

#SayHerName¹

#BlackWomensLivesMatter²: 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.³ Mrs. King, seventy years old, was the mother of the Reverend Dr. Martin Luther King, Jr.⁴ 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,

1. The African American Policy Institute in partnership with the Center for Intersectionality and Social Policy Studies at Columbia Law School created the hashtag “#SayHerName” to bring awareness to the absence of discussion and collective action around Black women and policing. See generally *#SayHerName Brief*, AFRICAN AMERICAN POLICY FORUM, <http://www.aapf.org/sayhernamereport> (last visited Dec. 10, 2015).

2. “Black Twitter,” an informal group of Black scholars and activists, created the hashtag “BlackWomensLivesMatter” to bring attention to the absence of discussion and collective action around Black women and policing.

* Associate Professor of Law, Mercer University School of Law. Spelman College (B.A., 1995); University of Iowa (M.A., 1998; J.D., 1998). Member, State Bar of Georgia. I thank God, without whom nothing in my life would be possible. I also thank my husband, Mark Anthony Chubb, whose intellect and labor allow me to exercise mine to produce scholarly work. Special thanks to my research assistants, Mandisa Styles and Harold A. McMurtry, Jr., for their work in researching all of the Black women, named and unnamed, whose lives matter, and to Nia Brown, Patsy White, Kellyn McGee, Cassandra Hill, Brenda Gibson, and Tiffany Watkins for their support and encouragement during the writing process. I dedicate this article to Black women and our families. We are all touched by State violence in the policing of our bodies. Despite what the world tells us, #BlackWomensLivesMatter.

3. Simon Winchester, *Martin Luther King’s Mother Slain in Church*, THE GUARDIAN (July 1, 1974), <http://static.guim.co.uk/sysimages/Guardian/Pix/pictures/2014/6/27/1403882968678/Murder-of-MLKs-mother-001.jpg>.

4. *Id.*

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.⁵ Reporters focused on the irony that Mrs. King was shot and killed so close to where her son was buried.⁶ They also highlighted that the violence against Mrs. King was another installment of racial disturbances in Atlanta that week.⁷ On Wednesday when a young Black male parolee was shot, Black Atlantans responded in protests.⁸ This shooting occurred amidst the ongoing standoff between Maynard Jackson and the white Atlanta Chief of Police John Inman.⁹ Jackson fired Inman, who refused to step down from his post.¹⁰ 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.¹¹ Just when all was looking up and protesting seemed quelled, Marcus Wayne Chenault, Jr. shot and fatally wounded Mrs. King on Sunday morning.¹² 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."¹³ The gunman was also reported as repeatedly stating: "The war did this to me. It's the war."¹⁴ Chenault was twenty-one years old at the time of the shooting.¹⁵

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.¹⁶ 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.*

16. Ashley Farmer, "Dr. Martin Luther King's Mother is Slain" and Lessons from Gendered History, AFRICAN AMERICAN INTELLECTUAL HISTORY SOCIETY (Jan. 17, 2015), <http://aaihs.org/dr-martin-luther-kings-mother-is-slain-and-lessons-from-gendered-history/>.

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,¹⁷ 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.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.¹⁹ Both boys and girls would work in the fields, cultivating cotton, sugar, rice, and indigo.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.²¹ Each also became more valuable because as they grew older and stronger, they could cultivate and harvest more cotton, sugar, rice, and indigo.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.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.²⁴ White male patriarchal primacy over slaves was legally codified, especially by laws that prohibited slaves from marrying.²⁵ Marriage was and remains closely linked to notions of contract, contractual rights, and contractual obligations.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.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."²⁸ Because legal marriage was viewed as the primary means by

18. See, e.g., WILLIAM GOODELL, *THE AMERICAN SLAVE CODE IN THEORY AND PRACTICE: ITS DISTINCTIVE FEATURES SHOWN BY ITS STATUTES, JUDICIAL DECISIONS, AND ILLUSTRATIVE FACTS* 83 (1853); see generally JACQUELINE JONES, *LABOR OF LOVE, LABOR OF SORROW: BLACK WOMEN, WORK, AND THE FAMILY, FROM SLAVERY TO THE PRESENT* (2010).

19. See generally DREW GILPIN FAUST, *JAMES HENRY HAMMOND AND THE OLD SOUTH: A DESIGN FOR MASTERY* (1982).

20. See generally JOHN HOPE FRANKLIN & EVELYN BROOKS HIGGINBOTHAM, *FROM SLAVERY TO FREEDOM: A HISTORY OF AFRICAN AMERICANS* (9th ed. 2011).

21. *Id.*

22. *Id.*

23. See generally FAUST, *supra* note 19; JONES, *supra* note 18.

24. SOME NOTES ON NEGRO CRIME PARTICULARLY IN GEORGIA 2-3 (W.E. Burghardt Du Bois ed., 1904).

25. See THOMAS D. MORRIS, *SOUTHERN SLAVERY AND THE LAW, 1619-1860* 46-48 (1996).

26. *Hall v. United States*, 92 U.S. 27, 30 (1875).

27. See, e.g., MORRIS, *supra* note 25, at 46.

28. *Id.*

which to convey property, and control over human property was the foundation for the wealth of plantations with twenty or more slaves,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.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.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.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, Georgia's statutes legalizing slave marriages and attendant relations read:

§ 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

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.

Id.

30. Darlene C. Goring, *The History of Slave Marriage in the United States*, 39 J. MARSHALL L. REV. 299, 307-08 (2006).

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

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).³³

§ 1667 [Among persons of color the parent shall be required to maintain his or her children, whether legitimate or illegitimate.] (a).³⁴

§ 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).³⁵

§ 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).³⁶

Section 1665 of the Code of the State of Georgia³⁷ legalized those relationships between a single male and single female slave if they were living together as husband and wife during slavery.³⁸ 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.³⁹ Section 1667⁴⁰ transferred to slave parents the material obligation to care for their children,⁴¹ and section 1668⁴² characterized these children as subservient within the familial dynamic much like their parents were to Whites in society.⁴³ Far from a benign piece of legislation, section 1668, subtitled "Obligations of children," is telling of how children were regarded within the marital relationship.⁴⁴ Like their parents' obligations to Whites, they existed for their parents' material benefit.⁴⁵ Planters further abdicated their material and legal responsibilities for slave mothers and their children in section 1669.⁴⁶

33. RICHARD H. CLARK, THOMAS R.R. COBB & DAVID IRWIN, *THE CODE OF THE STATE OF GEORGIA* 334, § 1665 (1867).

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 legitimate 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.*

49. PHILLIP A. BRUCE, *THE PLANTATION NEGRO AS A FREEMAN* (1889).

50. *Id.* at vii-ix.

The members of that population have recently emerged from the same state everywhere; their homogeneity as people has always been remarkable at every period of their history, and wherever they have been observed. The local circumstances surrounding them in the southern counties of Virginia, do not differ from those that hedge them about in the cotton region"

Id. at 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. Rozee 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*.⁵² Scholars have argued that she was created to prove the benevolence of her plantation master and mistress and her contentment with plantation life.⁵³

Jezebel, a nod to King Ahab's wife in the biblical book of *1 Kings*,⁵⁴ is the oversexed, promiscuous, immoral Black woman, the seductress who caused White planters to leave their marriage beds and produce illegitimate slave children.⁵⁵ She is the apologist for rape, the excuse for how and why Black women's reproductive labor funded the plantation economy.⁵⁶

Lastly, Sapphire is the conniving, angry, bold, aggressive Black woman, as she materialized on the hit radio program *Amos n' Andy*.⁵⁷ Sapphire is singularly responsible for the downfall of the Black family because she usurps the Black male patriarchal role.⁵⁸ She was crafted from the sculptor's fragments that fell from the chiseling of the White female identity.⁵⁹ 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.⁶⁰ 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.⁶¹

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

Kupenda, Letitia Simmons Johnston & Ramona Seabron-Williams, *Political Invisibility of Black Women: Still Suspect but No Suspect Class*, 50 WASHBURN L.J. 109, 115 (2010); Molly A. Schiffer, *Women of Color and Crime: A Critical Race Theory Perspective to Address Disparate Prosecution*, 56 ARIZ. L. REV. 1203, 1213-17 (2014).

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.⁶² 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.⁶³ 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."⁶⁴ 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.⁶⁵ 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.⁶⁶ 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.⁶⁷

62. BRUCE, *supra* note 49, at 3.

63. *Id.* at 4, 13.

64. *Id.* at 5, 9.

65. *Id.* at 4.

66. See, e.g., DOROTHY ROBERTS, KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY 26-30 (1997).

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.⁶⁸ In slavery, slaves were legally prohibited from gathering together or being in public after dark,⁶⁹ which Bruce noted as key to curbing Black sexual desire.⁷⁰ 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.⁷¹ Worst still was that the Black patriarchal figures in their lives, brothers and fathers, did not judge her sexual immorality unfavorably.⁷² 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.⁷³

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]."⁷⁴ 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

68. BRUCE, *supra* note 49, at 17.

69. See, e.g., Criminal Law, Persons of Color, and County Regulations, tit. 2, ch. 32, art. 1, § 6(47), in A CODIFICATION OF THE STATUTE LAW OF GEORGIA 814 (William A. Hotchkiss ed., Augusta, Charles E. Greenville, 2d ed. 1848) [hereinafter STATUTE LAW OF GEORGIA] ("More than seven men slaves not allowed to travel together"); Criminal Law, Persons of Color, and County Regulations, tit. 2, ch. 32, art. 1, § 6(48), in STATUTE LAW OF GEORGIA, *supra*, at 814 ("Meetings of slaves prohibited"); Criminal Law, Persons of Color, and County Regulations, tit. 2, ch. 32, art. 1, § 6(49), in STATUTE LAW OF GEORGIA, *supra*, at 814 ("Negroes not to assemble under the pretence [sic] of divine worship").

70. BRUCE, *supra* note 49, at 17.

71. *Id.* at 11-12.

72. *Id.* at 12.

73. *Id.* at 19-20.

74. *Id.* at 12.

they confer absolutely upon their husbands at the hour of marriage.”⁷⁵ 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.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.”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.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.”⁷⁹ Of this woman, Bruce recounted,

75. *Id.* at 19.

76. *Id.* at 26-27.

77. *Id.* at 26.

78. *Id.* at 26-27.

79. *Id.* at 11.

[W]hen 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.⁸⁰

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.⁸¹

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.⁸² 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.⁸³ 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.⁸⁴

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;

80. *Id.*

81. *Id.* at 24-25, 175; Sojourner Truth, Ain't I A Woman?, Women's Convention, Akron, Ohio (May 28, 1851), (transcript available at <http://legacy.fordham.edu/halsall/mod/sojtruthwoman.asp>).

82. BRUCE, *supra* note 49, at 57, 92.

83. *Id.* at 82-83.

84. *Id.* at 85-87, 90.

murder of a free white person, or murder of a slave or free person of color, or poisoning of a human being.”⁸⁵ 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.”⁸⁶

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;⁸⁷ hitting a White person;⁸⁸ arson or attempted arson of a house in the city⁸⁹ or country;⁹⁰ luring slaves away from their masters;⁹¹ and “circulating incendiary documents,” or documents that would allow any person of color, slave or free, to organize and resist white supremacy.⁹² Minor offenses included: “teaching slaves or free persons of color to read”;⁹³ trading with slaves if a free person of color;⁹⁴ harboring a slave by slaves⁹⁵ or free people of color;⁹⁶ preaching without a license;⁹⁷ “giving false

85. Criminal Law, Persons of Color, and County Regulations, tit. 2, ch. 34, art. 1, § 1(1), in *STATUTE LAW OF GEORGIA*, *supra* note 69, at 838 (“Capital crimes when punished with death”).

86. Criminal Law, Persons of Color, and County Regulations, tit. 2, ch. 34, art. 1, § 1(2), in *STATUTE LAW OF GEORGIA*, *supra* note 69, at 838 (“When punished by death, or discretion of the court”).

87. Criminal Law, Persons of Color, and County Regulations, tit. 2, ch. 34, art. 1, § 1(3), in *STATUTE LAW OF GEORGIA*, *supra* note 69, at 838.

88. Criminal Law, Persons of Color, and County Regulations, tit. 2, ch. 34, art. 1, § 1(4), in *STATUTE LAW OF GEORGIA*, *supra* note 69, at 838.

89. Criminal Law, Persons of Color, and County Regulations, tit. 2, ch. 34, art. 1, § 1(6), in *STATUTE LAW OF GEORGIA*, *supra* note 69, at 838-39.

90. Criminal Law, Persons of Color, and County Regulations, tit. 2, ch. 34, art. 1, § 1(7), in *STATUTE LAW OF GEORGIA*, *supra* note 69, at 839.

91. Criminal Law, Persons of Color, and County Regulations, tit. 2, ch. 34, art. 1, § 1(9), in *STATUTE LAW OF GEORGIA*, *supra* note 69, at 839.

92. Criminal Law, Persons of Color, and County Regulations, tit. 2, ch. 34, art. 1, § 1(10), in *STATUTE LAW OF GEORGIA*, *supra* note 69, at 839.

93. Criminal Law, Persons of Color, and County Regulations, tit. 2, ch. 34, art. 1, § 2(11), in *STATUTE LAW OF GEORGIA*, *supra* note 69, at 839.

94. Criminal Law, Persons of Color, and County Regulations, tit. 2, ch. 34, art. 1, § 2(12), in *STATUTE LAW OF GEORGIA*, *supra* note 69, at 839-40.

95. Criminal Law, Persons of Color, and County Regulations, tit. 2, ch. 34, art. 1, § 2(13), in *STATUTE LAW OF GEORGIA*, *supra* note 69, at 840.

96. Criminal Law, Persons of Color, and County Regulations, tit. 2, ch. 34, art. 1, § 2(14), in *STATUTE LAW OF GEORGIA*, *supra* note 69, at 840.

97. Criminal Law, Persons of Color, and County Regulations, tit. 2, ch. 34, art. 1, § 1(16), in *STATUTE LAW OF GEORGIA*, *supra* note 69, at 840-41.

information";⁹⁸ "teaching others to poison";⁹⁹ and "killing, marking, or branding cattle" by slaves.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.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.¹⁰² One addition was "actually poisoning a slave or free person of color with intent to kill."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:

[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.¹⁰⁴

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

[F]urnishing spirituous liquors to other slaves or free persons of color; concealing or harboring runaway slaves; . . . 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; . . . aiding or assisting in any manner in bringing into the

98. Criminal Law, Persons of Color, and County Regulations, tit. 2, ch. 34, art. 1, § 2(20), in *STATUTE LAW OF GEORGIA*, *supra* note 69, at 841.

99. Criminal Law, Persons of Color, and County Regulations, tit. 2, ch. 34, art. 1, § 2(21), in *STATUTE LAW OF GEORGIA*, *supra* note 69, at 841-42.

100. Criminal Law, Persons of Color, and County Regulations, tit. 2, ch. 34, art. 1, § 2(22), in *STATUTE LAW OF GEORGIA*, *supra* note 69, at 839.

101. RICHARD H. CLARK, THOMAS R.R. COBB & DAVID IRWIN, *THE CODE OF THE STATE OF GEORGIA* 919-20, § 4704 (1860) (Penal Code for Slaves and Free People of Color-Capital Offenses).

102. RICHARD H. CLARK, THOMAS R.R. COBB & DAVID IRWIN, *THE CODE OF THE STATE OF GEORGIA* 920, § 4708 (1860).

103. *Id.*

104. RICHARD H. CLARK, THOMAS R.R. COBB & DAVID IRWIN, *THE CODE OF THE STATE OF GEORGIA* 920, § 4714 (1860).

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.¹⁰⁵

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.¹⁰⁶ 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 that “[n]either slavery nor involuntary servitude, except as [] punishment 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.”¹⁰⁷ 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

105. RICHARD H. CLARK, THOMAS R.R. COBB & DAVID IRWIN, *THE CODE OF THE STATE OF GEORGIA* 920, § 4715 (1860).

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.

107. U.S. CONST. amend. XIII, § 1 (1865).

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*,¹¹⁴ by 1880 Black women were charged most frequently with crimes “against society [22.2%]”; “against person[s] [19.2%]”; and “against property [40.8%].”¹¹⁵ Crimes catego-

108. Du Bois, *supra* note 24, at 9.

109. Teri McMurtry-Chubb, *The Codification of Racism: Blacks, Criminal Sentencing, and the Legacy of Slavery in Georgia*, 31 T. MARSHALL L. REV. 139, 141, 150-54 (2005).

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.

113. Talitha LeFlouria, “The Hand that Rocks the Cradle Cuts Cordwood”: *Exploring Black Women’s Lives and Labor in Georgia’s Convict Camps, 1865-1917*, in 8:3 LABOR: STUDIES IN WORKING CLASS HISTORY OF THE AMERICAS 47, 53 (2011).

114. Du Bois, *supra* note 24.

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, drunkenness, disorder, concealed weapons, [and] vagrancy."¹¹⁶ Crimes against persons included "murder, rape, [and] assaults."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).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).¹¹⁹ Perpetrators of these crimes were sentenced to work on the chain gangs or otherwise employed in the convict leasing and labor system.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."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.¹²²

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

116. *Id.* at 14.

117. *Id.*

118. *Id.*

119. *See id.* at 15.

120. *Id.* at 5-6.

121. *Id.* at 16.

122. BRUCE, *supra* note 49, at 87.

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).

124. *Id.* at 413.

dynamics in Emancipation, in which former slaves and their masters redefined the contours of their relationship.¹²⁵ 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.¹²⁶ 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.¹²⁷ When not paid minimal wages, many were not paid at all for their work.¹²⁸ Thus, these women set about supplementing their labor with petty theft of food, other household items, and money.¹²⁹ 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.¹³⁰ 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."¹³¹

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.¹³² 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.

131. *Id.* at 57; see, e.g., Cheryl D. Hicks, "In Danger of Becoming Morally Depraved": Single Black Women, Working-Class Black Families, and New York State's Wayward Minor Laws, 1917-1928, 151 U. PA. L. REV. 2077 (2003).

132. LEFLOURIA, *supra* note 106, at 35-37.

White men, but on decidedly female turf, on decidedly female terms.¹³³ As owners of female houses of prostitution, Black women owned and profited from Black female sexuality.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.¹³⁵ Usually all three—gambling, liquor, and prostitution—were offered in the same “house.”¹³⁶ 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.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.”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.”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.¹⁴⁰ For daring to control herself and her sexuality, her punishment was the chain gang.¹⁴¹

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

133. Sharon Harley, *‘Working for Nothing But a Living’: Black Women in the Underground Economy*, in *SISTER CIRCLE: BLACK WOMEN AND WORK* 48, 50, 52-53 (Sharon Harley & the Black Women and Work Collective eds., 2002).

134. *Id.* at 59.

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.

136. *Id.* at 56-57; see also LEFLOURIA, *supra* note 106, at 36.

137. LEFLOURIA, *supra* note 106, at 36.

138. Du Bois, *supra* note 24, at 49.

139. LEFLOURIA, *supra* note 106, at 36.

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.

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.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.¹⁴³ Black women suffered the most extreme type of punishment: death by lynching for fighting off their attackers or testifying against them.¹⁴⁴

C. 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 a 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 so smart, 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.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.¹⁴⁶ As one Georgia agricultural reformer, David Dickson, complained, "half the women and children are absent, housekeeping, idling, and other things."¹⁴⁷ Another White Georgia planter observed that "[t]here are a great many negro women taken from the field to the

142. LEFLOURIA, *supra* note 106, at 28; see generally Patricia A. Broussard, *Black Women's Post-Slavery Silence Syndrome: A Twenty-First Century Remnant of Slavery, Jim Crow, and Systemic Racism—Who Will Tell Her Stories?*, 16 J. GENDER RACE & JUST. 373 (2013); Lisa Cardyn, *Sexualized Racism / Gendered Violence: Outraging the Body Politic in the Reconstruction South*, 100 MICH. L. REV. 675 (2002); Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991); Cheryl I. Harris, *Finding Sojourner's Truth: Race, Gender, and the Institution of Property*, 18 CARDOZO L. REV. 309 (1996).

143. LEFLOURIA, *supra* note 106, at 28-29.

144. *Id.* at 29.

145. Edmund L. Drago, *Militancy and Black Women in Reconstruction Georgia*, 1 J. AM. CULTURE 838, 841 (1978) (quoting ROBERT COLE AND JANE HALLOWELL COLE, *WOMEN OF CRISIS: LIVES OF STRUGGLE AND HOPE* 2 (1978)).

146. *Id.* at 841-42; see also LEFLOURIA, *supra* note 106, at 24.

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."¹⁴⁸ 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"¹⁴⁹ whose labor was wasted on any home and hearth not occupied by a White family.¹⁵⁰ 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, submissiveness, and sobriety (seriousness) of "true womanhood."¹⁵¹

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.¹⁵² In the midst of the rapidly expanding convict leasing and labor system, the Civil Rights Act of 1875¹⁵³ purportedly gave all Blacks equal treatment under the law,¹⁵⁴ the right to equal public accommodations (for example, movie theaters, parks, and public transportation), and Black males the right to serve on juries.¹⁵⁵ 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.¹⁵⁶ 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.*

150. The Georgia Code made an exception for nurses and "servants in attendance on their employers." JOHN L. HOPKINS, CLIFFORD ANDERSON & JOSEPH R. LAMAR, *THE CODE OF THE STATE OF GEORGIA* 157, § 2274 (1895). Also, consider the exception to the 1905 Florida statute segregating public transportation, which allowed Black nursemaids to accompany their White masters and mistresses. August Meier & Elliot Rudwick, *The Boycott Movement Against Jim Crow Streetcars in the South, 1900-1906*, 55 J. OF AM. HIST. 756, 766-67 (1969).

151. Drago, *supra* note 145, at 842; Barbara Y. Welke, *When All the Women Were White, and All the Blacks Were Men: Gender, Class, Race, and the Road to Plessy, 1855-1914*, 13 LAW & HIST. REV. 261, 268-69 (1995). For a more comprehensive discussion of Black women's activism to end streetcar segregation, see generally Blair L.M. Kelley, *Right to Ride: Streetcar Boycotts and African American Citizenship in the Era of Plessy v. Ferguson* (2010).

152. Drago, *supra* note 145, at 839.

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.

156. See, e.g., *Stanley*, 109 U.S. at 25-26.

its railroad and streetcars, which in 1900 would be supplemented by like segregation ordinances in its major cities.¹⁵⁷ Indeed it was given continued license to do so by the Supreme Court's ruling in *Plessy v. Ferguson*,¹⁵⁸ which sealed the deal on "separate but equal" and tightened Jim Crow's death grip throughout the South.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;¹⁶⁰ and the "Smoking" or "Colored" car, reserved for White men who wished to smoke and all Black people regardless of gender.¹⁶¹ The way the cars were segregated underscored: (1) that preserving White womanhood, "true womanhood," required physical separation from men in public spaces;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 *Macon Daily Telegraph* just after the Civil War, gave insight into these injustices:

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.¹⁶³

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

157. See, e.g., JOHN L. HOPKINS, CLIFFORD ANDERSON & JOSEPH R. LAMAR, *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.

158. 163 U.S. 537 (1897), *overruled by* Brown v. Bd. of Educ., 347 U.S. 483 (1954).

159. *Plessy*, 163 U.S. at 550-51, 552.

160. Welke, *When All the Women Were White*, *supra* note 151, at 261.

161. See *id.* The "Ladies" and "Smoking" cars were the types most widely employed by railroad companies. See, e.g., *id.* at 266, 268-69; see also Meier & Rudwick, *supra* note 150, at 756-57; Barbara Y. Welke, *Beyond Plessy: Space, Status, and Race in the Era of Jim Crow*, 2000 UTAH L. REV. 267, 267-70 (2000).

162. Welke, *When All the Women Were White*, *supra* note 151, at 266, 268-69.

163. Drago, *supra* note 145, at 839-40, 843 n.6.

spaces; she did not know her place.¹⁶⁴ 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,¹⁶⁵ 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.¹⁶⁶ 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.¹⁶⁷ 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.¹⁶⁸

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.”¹⁶⁹ 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 rabbleroxing, 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.

165. For general information about Eliza Peacher Turner, see Stephen W. Angell, *Henry McNeal Turner—Conservative? Radical? Or Independent?*, in *BLACK CONSERVATISM: ESSAYS IN INTELLECTUAL AND POLITICAL HISTORY* 27 (Peter Eisenstadt ed., 2013); see also PATRICE SHELTON LASSITER, *GENERATIONS OF BLACK LIFE IN KENNESAW AND MARIETTA GEORGIA* 23 (1999).

166. Drago, *supra* note 145, at 840.

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

168. *Id.*

169. Drago, *supra* note 145, at 840.

women.¹⁷⁰ 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.”¹⁷¹ 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.¹⁷² As of November 1, 2015, there are 3625 women housed in facilities operated by the Georgia Department of Corrections.¹⁷³ White women comprise 56.50% of the prison population or 2048 inmates.¹⁷⁴ 1504 Black women, or 41.49%, are guests of Georgia’s correctional facilities.¹⁷⁵ 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

170. *Id.* at 842.

171. *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)).

172. 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.

173. *Inmate Statistical Profile*, GA. DEPT OF CORR., 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)].

174. *Id.*

175. *Id.*

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.

**Available Statistical Sampling on Black Female Incarceration
in Georgia As of March 25, 2015¹⁷⁶**

<u>Crimes Against Society</u>	<u>% of Black Women Incarcerated (#)</u>	<u>% of White Women Incarcerated (#)</u>	<u>Total # of Women Incar- cerated as of March 2015</u>
Contributing to the Delinquency of a Minor	100% (1)	0	1 ¹⁷⁷

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 ¹⁷⁸	50% (1)	50% (1)	17 ¹⁷⁹
Cruelty to Children	25% (1)	75% (3)	91 ¹⁸⁰
Trafficking Cocaine Less than 200 grams	100% (3)	0	14 ¹⁸¹
Sale and Distribution of Cocaine	100% (1)	0	28 ¹⁸²
Possession with Intent to Distribute Cocaine	100% (3)	0	18 ¹⁸³
Possession of Cocaine	83.33% (5)	16.66% (1)	65 ¹⁸⁴
Possession with Intent to Distribute Marijuana	50% (1)	50% (1)	23 ¹⁸⁵
Racketeering	33.33% (1)	66.66% (2)	40 ¹⁸⁶
Possession of a Firearm by a Convicted Felon	50% (1)	50% (1)	37 ¹⁸⁷

178. *Inmate Statistical Profile* (Apr. 1, 2015), *supra* note 177, at 55.

179. Familial crimes, like adultery, were considered as against society. *See* Du Bois, *supra* note 24, at 14.

180. *Id.* at 56.

181. *Id.* at 61.

182. *Id.* at 59.

183. *Id.*

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.*

**Available Statistical Sampling on Black Female Incarceration
in Georgia As of March 25, 2015¹⁸⁸**

<u>Crimes Against Persons</u>	<u>% of Black Women Incarcerated (#)</u>	<u>% of White Women Incarcerated (#)</u>	<u>Total # of Women Incarcerated as of March 2015</u>
Murder	72.22% (26)	27.77% (10)	343 ¹⁸⁹
Voluntary Manslaughter	50% (5)	50% (5)	135 ¹⁹⁰
Involuntary Manslaughter	75% (3)	25% (1)	30 ¹⁹¹
Kidnapping	100% (5)	0	46 ¹⁹²
Aggravated Assault	86.36% (19)	13.63% (3)	284 ¹⁹³
Aggravated Battery	80% (8)	20% (2)	85 ¹⁹⁴
False Imprisonment	100% (1)	0	8 ¹⁹⁵

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.

Vehicular Homicide	40% (2)	60% (3)	55 ¹⁹⁶
Armed Robbery Robbery	43.75% (7)	56.25% (9)	201 ¹⁹⁷
Robbery by Sudden Snatch	100% (1)	0	9 ¹⁹⁸
Robbery by Force	33.33% (1)	66.66% (2)	25 ¹⁹⁹
Robbery	50% (4)	50% (4)	112 ²⁰⁰
Arson in the First Degree	100% (1)	0	8 ²⁰¹

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, 2015²⁰²**

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

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.*

Theft by	100% (2)	0	5 ²⁰⁹
Credit Card			

**Available Statistical Sampling of Black Female Incarceration
in Georgia As of November 6, 2015²¹⁰**

<u>Crimes Against Society</u>	<u>% of Black Women Incarcerated</u>	<u>% of White Women Incarcerated</u>	<u>Total # of Women Incarcerated as of Nov. 1, 2015</u>
Contributing to the Delinquency of a Minor	<i>Unknown</i>	<i>Unknown</i>	<i>Unknown</i>
Aggravated Child Molestation	50% (1)	50% (1)	20 ²¹¹
Cruelty to Children	50% (1)	50% (1)	87 ²¹²
Trafficking Cocaine Less than 200 grams	100% (2)	0	12 ²¹³

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.

Sale and Distribution of Cocaine	0	0	28 ²¹⁴
Possession with Intent to Distribute Cocaine	100% (1)	0	17 ²¹⁵
Possession of Cocaine	0	100% (1)	74 ²¹⁶
Possession with Intent to Distribute Marijuana	0	0	33 ²¹⁷
Racketeering	33.33% (1)	66.66% (2)	35 ²¹⁸
Possession of a Firearm by a Convicted Felon	0	0	35 ²¹⁹

214. *Id.* at 61.
215. *Id.*
216. *Id.*
217. *Id.*
218. *Id.*
219. *Id.*

**Available Statistical Sampling of Black Female Incarceration
in Georgia As of November 6, 2015²²⁰**

<u>Crimes Against Persons</u>	<u>% of Black Women Incarcerated</u>	<u>% of White Women Incarcerated</u>	<u>Total # of Women Incarcerated as of Nov. 1, 2015</u>
Murder	75% (9)	25% (3)	373 ²²¹
Voluntary Manslaughter	25% (1)	75% (3)	134 ²²²
Involuntary Manslaughter	100% (2)	0	26 ²²³
Kidnapping	100% (3)	0	39 ²²⁴
Aggravated Assault	85.71% (6)	14.28% (1)	288 ²²⁵
Aggravated Battery	100% (4)	0	77 ²²⁶
False Imprisonment	100% (1)	0	8 ²²⁷

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.

Vehicular Homicide	100% (1)	0	59 ²²⁸
Armed Robbery	20% (1)	80% (4)	207 ²²⁹
Robbery by Sudden Snatch	0	0	8 ²³⁰
Robbery by Force	0	0	19 ²³¹
Robbery	0	100% (1)	100 ²³²
Arson in the First Degree	0	0	10 ²³³

**Available Statistical Sampling of Black Female Incarceration
in Georgia As of November 6, 2015²³⁴**

<u>Crimes Against Property</u>	<u>% of Black Women Incarcerated (#)</u>	<u>% of White Women Incarcerated (#)</u>	<u>Total # of Women Incarcerated of Nov. 1, 2015</u>
Theft by Shoplifting	100% (1)	0	169 ²³⁵

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 as 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)	140 ²³⁶
Miscellaneous Fraud	100% (1)	0	2 ²³⁷
Burglary	66.66% (2)	33.33% (1)	1st degree, 103; 2nd degree, 25 ²³⁸
Forgery in the First Degree	0	100% (4)	30 ²³⁹
Fraudulent Credit Card	100% (2)	0	34 ²⁴⁰
Theft by Credit Card	0	0	7 ²⁴¹

**Comparison of Available Statistical Sampling for Black and White Female
Inmates in Georgia (March 2015/November 2015)²⁴²**

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

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.

Cruelty to Children	25%/75%	50%/50%
Trafficking Cocaine Less than 200 grams	100%/0%	100%/0%
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)²⁴³

Crimes Against Persons	% of Black/White Women Incarcerated as of March 25, 2015	% of Black/White Women Incarcerated as of November 6, 2015
Murder	72.22%/27.77%	75%/25%
Voluntary Manslaughter	50%/50%	25%/75%

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.

involuntary Manslaughter	75%/25%	100%/0%
Kidnapping	100%/0%	100%/0%
Aggravated Assault	86.36%/13.63%	85.71%/14.28%
Aggravated Battery	80%/20%	100%/0%
False Imprisonment	100%/0%	100%/0%
Vehicular Homicide	40%/60%	100%/0%
Armed Robbery	43.75%/56.25%	20%/80%
Robbery by Sudden	100%/0%	0
Robbery by Force	33.33%/66.66%	0
Robbery	50%/50%	0%/100%
Arson in the First Degree	100%/0%	0
Obstruction of a Law Enforcement Officer	33.33%/66.66%	0%/100%

**Comparison of Available Statistical Sampling for Black and White
Female Inmates in Georgia (March 2015/November 2015)²⁴⁴**

<u>Crimes Against Property</u>	<u>% of Black/White Women Incarcerated as of March 25, 2015</u>	<u>% of Black/White Women Incarcerated as of November 6, 2015</u>
Theft by Shoplifting	83.33%/16.66%	100%/0%

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 Jamerson (63²⁵⁰), 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

245. Complaint at 2 ¶ 2, *Johnson v. Napa Valley Wine Train, Inc.*, No. 3:15-CV-04515-JCS (N.D. Cal. Oct. 1, 2015).

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.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 Act²⁵⁷ and 42 U.S.C. section 1983²⁵⁸; (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.²⁵⁹

The Book Club alleges that they each bought tickets individually to ride on the train collectively as a book club.²⁶⁰ They planned to discuss a recent book they read.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."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.²⁶³

The trip commenced on August 22, 2015 at approximately 11:00 a.m.²⁶⁴ The Club was seated "in the back of the last train car . . . [to be] 'seen and not heard.'"²⁶⁵ The problems started even before the train left the station when the train's "maitre d'hotel, [Ann Marquinn], approached the group and admonished [the women] to 'tone down your noise level because you're being offensive to other passengers.'"²⁶⁶ Marquinn did not tell the women exactly which passengers were offended.²⁶⁷ The trip continued when the train departed and seven of the women took advantage of a complimentary wine tasting.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

256. *Id.* at 1-2.

257. Cal. Civ. Code § 51 (2007 & Supp. 2014).

258. 42 U.S.C. § 1983 (2012).

259. Complaint, *supra* note 245, at 1.

260. *Id.* at 5-6 ¶ 23. Plaintiff Deborah Neal bought the ticket for her mother-in-law Katherine Neal as a surprise. *Id.*

261. *Id.* at 5-6 ¶¶ 23-25.

262. *Id.* at 6 ¶ 25.

263. *Id.*

264. *Id.* at 7 ¶¶ 31, 33.

265. *Id.* at 7 ¶¶ 32.

266. *Id.* at 7 ¶ 35.

267. *Id.*

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."²⁶⁹ 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."²⁷⁰ Subsequently, Book Club members asked White passengers in close proximity on the train if they were bothered by the Club members' laughter and talking.²⁷¹ Two of the passengers queried stated that they were "enjoying the group's company."²⁷² One passenger told the women: "this is not a bar," but was actually mistaken because they were in the "Bar Car" of the train.²⁷³ The Book Club noticed that White passengers were enjoying the festive atmosphere of the train, demonstrated by loud and raucous behavior.²⁷⁴ However, train staff did not reprimand them.²⁷⁵

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.²⁷⁶ 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.²⁷⁷ 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.²⁷⁸ She then told the women that they were "unruly and aggressive."²⁷⁹

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.²⁸⁰ 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.²⁸¹ 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, 48.

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.”²⁸² Apparently, this incident was the first time St. Helena police were called to remove passengers from the Wine Train.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.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.”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.’”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

282. *Id.* at 10 ¶ 54.

283. *Id.* at 10 ¶ 55.

284. *Id.* at 9 ¶ 49.

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>.

286. *Id.*

Rudd, about Robinson's remarks.²⁸⁷ The president responded via Twitter that he would make Robinson's comments available to the campus Equal Employment Opportunity Office.²⁸⁸ Robinson made additional remarks about the Confederate flag in the aftermath of the Charleston church shootings.²⁸⁹ 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."²⁹⁰ Through social media, students and commenters called for Robinson's firing.²⁹¹ The University of Memphis subsequently issued a single tweet on an unverified account that Robinson was no longer employed there.²⁹² Far from being fired, Robinson had taken another job at nearby Rhodes College.²⁹³

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.²⁹⁴ 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.²⁹⁵ A spokesman for BU, Colin Riley, first underscored that the comments were Grundy's own from her private

287. *Id.*

288. *Id.*

289. On June 17, 2015, twenty-one-year-old Dylan Roof shot and killed nine members of Emanuel A.M.E. Church in Charleston, South Carolina who were in attendance at the church's weekly bible study. See *Charleston Shooting*, CBS NEWS, <http://www.cbsnews.com/pictures/charleston-south-carolina-church-shooting/> (last visited Dec. 10, 2015). Just after the shootings, pictures of Roof surfaced on the Internet of him posing with the Confederate flag. See, e.g., Frances Robles, *Dylan Roof Photos and a Manifesto Are Posted on Website*, N.Y. TIMES (June 20, 2015), http://www.nytimes.com/2015/06/21/us/dylan-roof-photos-website-charleston-church-shooting.html?_r=0.

290. Jaschik, *supra* note 285 (internal quotation marks omitted).

291. *Id.*

292. *Id.*

293. *Id.* For Robinson's narrative of these incidents see *Zeezus Does the Firing 'Round Hurr*, NEW SOUTH NEGRESS, <http://newsouthnegress.com/zeezusyear/#more-556> (last visited Dec. 10, 2015).

294. Colleen Flaherty, *Boston U. Distances Itself From New Professor's Comments About White Male Students*, INSIDE HIGHER ED (May 12, 2015, 3:00 AM), <https://www.insidehighered.com/news/2015/05/12/boston-u-distances-itself-new-professors-comments-about-white-male-students>.

295. *Id.* (alteration in original); Scott Jaschik, *Saida Grundy Discusses the Controversy Over Her Comments on Twitter, Her Career, Race and Sociology*, INSIDE HIGHER ED (Aug. 24, 2015, 3:00 AM), <https://www.insidehighered.com/news/2015/08/24/saida-grundy-discusses-controversy-over-her-comments-twitter-her-career-race-and>.

Twitter account where she was “exercising her right to free speech.”²⁹⁶ 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.”²⁹⁷ Riley did reiterate Grundy’s free speech rights as a corollary to his remarks.²⁹⁸ Grundy also issued an apology.²⁹⁹ 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.”³⁰⁰ 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.”³⁰¹

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.³⁰² 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.³⁰³ In the complaint, the students described Gibney’s classes on structural racism as making them uncomfortable.³⁰⁴ The formal reprimand resulted in the vice president of academic affairs placing this letter in Gibney’s file:

296. Flaherty, *supra* note 294.

297. *Id.*

298. *Id.*

299. Jaschik, *supra* note 285.

300. *Id.*

301. *Id.*

302. Tressie McMillan Cottom, *When Students Are Treated Like Customers, Racism and Sexism Win Out*, SLATE http://www.slate.com/articles/life/counter_narrative/2013/12/minneapolis_professor_shannon_gibney_reprimanded_for_talking_about_racism.html (last visited Mar. 15, 2016); Aaron Rupar, *Shannon Gibney, MCTC Prof, Also Took Heat for Structural Racism Comments in 2009*, CITY PAGES (Dec. 2, 2013), <http://www.citypages.com/news/shannon-gibney-mctc-prof-also-took-heat-for-structural-racism-comments-in-2009-6539583>.

303. Aaron Rupar, *MCTC Prof Reprimanded for Alienating White Students During Structural Racism Discussion*, CITY PAGES (Nov. 27, 2013), <http://www.citypages.com/news/mctc-prof-reprimanded-for-alienating-white-students-during-structural-racism-discussion-6538410>.

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.³⁰⁵

Gibney would later remark that she felt unsafe in class after the reprimand was issued.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."³⁰⁷

Gibney's reprimand was rescinded approximately a year later.³⁰⁸ The incident caused her mental anguish and harm.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 itself³¹⁰

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

305. *Id.* (alteration in original).

306. *Id.*

307. *Id.*

308. Mary Turck, *Shannon Gibney—Reprimand Rescinded!*, TWIN CITIES DAILY PLANET (May 23, 2014), <http://www.tcdailyplanet.net/news-day-shannon-gibney-reprimand-rescinded>.

309. *Id.*

310. *Id.*

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

311. Lynette Holloway, *Woman Committed to Mental Hospital After Cops Doubt BMW Ownership Speaks Out*, THE ROOT (Sept. 13, 2015, 8:37 AM), http://www.theroot.com/articles/news/2015/09/kamilah_brock_spends_8_days_in_psych_ward_after_cops_doubt_bmw_ownership.html.

312. *Id.*

313. *Id.*; Complaint at 3 ¶ 17, Brock v. City of New York, No. 1:15-cv-01832-VSB (S.D.N.Y. Mar. 3, 2015).

314. Complaint, *supra* note 313.

315. *Id.* at 3 ¶¶ 18, 20; Press Release, *Woman Falsely Arrested and Committed to a Mental Facility by the NYPD and Harlem Hospital Staff after Telling Them She Was a Banker and Was Followed on Twitter by the President*, LAW OFFICES OF MICHAEL S. LAMONSOFF, PLLC, (Mar. 24, 2015), <http://www.mslllegal.com/press-release-woman-falsely-arrested-and-committed-to-a-mental-facility-by-the-nypd-and-harlem-hospital-staff-after-telling-them-she-was-a-banker-and-was-followed-on-twitter-by-the-president> (last visited Mar. 15, 2016).

316. Complaint, *supra* note 313, at 3-4 ¶ 21.

317. *Id.* at 4 ¶ 27.

318. *Id.* at 4 ¶¶ 27-28.

319. *Id.* at 3, 4 ¶¶ 16, 33.

320. Holloway, *supra* note 311; see also Press Release: *Woman Falsely Arrested*, *supra* note 315.

321. Press Release, *Woman Falsely Arrested*, *supra* note 306.

require mental health treatment; and she was not a danger to herself or anyone else.³²² 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.

<u>Name</u>	<u>Age</u>	<u>Incident/Offense & Location</u>
Shelly Frey	27	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. ³²³ (Houston, TX)
Danette Daniel	31	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. ³²⁴ (Newark, NJ)
Megan Hockaday	26	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

322. Complaint, *supra* note 313, at 4 ¶¶ 22-25, 27.

323. Kimberlé Williams Crenshaw & Andrea J. Ritchie, *Say Her Name: Resisting Police Brutality Against Black Women*, AFRICAN AMERICAN POLICY FORUM 1, 14 (July 2015), <http://www.aapf.org/sayhernamereport>; James Nye, *Walmart Security Guard Shoots ‘Shoplifting’ Mother Dead in Parking Lot as She Tries to Escape with Two Young Children*, DAILY MAIL (Dec. 8, 2012, 11:09 AM), <http://www.dailymail.co.uk/news/article-2245074/Walmart-security-guard-shoots-shoplifting-mother-dead-parking-lot-tries-escape-young-children.html>.

324. Crenshaw & Ritchie, *supra* note 323, at 16; Andy Newman, *Protests Persist Over Shooting*, N.Y. TIMES (June 17, 1997), <http://www.nytimes.com/1997/06/17/nyregion/protests-persist-over-shooting.html>.

children were in the home at the time of her death.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. 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.” 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.

<u>Name</u>	<u>Age</u>	<u>Incident/Offense & Location</u>
Mya Hall(transgender)	27	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. ³²⁸ (Baltimore, MD)
Malissa Williams	30	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

325. Crenshaw & Ritchie, *supra* note 323, at 24.
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/la-now/la-me-ln-mary-ocallaghan-opening-statements-20150519-story.html>.
327. Crenshaw & Ritchie, *supra* note 323, at 30.
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-mya-hall-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)

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| 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 unarmed. 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) |

329. Crenshaw & Ritchie, *supra* note 323, at 12.

330. *Id.* at 13; Mike Blasky, *Friends: Woman Killed by Police Was Non-violent*, LAS VEGAS REV. J. (Apr. 27, 2012, 2:00 AM), <http://www.reviewjournal.com/news/crime-courts/friends-woman-killed-police-was-nonviolent>.

331. Crenshaw & Ritchie, *supra* note 323, at 13; Todd Lighty, *Untold Story Of Haggerty Shooting: Report Shows Witnesses Don't Back Cop's Account*, CHI. TRIB. (Sept. 12, 1999), http://articles.chicagotribune.com/1999-09-12/news/9909120226_1_officers-lawyer-chicago-police-supt-joseph-roddey.

332. Crenshaw & Ritchie, *supra* note 323, at 13; *Police Shooting of Young Woman Draws Intense Community Criticism*, PORTLAND COP WATCH, <http://www.portlandcopwatch.org/PPR30/kjames30.html> (last visited Dec. 10, 2015).

333. Crenshaw & Ritchie, *supra* note 323, at 16; Gary Washburn, *City Settles 1997 Police Brutality Suit*, CHI. TRIB. (July 7, 1999), http://articles.chicagotribune.com/1999-07-07/news/9907070195_1_police-brutality-suit-perkins-family-multimillion-dollar-wrongful-death.

Alberta Spruill	57	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. ³³⁴ (Harlem, NY)
Rekia Boyd	22	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. ³³⁵ (Chicago, IL)
Tarika Wilson	26	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. ³³⁶ (Lima, OH)
Yvette Smith	47	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. 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."

<u>Name</u>	<u>Age</u>	<u>Incident/Offense & Location</u>
Alexia Christian	26	Christian was accused of escaping from handcuffs while in police custody in the back of a police car; she alleged-

334. Crenshaw & Ritchie, *supra* note 323, at 16.

335. *Id.* at 22; Kim Bellware, *Chicago Cop Cleared Of All Charges in Shooting Death of Unarmed Woman*, HUFFINGTON POST (Apr. 20, 2015, 4:31 PM), http://www.huffingtonpost.com/2015/04/20/dante-servin-verdict_n_7102910.html.

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.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. 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. 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. 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. 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. 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

338. *Id.* at 10.

339. *Id.* at 12.

340. *Id.*

341. *Id.*

342. *Id.* at 13.

343. *Id.* at 16.

bruised, had two black eyes, and one finger was missing.³⁴⁴ (Fairfax County, VA)

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| 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. ³⁴⁵ (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. ³⁴⁶ (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. ³⁴⁷ (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. ³⁴⁸ (Ann Arbor, MI) |

344. *Id.* at 20.

345. *Id.*; Barry Paddock & Bill Hutchinson, *Cop Ignored Pleas as Inmate Kyam Livingston Died in Brooklyn Jail: Witness*, N.Y. DAILY NEWS, July 23, 2013, 2:30 AM), <http://www.nydailynews.com/new-york/brooklyn/cops-pleas-inmate-died-witness-article-1.1406255>.

346. Crenshaw & Ritchie, *supra* note 323, at 20.

347. *Id.* at 24-25; Fred Classen-Kelly, *the Seconds Before the Shots*, THE CHARLOTTE OBSERVER (Mar. 21, 2015, 7:46 PM.), <http://www.charlotteobserver.com/news/local/crime/article15728675.html>.

348. Crenshaw & Ritchie, *supra* note 323, at 25; Ryan Stanton, *Mayor Calls Aura Rosser's Death a 'Tragedy of Mental Illness Untreated and Drug Use Unabated'*, MLIVE (Jan. 31, 2015, 5:34 A.M.), <http://www.mlive.com/news/ann-arbor/index.ssf/2015/01/ann-arbor-mayor-aura-rosser-sh.html>.

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, 2014.³⁴⁹ 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.³⁵⁰

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.”³⁵¹ 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

349. *Final Report of The President's Task Force on 21st Century Policing*, OFFICE OF COMMUNITY ORIENTED POLICING SERVICES: WASHINGTON, DC 1, 1 (May 2015), available at http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

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.³⁵² The policies developed should be thorough with respect to the use of force, how mass demonstrations are handled, and Fourth Amendment³⁵³ issues that arise with searches (including for those of non-conforming genders), profiling, and deaths of in-custody arrestees or incarcerated.³⁵⁴ One glaring oversight here is that #BlackLivesMatter demonstrations have been criminalized as lawless gatherings rather than viewed as a proper exercise of First Amendment³⁵⁵ rights.³⁵⁶ 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.³⁵⁷ Gender non-conformity continues to be criminalized in a manner that disproportionately affects women of color.³⁵⁸

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.³⁵⁹ The state still refuses to release the videotape to the family's lawyer.³⁶⁰ 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.³⁶¹

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.³⁶² This

352. *Id.* at 2, 19-30.

353. U.S. CONST. amend. IV.

354. *Final Report*, *supra* note 349, at 2.

355. U.S. CONST. amend. I.

356. *See, e.g., Protests over police violence*, CBS News, <http://www.cbsnews.com/feature/protests-over-police-violence/> (last visited Dec. 10, 2015).

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.

358. Crenshaw & Ritchie, *supra* note 323, at 26-27.

359. *Id.* at 20.

360. *Id.*

361. *See id.* at 9, 20; Sophie Trawalter, Kelly M. Hoffman & Adam Waytz, *Racial Bias in Perceptions of Others' Pain*, PLOS ONE (Nov. 14, 2012), <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0048546> (reporting nursing students' perception that Black people experience less physical pain).

362. *Final Report*, *supra* note 349, at 2-3, 31-40.

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.³⁶³ 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,³⁶⁴ 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.³⁶⁵

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.³⁶⁶ 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.”³⁶⁷ 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

363. Seth Mydans, *Los Angeles Policemen Acquitted in Taped Beating*, N.Y. TIMES, <http://www.nytimes.com/learning/general/onthisday/big/0429.html#article> (last visited Dec. 10, 2015).

364. *Final Report*, *supra* note 349, at 4, 61-70.

365. See, e.g., Shaun King, *Exploring What it Means When Police Refuse to Provide Medical Attention to Their Victims*, DAILY KOS (June 2, 2015), <http://www.dailykos.com/story/2015/06/02/1389815/-Exploring-what-it-means-when-police-completely-refuse-medical-attention-to-their-victims>.

366. *Final Report*, *supra* note 349, at 3, 41-50.

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.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."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."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."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

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).

369. Cynthia J. Najdowski, Bette L. Bottoms & Philip Atiba Goff, *Stereotype Threat and Racial Differences in Citizens' Experiences of Police Encounters*, 39 LAW & HUM. BEHAV. 463, 465 (2015).

370. *Id.*

371. *Id.*

LGBTQ communities,³⁷² 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.

372. *Final Report*, *supra* note 349, at 58.
