#SayHerName

#BlackWomensLivesMatter: State Violence in Policing the Black Female Body

by Teri A. McMurtry-Chubb

On June 30, 1974, Alberta Williams King was shot and killed in the sanctuary of Ebenezer Baptist Church in Atlanta, Georgia as she played the organ for Sunday morning service. Mrs. King, seventy years old, was the mother of the Reverend Dr. Martin Luther King, Jr. News of her death was overshadowed by four Black men: her son, killed six years previously; the shooting of a “young Black man” in Atlanta on June 26,
1974, who was out on parole; Maynard Jackson, then newly elected as Atlanta’s first Black mayor; and her assailant, a Black man, a Vietnam War veteran with mental illness. Reports focused on the irony that Mrs. King was shot and killed so close to where her son was buried. They also highlighted that the violence against Mrs. King was another installment of racial disturbances in Atlanta that week. On Wednesday when a young Black male parolee was shot, Black Atlantans responded in protests. This shooting occurred amidst the ongoing standoff between Maynard Jackson and the white Atlanta Chief of Police John Inman. Jackson fired Inman, who refused to step down from his post. The men at loggerheads threatened to further arouse racial tensions in the city. Maynard Jackson was abruptly summoned back to Atlanta to deal with the shooting, and the renewed racial unrest it brought, from a conference he was attending on the West Coast. Just when all was looking up and protesting seemed quelled, Marcus Wayne Chenault, Jr. shot and fatally wounded Mrs. King on Sunday morning. As he fired the shots, he yelled: “The war is still on! I’m going to kill everyone in here—they did it to me in the war.” The gunman was also reported as repeatedly stating: “The war did this to me. It’s the war.” Chenault was twenty-one years old at the time of the shooting.

Mrs. King’s story illustrates the tension between Black women, Black men, the State, and its actors. Mrs. King as a Black woman was viewed only in relationship to four men: her child, Reverend Dr. Martin Luther King, Jr.; Maynard Jackson, Atlanta’s first Black mayor; a Black male death at the hands of a White police officer; and the stigma and threat of untreated mental illness in the body and mind of her killer. Mrs. King’s story is lost to us because it is consumed in an intersectional narrative of state violence, patriarchy, and white supremacist politics.

5. See id.
6. Id.
7. Id.
8. Id.
9. Id.
10. Id.
11. Id.
12. Id.
13. Id.
14. Id.
15. Id.
which all serve to push her beyond the periphery and out of our view. In this narrative she is only a mother, a member of a community led by Black men whose main focus is the health and welfare of Black men. Mrs. King's story highlights how the invisibility of Black women and policing is a type of state violence against Black women. The reasons for her erasure illustrate why the innumerable known and unknown stories about Black women's encounters with the police are also pushed beyond our collective vision. Mrs. King's story makes visible that deep knowledge and understanding of Black women's historic and contemporary relationship with capitalism, patriarchy, white supremacy, and the State (state and federal governing entities) is necessary to comprehend how Black women are policed in the United States.

The central theme of this Article is that Black female bodies are regularly policed and eventually sorted in United States prisons in accordance with their material value to the State and their ability to threaten its foundations. Undergirding this theme is the notion that the State is not a benign benefactor and protector of rights, but rather a malevolent entity that feeds on a material valuation of Black bodies, male and female, ordered as inferior to White bodies to gain both economic strength and political currency. This Article traces this phenomenon and its evolution in four parts. The discussion commences at the plantation as a proxy for the State and its actors, and its role in shaping the material and political valuation of Black female bodies. Next, it moves to the transfer of power from the plantation to state governments with the passage of the Thirteenth Amendment, and the implications for policing and sorting Black female bodies. Third, it interrogates the race and gendered dimensions of Jim Crow and its impact on policing Black women in the twenty-first century. The fourth and final section is a series of contemporary examples of how the vestiges of these systemic oppressive regimes persist in policing Black female bodies today. Although the main site of this Article is Georgia, it incorporates regional and national trends shaped by forces similar in kind and impact.

I. THE PLANTATION AS “STATE”

Since the Black woman’s arrival in the Americas as human chattel, her relationship with the State and its actors mimicked that of an eager lover, brutal and willfully blind to the forced submission of his conquest. The State, as embodied in lawmakers and plantation owners, was enamored with the Black woman’s body, especially its reproductive

17. U.S. CONST. amend. XIII.
capacity, as the foundation of both the national and plantation economies. Through rape, she would be impregnated and then give birth to girls and boys who were owned by the White plantation master and mistress; she had no parental authority over them.\(^\text{18}\) The plantation master, the children's father and owner, was their patriarch, even when Black women bore these children through love or forced breeding with male slaves.\(^\text{19}\) Both boys and girls would work in the fields, cultivating cotton, sugar, rice, and indigo.\(^\text{20}\) Upon reaching puberty, both boys and girls increased in monetary value because of their own ability to reproduce additional human chattel to fuel the slave economy.\(^\text{21}\) Each also became more valuable because as they grew older and stronger, they could cultivate and harvest more cotton, sugar, rice, and indigo.\(^\text{22}\)

It is important to reiterate that in the plantation regime, the White male planter or “master” was the sole legally and socially recognized patriarchal figure for the slaves he owned and for his wife and the children she bore.\(^\text{23}\) Rule over the plantation was within the planters’ scope of power alone; state laws did not interfere with plantation business except to preserve that status quo.\(^\text{24}\) White male patriarchal primacy over slaves was legally codified, especially by laws that prohibited slaves from marrying.\(^\text{25}\) Marriage was and remains closely linked to notions of contract, contractual rights, and contractual obligations.\(^\text{26}\) A key right and obligation of marriage granted only to White males was the ability to legitimate the children born from their unions with White females.\(^\text{27}\) White males were expressly prohibited by law from legitimating children of their unions with Black females, because to do so would render the children “heirs” rather than “property.”\(^\text{28}\) Because legal marriage was viewed as the primary means by
which to convey property, and control over human property was the
foundation for the wealth of plantations with twenty or more slaves,\textsuperscript{29}
it was imperative for planters to maintain control over this most basic
means of conveyance. Thus, slaves were allowed to enter into fictive
marriages, contubernal relationships only.\textsuperscript{30} To provide otherwise
would permit someone other than the planter, namely Black male slaves,
to have the benefits of control over Black children and their mothers, the
ultimate means of production and generational wealth.

Emancipation precipitated the collapse of the plantation economy, a
credit economy supported by investment in slave labor and hypothecated
returns on crops.\textsuperscript{31} Planters found themselves bankrupt and unable to
support their wives and legally legitimate children, let alone fulfill their
legal obligations as patriarchs to slaves and the larger community.\textsuperscript{32}
Thus, in Emancipation, plantation masters transferred their immediate
patriarchal authority over Black women, both rights and obligations, to
Black men. Statutory provisions throughout the South that made slave
marriages legal illustrate this transfer of authority. For example,
Georgias statutes legalizing slave marriages and attendant relations
read:

\begin{verbatim}
§ 1665 [Persons of color living together on the 9th day of March, 1866,
as husband and wife, are hereby declared to sustain that legal relation
to each other, unless a man shall have two or more reputed wives, or
a woman two or more reputed husbands. In such event, the man shall
immediately select one of his reputed wives, with her consent, or the
woman one of her reputed husbands, with his consent, and the
ceremony of marriage between these two shall be performed. If such
man, thus living with more than one woman, or such woman living
\end{verbatim}

\textsuperscript{29.} JAMES OAKES, THE RULING RACE: A HISTORY OF AMERICAN SLAVEHOLDERS 52
(1998). Oakes states:
To own twenty slaves in 1860 was to be among the wealthiest men in America,
easily within the top five percent of southern white families. Barely one in twenty
slaveholders owned that many bondsmen, and not one in a hundred southern
white families was headed by such a man. Yet southern white society is
frequently analyzed from the perspective of this tiny elite.

\textit{Id.}

\textsuperscript{30.} Darlene C. Goring, \textit{The History of Slave Marriage in the United States}, 39 J.

\textsuperscript{31.} LEWIS CECIL GRAY, HISTORY OF AGRICULTURE IN THE SOUTHERN
UNITED STATES TO 1860: VOLUME I 409-10 (1933).

\textsuperscript{32.} FAUST, supra note 19; see generally J. WILLIAM HARRIS, PLAIN FOLK AND GENTRY IN A SLAVE
SOCIETY: WHITE LIBERTY AND BLACK SLAVERY IN AUGUSTA'S HINTERLANDS (1985); STEPHANIE MCCURRY, MASTERS OF SMALL WORLDS: YEOMAN HOUSEHOLDS, GENDER
RELATIONS, AND THE POLITICAL CULTURE OF THE ANTEBELLUM SOUTH CAROLINA LOW
COUNTRY (1997).
with more than one man, shall fail or refuse to comply with the provisions of this Section, he or she shall be prosecuted for the offense of fornication, or fornication or adultery, or fornication and adultery, and punished accordingly.] (a).

§ 1667 [Among persons of color the parent shall be required to maintain his or her children, whether legitimate or illegitimate.] (a).

§ 1668 [Children shall be subjected to the same obligations in relation to their parents as those which exist in relation to white persons, and in all cases when the parents have separated and the children remain with the mother, she shall have control of such children during their minority.] (c).

§ 1669 [Every colored child born before the 9th day of March, 1866, is hereby declared to be the legitimate child of his mother; but such child is the legitimate child of his colored father only when born within what was regarded as a state of wedlock, or when the parents were living together as husband and wife.] (d).

Section 1665 of the Code of the State of Georgia legalized those relationships between a single male and single female slave if they were living together as husband and wife during slavery. In passing this provision, the Georgia legislature did not allow either party, outside of a dispute about who was married to whom, to choose to continue in a “marriage” relationship. Section 1667 transferred to slave parents the material obligation to care for their children, and section 1668 characterized these children as subservient within the familial dynamic much like their parents were to Whites in society. Far from a benign piece of legislation, section 1668, subtitled “Obligations of children,” is telling of how children were regarded within the marital relationship. Like their parents’ obligations to Whites, they existed for their parents’ material benefit. Planters further abdicated their material and legal responsibilities for slave mothers and their children in section 1669.

34. Id. at 335, § 1667.
35. Id. at 335, § 1668.
36. Id. at 335, § 1669.
37. Id. at 334, § 1665.
38. Id.
39. See id.
40. Id. at 335, § 1667.
41. Id.
42. Id. at 335, § 1668.
43. Id.
44. See id.
45. See id.
46. Id. at 335, § 1669.
This provision rendered slave children fatherless and legally illegitimate prior to 1866.47

Because slaves were not legally free until the passage of the Thirteenth Amendment, to recognize a plantation owner as a slave child's father would have given these children access to the generational wealth of the plantation. If a Black male slave was the child's father, then to recognize his patriarchal rights would give him control of his children and place him at odds with the rights of the plantation master. After 1866, section 1669 gave a free Black man the ability to legitimize his children only when living with the child's mother as married, or as husband and wife.48 This provision permitted Black women and their children access to Black male acquired wealth and status only within a structure legally recognized by the state (that is, marriage).

Newly divested of their labor force, former plantation owners struggled to make sense of the freedom in the unrestrained bodies of the perceived inferior and formerly enslaved. Of particular interest to contemporaries in this period were relationships between Black mothers, fathers, and their children in Black familial structures. One such effort to make sense of Emancipation's new reality was the book The Plantation Negro as A Freeman,49 authored by Philip A. Bruce in 1889. Although the case study for Bruce's interpretation of post-Emancipation Black behavior was Virginia, his observations of Blacks led him to believe that the book was widely applicable for all of the South's Black population where plantation slavery was the norm.50 Bruce's work gives us one of the earliest glimpses into post-Emancipation social constructions of Black female identities in relation to familial structures. Scholars have classified these identities as the stereotypical tropes "Mammy," "Jezebel," and "Sapphire" and argue that Whites used them to explain away the treatment of Black women by plantation masters and mistresses.51

47. Id.
48. Id.
50. Id. at vii-ix.
51. Carolyn M. West, Mammy, Jezebel, Sapphire, and Their Homegirls: Developing an "Oppositional Gaze" Toward the Image of Black Women, in LECTURES ON THE PSYCHOLOGY OF WOMEN (Joan C. Chrisler, Carla Golden & Patricia D. Rozea eds., 2012); see generally Zanita E. Fenton, Domestic Violence in Black and White: Radicalized Gender Stereotypes in Gender Violence, 8 COLUM. J. GENDER & L. 1, 23-24, 24 n.87 (1998); Angela Mae
Mammy is the benevolent, asexual caretaker of the plantation household and White children, memorialized forever in the body and demeanor of Hattie McDaniel in the movie Gone With the Wind. Scholars have argued that she was created to prove the benevolence of her plantation master and mistress and her contentment with plantation life.

Jezebel, a nod to King Ahab’s wife in the biblical book of 1 Kings, is the oversexed, promiscuous, immoral Black woman, the seductress who caused White planters to leave their marriage beds and produce illegitimate slave children. She is the apologist for rape, the excuse for how and why Black women’s reproductive labor funded the plantation economy.

Lastly, Sapphire is the conniving, angry, bold, aggressive Black woman, as she materialized on the hit radio program Amos n’ Andy. Sapphire is singularly responsible for the downfall of the Black family because she usurps the Black male patriarchal role. She was crafted from the sculptor’s fragments that fell from the chiseling of the White female identity. In direct contrast to White women’s perceived purity and subservient positions to White men, Sapphire’s creation was to explain Black women’s physiological and psychological “tendencies” to be indistinguishable from her male counterparts in strength and demeanor. In actuality, Sapphire is an attempt to explain Black women in “male” jobs as unnatural, even as their work tasks were normalized in the plantation fields and in the post-Emancipation industrial economy.

Bruce’s collection of information about Black women as mothers, wives, and members of society shows that these identities are much more than tropes or stereotypes to overcome. Bruce’s observations offer a critique of each identity as it occurs in the larger context of a South


52. West, supra note 51, at 289; see also GONE WITH THE WIND (Warner Bros. 1989).
53. West, supra note 51, at 289.
54. See 1 Kings 21:1-29 (King James).
55. Id.
56. West, supra note 51, at 294-95.
57. Id. at 295-96.
58. Id.
59. Id.
60. Id.
61. Id. at 296.
struggling to move from an agrarian to industrial economy but lacking a free labor force to aid it in the transition. Simply, his observations give us insight into the Black woman's importance to this transition and the State's means of capturing her labor for this purpose.

A. Molding Mammy

According to Bruce, Blacks in freedom lacked the strong patriarchal hand of the slave owner to guide and correct them, much to their detriment. In particular, the Black male as patriarch over his family was a failure because he was unable to assert his power as male, as readily understood in this structure, as the primary laborer and breadwinner. As a result, slave parents were ill-prepared to instill moral character in their children, which caused them to revert to their natural animalistic tendencies. "The average father and mother are morally obtuse and indifferent," said Bruce, "and at times even openly and unreservedly licentious . . . . Far too many members of the older generations set a demoralizing example, by showing little appreciation in word and action alike for order, cleanliness, temperance, continence, veracity, and integrity." In Bruce's perception, Black women were imperfect mothers because there was no one to teach them how to mother. Note that these same Black women "mothered" White children all through slavery and beyond, but then had the moralizing, mentoring force of the plantation master and mistress to guide them. Now an employer, the former planter only had occasion to interfere in Black parenting through the police power of the State when those children harmed or destroyed his property. Emancipation had done away with Mammy, much to Black women's detriment. With the civilizing effects of a White male patriarch and the State, she was an ideal caretaker of White children. Without both she was unable to care for her own children. Her job was to be a domestic worker, a role that supplemented white household labor and the successful running of the family. Thus in Emancipation, Black mothering of Black children became a highly proscribed space where Black women became deviant mothers. Their parenting lapses were criminalized, which opened the door for the State to step in and discipline their children for its benefit.

62. BRUCE, supra note 49, at 3.
63. Id. at 4, 13.
64. Id. at 5, 9.
65. Id. at 4.
67. Id.
B. Justifying Jezebel

Bruce further blamed the absence of a strong patriarch in Black women's lives for their moral deficiencies. Such a void left single Black women to their lascivious impulses without the purifying effects of slavery.\(^6\) In slavery, slaves were legally prohibited from gathering together or being in public after dark,\(^6\) which Bruce noted as key to curbing Black sexual desire.\(^7\) In Emancipation, Black matriarchs taught their female children no moral values, chastity chief among them. These daughters had no abiding sense of personal purity and no sense of the consequences of their sexual immorality.\(^7\) Worst still was that the Black patriarchal figures in their lives, brothers and fathers, did not judge her sexual immorality unfavorably.\(^7\) For Bruce, this lack of condemnation was problematic, because in his view the institution of marriage depended upon shaming women into purity to deem them worthy of a legally blessed, state sanctioned sacred union. He wrote:

This state of mind on the part of the men with respect to the conduct of the women they marry, is very injurious to the moral tone of the unmarried women, for it removes the most powerful influence that could be brought to bear to make them prudent, inasmuch as the thoughtless and wanton can secure husbands with the same ease as the virtuous and circumspect.\(^7\)

These women had some redeeming qualities, namely they were "remarkable for a certain cheerfulness of spirit and amiability of temper that partially redeem her [from her moral defects]."\(^7\) Most importantly, her dalliances outside of the legal strictures of marriage produced children who, once of an age to work, would "constitute a valuable dowry to whoever marry their mothers, such women occupying somewhat the position of widows with considerable property at their command, which

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\(^6\) BRUCE, supra note 49, at 17.


\(^7\) BRUCE, supra note 49, at 17.

\(^7\) Id. at 11-12.

\(^7\) Id. at 12.

\(^7\) Id. at 19-20.

\(^7\) Id. at 12.
they confer absolutely upon their husbands at the hour of marriage.\textsuperscript{76} In marriage, these “Jezebels” submitted the material value of their children, their reproductive labor, to Black patriarchal control. Although Jezebel could not be civilized in the wake of the transfer of patriarchal authority and responsibility off the plantation, her children remained property for the enjoyment of the husband and their material benefits to the Black family.

C. Sculpting Sapphire

Bruce saw the lack of the planter’s correction and guidance as even more acute in the newly legalized Black family, where he viewed Black women’s usefulness in direct relationship to her ability and willingness to contribute monetarily to the household. Bruce mused that Emancipation ruined Black women for labor and left them idle to corrupt and control their husbands to challenge white supremacy.\textsuperscript{76} These women were Sapphires whose “moral influence over their husbands is often pernicious . . . who frequently go so far as to be active accomplices themselves, in gross as well as petty violations of law.”\textsuperscript{77} Bruce went on to explain that:

[Sapphire’s] bearing when thrown with members of the white race is often presumptuous, when there is no reason why it should be, apart from the spirit of antagonism which seems to have been engendered in their own hearts; and the consequence is that the whites avoid all intercourse with them, unless domestic servants, all communication being generally held indirectly.\textsuperscript{78}

If not a Mammy, Sapphire was discounted and rendered invisible in public life.

Sapphire’s nefarious hold on her husband and children could only be loosened and her body made useful as a laborer. She was ill-suited to be a wife at home, as she lacked the moral character to raise children and foster non-pathological Black family life. Accordingly, Bruce’s narrative contained yet another type of Black woman: the industrious daughter whose labor could be controlled by the Black patriarch for capital gain. “[These] girls,” said Bruce, “are more easily managed [than the boys] because [they are more amenable] to physical restraint.”\textsuperscript{79} Of this woman, Bruce recounted,

\textsuperscript{75} Id. at 19.
\textsuperscript{76} Id. at 26-27.
\textsuperscript{77} Id. at 26.
\textsuperscript{78} Id. at 26-27.
\textsuperscript{79} Id. at 11.
[When the wheat harvest, for instance, is in progress, or the corn being planted, or the tobacco stripped, many of them are regularly employed, and are paid well for their work. These are then found in the fields or barns at all hours of the day, and, to the extent of their physical strength, are as good hands as males of the same age.]

At least in the field Sapphire was limited from influencing a husband to rebel. Her labor neutralized her danger and was ultimately useful for the benefit of the household, namely her husband.

II. CODIFYING BLACK FEMALE CRIMINALITY

The major conclusion of *The Plantation Negro as A Freeman* was that Blacks were only useful to the State as laborers under the supervision of White men. When left to their own devices, Black men were criminals with a predilection to rape White women, burn down their former masters' homes and farms (arson), and murder to cover up robbery. Bruce criminalized Black women differently, as he opined that domestic workers were vengeful, resentful poisoners of White family members, and all Black people, men and women, were thieves of their White employers' property, including credit, and primarily food and household items.

In this respect, Bruce's link of Blackness and criminality, or a Black predisposition to commit certain crimes, is not unique. However, his separate discussion of Black male and Black female "pathologies" and criminality provide us with new insight into how antebellum and postbellum laws criminalizing Black behavior was gendered. Prior to the passage of the Thirteenth Amendment, Georgia's criminal code was divided racially; there was a separate code for Whites and a separate code for slaves and free people of color. Two versions of the Code, published in 1848 and 1860, demonstrate how policing Black bodies was far from race or gender neutral, but showcased perceptions about how Black men and women embodied criminality on and off the plantation.

Georgia's 1848 criminal code punished the following conduct by slaves or free people of color with a death sentence: "insurrection, or an attempt to excite it; committing a rape, or attempting it on a free white female;
murder of a free white person, or murder of a slave or free person of color, or poisoning of a human being. The 1848 criminal code further punished slaves and free people of color by death or at the discretion of the court for "assaulting a free white person with intent to murder, or with a weapon likely to produce death; maiming a free white person; burglary or arson of any description; [and] also, any attempt to poison a human being."

Other crimes punished at the discretion of the court, with the possibility of a death sentence, when committed by slaves or free people of color included the following: manslaughter, hitting a White person, arson or attempted arson of a house in the city or country, luring slaves away from their masters, and "circulating incendiary documents," or documents that would allow any person of color, slave or free, to organize and resist white supremacy. Minor offenses included: "teaching slaves or free persons of color to read", trading with slaves if a free person of color, harboring a slave or free person of color, preaching without a license, "giving false
information";\textsuperscript{98} "teaching others to poison";\textsuperscript{99} and "killing, marking, or branding cattle" by slaves.\textsuperscript{100} When viewed through Bruce's lenses of Black female pathology, these crimes take on new meaning.

Likewise, the 1860 Georgia criminal code listed the same capital crimes for slaves and free people of color as the 1848 code with the exception of the inchoate crimes.\textsuperscript{101} Those crimes committed by slaves or free people of color punishable by death or at the discretion of the court also remained the same.\textsuperscript{102} One addition was "actually poisoning a slave or free person of color with intent to kill."\textsuperscript{103} The 1860 criminal code extended the reach of the "White" or "regular" penal code to slaves and people of color with respect to the following:

\begin{quote}
[A]ssault upon any person, free or slave; assault with intent to murder another free person of color; battery upon the same; kidnapping a free person; inveigling and kidnapping a free white child; stabbing a slave or free person of color; robbery; larceny; forgery; perjury; rescue; aiding in escape; conspiracy; receiving stolen goods; unlawful assemblies; riot; affray; keeping gaming houses or tables; gambling, and every specification of malicious mischief.\textsuperscript{104}
\end{quote}

Additional non-capital offenses criminalized only when committed by slaves and free people of color were the following:

\begin{quote}
[F]urnishing spirituous liquors to other slaves or free persons of color; concealing or harboring runaway slaves; \ldots teaching or instructing a slave or free person of color in the knowledge of any poisonous root, plant or herb, or other poison; administering medicine, or pretended [sic] medicine, to a slave, except by authority of the master or employer, or under the direction of a physician; carrying fire arms or other deadly weapons, except in the company of a white person at least sixteen years of age, or else about the business of the master or employer; \ldots aiding or assisting in any manner in bringing into the
\end{quote}

\begin{itemize}
\item \textsuperscript{98} Criminal Law, Persons of Color, and County Regulations, tit. 2, ch. 34, art. 1, § 2(20), in Statute Law of Georgia, \textit{supra} note 69, at 841.
\item \textsuperscript{99} Criminal Law, Persons of Color, and County Regulations, tit. 2, ch. 34, art. 1, § 2(21), in Statute Law of Georgia, \textit{supra} note 69, at 841-42.
\item \textsuperscript{100} Criminal Law, Persons of Color, and County Regulations, tit. 2, ch. 34, art. 1, § 2(22), in Statute Law of Georgia, \textit{supra} note 69, at 839.
\item \textsuperscript{102} Richard H. Clark, Thomas R.R. Cobb & David Irwin, The Code of the State of Georgia 920, § 4708 (1860).
\item \textsuperscript{103} Id.
\item \textsuperscript{104} Richard H. Clark, Thomas R.R. Cobb & David Irwin, The Code of the State of Georgia 920, § 4714 (1860).
\end{itemize}
State or circulating any insurrectionary document of any kind whatever; teaching slaves or free persons of color to read or write; indecent or disorderly conduct in the presence and to the annoyance of free white persons; [and] insolent or improper language to a white person. 

In the postbellum "freedom" era, the crimes enumerated in the 1848 and 1860 codes would carry with them both racialized and gendered notions of criminality that served as the justification to police Black female bodies.

III. BLACK WOMEN'S FREEDOM AIN'T FREE

Although the plantation master's authority over the familial space of Black women and children transferred to Black men at Emancipation, the plantation master's ultimate authority transferred to the State as it made laws to specifically recapture those recently emancipated bodies and use them again to further the aims of capitalism. To be clear, this Article's major theme is how the State uses the created identities of Mammy, Jezebel, and Sapphire to police Black women rather than how these identities are utilized to order Black women's labor once in the penal system. When viewed in the context of the Thirteenth Amendment and its exception to slavery for incarcerated labor, Mammy, Jezebel, and Sapphire take on new meaning as sorting mechanisms for policing and incarcerating Black female bodies.

The Thirteenth Amendment to the United States Constitution states "[n]either slavery nor involuntary servitude, except as [p]unishment for [a] crime whereof the party shall have been duly convicted, shall exist within the United States, or any [other] place subject to their jurisdiction." Crime, then, became the means of funneling Black labor back to the State. Mississippi Governor James K. Vardeman expressed the prevailing view of free Blacks in the South: "The Negro element is the most criminal in our population; [t]he Negro is much

106. For more on how the State used the created identities of Mammy, Jezebel, and Sapphire to order Black women's labor in the penal system, see generally Talitha L. Leflouria, Chained in Silence: Black Women and Convict Labor in the New South (2015) (arguing that Black women's labor on Georgia chain gangs and in its convict leasing and labor system as equal to Black men's was a key factor in modernizing the South, and that Sapphire and Jezebel stereotypes supported Black women's labor and sexual exploitation). Note also that this article does not cover the creation of Mammy, Jezebel, Sapphire as they relate to LGBTQ communities. The author leaves such inquiries open for further research.
more criminal as a free man than he was as a slave."108 Each incarnation of the Georgia criminal code after 1865 was a brick by which the Georgia legislature constructed the strong tower of the convict leasing and labor system. In this tower, the legislature endeavored to keep its newly freed labor force. Although the criminal code provisions carried forward after 1865 appeared primarily race and gender neutral until the era of Jim Crow, the majority of offenses listed in the criminal code for slaves and free people of color in the antebellum era now carried with them sentences of labor and imprisonment in the penitentiary or a sentence to work on a chain gang.109

In the years after 1865, Southern prisons, especially Georgia prisons, became overwhelmingly Black, approximately 70%, as the state criminalized behavior that suggested that newly freed men and women were unwilling to participate in the Southern workforce as laborers on Whites' terms.110 The largest legal web to trap freedmen and women consisted of vagrancy laws that criminalized "idleness," which yielded so many Black bodies in state jails and penitentiaries that the state turned to a system of convict leasing and labor to again utilize these men and women for its benefit.111 This system would remain until the turn of the century.112 Georgia's system of convict leasing and its use of chain gangs to rebuild state infrastructures after the Civil War was legendary; it served as the model for other such systems throughout the United States.113

The State fixed its police power on Black women by criminalizing their behavior as it aligned with the Mammy, Jezebel, and Sapphire identities. As W.E.B. Du Bois recorded in his 1904 study, *Some Notes on Negro Crime Particularly in Georgia*, by 1880 Black women were charged most frequently with crimes "against society [22.2%]; "against person[s] [19.2%]; and "against property [40.8%]."114 Crimes catego-

110. Du Bois, supra note 24, at 3-4.
111. *Id.* at 4-5. The study shows that in 1890 Southern prisons made a $47,974 profit, in sharp contrast to prisons in the mid-west, upper-south, west, and New England. *Id.* at 5.
112. McMurtry-Chubb, supra note 109, at 141, 145.
115. *Id.* at 13. Charging data for 1181 Black women was collected in the year 1880. *Id.* Of that number, 263 were charged with crimes against society; 227 with crimes against person; and 483 with property crimes. *Id.*
rized as against society included "perjury, adultery, gambling, drunken-ness, disorder, concealed weapons, [and] vagrancy."\textsuperscript{116} Crimes against persons included "murder, rape, [and] assaults."\textsuperscript{117} Black female incarceration rates in 1890 for these crimes were 40.64\% (crimes against society); 18.22\% (crimes against persons); and 30.33\% (crimes against property).\textsuperscript{118} Of the one million criminal charges issued in 1890, Black males and females were charged disproportionately with gambling (10,545); public intoxication (16,358); disorderly conduct (23,767); carrying concealed weapons (14,293); and vagrancy (14,747).\textsuperscript{119} Perpetrators of these crimes were sentenced to work on the chain gangs or otherwise employed in the convict leasing and labor system.\textsuperscript{120} Newspaper accounts, charging documents, and other records give insight into how these crimes, namely crimes against society, persons, and property became Mammy, Jezebel, and Sapphire crimes.

A. Policing Mammy: Criminalizing Multiple Labors

The 1890 statistics on Black incarceration revealed that "[n]early half of the Negro prisoners are confined for crime against property . . . . This is due to imperfect ideas of property ownership inseparable from a system of slavery."\textsuperscript{121} Bruce in The Plantation Negro as A Freeman waxed on about the same, stating:

The most confirmed criminal habit of the plantation negro is petit larceny; this infirmity is so common that there are comparatively few individuals of his race and condition who will not yield to the temptation to take what does not belong to them . . . . admit[ting] [a house servant] without supervision into the room where the groceries are stored, [puts] him in a situation in which he can rarely resist abstracting as much as he can conceal about his person.\textsuperscript{122}

In his article, 'That Disposition to Theft, with Which They Have Been Branded': Moral Economy, Slave Management, and the Law,\textsuperscript{123} historian Alex Lichtenstein provides context for perceived slave theft on plantations.\textsuperscript{124} He argues that theft was illustrative of the shifting power

\textsuperscript{116} Id. at 14.  
\textsuperscript{117} Id.  
\textsuperscript{118} Id.  
\textsuperscript{119} See id. at 15.  
\textsuperscript{120} Id. at 5-6.  
\textsuperscript{121} Id. at 16.  
\textsuperscript{122} BRUCE, supra note 49, at 87.  
\textsuperscript{123} Alex Lichtenstein, 'That Disposition to Theft, with Which They Have Been Branded': Moral Economy, Slave Management, and the Law, 21 J. Soc. Hist. 413 (1988).  
\textsuperscript{124} Id. at 413.
dynamics in Emancipation, in which former slaves and their masters redefined the contours of their relationship. This was no more evident than in the relationship between domestic servants and their employers.

In the post-Emancipation period through Jim Crow, domestic laborer jobs were most available to Black women. For example, scholars estimate that over 90% of all Black women employed during this time period in Atlanta served as cooks, maids, laundresses, or nursemaids in White households. These jobs reaffirmed Black women’s proper station as caretakers for White families, especially White children. Although plentiful, such work barely allowed Black women to make a living. When not paid minimal wages, many were not paid at all for their work. Thus, these women set about supplementing their labor with petty theft of food, other household items, and money. When viewed in the context of Mammy’s material relationship to the State, policing Black women disproportionately for these activities, crimes against property, was a means to punish them for supplementing their own household resources at the expense of their White employers. The crime was not taking the bread out of their masters’ and mistresses’ mouths, but rather using that bread to feed themselves and their own.

The living breathing fruits of Mammy’s labor, her children, and her ability to parent them were also criminalized. In the absence of the slaveholder, there was no one to teach Black mothers to parent. This resulted in the transference of their own moral deficiencies to their children, a lawless bunch who “[were] not so amenable to authority and [were] much less inclined to work.”

B. Policing Jezebel: Criminalizing Sexual Autonomy and Ownership

As supplemental or primary sources of income, Black women set up houses of prostitution and gambling, “lewd houses,” or bootlegged liquor. These jobs placed women in close proximity to Black and

125. Id. at 413-15.
126. LEFLOURIA, supra note 106, at 31.
127. Id. at 32.
128. Id.
129. Id. at 34-35.
130. BRUCE, supra note 49, at 3-5, 9.
132. LEFLOURIA, supra note 106, at 35-37.
White men, but on decidedly female turf, on decidedly female terms.\textsuperscript{133} As owners of female houses of prostitution, Black women owned and profited from Black female sexuality.\textsuperscript{134} As owners of gambling houses and informal liquor distribution systems, these women too encountered men as customers and employees on their own terms and in direct resistance to notions of female purity and lasciviousness, and occupancy of public versus private spaces.\textsuperscript{135} Usually all three—gambling, liquor, and prostitution—were offered in the same "house." In Georgia, state resistance to Jezebel's autonomy was swift; the State became the first in the South to pass laws prohibiting the sale and distribution of liquor.\textsuperscript{137} Of Atlanta, several social scientists lamented "the fountain head of crime among the Negroes of Atlanta is the open saloon. There is no doubt but that the removal of strong drink from the city would decrease crime by half."\textsuperscript{138} Clergy members and politicians opined that Blacks were predisposed to use and abuse alcohol, one even going so far as to state that "[t]he very worst traits of human nature, and of negro nature especially, are brought out by whisky. It is whisky which makes of the negro a criminal, a pauper, a vagrant and a menace to the homes of country people."\textsuperscript{139} In actuality, the true menace was Black women's potential for wealth acquisition from the very bodies that funded the coffers of the plantation economy. Jezebel's crime was earning more than a decent living.\textsuperscript{140} For daring to control herself and her sexuality, her punishment was the chain gang.\textsuperscript{141}

Black women were also punished for resisting the sexual advances and assaults of White men. The prevailing attitude and custom among


\textsuperscript{134} Id. at 59.

\textsuperscript{135} Id. at 58-60. Harley argues that Black women, "respectable" Black women, honored the distinction between public and private spaces. Id. at 58-59.

\textsuperscript{136} Id. at 56-57; see also LEFLOURIA, supra note 106, at 36.

\textsuperscript{137} LEFLOURIA, supra note 106, at 36.

\textsuperscript{138} Du Bois, supra note 24, at 49.

\textsuperscript{139} LEFLOURIA, supra note 106, at 36.

\textsuperscript{140} Harley, supra note 133, at 57-58. Harley posits that running a lewd house allowed Black women to earn far more, as much as ten times the amount, that they would earn as domestics. Id. at 58.

\textsuperscript{141} LEFLOURIA, supra note 106, at 37. For example, consider the story of Carrie Hollis, who at her sentencing for operating a lewd house was given the choice between paying a seventy dollar fine or serving seven months on a chain gang. Id.; see also McMurtry-Chubb, supra note 109, at 150-54.
Whites was that Black women could not be legally raped.\textsuperscript{142} In the post-Emancipation period and well into the era of Jim Crow, Black women were brutally raped by male members of the Ku Klux Klan as punishment for resisting White authority and as a way for these males to assert White patriarchal control.\textsuperscript{143} Black women suffered the most extreme type of punishment: death by lynching for fighting off their attackers or testifying against them.\textsuperscript{144}

C. \textit{Policing Sapphire: Criminalizing Space and Place}

When six-year-old Ruby Bridges became hesitant to embrace her role in integrating a New Orleans elementary school, activist and mentor Mrs. Leontine Luke told the young girl:

Yesterday that white boy told you to stop putting on airs, and be a n._-r girl. Well, you are a n._-r girl, and that's a lot to be, let me tell you. And I'm a n._-r woman; and that's a lot to be. It means to be a n._-r, and it means to be a woman. It means to be so strong you can cry and cry to yourself, then go out and meet the world and smile, and say yes, sir, to the world, to all the white people, who think they're so wonderful, and sosmart, and so the tops. And it means to say yes, sir, to the n._-rs, too--the men. I'll tell you, it means that, too.\textsuperscript{145}

Luke's words highlight that Black women's spaces, even in public, were constricted by the race and gender expectations of both Black and White men. Just after slavery, many Black women turned their attentions to the home, to the exclusion of field labor almost entirely.\textsuperscript{146} As one Georgia agricultural reformer, David Dickson, complained, "half the women and children are absent, housekeeping, idling, and other things."\textsuperscript{147} Another White Georgia planter observed that "[t]here are a great many negro women taken from the field to the


\textsuperscript{143} LEFLOURIA, supra note 106, at 28-29.

\textsuperscript{144} Id. at 29.


\textsuperscript{146} Id. at 841-42; see also LEFLOURIA, supra note 106, at 24.

\textsuperscript{147} Drago, supra note 145, at 841.
shanty, to live the lady . . . poor fellows, they'll catch it when they come to foot the bill." Such a station was deemed unnatural for Black women, who as idle Sapphires would place their families in economic ruin and drive their husbands to resist white supremacy. Sapphire was, after all, "a splendid field hand" whose labor was wasted on any home and hearth not occupied by a White family. These women would resist white supremacy as well, by challenging notions that their proper space was outside of the home and outside of the purity, subservience, and sobriety (seriousness) of "true womanhood."

In the post-Emancipation or "Reconstruction" period, Blacks and Whites worked at dual purposes to understand and ascribe meaning to the social, legal, and economic ramifications of freedom. Black women were front and center in this toil in which they vocally and publicly protested attempts to deny them the respect and other visible accouterments of citizenship. In the midst of the rapidly expanding convict leasing and labor system, the Civil Rights Act of 1875 purportedly gave all Blacks equal treatment under the law, the right to equal public accommodations (for example, movie theaters, parks, and public transportation), and Black males the right to serve on juries. The Supreme Court of the United States issued a series of rulings, known as "The Civil Rights Cases" that rendered the Civil Rights Act of 1875 unconstitutional. In the aftermath, Southern states, chief among them Georgia, continued to implement laws that segregated Blacks and Whites in public spaces. In 1891, Georgia passed legislation to segregate

148. *Id.* at 842.
149. *Id.*
153. 18 Stat. 335 (1875); See United States v. Stanley, 109 U.S. 3 (1883).
154. 18 Stat. 335, §§ 1-2; see Stanley, 109 U.S. at 9-10.
155. 18 Stat. 335, §§ 1, 4.
its railroad and streetcars, which in 1900 would be supplemented by like segregation ordinances in its major cities.\textsuperscript{157} Indeed it was given continued license to do so by the Supreme Court's ruling in \textit{Plessy v. Ferguson},\textsuperscript{158} which sealed the deal on "separate but equal" and tightened Jim Crow's death grip throughout the South.\textsuperscript{159}

Segregated railroad cars and streetcars were public spaces where commonly accepted race and gender norms were in full display. There were usually two types of cars: the "White-Only" car, reserved for White men with the "Ladies" car reserved for White women alone or in the company of White men;\textsuperscript{160} and the "Smoking" or "Colored" car, reserved for White men who wished to smoke and all Black people regardless of gender.\textsuperscript{161} The way the cars were segregated underscored: (1) that preserving White womanhood, "true womanhood," required physical separation from men in public spaces;\textsuperscript{162} (2) that Black men had no patriarchal authority to protect Black women in public spaces; and (3) that Black women were most decidedly not ladies. One written Black protest, published in the \textit{Macon Daily Telegraph} just after the Civil War, gave insight into these injustices:

\begin{quote}
We are charged equal with the whites, but do not get half the accommodation. We are cursed and kicked about by conductors; our wives and sisters are blackguarded and insulted by the scrapings of earth. The most filthy language is used to our ladies regardless of their respectability, age or character offering restraint, and generally assigned to cars with no comforts whatever, while the whites who pay no more, if as much, have all the conveniences possible, and if we speak of our treatment, we are frowned upon with contempt, and replied to in bitter epithets.\textsuperscript{163}
\end{quote}

Black women who resisted segregated rail and streetcars were Sapphires. Sapphire blurred the lines between public and private

\begin{footnotes}
\item 157. \textit{See}, \textit{e.g.}, JOHN L. HOPKINS, CLIFFORD ANDERSON \& JOSEPH R. LAMAR, \textit{THE CODE OF THE STATE OF GEORGIA} 156, § 2269 (1895). In 1900, the Georgia cities of Rome, Atlanta, and Augusta passed supplemental municipal ordinances requiring segregation. Meier \& Rudwick, supra note 150, at 756-57.
\item 159. \textit{Plessy}, 163 U.S. at 550-51, 552.
\item 160. Welke, \textit{When All the Women Were White}, supra note 151, at 261.
\item 161. \textit{See id.} The "Ladies" and "Smoking" cars were the types most widely employed by railroad companies. \textit{See, e.g., id.}, at 266, 268-69; \textit{see also} Meier \& Rudwick, supra note 150, at 756-57; Barbara Y. Welke, \textit{Beyond Plessy: Space, Status, and Race in the Era of Jim Crow}, 2000 \textit{UTAH L. REV.} 267, 267-70 (2000).
\item 162. Welke, \textit{When All the Women Were White}, supra note 151, at 266, 268-69.
\item 163. Drago, supra note 145, at 839-40, 843 n.6.
\end{footnotes}
spaces; she did not know her place. These women forcefully opposed segregation by sacrificing their very bodies. The *Macon Daily Telegraph* and the *Atlanta Daily New Era* reported the story of Eliza Peacher Turner, wife of the famed African Methodist Episcopal Bishop Henry McNeal Turner, who was physically removed from the Ladies car to the Colored car when she attempted to remain. A conductor on the Chesapeake, Ohio & Southwestern Railroad physically removed Ida B. Wells, anti-lynching advocate, journalist, and sociologist, from the Ladies car and the train. For her ten-mile trip, Wells insisted on accommodations in the Ladies car after she had purchased a first class ticket that allowed her to be seated there. Wells subsequently filed a lawsuit. The lower court ruled in her favor, on grounds that she purchased a first class ticket that entitled her to first class accommodations. The Supreme Court of Tennessee reversed the lower court with a scathing reprimand to Wells:

> The conduct of the plaintiff below was upon an idea without the slightest reason . . . . We think it is evident that the purpose of the defendant in error was to harass with a view to this suit, and that her persistence was not in good faith to obtain a comfortable seat for the short ride.

In a confrontation over a shortage of segregated Colored cars operated by the Savannah Street Car Company, Black women “were particularly excited, and endeavored strenuously to encourage the negro men to take some violent action.” This was the horrific specter of Sapphire in all of her glory, the Black woman that Whites feared most. She whispered revolution into Black men’s ears and encouraged them to publicly challenge the racially ordered social hierarchy. For her rabblerousing, she was often arrested and jailed without the dignity afforded to White

164. **Glenda Gilmore, Gender & Jim Crow: Women and the Politics of White Supremacy in North Carolina, 1896-1920** 3 (1996). Gilmore argues that segregation was an effort to put Blacks back in their “place” after Emancipation. *Id.* In Gilmore’s view, Black economic progress in particular threatened a social structure ordered by white supremacy. *Id.; see also* Welke, *Beyond Plessy*, *supra* note 161, at 267-70.


167. Chesapeake, Ohio & Sw. R.R. Co. v. Wells, 4 S.W. 5, 5 (Tenn. 1887).

168. *Id.*

women. Plainly, “[a] woman . . . who plays the deferential role to perfection and who, whites say, never steps out of ‘her place,’ . . . feels guilty because she hates the whites who do not seem to distinguish between her, a very moral, respectable, and law-abiding person, and the immoral, disreputable colored prostitute of the community.”\footnote{Policing Sapphire required the State to categorize all Black women as the same.}

D. Incarcerating Mammy, Jezebel, and Sapphire

Created in the antebellum era, honed in Jim Crow and perfected throughout the twentieth century, Mammy, Jezebel, and Sapphire continue to serve as the sorting mechanisms to police, arrest, and incarcerate Black women in the United States. Mammy is still criminalized for theft from the plantation/employer household, now multi-national corporate commercial/retail entities, and bad parenting. In the escalating war on drugs, Jezebel’s crimes are still those where Black women encroach upon male “turf” and are thrust into illicit commerce with a “dangerous” male element. Lewd houses, prostitution, and bootlegging are now encompassed by Black women’s relationship to the illegal drug trade. Sapphire’s crimes remain consistent, as she resists and refuses to conform to her proper “place” as a deferential, retiring lady in public, visible spaces.

Georgia’s Black female prison population is illustrative of these categories and demonstrates the continuing material relationship between Black female bodies and the State.\footnote{As of November 1, 2015, there are 3625 women housed in facilities operated by the Georgia Department of Corrections. White women comprise 56.50% of the prison population or 2048 inmates. 1504 Black women, or 41.49%, are guests of Georgia’s correctional facilities. The Georgia Department of Corrections does not presently make available complete statistical data disaggregated by race, gender, and crime for any of its inmates. The Georgia Department of Corrections website only generates the same predetermined data set.}

\begin{itemize}
\item \footnote{Id. at 842.}
\item \footnote{Id. (quoting Hortense Powdermake, The Channeling of Negro Aggression by the Cultural Process, in The National Temper: Readings in American Culture and Society 331 (Lawrence W. Levine & Robert Middlekauff eds., 1972))).}
\item \footnote{The author enlisted the help of others to search the Georgia Department of Corrections Database. Every search, regardless on which computer it was made, yielded the same predetermined data set.}
\item \footnote{Inmate Statistical Profile, GA. DEPT OF CORRS., at 5 (Nov. 1, 2015), www.dcor.state.ga.us/Research/Monthly/Profile_all_inmates_2015_10.pdf [hereinafter Inmate Statistical Profile (Nov. 1, 2015)].}
\item \footnote{Id.}
\item \footnote{Id.}
\end{itemize}
a pre-determined data set of 4 pages in response to any general inquiry based on both gender and race. Accordingly, a gender and race search of the database as of November 6, 2015 yielded only information for 45 Black women (approximately 30%) out of 1504 active inmates and 43 White women (approximately 21%) out of the 2048 inmates, respectively. While the percentage of information is small, it nonetheless provides insight into what seems to be incarceration trends for Black and White women in the state when compared to a similar data set taken on March 25, 2015. When compared to the historical data collected by Du Bois in Some Notes on Negro Crime Particularly in Georgia, Black women incarcerated in Georgia today still appear disproportionately represented in crimes against society, persons, and property.

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Available Statistical Sampling on Black Female Incarceration in Georgia As of March 25, 2015

<table>
<thead>
<tr>
<th>Crimes Against Society</th>
<th>% of Black Women</th>
<th>% of White Women</th>
<th>Total # of Women Incarcerated as of March 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contributing to the Delinquency of a Minor</td>
<td>100% (1)</td>
<td>0</td>
<td>1</td>
</tr>
</tbody>
</table>

176. The following percentages were collected using the search engine that the Department of Department of Correction's website, www.dcor.state.ga.us, provides. The searches were conducted periodically. Note that the total number of inmates for each crime is available, but the percentages are based on the actual number of inmates culled from the race and gender search. Thus, the raw numbers next to the percentages do not add up to the total number of inmates. At this time the total percentages and raw numbers of African American and White women for each crime are not known, because the Department of Corrections does not accommodate searches that disaggregate the data by race, gender, and crime.

177. Inmate Statistical Profile, GA. DEP'T OF CORRS., at 56 (Apr. 1, 2015), www.dcor.state.ga.us/Research/Monthly/Profile_all_inmates_2015_03.pdf [hereinafter Inmate Statistical Profile (April 1, 2015)].
Aggravated Child Molestation\textsuperscript{179} 50\% (1) 50\% (1) 17\textsuperscript{179}
Cruelty to Children 25\% (1) 75\% (3) 91\textsuperscript{180}
Trafficking Cocaine Less than 200 grams 100\% (3) 0 14\textsuperscript{181}
Sale and Distribution of Cocaine 100\% (1) 0 28\textsuperscript{182}
Possession with Intent to Distribute Cocaine 100\% (3) 0 18\textsuperscript{183}
Possession of Cocaine 83.33\% (5) 16.66\% (1) 65\textsuperscript{184}
Possession with Intent to Distribute Marijuana 50\% (1) 50\% (1) 23\textsuperscript{185}
Racketeering 33.33\% (1) 66.66\% (2) 40\textsuperscript{186}
Possession of a Firearm by a Convicted Felon 50\% (1) 50\% (1) 37\textsuperscript{187}

\textsuperscript{178} Inmate Statistical Profile (Apr. 1, 2015), supra note 177, at 55.
\textsuperscript{179} Familial crimes, like adultery, were considered as against society. See Du Bois, supra note 24, at 14.
\textsuperscript{180} Id. at 56.
\textsuperscript{181} Id. at 61.
\textsuperscript{182} Id. at 59.
\textsuperscript{183} Id.
\textsuperscript{184} Id.
\textsuperscript{185} Id.
\textsuperscript{186} Id.
\textsuperscript{187} Id.
Available Statistical Sampling on Black Female Incarceration in Georgia As of March 25, 2015

<table>
<thead>
<tr>
<th>Crimes Against Persons</th>
<th>% of Black Women Incarcerated (#)</th>
<th>% of White Women Incarcerated (#)</th>
<th>Total # of Women Incarcerated as of March 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Murder</td>
<td>72.22% (26)</td>
<td>27.77% (10)</td>
<td>343\textsuperscript{186}</td>
</tr>
<tr>
<td>Voluntary Manslaughter</td>
<td>50% (5)</td>
<td>50% (5)</td>
<td>135\textsuperscript{186}</td>
</tr>
<tr>
<td>Involuntary Manslaughter</td>
<td>75% (3)</td>
<td>25% (1)</td>
<td>30\textsuperscript{187}</td>
</tr>
<tr>
<td>Kidnapping</td>
<td>100% (5)</td>
<td>0</td>
<td>46\textsuperscript{187}</td>
</tr>
<tr>
<td>Aggravated Assault</td>
<td>86.36% (19)</td>
<td>13.63% (3)</td>
<td>284\textsuperscript{188}</td>
</tr>
<tr>
<td>Aggravated Battery</td>
<td>80% (8)</td>
<td>20% (2)</td>
<td>85\textsuperscript{189}</td>
</tr>
<tr>
<td>False Imprisonment</td>
<td>100% (1)</td>
<td>0</td>
<td>8\textsuperscript{190}</td>
</tr>
</tbody>
</table>

188. The following percentages were collected using the search engine that the Department of Department of Correction's website, www.dcor.state.ga.us, provides. The searches were conducted periodically. Note that the total number of inmates for each crime is available, but the percentages are based on the actual number of inmates culled from the race and gender search. Thus, the raw numbers next to the percentages do not add up to the total number of inmates. At this time the total percentages and raw numbers of African American and White women for each crime are not known, because the Department of Corrections does not accommodate searches that disaggregate the data by race, gender, and crime.

189. Inmate Statistical Profile (Apr. 1, 2015), supra note 177, at 58.
190. Id. at 61.
191. Id. at 58.
192. Id.
193. Id. at 55.
194. Id.
195. Id. at 57.
<table>
<thead>
<tr>
<th>Crime</th>
<th>Percentage</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vehicular Homicide</td>
<td>40% (2)</td>
<td>60% (3)</td>
</tr>
<tr>
<td>Armed Robbery</td>
<td>43.75% (7)</td>
<td>56.25% (9)</td>
</tr>
<tr>
<td>Robbery by Sudden Snatch</td>
<td>100% (1)</td>
<td>0</td>
</tr>
<tr>
<td>Robbery by Force</td>
<td>33.33% (1)</td>
<td>66.66% (2)</td>
</tr>
<tr>
<td>Robbery</td>
<td>50% (4)</td>
<td>50% (4)</td>
</tr>
<tr>
<td>Arson in the First Degree</td>
<td>100% (1)</td>
<td>0</td>
</tr>
</tbody>
</table>

¹⁹⁶. *Id.* at 61.  
¹⁹⁷. *Id.* at 55.  
¹⁹⁸. *Id.* at 59.  
¹⁹⁹. *Id.*  
²⁰⁰. *Id.*  
²⁰¹. *Id.* at 55.
## Available Statistical Sampling on Black Female Incarceration in Georgia As of March 25, 2015

<table>
<thead>
<tr>
<th>Crimes Against Property</th>
<th>% of Black Women</th>
<th>% of White Women</th>
<th>Total # of Women Incarcerated as of March 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Theft by Shoplifting</td>
<td>83.33% (10)</td>
<td>16.66% (2)</td>
<td>160&lt;sup&gt;203&lt;/sup&gt;</td>
</tr>
<tr>
<td>Theft by Taking</td>
<td>42.85% (6)</td>
<td>57.14% (8)</td>
<td>137&lt;sup&gt;204&lt;/sup&gt;</td>
</tr>
<tr>
<td>Miscellaneous Fraud</td>
<td>50% (1)</td>
<td>50% (1)</td>
<td>2&lt;sup&gt;205&lt;/sup&gt;</td>
</tr>
<tr>
<td>Burglary</td>
<td>50% (5)</td>
<td>50% (5)</td>
<td>1st degree, 95; 2nd degree, 17&lt;sup&gt;206&lt;/sup&gt;</td>
</tr>
<tr>
<td>Forgery in the First Degree</td>
<td>31.81% (7)</td>
<td>68.18% (15)</td>
<td>37&lt;sup&gt;207&lt;/sup&gt;</td>
</tr>
<tr>
<td>Fraudulent Credit Card</td>
<td>50% (4)</td>
<td>50% (4)</td>
<td>39&lt;sup&gt;208&lt;/sup&gt;</td>
</tr>
</tbody>
</table>

<br />

202. The following percentages were collected using the search engine that the Department of Department of Correction's website, www.dcor.state.ga.us, provides. The searches were conducted periodically. Note that the total number of inmates for each crime is available, but the percentages are based on the actual number of inmates culled from the race and gender search. Thus, the raw numbers next to the percentages do not add up to the total number of inmates. At this time the total percentages and raw numbers of African American and White women for each crime are not known, because the Department of Corrections does not accommodate searches that disaggregate the data by race, gender, and crime.

203. Inmate Statistical Profile (Apr. 1, 2015), supra note 177, at 60.
204. Id.
205. Id. at 58.
206. Id. at 56.
207. Id. at 57.
208. Id.
Available Statistical Sampling of Black Female Incarceration in Georgia As of November 6, 2015

<table>
<thead>
<tr>
<th>Crimes Against Society</th>
<th>% of Black Women Incarcerated</th>
<th>% of White Women Incarcerated</th>
<th>Total # of Women Incarcerated as of Nov. 1, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contributing to the Delinquency of a Minor</td>
<td>Unknown</td>
<td>Unknown</td>
<td>Unknown</td>
</tr>
<tr>
<td>Aggravated Child Molestation</td>
<td>50% (1)</td>
<td>50% (1)</td>
<td>20211</td>
</tr>
<tr>
<td>Cruelty to Children</td>
<td>50% (1)</td>
<td>50% (1)</td>
<td>87212</td>
</tr>
<tr>
<td>Trafficking Cocaine Less than 200 grams</td>
<td>100% (2)</td>
<td>0</td>
<td>12213</td>
</tr>
</tbody>
</table>

209. Id. at 60.
210. The following percentages were collected using the search engine that the Department of Correction’s website, www.dcor.state.ga.us, provides. The searches were conducted periodically. Note that the total number of inmates for each crime is available, but the percentages are based on the actual number of inmates culled from the race and gender search. Thus, the raw numbers next to the percentages do not add up to the total number of inmates. At this time the total percentages and raw numbers of African American and White women for each crime are not known, because the Department of Corrections does not accommodate searches that disaggregate the data by race, gender, and crime.
211. Inmate Statistical Profile (Nov. 1, 2015), supra note 173, at 57.
212. Id. at 58.
213. Id. at 63.
<table>
<thead>
<tr>
<th>Crime</th>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sale and Distribution of Cocaine</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Possession with Intent to Distribute Cocaine</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Possession of Cocaine</td>
<td>0</td>
<td>100% (1)</td>
</tr>
<tr>
<td>Possession with Intent to Distribute Marijuana</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Racketeering</td>
<td>33.33% (1)</td>
<td>66.66% (2)</td>
</tr>
<tr>
<td>Possession of a Firearm by a Convicted Felon</td>
<td>0</td>
<td>0%</td>
</tr>
</tbody>
</table>

214. *Id.* at 61.
215. *Id.*
216. *Id.*
217. *Id.*
218. *Id.*
219. *Id.*
<table>
<thead>
<tr>
<th>Crimes Against Persons</th>
<th>% of Black Women Incarcerated</th>
<th>% of White Women Incarcerated</th>
<th>Total # of Women Incarcerated as of Nov. 1, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Murder</td>
<td>75% (9)</td>
<td>25% (3)</td>
<td>379[^221]</td>
</tr>
<tr>
<td>Voluntary Manslaughter</td>
<td>25% (1)</td>
<td>75% (3)</td>
<td>134[^222]</td>
</tr>
<tr>
<td>Involuntary Manslaughter</td>
<td>100% (2)</td>
<td>0</td>
<td>26[^223]</td>
</tr>
<tr>
<td>Kidnapping</td>
<td>100% (3)</td>
<td>0</td>
<td>39[^224]</td>
</tr>
<tr>
<td>Aggravated Assault</td>
<td>85.71% (6)</td>
<td>14.28% (1)</td>
<td>288[^225]</td>
</tr>
<tr>
<td>Aggravated Battery</td>
<td>100% (4)</td>
<td>0</td>
<td>77[^226]</td>
</tr>
<tr>
<td>False Imprisonment</td>
<td>100% (1)</td>
<td>0</td>
<td>8[^227]</td>
</tr>
</tbody>
</table>

[^220]: The following percentages were collected using the search engine that the Department of Correction's website, www.dcor.state.ga.us, provides. The searches were conducted periodically. Note that the total number of inmates for each crime is available, but the percentages are based on the actual number of inmates culled from the race and gender search. Thus, the raw numbers next to the percentages do not add up to the total number of inmates. At this time the total percentages and raw numbers of African American and White women for each crime are not known, because the Department of Corrections does not accommodate searches that disaggregate the data by race, gender, and crime.

[^221]: Inmate Statistical Profile (Nov. 1, 2015), supra note 173, at 60.
[^222]: Id. at 63.
[^223]: Id. at 60.
[^224]: Id.
[^225]: Id. at 57.
[^226]: Id.
[^227]: Id. at 59.
Available Statistical Sampling of Black Female Incarceration in Georgia As of November 6, 2015

<table>
<thead>
<tr>
<th>Crimes Against Property</th>
<th>% of Black Women Incarcerated (#)</th>
<th>% of White Women Incarcerated (#)</th>
<th>Total # of Women Incarcerated of Nov. 1, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vehicular Homicide</td>
<td>100% (1)</td>
<td>0</td>
<td>59</td>
</tr>
<tr>
<td>Armed Robbery</td>
<td>20% (1)</td>
<td>80% (4)</td>
<td>207</td>
</tr>
<tr>
<td>Robbery by Sudden Snatch</td>
<td>0</td>
<td>0</td>
<td>8</td>
</tr>
<tr>
<td>Robbery by Force</td>
<td>0</td>
<td>0</td>
<td>15</td>
</tr>
<tr>
<td>Robbery</td>
<td>0</td>
<td>100% (1)</td>
<td>100</td>
</tr>
<tr>
<td>Arson in the First Degree</td>
<td>0</td>
<td>0</td>
<td>10</td>
</tr>
<tr>
<td>Theft by Shoplifting</td>
<td>100% (1)</td>
<td>0</td>
<td>169</td>
</tr>
</tbody>
</table>

228. *Id.* at 63.
229. *Id.* at 57.
230. *Id.* at 61.
231. *Id.*
232. *Id.*
233. *Id.* at 57.
234. The following percentages were collected using the search engine that the Department of Correction’s website, www.dcor.state.ga.us, provides. The searches were conducted periodically. Note that the total number of inmates for each crime is available, but the percentages are based on the actual number of inmates culled from the race and gender search. Thus, the raw numbers next to the percentages do not add up to the total number of inmates. At this time the total percentages and raw numbers of African American and White women for each crime are not known, because the Department of Corrections does not accommodate searches that disaggregate the data by race, gender, and crime.
235. *Id.* at 62.
Theft by Taking 50% (1) 50% (1) 140
Miscellaneous Fraud 100% (1) 0 2
Burglary 66.66% (2) 33.33% (1) 1st degree, 103; 2nd degree, 25
Forgery in the First Degree 0 100% (4) 30
Fraudulent Credit Card 100% (2) 0 34
Theft by Credit Card 0 0 7

Comparison of Available Statistical Sampling for Black and White Female Inmates in Georgia (March 2015/November 2015)

<table>
<thead>
<tr>
<th>Crimes Against Society</th>
<th>% of Black/White Women Incarcerated as of March 25, 2015</th>
<th>% of Black/White Women Incarcerated as of November 6, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contributing to the Delinquency of a Minor</td>
<td>100%/0%</td>
<td>Unknown</td>
</tr>
<tr>
<td>Aggravated Child Molestation</td>
<td>50%/50%</td>
<td>50%/50%</td>
</tr>
</tbody>
</table>

236. Id.
237. Id. at 60.
238. Id. at 58.
239. Id. at 59.
240. Id.
241. Id. at 62.
242. The following percentages were collected using the search engine that the Department of Correction's website, www.dcor.state.ga.us, provides. The searches were conducted periodically.
Cruey to Children  25%/75% 50%/50%

Trafficking Cocaine  100%/0% 100%/0%
Less than 200 grams

Sale and Distribution of Cocaine  100%/0% 0

Possession with Intent to Distribute Cocaine  100%/0% 100%/0%

Possession of Cocaine  83.33%/16.66% 0/100%

Possession with Intent to Distribute Marijuana  50%/50% 0

Racketeering  33.33%/66.66% 33.33%/66.66%

Possession of a Firearm by a Convicted Felon  50%/50% 0

Fleeing/Eluding Police  50%/50% 0

Comparison of Available Statistical Sampling for Black and White Female Inmates in Georgia (March 2015/November 2015)

<table>
<thead>
<tr>
<th>Crimes Against Persons</th>
<th>% of Black/White Women Incarcerated as of March 25, 2015</th>
<th>% of Black/White Women Incarcerated as of November 6, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Murder</td>
<td>72.22%/27.77%</td>
<td>75%/25%</td>
</tr>
<tr>
<td>Voluntary Manslaughter</td>
<td>50%/50%</td>
<td>25%/75%</td>
</tr>
</tbody>
</table>

243. The following percentages were collected using the search engine that the Department of Correction’s website, www.dcor.state.ga.us, provides. The searches were conducted periodically.
Comparison of Available Statistical Sampling for Black and White Female Inmates in Georgia (March 2015/November 2015)

<table>
<thead>
<tr>
<th>Crimes Against Property</th>
<th>% of Black/White Women Incarcerated as of March 25, 2015</th>
<th>% of Black/White Women Incarcerated as of November 6, 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Theft by Shoplifting</td>
<td>83.33%/16.66%</td>
<td>100%/0%</td>
</tr>
</tbody>
</table>

244. The following percentages were collected using the search engine that the Department of Correction’s website, www.dcor.state.ga.us, provides. The searches were conducted periodically.
Theft by Taking 42.85%/57.14% 50%/50%

Miscellaneous Fraud 50%/50% 100%/0%

Burglary 50%/50% 66.66%/33.33%

Forgery in the 1st Degree 31.81%/68.18% 0%/100%

Fraudulent Credit Card 50%/50% 100%/0%

Theft by Credit Card 100%/0% 0

Criminal Interference with Government Property 100%/0% 0

IV. POLICING BLACK FEMALE “IMPUDENCE” IN THE 21ST CENTURY

Reported incidents abound of Black women who are policed because of their failure to know their place. Although railways are no longer explicitly segregated by race and gender, railroads have reentered the news again as sites to challenge Black women’s “place.” On October 1, 2015, Lisa Johnson (47 years old245), Katherine Neal (85246), Deborah Neal (60247), Allisa Carr (48248), Dininne Neal (39249), Sandra James250, Linda Carlson (55251), Debbie Reynolds (49252), Georgia Lewis (66253), Briana Rosenberg (36254), and Tira McDonald (47255) (hereinafter The Book Club), all Black women, sued the Napa Valley Wine Train, Inc.; Noble House Hotels & Resorts, LTD; Brooks Street Property Management, Inc.; and Kim Powers, Kira McManus Devitt, and Ann Marquinn as individuals (hereinafter defendants) for ejecting them

246. Id. at 2 ¶ 3.
247. Id. at 3 ¶ 9.
248. Id. at 2 ¶ 4.
249. Id. at 4 ¶ 12.
250. Id. at 2 ¶ 5.
251. Id. at 4 ¶ 11.
252. Id. at 3 ¶ 6.
253. Id. at 3 ¶ 7.
254. Id. at 3 ¶ 8.
255. Id. at 4 ¶ 10.
from the Napa Valley Wine Train.\textsuperscript{256} The women, all members of the "Sistahs on the Reading Edge Book Club," brought an action for damages against the defendants on the following grounds: (1) Racial Discrimination under the Unruh Civil Rights Act\textsuperscript{257} and 42 U.S.C. section 1983\textsuperscript{258}; (2) Defamation; (3) Libel; (4) Intentional Infliction of Emotional Distress; (5) Breach of Contract; (6) Breach of the Covenant of Good Faith and Fair Dealing; and (7) Unfair Competition.\textsuperscript{259}

The Book Club alleges that they each bought tickets individually to ride on the train collectively as a book club.\textsuperscript{260} They planned to discuss a recent book they read.\textsuperscript{261} Deborah Neal, the book club member responsible for handling the logistics of the trip, explained to the reservationist at the Napa Valley Wine Train that they were an eleven-member book club and "would be discussing the monthly book with lots of dialogue and laughter, and that there would be a certain group noise level commensurate of 11 individuals."\textsuperscript{262} The reservationist allegedly communicated to Neal that group passage on the train was a regular occurrence and that the train could meet the group's needs.\textsuperscript{263}

The trip commenced on August 22, 2015 at approximately 11:00 a.m.\textsuperscript{264} The Club was seated "in the back of the last train car . . . [to be] 'seen and not heard.'"\textsuperscript{265} The problems started even before the train left the station when the train's "maître d'hôtel, [Ann Marquinn], approached the group and admonished [the women] to 'tone down your noise level because you're being offensive to other passengers.'"\textsuperscript{266} Marquinn did not tell the women exactly which passengers were offended.\textsuperscript{267} The trip continued when the train departed and seven of the women took advantage of a complimentary wine tasting.\textsuperscript{268} Again, Marquinn told the women that they were bothering other Wine Train passengers, and issued a stronger warning with: "That's it. This is not

\textsuperscript{256} Id. at 1-2.
\textsuperscript{259} Complaint, supra note 245, at 1.
\textsuperscript{260} Id. at 5-6 ¶ 23. Plaintiff Deborah Neal bought the ticket for her mother-in-law Katherine Neal as a surprise. Id.
\textsuperscript{261} Id. at 5-6 ¶ 23-25.
\textsuperscript{262} Id. at 6 ¶ 25.
\textsuperscript{263} Id.
\textsuperscript{264} Id. at 7 ¶¶ 31, 33.
\textsuperscript{265} Id. at 7 ¶ 32.
\textsuperscript{266} Id. at 7 ¶ 35.
\textsuperscript{267} Id.
\textsuperscript{268} Id. at 7 ¶ 36.
going to work. Either you guys tone it down or I am going to have to ask you to leave the train." In response to Book Club members asking which passengers were bothered, Marquinn said: "I can see it on the face of other passengers when you laugh out loud." Subsequently, Book Club members asked White passengers in close proximity on the train if they were bothered by the Club members’ laughter and talking. Two of the passengers queried stated that they were "enjoying the group's company." One passenger told the women: “this is not a bar,” but was actually mistaken because they were in the “Bar Car” of the train. The Book Club noticed that White passengers were enjoying the festive atmosphere of the train, demonstrated by loud and raucous behavior. However, train staff did not reprimand them.

Concerned about Marquinn's threats to have them removed from the train, one Book Club member asked Marquinn how they would get back to Napa so that they could access their cars to drive home. Because the women did not wish to be without their cars in a place unfamiliar to them, they insisted that they would stay on the train. Marquinn first dismissed this concern as a “customer service issue” and then assured the women that police officers would be waiting for them in St. Helena, a stop on the train's route, to take them off the train. She then told the women that they were “unruly and aggressive.”

Once the train stopped in St. Helena, the women were kept in the Bar Car while other passengers were led to lunch in the dining cars. After approximately fifteen minutes, train staff led the Book Club through the entire train, six cars, where they exited and were greeted by three members of the St. Helena Police Department and one rail officer for the train. Upon viewing the women, one officer noted, “You are not what we expected. We were told there were 11 unruly

269. Id. at 7 ¶ 37.
270. Id. at 8 ¶ 37.
271. Id.
272. Id.
273. Id. at 8 ¶ 40.
274. See id. at 8 ¶¶ 38-40.
275. Id. at 8, 9 ¶¶ 41,43.
276. Id. at 8 ¶ 42.
277. Id. at 8 ¶ 43.
278. Id. at 8 ¶ 42.
279. Id. at 8 ¶ 45.
280. Id. at 9 ¶ 46.
281. Id. at 9 ¶¶ 47-48, 53.
passengers.\textsuperscript{282} Apparently, this incident was the first time St. Helena police were called to remove passengers from the Wine Train.\textsuperscript{283}

In summing up the incident, the Book Club alleges that:

Kicking [us] off the train gave white privilege to the passenger who verbally complained in the Bar Car. Clearly, this passenger did not want to share her space with [us] and was treated more favorably by Defendants’ decision to remove all eleven Plaintiffs from the train. This action shows that African Americans are policed by other patrons and by management in restaurants, theaters, and public places. African American adults are more likely to be shushed, stared at, and kicked out of places where white people perceive that they do not fit.\textsuperscript{284}

Another public site for policing Black women is the university. As Black women in academia challenge white supremacist-based epistemologies, they have been increasingly disciplined for not knowing their place in creating and distributing knowledge. Recently two sociologists, Zandria Robinson (formerly of Memphis State University) and Saida Grundy (Boston University), came under fire and were reprimanded by their institutions for “calling out” racism and white privilege at their respective institutions. Both used the social media vehicle Twitter to post their remarks.

In response to White graduate students’ lamentations about Memphis State University admitting “unqualified” minority students into graduate programs, Robinson tweeted that such views were based on lies, and that “[s]tudents of color applying to graduate schools are always already exceptional because of the various structural hurdles they leapt to get out of college, take the GRE and apply, etc.”\textsuperscript{285} She went on to say that White students applying to graduate schools are facilitated because they have white privilege and that she would not “tolerate white students who are ‘perpetuating these racist lies again. Not even in your head.”\textsuperscript{286}

Troubled by Robinson’s comments, a White male, Peter Hasson of Campus Reform, an online news aggregator and blog discussing higher education issues, notified University of Memphis’s president, M. David

\begin{itemize}
  \item \textsuperscript{282} Id. at 10 ¶ 54.
  \item \textsuperscript{283} Id. at 10 ¶ 55.
  \item \textsuperscript{284} Id. at 9 ¶ 49.
  \item \textsuperscript{285} Scott Jaschik, Twitter Explodes with (False) Reports that U of Memphis Fired a Professor. Why?, INSIDE HIGHER ED (July 1, 2015, 3:00 AM), https://www.insidehighered.com/news/2015/07/01/twitter-explodes-false-reports-u-memphis-fired-professor-why.
  \item \textsuperscript{286} Id.
\end{itemize}
Rudd, about Robinson's remarks. The president responded via Twitter that he would make Robinson's comments available to the campus Equal Employment Opportunity Office. Robinson made additional remarks about the Confederate flag in the aftermath of the Charleston church shootings. She tweeted: “The Confederate flag is more than a symbol of white racial superiority. It is the ultimate symbol of “white heteropatriarchal capitalism,” and “[w]hite folks think that if they are nice to you they are above a critique of whiteness, white supremacy or structural racism.” Through social media, students and commenters called for Robinson's firing. The University of Memphis subsequently issued a single tweet on an unverified account that Robinson was no longer employed there. Far from being fired, Robinson had taken another job at nearby Rhodes College.

Professor Saida Grundy was also taken to task by her employer, Boston University (BU), for Twitter comments that she made months in advance of her formal employment there. One of the comments, “Why is white america [sic] so reluctant to identify white college males as a problem population?”, served to demonize her on social media and evoked the criticism of BU. A spokesman for BU, Colin Riley, first underscored that the comments were Grundy's own from her private

287. Id.
288. Id.

290. Jaschik, supra note 285 (internal quotation marks omitted).
291. Id.
292. Id.
293. Id. For Robinson's narrative of these incidents see Zezus Does the Firing 'Round Hurr, NEW SOUTH NEGRESS, http://newsouthnegress.com/zeezusyear/#more-556 (last visited Dec. 10, 2015).


Twitter account where she was “exercising her right to free speech.”  

After BU alumni took issue with BU’s stance on the issue, Riley stated that BU “[did] not condone racism or bigotry in any form” and was “deeply saddened when anyone makes such offensive statements.”  

Riley did reiterate Grundy’s free speech rights as a corollary to his remarks. Grundy also issued an apology. About her experience, Grundy has noted that the United States is “race illiterate” and that sociologists “are trying to destroy many assumptions about race [which is] extremely upsetting to many people.” She went on to state: “For sociology in particular we have to double down on the fact that we do research, that we have theory, that we have historical knowledge and that these things are not our opinions.”

Perhaps one of the most extreme examples of policing Black female academics for speaking against white privilege and power involve Shannon Gibney. Students first brought allegations of discrimination against Gibney, a professor of English and African Diaspora Studies at Minneapolis Community and Technical College (MCTC), in 2009 after she explained to them that students of color might find a hanging noose in the campus newsroom alienating. Three years later, MCTC’s vice president of academic affairs formally reprimanded Gibney after two White male students filed a discrimination complaint in accordance with University grievance policies. In the complaint, the students described Gibney’s classes on structural racism as making them uncomfortable. The formal reprimand resulted in the vice president of academic affairs placing this letter in Gibney’s file:

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296. Flaherty, supra note 294.
297. Id.
298. Id.
300. Id.
301. Id.
304. Id.
Shannon, I find it troubling that the manner in which you led a discussion on the very important topic of structural racism alienated two students who may have been most in need of learning about this subject.

While I believe it was your intention to discuss structural racism generally, it was inappropriate for you to single out white male students in class. Your actions in targeting select students based on their race and gender caused them embarrassment and created a hostile learning environment.

For that reason, I have determined that reprimand is warranted.\textsuperscript{305}

Gibney would later remark that she felt unsafe in class after the reprimand was issued.\textsuperscript{306} In her words:

I definitely feel like I'm a target in class. I don't feel like students respect me . . . . Those students were trying to undermine my authority from the get-go. And I told the lawyer at the investigatory meeting, "You have helped those three white male students succeed in undermining my authority as one of the few remaining black female professors here."\textsuperscript{307}

Gibney's reprimand was rescinded approximately a year later.\textsuperscript{308} The incident caused her mental anguish and harm.\textsuperscript{309} For her,

[t]he deeper questions of ongoing institutional racism in MCTC and throughout the MnSCU system—especially for employees and students of color—still demand real and systemic attention and redress, however my case ends or develops. And this whole experience has left me with no faith in the system's ability to correct itself . . . . \textsuperscript{310}

A. "Crazy" is Rejecting Mammy, Jezebel, and Sapphire

When a Black woman explicitly rejects the State's categorization of her as a Mammy, Jezebel, or Sapphire, there are swift and serious consequences. At worst she is physically abused, jailed, and killed; at best, she is further marginalized by being labeled mentally impaired by the State and treated accordingly. One of the most recent stories of perceived "craziness" in a Black woman is Kamilah Brock. Brock was

\begin{itemize}
  \item 305. Id. (alteration in original).
  \item 306. Id.
  \item 307. Id.
  \item 309. Id.
  \item 310. Id.
\end{itemize}
arrested by a New York Police Department (NYPD) police officer for taking her hands off the wheel while dancing when her car was stopped at a red light.311 She was taken to the police station in handcuffs and her car, a 2003 BMW 325Ci, was impounded.312 Brock was told to come back the next day to claim her vehicle.313 When she returned to the police station and told the police that she was there to claim her BMW, much trouble ensued.314

Upon insisting that she owned a BMW, she was handcuffed, placed in an ambulance, and taken to Harlem Medical Center.315 Officers indicated to the ambulance drivers that Brock “should be designated an ‘emotionally disturbed person.’”316 When she arrived at Harlem Hospital, she was handcuffed to a gurney and wheeled to the mental health ward.317 Despite insisting she needed no mental health treatment, Brock’s assigned physicians injected her with drugs without her consent.318 She was kept in the mental health ward against her will for eight days.319 Officials refused to release her until she denied that: (1) she owned a BMW; (2) she was a professional banker; and (3) President Barack Obama followed her on Twitter,320 all of which were true and readily verifiable.321 Ms. Brock’s complaint, filed on March 25, 2015, against the NYPD, Harlem Hospital, and her treating physicians in the mental health ward, alleges that she committed no crimes; the NYPD lacked probable cause to arrest her; she did not
require mental health treatment; and she was not a danger to herself or anyone else. The litigation in this matter is pending.

B. Killing Mammy, Jezebel, and Sapphire

Lastly, Black women are killed by State actors, police officers, for refusing to render up their bodies for State use and material gain. The following charts group the overwhelming deaths of Black women by police in terms of their violations of the Mammy, Jezebel, and Sapphire identities.

1. Killing “Mammy.” The following deaths are related to theft, child endangerment, and/or domestic disputes.

<table>
<thead>
<tr>
<th>Name</th>
<th>Age</th>
<th>Incident/Offense &amp; Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shelly Frey</td>
<td>27</td>
<td>Frey was with friends at Wal-Mart, all of whom were suspected of shoplifting. An officer attempted to catch them when they exited the store, but both women entered a car and drove away. Alleging the driver of the car tried to hit him, the officer fired into the car. Frey was shot twice in the neck. She was left there for eight hours; medical personnel were never called. There were children in the car. (Houston, TX)</td>
</tr>
<tr>
<td>Danette Daniel</td>
<td>31</td>
<td>Arrested for allegedly dealing drugs and killed after a “scuffle” with police while she was in the police car. Daniels was pregnant at the time. Witnesses say she was not involved in a drug sale when arrested. She was unarmed. (Newark, NJ)</td>
</tr>
<tr>
<td>Megan Hockaday</td>
<td>26</td>
<td>Police were summoned to the home on a domestic dispute. As they entered they gunned down Hockaday, who allegedly was coming toward officers with a knife drawn. Hockaday’s three</td>
</tr>
</tbody>
</table>

322. Complaint, supra note 313, at 4 ¶¶ 22-25, 27.
children were in the home at the time of her death.\textsuperscript{325} (Oxnard, CA)

Alesia Thomas 35 Thomas was arrested for child abandonment after she dropped off her three and twelve-year-old children at the Los Angeles Police Department. Thomas left the children there because she could no longer take care of them; she had problems with drug addiction. The arresting officer, a female, repeatedly kicked Thomas in her stomach and genitals. Thomas lost consciousness in the back of the police car and died of a heart attack.\textsuperscript{326} (Los Angeles, CA)

Sonji Taylor 27 Taylor was shot after allegedly holding her three-year-old son hostage with a knife. Police justified spraying her with pepper spray and then shooting her, stating that Taylor moved toward them with the knife and in a threatening manner. Autopsy reports showed that Taylor was “shot twice in the chest and several times in the back while laying face-down on the ground.”\textsuperscript{327} (Los Angeles, CA)

2. Killing “Jezebel.” The following deaths are related to Black women’s proximity to “dangerous” men or engagement in male-perceived criminal activities like drug trafficking or car theft.

<table>
<thead>
<tr>
<th>Name</th>
<th>Age</th>
<th>Incident/Offense &amp; Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mya Hall(transgender)</td>
<td>27</td>
<td>While allegedly driving a stolen car, Hall mistakenly drove on NSA property, where she collided with a barricade and police cruiser. No one in the vehicle was armed.\textsuperscript{328} (Baltimore, MD)</td>
</tr>
<tr>
<td>Malissa Williams</td>
<td>30</td>
<td>Williams was shot while a passenger in Timothy Russell’s car. Russell did not comply with police requests to pull the car over after it backfired. A high-speed chase</td>
</tr>
</tbody>
</table>

\textsuperscript{325} Crenshaw & Ritchie, supra note 323, at 24.
\textsuperscript{326} Id. at 30; Marisa Gerber, Arrest Video Played in Trial of LAPD Officer Accused in Woman’s Death, L.A. TIMES (May 20, 2015, 2:09 PM), http://www.latimes.com/local/lanow/la-me-ln-mary-o'callaghan-opening-statements-20150519-story.html.
\textsuperscript{327} Crenshaw & Ritchie, supra note 323, at 30.
\textsuperscript{328} Id. at 10; Aja Romano, A Transgender Woman was Shot in Baltimore and No One Is Talking About it, THE DAILY DOT (Apr. 30, 2015, 11:01 AM), http://www.dailydot.com/lifestyle/transgender-sex-worker-myahall-death-nsa.
ensued and both passengers were killed when a police officer fired two rounds at them after climbing onto the hood of Russell's car. 329 (Cleveland, OH)

Sharmel Edwards 49 Edwards was followed on suspicion of driving a stolen car. She allegedly exited the car and pointed a gun at police officers. Eyewitnesses testified that she did not have a gun. 330 (Las Vegas, NV)

LaTanya Haggerty 26 The car she was in refused to stop for police. Officer alleges that Haggerty pulled a gun, but no gun was ever found at the scene. Haggerty was on her cell phone when she was fatally shot. 331 (Chicago, IL)

Kendra James 21 Male driver of the car she was in had an outstanding warrant. When police took him from the car, James moved to the drivers seat. A struggle with the arresting officer followed as he attempted to remove James from the car; she was not under arrest. The officer shot her in the head at point-blank range. She was un- armed. 332 (Portland, OR)

Frankie Ann Perkins 37 Accused of swallowing drugs; police allegedly strangled her to death in an attempt to force regurgitation of the drugs. Autopsy photos revealed injuries consistent with a beating, but no drugs were found. 333 (Chicago, IL)

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329. Crenshaw & Ritchie, supra note 323, at 12.
Police mistakenly raided her home on suspicion that she had illegal drugs and guns; Spruill died of a heart attack. There were neither drugs nor guns in her home.\(^\text{334}\) (Harlem, NY)

Boyd was standing in an alley with several male friends. An off-duty police officer noticed them on his ride home and allegedly saw one of the men pull a gun. The officer shot in the direction of the group, hitting Boyd in the back of the head. The male was later found to have brandished a cell phone, not a gun.\(^\text{335}\) (Chicago, IL)

The SWAT team raided Wilson’s home in hopes of finding and apprehending Wilson’s boyfriend, a suspected drug dealer. Upon entering the home, the police fatally shot Wilson and wounded her fourteen-month-old son. Wilson was not involved in the drug trade.\(^\text{336}\) (Lima, OH)

Police were summoned to the home to address a domestic dispute between two male residents. Smith opened the door and was shot in the head and stomach. The police alleged she had a gun but retracted the allegation a day after the incident occurred. Smith was unarmed.\(^\text{337}\) (Bastrop County, TX)

3. **Killing “Sapphire.”** The following deaths resulted from Black women’s refusal to submit to police, challenging the police, and otherwise advocating for their needs to be met once in police custody. Most were arrested or detained for being “disorderly” or “uncooperative.”

<table>
<thead>
<tr>
<th>Name</th>
<th>Age</th>
<th>Incident/Offense &amp; Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alexia Christian</td>
<td>26</td>
<td>Christian was accused of escaping from handcuffs while in police custody in the back of a police car; she alleged-</td>
</tr>
</tbody>
</table>

\(^{334}\) Crenshaw & Ritchie, *supra* note 323, at 16.


\(^{336}\) Crenshaw & Ritchie, *supra* note 323, at 22.

\(^{337}\) *Id.* at 25.
ly shot at officers with a stolen gun. Officers admit to not fully searching her upon arrest.\footnote{338} (Atlanta, GA)

**Gabriella Navarez** 22

Grandmother called police after Navarez took her car; the two had been arguing. Navarez did not enter voluntarily into police custody and a high-speed chase ensued. She attempted to hit the police car with her car; police claim they then began shooting at the car in self-defense. Passengers in the car say Navarez lost control of the car after she was shot. She was unarmed.\footnote{339} (Sacramento, CA)

**Shantel Davis** 23

Police followed her for driving erratically. A high-speed chase ensued but came to a halt when Davis hit a minivan. The police officer then shot her in the chest. She was unarmed.\footnote{340} (Brooklyn, NY)

**Miriam Carey** 34

Did not stop at a White House checkpoint, but drove away. Federal agents chased her and shot her. She was unarmed.\footnote{341} (Washington, D.C.)

**Sandra Bland** 28

Bland was subsequently pinned to the ground by police after being pulled over for failure to signal a lane change. She was charged with assault and jailed. Bland was found dead in her cell three days after her arrest.\footnote{342} (Waller County, TX)

**Kathryn Johnston** 92

Police mistakenly entered her house in a drug raid. Johnson fired at them in self-defense and was killed by return fire. Her single shot hit no one.\footnote{343} (Atlanta, GA)

**Natasha McKenna** 37

Tased by police officers for being “uncooperative” after restrained with handcuffs, leg shackles, and a hood. McKenna died shortly after the incident; she was badly

\footnotesize{\textsuperscript{338} \textit{Id. at} 10. \textsuperscript{339} \textit{Id. at} 12. \textsuperscript{340} \textit{Id.} \textsuperscript{341} \textit{Id.} \textsuperscript{342} \textit{Id. at} 13. \textsuperscript{343} \textit{Id. at} 16.}
bruised, had two black eyes, and one finger was missing. (Fairfax County, VA)

Kyam Livingston 37

Arrested for fighting with her grandmother, taken into police custody, and placed in a cell. Police ignored her complaints indicating medical distress. She died of an alcohol-induced seizure. (Brooklyn, NY)

Sheneque Proctor 18

Arrested for disorderly conduct and jailed. Proctor had asthma. In her one call from the jail to her mother, she reported police maltreatment. She told the police that she was not feeling well, but they did not give her medical attention. The following morning she was found dead in her cell. Although a videotape exists for her cell during the time in question, police will not turn it over to the family's attorney. (Bessemer, AL)

Janisha Fonville 20

Police were summoned to the home on a domestic dispute. They shot and killed Fonville for allegedly attempting to knife them. According to Fonville's girlfriend, Fonville was no direct threat to the police. (Charlotte, NC)

Aura Rosser 40

Police were summoned to the home on a domestic dispute. The police shot her when they got to the home on allegations that she attacked them with a knife. (Ann Arbor, MI)

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344. Id. at 20.
V. ENDING STATE VIOLENCE AND THE POLICING OF BLACK FEMALE BODIES

Because policing Black women is directly tied to their perceived and actual material value to the State, nothing short of reconceptualizing and implementing a prison system untainted by the legacy of slavery and the Thirteenth Amendment exception will correct the myriad of issues discussed in this Article. The State continues to capture all Black bodies, male and female, in accordance with their perceived commercial benefit as laborers for the State. Our policing and incarceration systems as they exist today were created in the shadow of slavery to address the labor needs of a rapidly industrializing, now rapidly technologizing society. The system is not broken; it functions exactly as intended.

However, until our system of law enforcement becomes a place of rehabilitation and redemption instead of a holding pen for those suffering from societal problems currently without solutions, we must find strategies to address the casualties of the system in its present incarnation. Amidst public outcry over the deaths of Black males at the hands of police, President Barack Obama created the Taskforce on 21st Century Policing by an executive order signed on December 18, 2014. The Taskforce recommendations were based on six pillars: (1) Building Trust and Legitimacy; (2) Policy and Oversight; (3) Technology and Social Media; (4) Community Policing and Crime Reduction; (5) Officer Training and Education; and (6) Officer Safety and Wellness.

Pillar 1, Building Trust and Legitimacy, calls upon the police to build the public trust through transparency and by acting in ways consistent with current policies and procedures, because ultimately “[t]he public confers legitimacy only on those they believe are acting in procedurally just ways.” As this Article chronicles, Black women have protested governmentally created and sanctioned policies and procedures precisely because State actors alleged that their actions were procedurally just in the face of evidence to the contrary. In protest movements ranging from resistance to segregated streetcars to the Vietnam War, the State through its policies and police acted to assert authority against those who questioned procedural and actual justice.

Pillar 2, Policy and Oversight, espouses the view that police procedures should reflect community values and that “[l]aw enforcement

350. Id. at 1.
351. Id. at 1-2, 9-18.
agencies should collaborate with community members, especially in communities and neighborhoods disproportionately affected by crime, to develop policies and strategies for deploying resources that aim to reduce crime by improving relationships, increasing community engagement, and fostering cooperation." The policies developed should be thorough with respect to the use of force, how mass demonstrations are handled, and Fourth Amendment issues that arise with searches (including for those of non-conforming genders), profiling, and deaths of in-custody arrestees or incarcerees. One glaring oversight here is that #BlackLivesMatter demonstrations have been criminalized as lawless gatherings rather than viewed as a proper exercise of First Amendment rights. When police arrive at a protest with riot gear, tanks, and other military equipment, such a show of force rarely leads to trust and peace. Likewise, police lack a clear understanding of gender versus sex and how gender non-conforming men and women wish to be identified and treated. Gender non-conformity continues to be criminalized in a manner that disproportionately affects women of color.

Moreover, when Sheneque Proctor died of an asthma attack in police custody, there was a videotape of her cell during the entire time she was in it. The state still refuses to release the videotape to the family's lawyer. Such power struggles over information and narrative, specifically in this instance, reflect societal values about Black life and Black people’s alleged superhuman strength and resilience that exempt them from death and disease.

Pillar 3, Technology and Social Media, explores how best to use technology to both monitor and improve law enforcement agency actions, especially as it relates to using alternatives to lethal force. This

352. Id. at 2, 19-30.
353. U.S. CONST. amend. IV.
355. U.S. CONST. amend. I.
357. See, e.g., Andrea J. Ritchie, Living the Legacy of Rhonda Copelon, 15 CUNY L. REV. 255 (2012); see also Crenshaw & Ritchie, supra note 323, at 26-27.
359. Id. at 20.
360. Id.
particular policy has found traction with the use of police body cameras to monitor police conduct during stops and arrests. One need only search Twitter with the hashtag “BlackLivesMatter” to find a legion of incidences where police simply turn off the cameras and otherwise claim equipment malfunction when arrestees allege brutality or an arrest ends in death. Perhaps the nation has forgotten that when Rodney King was brutalized by the Los Angeles Police Department, there was videotape of the incident. The officers responsible were acquitted of all of the criminal charges. Videotape is not a deterrent, particularly when it can be stopped, started, and edited to conform to a narrative that excuses police misconduct.

Pillar 6, Wellness and Safety, places emphasis on protecting officer health in the field and their ability to provide medical assistance to those policed, even though evidence shows that police have neglected to simply call Emergency Medical Services for those who have died in their custody or by their hand.

Pillar 4, Community Policing and Crime Reduction, reviews the interplay between community policing, community recommendations for how to address crime, and law enforcement responsiveness to and support of both. Lastly, the focus of Pillar 5, Training and Education, is fostering effective leadership training for law enforcement administration and officer training that includes instruction on: “[the] disease of addiction, implicit bias and cultural responsiveness, policing in a democratic society, procedural justice, and effective social interaction and tactical skills.”

Neither Pillar 4 nor 5 addresses how our current system of policing and incarceration reflects the American values of capitalism, white supremacy, and patriarchy, or how laws and governmental policies (federal, state, local, and custom) favor those who are wealthy, White, male, and heterosexual. Thus, any solutions that do not include grappling with privilege and power as performed in the bodies of State agents, police officers in particular, is no solution at all. Implicit bias training is no match for white supremacy. Holding a bias against someone is one thing, but understanding how one benefits from

367. Id. at 3-4, 51-60.
capitalism, white supremacy, and patriarchy and how those structures harm others through his or her actions is quite another. Accordingly, sprinkling black and brown faces throughout law enforcement agencies and task forces is window dressing to the extent that these people also are ignorant of their relationship to privilege and power and how it affects all members of the community.\textsuperscript{368}

An October 2015 study on stereotype threat and bias in policing underscores the inadequacy of such approaches to address how and why Black women are discriminatorily policed. It found: "Black men, but not Black women, White men, nor White women, agreed that they feel concerned that police officers might judge them unfairly and stereotype them as criminals."\textsuperscript{369} The October 2015 study cited a 2014 study that found: "Black women become socially invisible and are less likely than Black men to be categorized according to either race or gender."\textsuperscript{370} The authors of the October 2015 study concluded that such invisibility "might confer the benefit of protecting Black women from the negative stereotype of Black criminality."\textsuperscript{371} Given the evidence presented in this Article, nothing could be further from the truth.

To this end we must start with informed research of policing across race, class, gender, and sexuality and with training that pushes those who undergo it to deal with privilege and power. Researchers need data. State agencies, including departments of corrections, must be forthcoming with information about arrests, detentions, and criminal charges so that scholars and professionals know what problems exist. Until we can study this data disaggregated by race, gender, and crime, we cannot adequately and comprehensively address the problems and develop solutions to them.

State entities also must rethink sensitivity and implicit bias training for law enforcement professionals at all levels. State entities are like the proverbial frog in boiling water. Structural discriminatory practices have existed for so long that these entities operate blindly as if they do not exist. While the Report of the President's Task Force on 21st Century Policing suggests training for officers, including scenario training, that makes them sensitive to encounters with immigrant, Muslim, and

\textsuperscript{368} See, e.g., Liyah Kaprice Brown, Officer or Overseer?: Why Police Desegregation Fails As An Adequate Solution to Racist, Oppressive, and Violent Policing in Black Communities, 29 N.Y.U. REV. L. SOC. & CHANGE 757, 789-92 (2005).


\textsuperscript{370} Id.

\textsuperscript{371} Id.
LGBTQ communities, the most effective training begins with observation. Police, like anyone who is aware they are being observed, know how to operate in a politically correct manner. However, unobtrusive observations of police in the field as they interact with communities of difference will give stakeholders information on how to best develop scenario-based training that helps police to struggle with power and privilege. Grappling with both will help police officers to learn more effective non-lethal ways to deal with the public. Obtaining data and moving from sensitivity training to power and privilege models will place us in a better position to end the commercial exploitation of Black female bodies as a result of State violence as we continue through the twenty-first century.
