate, Juvenile Justice Project of Louisiana; and Shana griffin, Women's Health and Justice Initiative.
  60. In our interview, Bill Quigley described how he and Deon Haywood were asked to explain the sexual practices criminalized under the CANS statute in graphic detail before the House Committee. After the House Committee's unanimous ruling, Deon Haywood turned to him and asked, "What do we do next?" Quigley replied, "I don't know. We don't usually win."
  61. While the legislative repeal of the CANS statute was building, two motions had been filed to dismiss the federal lawsuit: one by the state on April 11, 2011, and the other by the city of New Orleans on May 17, 2011. On June 14, 2011, the NO Justice legal team filed opposition to these motions and then filed an amicus brief in support of the lawsuit on June 23, 2011. On September 7, 2011, Judge Feldman ruled that the lawsuit would proceed. On October 31, 2011, the NO Justice legal team moved for summary judgment. See CCR, "Crime Against Nature by Solicitation Litigation."
  62. *Audrey Doe, et al. v. Bobby Jindal, et al.*, "Order and Reasons," 29. Defendants included Governor Bobby Jindal; Attorney General James D. Buddy Caldwell; Secretary of the Louisiana Department of Public Safety and Corrections (DPSC) James M. LeBlanc; Superintendent of the DPSC Colonel Michael D. Edmonson; Deputy Superintendent of the DPSC, Office of the State Police, Charles Dupuy; Director of the DPSC, Division of Probation and Parole, Eugenie C. Powers; Assistant Director of the DPSC, Division of Probation and Parole, Barry Matheny; Commissioner of the DPSC, Office of Motor Vehicles, Nick Gautreaux; and Superintendent of the New Orleans Police Department, Ronal W. Serpas.
  63. WWAV, "OUR WIN."
  64. Judge Feldman granted summary judgment on March 29, 2012. On April 11, 2012, Feldman's formal judgment declared sex offender registration under Louisiana's CANS law unconstitutional, and ordered that the state remove the NO Justice plaintiffs from the registry within

- thirty days. See CCR, “Crime Against Nature by Solicitation Litigation.” Alexis Agathocleous, CCR Staff Attorney, explained that when he called the people named in the lawsuit to share the details of the formal judgment, each person started to cry when he said, “A judge found that the state of Louisiana *violated your rights*.”
65. This point was emphasized by Zina Mitchell in an interview I conducted with her on June 4, 2012.
  66. Statement made to Deon Haywood in 2013, after the 2012 ruling was extended to all people with CANS convictions.
  67. Women With A Vision, “Victory at Last!,” October 28, 2013, <http://wwav-no.org/victory-at-last-louisiana-has-removed-hundreds-of-individuals-unconstitutionally-placed-on-sex-offender-registry> (accessed March 1, 2017).
  68. During this period, Deon and I began to conceptualize an oral history project to document the steps to the NO Justice victory, which we planned to launch in the summer of 2012 as “We Spoke Our Truths.” We discussed the evolution the campaign, its pivot points, and its interpretations throughout this planning process.
  69. WWAV, “OUR WIN.”
  70. Ibid.
  71. See Jasbir Puar, *Terrorist Assemblages: Homonationalism in Queer Times* (Durham: Duke University Press, 2007), 4.
  72. Michael Kunzelman, “Louisiana Sex Law Violates Offenders’ Rights, Federal Judge Rules,” *The Times Picayune*, March 29, 2012, [http://www.nola.com/crime/index.ssf/2012/03/louisiana\\_sex\\_law\\_violates\\_off.html](http://www.nola.com/crime/index.ssf/2012/03/louisiana_sex_law_violates_off.html) (accessed March 1, 2017).
  73. Women With A Vision, “Arson Destroys Women With A Vision Office,” May 25, 2012, <https://www.youtube.com/watch?v=Zp8lEEj1rc4> (accessed March 1, 2017).
  74. See Center for Constitutional Rights, “Crime Against Nature by Solicitation Litigation.”
  75. The Data Center, “Who Lives in New Orleans and Metro Parishes Now?,” *The Times Picayune*, June 30, 2017, <http://www.datacenterresearch.org/data-resources/who-lives-in-new-orleans-now/> (accessed August 1, 2017).

### About the Authors

Laura McTighe is a postdoctoral fellow in the Dartmouth Society of Fellows and the cofounder and associate director of Front Porch Research Strategy. She comes to her work in the academy through twenty years of grassroots organizing in movements to end AIDS and prisons. Her research centers on the often-hidden histories, practices, and geographies of struggle in America’s zones of abandonment, and ask how visions for living otherwise become actionable. Her current book project, *Born in Flames*, is a collaborative ethnography of race, religion, and the spatiality of opposition, which she has researched and is writing alongside the leaders of Women With A Vision (WWAV) in New Orleans.

Deon Haywood is a southern black queer woman, an activist warrior, a mother and grandmother, and a breast cancer survivor. As the Executive Director of Women With A Vision (WWAV) in New Orleans, she led the organization after Hurricane Katrina in successfully striking down a “crime against nature” statute being used to criminalize street-based sex work, thereby securing the removal of more than 800 people from the Louisiana sex offender registry. For this work, she has been honored with numerous awards by groups across the United States in recognition of her leadership at the intersection of HIV/AIDS, harm reduction, LGBTQ rights, reproductive justice, anti-criminalization, and ending mass incarceration.

## Appendix

### *OUR WIN—Letter from Executive Director Deon Haywood*

Dear friends and allies,

There are few times in our work when are truly brought to the point of being speechless. For all of us at Women With A Vision, today is one of those days. Today, we celebrate with the women and men who courageously stood up to combat the criminalization of their lives—and *won*. Today, we celebrate a victory for *all* people who have told their truths that justice might be done. WWAV has always just been a catalyst for women affected by this.

So many times, people tried to tell us not to do it. They didn't believe that poor, uneducated women could win a victory on this scale. They didn't think that our women were important enough, or that they had the ability to change their own lives. Let this be an example of people standing together through grassroots organizing to change their lives. We didn't back down even when we lacked the funding to do this. We did not back down when person after person said that they were unsure about standing by us. We knew what we were doing was right. We did not waver. We did not compromise what needed to happen. We just stayed the course and fought the fight.

At a time in this country right now when we feel like justice is not on the side of the people, the people most affected spoke their truths—not some abstract “speak truth to power,” but *their* truths from *their* hearts—and that is what made the difference.

This was not a legal fight or a legislative fight. This was a fight for women's lives and wellbeing. This was a fight, simply put, about everything. This was about the freedom of people to make choices for themselves. This was about public health. This was about sex worker rights. This was about human rights. This was and is about everything. Which is why we cannot pick apart injustice. We can't decide that something is wrong for one group and right for another. We can't decide we don't like this law for women, but it's okay for gay people or trans people.

Especially in the South, most people feel like we come in last. But this is where the Civil Rights Movement started. And today it continues in the South.

We have seen too often that the way problems are solved in Louisiana is through incarceration. But over-incarceration is not going to solve things. It's not going to make our communities safer. It's not going to make our communities better. The issue here is poverty. Over-incarceration is not going to solve that.

For once, women and men won. And we believe that this is not just a win for us. This is a win for every group that has ever been criminalized. Our win today proves that when we stand with folks who have been wrongly charged, we *can* make a difference.

With this win, the women of NO Justice can begin to heal. With this win, we can begin to renew and rebuild our lives.

And the struggle continues,

The women we stand with, Deon Haywood, the staff of WWAV, and our Board of Directors.