

Love and Punishment: A Feminist Theo-Ethical Analysis of Gender Entrapment, Carceral Resistance, and the Incarceration of Women ‘Behind a Man’

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For survivors in their struggle to be free from prisons in all their forms and for all who dream of
a world where women can both be loved and be free

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INTRODUCTION

'Finding the Air to Begin to Speak'

She must learn again to speak
starting with I
starting with We
starting as the infant does
with her own true hunger
and pleasure
and rage.

—Marge Piercy, “Unlearning to Not Speak”¹

Our sisters are suffocating every day. They cannot find the air to begin to speak. It is caught in their lungs, in their throat just below the vocal folds.

—Teresa L. Fry Brown, “Avoiding Asphyxiation”²

At an early age and in subtle ways, girls are discouraged from speaking. They are commended and rewarded for being quiet—and at times punished when they are not—while raucous or aggressive behavior from boys is generally tolerated and waved off as “boys being boys.”³ In the classroom, teachers spend more time talking with boys, call on them more frequently, and are more likely to interrupt girls when they are speaking while they let boys talk over them.⁴ This early devaluing of female speech in the classroom reflects a larger history in which women and girls have been disciplined to silence so as to be “seen and not heard.” There is perhaps nothing more effective in disciplining women to silence than restricting our ability to breathe. The early nineteenth century beauty practice of tight lacing exemplifies the insidious ways in which throughout history women’s breathlessness has been made desirable. The tight

¹ Marge Piercy, “Unlearning to Not Speak,” *Cries of the Spirit: A Celebration of Women’s Spirituality*, Edited by Marilyn Sewell, (Boston: Beacon Press, 1991), 21.

² Teresa L. Fry Brown, “Avoiding Asphyxiation: A Womanist Perspective on Intrapersonal and Interpersonal Transformation,” *Embracing the Spirit: Womanist Perspectives on Hope, Salvation and Transformation*, Edited by Emilie M. Townes, (Maryknoll, NY: Orbis Books, 1997), 75.

³ One cited study found that Black girls are disproportionately punished among girls in school for being assertive. Soraya Chemaly, “All Teachers Should Be Trained to Overcome Their Hidden Biases,” *Time*, February 12, 2015, <https://time.com/3705454/teachers-biases-girls-education/>.

⁴ Chemaly, “All Teachers.”

lacing of corsets was used to achieve through dress not only a small, accentuated waist but the white feminine ideal of fragility, languidness, and submissiveness and it did so by limiting mobility and the ability to breathe from the diaphragm.⁵ Celebrity influencers like the Kardashian sisters have more recently promoted the use of corset-resembling “waist trainers” to achieve a small waist, advertising the product to their millions of social media followers and largely female audience, despite their ineffectiveness and the difficulty they create for breathing.⁶

In addition to interactions shaped by unconscious bias and cultural demands to adhere to dangerous and often largely impossible-to-achieve cultural beauty standards, women are also dissuaded from speaking in unmistakable ways, including outright prohibitions—such as on women preaching in church—as well as through overt tactics such as online harassment, threats of violence, and physical assault.⁷ The breath is also knocked out of us by institutional responses to those who do speak up and break the crushing silence. During the Supreme Court confirmation hearings of Clarence Thomas (1991), in the face of personal attacks and hostile

⁵ Corsets constricted the diaphragm making it difficult for women to breathe deeply, forcing them to breathe from the upper part of their chests. According to Helene Roberts, “sex roles are one of the obvious definitions made by dress” such that “wearing corsets also came to be seen as a moral imperative. The uncorseted woman was in danger of loose morals” (555, 556). Helene E. Roberts, “The Exquisite Slave: The Role of Clothes in the making of the Victorian Woman,” *Signs* 2, no. 3 (Spring 1977): 554-569. Corsets were also a way to achieve a consumptive aesthetic that came to be regarded as fashionable among the upper classes in Europe—the gaunt, pale figure with flushed cheeks that often resulted from tuberculosis, a disease that deteriorates lung tissue. See Carolyn Daly, *Consumptive Chic: A History of Beauty, Fashion, and Disease* (New York: Bloomsbury Academic: 2017).

⁶ Korin Miller, “Khloé Kardashian Loves Waist Trainers, But They Don’t Actually Work,” *Self*, September 16, 2016, <https://www.self.com/story/khloe-kardashian-waist-trainers>.

⁷ Denominations that prohibit the ordination of women rely on scripture that says women should not speak in churches. 1 Corinthians 14: 34-35 reads: “As in all the churches of the saints, women should be silent in the churches. For they are not permitted to speak, but should be subordinated as the law also says. If there is anything they desire to know, let them ask their husbands at home. For it is shameful for a woman to speak in the church.” (NRSV). Scholars dispute whether this text can be attributed to the Apostle Paul but it has long been used to prohibit the ordination of women. Harry Farley, “Apostle Paul Never Said ‘Women Should Remain Silent’: Scholars Claim Controversial passage was Added Later,” *Christian Today*, September 21, 2017, <https://www.christiantoday.com/article/apostle-paul-never-said-women-should-remain-silent-scholars-claims-controversial-passage-was-added-later/114255.htm>. Danny O’Brien and Dia Kayyali, “Facing the Challenge of Online Harassment,” Electronic Frontier Foundation, January 8, 2015, <https://www.eff.org/deeplinks/2015/01/facing-challenge-online-harassment>. A Pew Study indicates that young adult women are most likely to be targeted for online harassment and stalking and Black people and people of color report higher levels of harassment online than white people. Pew Research Center, “Online Harassment,” October 2014, <http://www.pewinternet.org/2014/10/22/online-harassment/>.

questioning, Anita Hill testified to his sexual harassment of her. Almost thirty years later, despite attempts to discredit her and unending threats that made it impossible for her to safely live at home, Christine Blasey Ford testified that Brett Kavanaugh had sexually assaulted her. Both women took immense personal and professional risks to testify, only to see both men confirmed anyway.⁸

My own unmistakable experience of learning not to speak as a young adult woman occurred within the familiarity of an intimate relationship. It is marked by a memory of struggling to breathe and free myself from a grasp held in rage by one who would soon ask forgiveness for laying his hands on me in any way other than a “laying on of hands.” This assault that threatened to crush my larynx if it did not succeed in extinguishing my life breath, was preceded and followed by years of coercive control that cumulatively threatened to asphyxiate me, choking off my agency and my spirit. Paradoxically, at the same time that I was learning to not speak, I was also, as a student in divinity school, deconstructing discourses that silence women. While I entered theological education focused on incarceration as a theological and moral issue—I had spent the previous years as a religious volunteer at a federal prison for men—it was not until I started visiting regularly with incarcerated women during supervised ministry that I encountered through their stories of the smothering nature of incarceration and its similarities with the abuse in their relationships, a means for contextualizing my own experience of asphyxiation and for understanding the various forms that imprisonment can take.

⁸ Elise Viebeck, “Joe Biden was in the Anita Hill hearing. Even he says it wasn’t fair,” *The Washington Post*, April 26, 2019, https://www.washingtonpost.com/politics/joe-biden-was-in-charge-of-the-anita-hill-hearing-even-he-says-it-wasnt-fair/2019/04/26/a9a6f384-6500-11e9-82ba-fcfeff232e8f_story.html. Tim Mak, “Kavanaugh Accuser Christine Blasey Ford Continues Receiving Threats, Lawyer Says,” *NPR*, November 8, 2018, <https://www.npr.org/2018/11/08/665407589/kavanaugh-accuser-christine-blasey-ford-continues-receiving-threats-lawyers-say>.

Instrumental in controlling the voice, the breath animates speech and the mechanics of speaking rely on much of the same anatomy as that of breathing. Asphyxiation occurs through a variety of ways, but strangulation as a gendered form of violence—most often used by men against their female intimate partners—is emblematic of misogyny.⁹ Strangulation terminates speech, both as it cuts off oxygen making speaking impossible and as it prompts “testimonial smothering” or the suppression of future speech.¹⁰ It is intended to elicit fear and compliance from its victim, if not killing them, by demonstrating dominance as “divinely ordained” sovereignty through “the right to take life or let live.”¹¹ In her analysis of misogyny as systematic hostility towards women and a cardinal manifestation of patriarchal ideology, feminist philosopher Kate Manne suggests, “misogyny should be understood primarily as the ‘law

⁹ Kate Manne, *Down Girl: The Logic of Misogyny* (New York: Oxford University Press, 2018), 3. Manne suggests that strangulation is the “action paradigmatic of misogyny” because it is gendered and serves to establish domination. Kristie A. Thomas, et al. “Do You Know What It Feels Like to Drown?”: Strangulation as Coercive Control in Intimate Relationships,” *Psychology of Women Quarterly* 38, no. 1 (2014): 124-137. Strangulation asphyxiates by blocking the airway through external pressure, although it is often incorrectly referred to as “choking” which occurs internally. Strangulation can be done manually or with a ligature and can render someone unconscious within 10 seconds and dead within 4-5 minutes. G.B. Strack, et al. “A Review of 300 Attempted Strangulation Cases: Criminal Legal Issues.” *Journal of Emergency Medicine* 21 (2001): 303-309. Non-fatal strangulation is often a sign of an escalation of relationship violence and is an indicator of a high risk for future homicide. It is associated with a six-fold increase in future attempted homicide and a seven-fold increase of future homicide. Nancy Glass, Kathryn Laughon, Jacquelyn Campbell, Carolyn Rebecca Block, Ginger Hanson, Phyllis W. Sharps, and Ellen Taliaferro, “Non-Fatal Strangulation is an Important Risk Factor for Homicide of Women,” *The Journal of Emergency Medicine* 35, no. 3 (2008): 329-335. Although it can be lethal hours or days afterward and have substantial physical, neurological and psychological consequences, many victims do not seek medical attention because its injuries are often invisible. Abusers who repeatedly use strangulation to coerce and control their victims often do so because of the lack of visible markings. Strangulation is very painful and the inability to breathe, without any recourse to stop the strangulation, terrorizing. Victims of strangulation often think that they are going to die. Susan B. Sorenson, a professor of social policy and of health and societies and director of the Ortner Center on Family Violence compares strangulation to waterboarding in that “It can be used repeatedly, often without detection, and it has intense fear and reasonable fear associated with it. Repeated loss of consciousness, whether through waterboarding or being strangled can lead to brain damage.” Stassa Edwards, “The Uniquely Violent and ‘Waterboarding’ Effects of Strangulation,” *Jezebel*, February 14, 2018, <https://jezebel.com/the-uniquely-violent-and-waterboarding-effects-of-stran-1822849082>.

¹⁰ Manne makes the connection of strangulation as a form of what Kristie Dotson refers to as “testimonial smothering.” Testimonial smothering “denotes a kind of self-silencing on the part of the speaker” that occurs when sharing the testimony feels risky or unsafe and the audience lacks competence on the testimony’s content due to harmful ignorance (3-4). Manne notes victims of strangulation assaults rarely report or work with police and the criminal legal system has generally lacked competence in its approach to strangulation assaults.

¹¹ Michel Foucault, *The History of Sexuality: Volume 1*, Translated by Robert Hurley (New York: Vintage Books, [1978] 1990), 136. Foucault characterizes classical sovereignty or that of the locus of political power, as the right to kill exercised largely through war and capital punishment.

enforcement' branch of a patriarchal order, which has the overall function of policing and enforcing its governing norms and expectations."¹² Manne does not theorize the punishment of incarceration as misogynistic violence, but her definition—which identifies institutional misogyny and its compounding iterations as systemic hostility to women in enforcing the patriarchal order—does not preclude it. Moreover, it is useful for identifying misogyny as a carceral logic and understanding how intimate partners and the state discipline and punish women to a racialized patriarchal order in order to subordinate them.¹³ This dissertation seeks to make clear the connection between interpersonal, institutional, and state-sanctioned gender violence, particularly in the form of entrapment and imprisonment as the work of misogyny—

¹² Manne, 78. Sexism is distinguished by Manne as the “justificatory” branch that naturalizes difference through ideology “in order to justify patriarchal social arrangements, by making them seem as inevitable” (79).

¹³ Misogynoir and transmisogyny are two such iterations. Black feminist Moya Bailey coined misogynoir to identify the particular “ways that anti-Blackness and misogyny combine to malign Black women in our world.” Moya Bailey, “More on the Origin of Misogynoir,” *Moyazb*, April 27, 2014, Tumblr. <https://moyazb.tumblr.com/post/84048113369/more-on-the-origin-of-misogynoir>. Transmisogyny was coined by Julia Serano in *Whipping Girl: A Transsexual Woman on Sexism and the Scapegoating of Femininity* (Emeryville, CA: Seal Press, 2007), to describe the particular ways in which transphobia and misogyny intersect to culturally mark and punish trans women “not for failing to conform to gender norms per se, but because of the specific direction of their gender transgression—that is, their feminine gender expression and/or their female gender identities.” Julia Serano, “Transmisogyny Primer,” <http://www.juliaserano.com/av/TransmisogynyPrimer-Serano.pdf>. This dissertation focuses primarily on cisgendered women in love with men as the majority of women incarcerated behind a man are cisgendered and because we have even less research available regarding incarcerated trans women and intimate partner violence. It is important to note however, that trans women face higher rates of violence and incarceration (21% have been incarcerated at some point in their lives) and are at higher risk of violence in prison with one third of transgender prisoners experiencing sexual assault. Aviva Stahl, “Transgender Prisoners Suffer Abuse at Record Numbers,” *Vice*, June 12, 2017, <https://www.vice.com/en/article/43g5jd/why-is-ice-closing-its-only-detention-center-for-transgender-detainees-v24n5>. Nearly half (47%) of Black transgender people have been incarcerated at some point in their lives. Jaime M. Grant, et al. *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011). My hope is that in offering an analysis of misogyny as it enforces hegemonic gender norms, demonstrates hostility toward and seeks to subordinate the feminine might gesture beyond cisgendered women but I also recognize that this analysis is far from complete without a deeper engagement with transgendered women and further analysis of transmisogyny and misogynoir. The Report of the 2015 U.S. Transgender Survey found that more than half of trans people have experienced some form of intimate partner violence and trans people of color experience high rates of physical assault. It does not provide a breakdown of intimate partner rates by gender identity or expression. Of the tactics of coercive control, telling trans victims of abuse that they were not a “real” woman or man and threatening to out them are two that explicitly involve an abuser leveraging their cisgender privilege. S.E. James, et al. *The Report of the 2015 U.S. Transgender Survey* (Washington, DC: National Center for Transgender Equality, 2016). Lesbian and bisexual women are overrepresented in jails and prisons where about a third of incarcerated women identify as lesbian or bisexual which is 8 to 10 times greater than in the U.S. population. Ilan H. Meyer, et al. “Incarceration Rates and Traits of Sexual Minorities in the United States: National Inmate Survey, 2011-2012,” *American Journal of Public Health* 107 (2017): 267-273.

that is, the hatred and hostility toward women and the feminine—in enforcing the subordination of women and upholding white supremacy.

While misogyny takes multiple forms—media portrayals, interpersonal assaults, community violence, public policy—it is the exercise of coercive control that most clearly demonstrates misogyny as the enforcement of the patriarchal order. Intimate partner violence in heterosexual relationships does not only or even primarily take the form of physical assaults. It is best understood as coercive control, which sociologist Evan Stark defines as a “gender-specific pattern of coercive and controlling behaviors that causes a range of harms in addition to injury.”¹⁴ Coercive control seeks to subordinate the will of the victim to another and it not only violates a victim’s physical integrity, it violates their autonomy and personhood in order to diminish their agency. Coercive control, according to Stark, results in a condition of unfreedom (experienced as *entrapment*) that is ‘gendered’ in its construction, delivery, and consequence.”¹⁵ While intimate partner violence crosses gender and sexuality, coercive control is gendered because it is used to enforce gender norms and maintain a gender hierarchy based on male dominance.¹⁶ As such, women are its most frequent victims and men are primarily its purveyors.

¹⁴ Evan Stark, *Coercive Control: How Men Entrap Women in Personal Life*, (New York: Oxford University Press, 2007), 99-100. While there are multiple typologies of intimate partner violence, my focus is on coercive control in heteronormative relationships. While domestic violence has most often been used to refer to intimate partner violence, it includes violence in the home more broadly and not just between intimate partners. I think domestic violence as a term can be politically useful as it has mainstream awareness and because it helps to connect the history of gender punishment in the public and private realms, through the notions of domestic prison regimes to the U.S. prison regime. I prefer to use intimate partner violence and coercive control, however, for specificity. In addition, the adequacy of the term domestic violence has been called into question for its ability to accurately reflect coercive control in intimate partner relationships because the focus on violence has obscured abuse outside of physical assault that results in injury and because many assaults tend to occur when people are separated.

¹⁵ Evan Stark, “Re-presenting Battered Women: Coercive Control and the Defense of Liberty,” *Violence Against Women: Complex Realities and New Issues in a Changing World*, Les Presses de l’Université de Québec, 2012, 7-8. Evan Stark, *Coercive Control: How Men Entrap Women in Personal Life*, (New York: Oxford University Press, 2007), 204, 15. While the term coercive control might at first appear redundant, it reflects, I would argue, the meeting of both the coercive nature of disciplinary power and the sovereign power of domination.

¹⁶ Research indicates that the rates of intimate partner violence between same-sex couples are comparable to those between heterosexual ones but more information is needed on coercive control as a typology of intimate partner violence in same-sex relationships. (Other typologies include: situational couple violence, mutually violent control and non-violent control.) Andrew Frankland and Jac Brown suggest from their preliminary research on coercive

According to Stark, “there is no counterpart in men’s lives to women’s entrapment by men in personal life due to coercive control” because coercive control “relies for its impact on women’s vulnerability *as women* due to sexual inequality.”¹⁷ Through coercive control, abusers exercise power and deploy techniques designed specifically to effectively undermine and overtake a victim’s sense of self and agency. Stark traces the advent of it as a contemporary strategy of male domination in private life and its evolution from wife beating and torture to changes in the status of women as a result of shifts in political governance. He explains that coercive control as the means of intensive policing and a strategy for enforcing male domination in private life was not necessary “so long as traditional sex hierarchies were stable.”¹⁸ As women’s rights have expanded and patriarchal authority has diminished in both public and private life, coercive control has become a dominant means of disciplining and punishing women to the racialized patriarchal order, both in intimate relationships and by the state through incarceration.¹⁹ The rapid rise in the incarceration of women—who have been the fastest growing prison population for decades—coincides with the backlash to the gains of second-wave feminism and the civil rights movement and a destabilization of the white nuclear family reflected in a record high divorce rate at the time, making evident a connection between the entrapment of women in personal life and the imprisonment of women by the state.

control in same sex relationships that “violence or control in same-sex relationships may exploit structural constraints that operate on gay men and women, but the outcome is not one partner ‘securing’ some privilege which is denied to the other” in the way it does for heterosexual couples (21). Andrew Frankland and Jac Brown, “Coercive Control in Same-Sex Intimate Partner Violence,” *Journal of Family Violence* 29 (2014): 15-22.

¹⁷ Stark, *Coercive Control*, 6. He explains further, “asymmetry in sexual power gives men (but rarely women) the social facility to use coercive control to entrap and subordinate partners. Men and women are unequal in battering not because they are unequal in their capacities for violence but because sexual discrimination allows men privileged access to the material and social resources need to gain advantage in power struggles” (105).

¹⁸ *Ibid.*, 192.

¹⁹ Black women and women of color have faced gender punishment through state violence in a variety of ways before the sharp increase in incarceration, but this increase is so significant that I think that it reflects a larger shift in gender punishment is undeniable.

Social Problem

Despite the expansion of rights and opportunities for women, violence against women remains at epidemic proportions without eliciting regular or sustained large-scale outrage and mobilization.²⁰ The deaths of women by their intimate partners have become largely depoliticized and routine—accepted and expected on the nightly news. One half of all female homicide victims are killed by an intimate partner, the vast majority who are men.²¹ Femicides are on the rise with four women a day killed by someone they love.²² Black women face homicide rates that are higher than any other racial group.²³ And this data does not get at the full scope of the problem because homicide statistics and those of other domestic violence related crimes do not measure coercive control and are largely limited to physical assaults and incidents of stalking. Research indicates that a majority of incarcerated women have experienced gender violence prior to incarceration and at a rate higher than their male counterparts and Black women are disproportionately represented, incarcerated at twice the rate of white women.²⁴ We have accepted, it would seem, the incarceration of women and survivors of abuse at the cost of increased rights and liberties that remain partial, unstable, and often elusive for the most marginalized among us.

²⁰ This is not to minimize the continued grassroots efforts to address the problem but to note how they remain underfunded and on the margins of social movement conversations. While #MeToo has been a catalyst in re-politicizing violence against women in recent years, public conversation regarding it remains largely centered on harassment and violence experienced by strangers or acquaintances, not intimate partners or the state.

²¹ E. Petrosky, et al. “Racial and Ethnic Differences in Homicides of Adult Women and the Role of Intimate Partner Violence—United States, 2003-2014.” *Morbidity and Mortality Weekly Report* 66 (2017): 741-746.

²² Melissa Jeltsen, “Domestic Violence Murders are Suddenly on the Rise,” *The Huffington Post*, April 11, 2019, https://www.huffingtonpost.ca/entry/domestic-violence-murders-rising_n_5cae0d92e4b03ab9f24f2e6d.

²³ Petrosky, et al. “Racial and Ethnic Differences in Homicides.”

²⁴ *Ibid.*, While more men are in prison than women, since the 1980s women have been the fastest growing population. Between 1980 and 2014, the number of incarcerated women increased by more than 700% outpacing men by more than 50%. There are about 1.2 million women under supervision of the criminal legal system. “Incarcerated Women and Girls,” Factsheet, The Sentencing Project, Revised 2015, <http://www.sentencingproject.org/wp-content/uploads/2016/02/Incarcerated-Women-and-Girls.pdf>.

The rise in the incarceration of women in the U.S. is generally a result of the criminalization of their survival strategies such as substance use, drug couriering, sex work, and welfare fraud.²⁵ Broken windows policing, that is policing that focuses on quality of life and other low level offenses such as petty theft, disorderly conduct, public intoxication, loitering and vagrancy under the refuted theory that focusing on low-level crimes helps prevent more serious crimes, has contributed to the increase in arrests of women.²⁶ Since women are more likely to be involved in minor offenses like simple drug possession, they have been arrested at higher rates than men through such policies. In addition, many women have been incarcerated “behind a man,” held criminally responsible for the actions of their male intimate partners—oftentimes for surviving their abuse—and punished for being coerced to illegal activity, fighting back, or killing their batterers. Both the increase in violence against women and the incarceration of survivors is a consequence of the build-up of the carceral state or prison nation. Beth Richie explains that through a prison nation, characterized by the simultaneous build-up of policing and prisons through aggressive norm-violating behavior and the elimination of social programs intended to offer a “safety net,” Black women and women of color from marginalized communities have been made even more vulnerable to interpersonal, community, and state violence. According to Richie, Black women have been made more vulnerable through the divestment from marginalized communities, the anti-violence movement’s unholy alliance with the criminal

²⁵ Julia Sudbury, ed., *Global Lockdown: Race, Gender, and the Prison-Industrial Complex* (New York: Routledge, 2005), xv.

²⁶ See Elizabeth Swavola, Kristine Riley and Ram Subramanian, *Overlooked: Women and Jails in an Era of Reform* (New York: Vera Institute of Justice, 2016). See also, Bernard E. Harcourt and Jens Ludwig, “Broken Windows: New Evidence from New York City and a Five-City Social Experiment,” *University of Chicago Law Review* 73, no. 1 (2006): 271-320. The notable shift from a liberal 1960s agenda (the War on Poverty) to a 1980s conservative agenda (the War on Drugs/Crime) contributed to the rise of the carceral state.

punishment system, and the criminalization of Black women trying to survive violence in their homes and communities.²⁷

The de-politicization of violence against women and the rise in their incarceration is attributable, in part, to the legitimating of imprisonment by the anti-violence movement through its collaboration with the state. This alliance has given rise to “carceral feminism,” a term coined by scholar Elizabeth Bernstein to refer to a shift in liberal feminism from the welfare state to the carceral one for achieving feminist outcomes.²⁸ The term carceral feminism has been adopted by movement organizers fighting the criminalization of survivors of gender violence and activist and writer Victoria Law explains that it “sees increased policing, prosecution, and imprisonment as the primary solution to violence against women” and “does not acknowledge that police are often purveyors of violence and that prisons are always sites of violence,” especially for women of color.²⁹ Richie traces how the anti-violence-against-women movement “won the mainstream but lost the movement,” arguing that as it became more professionalized it moved away from an analysis of gender violence as a structural problem and became heavily reliant on state interventions in the form of policing and prisons and legislative reform as solutions to male violence, effectively abandoning the most marginalized women in the process.³⁰ The anti-violence movement was central to the politicization of violence against women, however, in

²⁷ Beth Richie, *Arrested Justice: Black Women, Violence, and America's Prison Nation* (New York: New York University Press 2012), 105. Divestment, according to Richie, “starts with public policies that eliminate social programs that were intended to provide a social ‘safety net’ to remedy social problems, leaving communities that rely on public assistance and governmental support more destitute. As a result, people who live in these communities struggle to survive despite persistent poverty, chronic health problems, family disruption, vulnerability to aggressive law enforcement, internalized oppression, and gender violence” (104-105).

²⁸ See Elizabeth Bernstein, “Carceral Politics as Gender Justice? The ‘Traffic in Women’ and Neoliberal Circuits of Crime, Sex, and Rights,” *Theory and Society* 42, no. 3 (2012): 233-259. Bernstein, “Militarized Humanitarianism Meets Carceral Feminism: The Politics of Sex, Rights, and Freedom in Contemporary Antitrafficking Campaigns,” *Signs* 36, no. 1, (Autumn 2010): 45-71. Bernstein looks specifically at the convergence between liberal feminist activists and Christian evangelical groups in anti-trafficking efforts.

²⁹ Victoria Law, “Against Carceral Feminism,” *Jacobin*, 17 October 17, 2014, <http://www.jacobinmag.com/2014/10/against-carceral-feminism/>.

³⁰ Richie, *Arrested Justice*, 65-98.

seeking legitimacy from the state, professionalized services were prioritized over survivor mutual aid and ensuring the prosecution of individuals took priority over efforts that sought to root out the social conditions that enable misogynist violence. Plainly put, feminists within the anti-violence movement colluded with white supremacy to win protections for privileged women at the expense of those most socially vulnerable. As Richie explains, the goal of public interventions including legislation and policy became “to procure and distribute benefits to those women who are important to people in power in order to maintain the status quo.”³¹ This co-optation occurred through the institutionalization of the movement in which, according to Richie, leadership moved away from women who had directly experienced male violence to professionals “more oriented toward organizational development, legal reform, bureaucratic management, evidence-based research, and best practices and other activities geared toward legitimizing the issue of violence against women.”³² As a result of this professionalization, Richie suggests that “the lure of being respected professional feminists was very strong and pulled women away from issues that would challenge the status of powerful men.”³³ This dissertation seeks to grapple with this carceral legacy of white feminist anti-violence politics, the ways in which it has facilitated the co-optation of resistance strategies by the state, and as I argue, has helped to further entrench the entrapment of women in personal life. I endeavor to further an anti-carceral feminist Christian ethics that is accountable to Black women and women of color who are, as womanist homiletician Teresa Fry Brown says, “suffocating everyday.” And they are doing so in part as a result of policies and practices that privilege white women as a result of our whiteness while still upholding our subordination as women.

³¹ Richie, *Arrested Justice*, 105.

³² *Ibid.*, 104.

³³ *Ibid.*, 111.

Background and Rationale

While mainstream attention has increasingly turned to mass incarceration as a leading social problem of our time, women, gender and sexuality remain on the margins of theorizing punishment, prisons, the carceral state, and related social movements. In *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (2010), civil rights lawyer Michelle Alexander offers an analysis of mass incarceration as the current instantiation of a racial caste system analogous to Jim Crow segregation in the South. Though women have been and continue to be the fastest growing prison population, Alexander treats gender as ancillary to this problem and leaves it for others to take up.³⁴ In addition, her emphasis on mass incarceration draws attention to hyper-incarceration as a problem of racial bias but does not fully challenge incarceration itself.

Julia Sudbury, a leading scholar activist in the prison abolition movement was the first to apply a transnational feminist framework to criminalization and the prison industrial complex which grassroots prison abolitionist organization Critical Resistance defines as “the overlapping interests of government and industry that use surveillance, policing, and imprisonment as solutions to economic, social and political problems.”³⁵ Sudbury seeks to shift the discourse on imprisonment by doing away with “unidimensional analyses that provide either a race-based *or* a gendered *or* a class-based analysis.”³⁶ This dissertation builds on the work of Sudbury and other Black feminists, feminists of color, and prison abolitionists in shifting incarcerated women, especially the most marginalized survivors of misogynistic violence to the center of conversations on incarceration and theorizing punishment in order to examine the entrapment and incarceration of women. As they have long argued, the failure to include gender as an

³⁴ “Incarcerated Women,” Factsheet. The Sentencing Project, Revised Dec. 2012, http://www.sentencingproject.org/doc/publications/cc_Incarcerated_Women_Factsheet_Dec2012final.pdf.

³⁵ “What is the PIC?,” Critical Resistance, <http://criticalresistance.org/about/not-so-common-language/>.

³⁶ Sudbury, xii.

integral category of analysis erases the gender of race and the racing of gender.³⁷ Nevertheless, where gender has been taken up, it has been done with minimal attention in scholarship to religion and the religious subjectivities of those incarcerated.

From the early influence of the Christian monastic tradition on the design of the American penal system, which sought penitence and reform through isolation, silence and labor, to the current prevalence of and reliance on mostly Christian faith-based programming, religion, Christianity in particular, is profoundly implicated in the ideological underpinnings and development of modern imprisonment, as well as its many reforms. This dissertation seeks to contribute to these larger conversations by looking at how Christian theology and moral tradition have contributed to the incarceration of women “behind a man” and aided in carceral resistance as well as how prison abolition might inform the Christian moral imagination. The undergirding of gendered punishment by the “myth of the fallen woman” which has its origins in Christian theology further impresses religion as a necessary category of analysis in an abolitionist approach that privileges a multi-dimensional analysis of intersecting systems of oppression. At the same time, while feminist and womanist theoethical discourses seek to center the experiences of the most marginalized women in doing ethics, they have curiously lacked a critical attention to incarceration, much less incarcerated women. This dissertation seeks to remedy this omission in feminist theological ethics in particular and Christian social ethics more generally.

Feminist theological ethics situates itself within the liberation tradition of theology, which traces back to Latin American theologians such as Gustavo Gutiérrez who developed the idea of doing theology “from the underside of history.” However, according to feminist theologian Letty Russell, feminist theological ethics prefers the imagery of the margin “because

³⁷ See Angela Davis, “The Color of Violence Against Women,” *ColorLines*, Fall 2000, <http://www.colorlines.com/articles/color-violence-against-women> and Incite! Women of Color Against Violence, ed., *Color of Violence: The Incite! Anthology* (Cambridge, MA: South End Press, 2006).

one of the ways persons are marginalized is by hierarchical thinking. In societies and churches where they have been considered of no importance, women not only speak out for themselves and all those on the margin but also move from the margin to center so that their voices may be heard.”³⁸ It is an open-ended, ongoing project of theological and moral reflection that places women’s lived experiences and wellbeing at the center of liberative praxis and evaluation, in response to “traditional male-dominated modes of doing ethics.”³⁹ I locate my own contribution to this project more specifically within what Beverly W. Harrison, the progenitor of feminist Christian ethics, identifies as a “feminist liberatory” or feminist liberationist approach. Feminist liberationist ethics refers to “work that seeks revision of Christian tradition away from past oppressions, that stands in solidarity with marginalized voices, and that uses women’s experiences as criteria for reconstructive directions in Christian ethics.”⁴⁰ As an intervention in and contribution to feminist liberationist ethics, I strive to convincingly argue that prison abolition, as an analytical lens, political strategy, and social movement for envisioning and creating a world without prisons, aligns with the project of feminist liberationist ethics and to demonstrate that abolition is fundamentally an ethical project. Inasmuch as feminist liberationist ethics seeks the liberation of *all* women and marginalized peoples, it must become abolitionist.

Methodology

This project is an interdisciplinary one that significantly engages womanist ethics, Black feminist thought, queer theory, and prison abolition in working toward a more accountable

³⁸ Letty Russell, *Church in the Round* (Louisville: Westminster John Knox Press, 1993), 25-26.

³⁹ Lois K. Daly, ed., *Feminist Theological Ethics: A Reader*, (Louisville: Westminster John Knox Press, 1994), xiii.

⁴⁰ Beverly W. Harrison, *Justice in the Making: Feminist Social Ethics*, Edited by Elizabeth M. Bounds, Pamela K. Brubaker, Jane E. Hicks, Marilyn J. Legge, Rebecca Todd Peters, and Traci C. West, (Louisville: Westminster John Knox Press, 2004), 1. According to Harrison, a “feminist liberatory” ethics “must address the gender and sexual injustice rooted in a deeply embedded misogyny that includes both contempt for women’s competence as thinkers and agents of change and also hatred of strong women who will not surrender to malestream hegemonies of all kinds. It also must expose the distortions compulsory heterosexuality inscribes on all women. A liberating ethics must include careful attention to class dynamics (blockages in access to wealth and political power) and to white racism (the continuous practice of Euro-American cultural supremacy).”

feminist ethics. Dominant ethical traditions often start with abstractions to define the good life and virtue. However, feminist and womanist theological ethics start with reflection on concrete social and historical experiences.⁴¹ While the observation that many women in jail and prison are incarcerated “behind a man” is one that has long been made by incarcerated and formerly incarcerated women, Black anti-violence feminists, feminists of color, and advocates for battered women in prison, there remains a dearth of available data and research on the incarceration of women and survivors of abuse.⁴² It is not only a methodological choice then, but also an analytical necessity to take as our starting point the experiences and stories of women incarcerated “behind a man” in order to name and define the moral problem as one appropriate for ethical reflection.⁴³ In focusing on those women incarcerated “behind a man,” my intent is not to overlook or deny women’s agency apart from men but to point to the ways in which women are held overly responsible and punished for the actions of men. I argue that the stories of women incarcerated “behind a man” help to unlock misogyny as a carceral logic. Where I mention specific stories and experiences of women, I rely primarily on public reporting. I center the stories and experiences of incarcerated women and survivors, not to individualize or exceptionalize their stories but to simultaneously map patterns and retain complexity and nuance

⁴¹ Carol S. Robb, “A Framework for Feminist Ethics,” *Feminist Theological Ethics: A Reader*, Edited by Lois K. Daly, (Louisville: Westminster John Knox Press, 1994), 14.

⁴² In *Beyond Prisons: A New Interfaith Paradigm for Our Failed System* (Minneapolis: Fortress Press, 2006), Laura Magnani and Harmon L. Wray note that “Many women in prison are doing time because of the men in their lives,” as a result of “the structure of drug laws, the injustice of conspiracy statutes, and the number of women incarcerated for killing their batterers or their pimps” (116).

Also see Elizabeth M. Bounds, “Realist Dreams,” *Justice in the Making: Feminist Social Ethics*, Beverly Wildung Harrison, Edited by Bounds, et al. (Louisville: Westminster John Knox Press, 2004), 232.

⁴³ This dissertation also seeks to further an analysis called on by anti-violence organization Incite! and anti-prison organization Critical Resistance. In their joint statement on “Gender Violence and the Prison Industrial Complex,” they issue a call to “develop an analysis and strategies to end violence that do not isolate individual acts of violence (either committed by the state or individuals) from their larger contexts...Battered women prisoners represent an intersection of state and interpersonal violence and as such provide an opportunity for both movements to build coalitions and joint struggles.” “Gender Violence and the Prison-Industrial Complex: Statement by Critical Resistance and INCITE! Women of Color Against Violence,” Critical Resistance and Incite!, *Color of Violence: The Incite! Anthology*, Edited by Incite! Women of Color Against Violence, (Cambridge, MA: South End Press, 2006), 226.

where differences emerge. While the incarceration of women “behind a man” is undoubtedly a moral problem experienced personally, it is at its foundation a sociocultural and structural one.

I engage womanist methodology as it centers the experiences of Black women at the interstices of race, class, and gender oppression, in order to analyze and theorize the entrapment and incarceration of women and to do feminist liberationist ethics from the margins.⁴⁴ Womanist ethicist Stacey Floyd-Thomas identifies womanism as an “epistemological revolution” that takes as normative the knowledge production of Black women on behalf of *their own* health and wellbeing.⁴⁵ While only Black women can be producers of womanist knowledge as it is particular to their embodiment and subject position—as categories of race, class, gender, and sexuality intersect in context-specific ways—womanist methodology is opened up for others to engage in the work of liberation through “appropriation and reciprocity,” which Floyd-Thomas defines as “the intentional and concomitant effort of others to participate in solidarity with and on behalf of Black women who have made available, shared, and translated their wisdom, strategies, and methods for the universal task of liberating the oppressed and speaking truth to power.”⁴⁶ For too long the onus for a multi-dimensional analysis has been placed on Black women. I take up this work of appropriation and reciprocity as this project has been in many ways a working out of my own salvation, recognizing that the dismantling and transformation of conditions that threaten to asphyxiate the most marginalized peoples are ones in which we all can breathe. I turn in particular to the “love and trouble” tradition in Black feminist and womanist thought as it invokes the incarceration of women “behind a man” and is instructive for

⁴⁴ While Native women experience equally high, if not a bit higher rates of incarceration and gender violence, I begin with Black women because anti-blackness and white supremacy are fundamental to any thorough analysis. I include an analysis of white settler colonial violence as it has normalized interpersonal and structural gender violence against Black and Native women through an examination of the construction of white female victimhood in chapter 2.

⁴⁵ Stacey Floyd-Thomas, ed., *Deeper Shades of Purple: Womanism in Religion and Society* (New York: New York University Press, 2006), 2-3.

⁴⁶ *Ibid.*, 250.

understanding the entrapment and incarceration of women. The love and trouble tradition denotes the often precarious nature of Black women's love relationships with Black men that Black feminist theorist Patricia Hill Collins notes has been "a long-standing theme in U.S. Black feminist thought."⁴⁷ Novelist Gayl Jones characterizes these relationships as blues relationships.⁴⁸ And in her work on the influence of sexual violence in prophetic literature on the religious imagination, womanist Hebrew Bible scholar Renita Weems echoes Alice Walker and extends this tradition in her observation that the repeated correlation of divine punishment and wife-battering "suggests that as far back as the days of biblical writings women in love were women in trouble."⁴⁹ That women in love are women in trouble is a central claim of this project, which attempts to draw from the particular—women in love and trouble with the law—to women's troubles in love with men more generally. To say "women in love are women in trouble" is descriptive in nature. It takes seriously the experience of suffering in love for women, as love coincides with hostility. Gayl Jones refers to relationships in the love and trouble tradition as blues relationships precisely because blues is characterized by this "simultaneity of good and bad, as feeling."⁵⁰ As Collins, explains this tradition reflects "a rejection of binary thinking and an acceptance of the both/and conceptual stance in Black feminist thought" that is represented in "both the tensions between African-American women and men and the strong attachment we feel for one another."⁵¹ Domestic violence awareness campaigns have attempted to combat the normalization of violence against women by emphasizing love's incompatibility with abuse. They have characterized love as the absence of pain and where such pain in love

⁴⁷ Patricia Hill Collins, *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment* (New York: Routledge, [2000] 2009), 164.

⁴⁸ Michael S. Harper, "Gayl Jones: An Interview," *The Massachusetts Review* 18, no. 4 (Winter 1977): 692-715, cited by Hill Collins in *Black Feminist Thought*, 165.

⁴⁹ Renita J. Weems, *Battered Love: Marriage, Sex and Violence in the Hebrew Prophets* (Minneapolis: Fortress Press, 1995), 3.

⁵⁰ Harper, "Gayl Jones," 700. Cited by Collins, *Black Feminist Thought*, 165.

⁵¹ Collins, 165.

exists they have tended to attribute a sense of love to false-consciousness. To say women in love are women in trouble, however, is not to normalize abuse or render any experience of love in abusive relationships as illusory. It is to describe romantic love in heteronormative relationships as a very real and central site of gendered power struggles.⁵² It encourages us to sit with the tension without rushing to resolve it and in our rush, failing to ascertain how the good is used in what womanist ethicist Emilie Townes refers to as the “cultural production of evil.”⁵³ For survivors of intimate partner violence, emotional investments are particularly complicated because it is the experience of love not just the illusion of it that abusive partners wield to such devastating ends.

The love and trouble tradition is also instructive for understanding the entrapment and incarceration of women as it acknowledges “the great love Black women feel for Black men” such that they “do not want to give up men—they want them to change.”⁵⁴ Any analysis of and prescriptions for the problem of women in love and trouble must consider the large majority of women who love men (including those who are victims of their abuse) who do not want to disavow them altogether and should not have to do so. They want men to be accountable to them and relationally responsible by changing their behavior. To say women in love are women in trouble is not to accept an inability of men to change but to demand a collective accounting for the harms male supremacy has wrought and the significant work required of men in women’s liberation—both relational and structural. According to Collins, a Black feminist analysis of the love and trouble tradition requires an examination of hegemonic gender ideologies and white

⁵² This is not to say that abuse is not normalized. As Collins, explains “hegemonic ideologies make everyday violence against Black women appear so routine, some women perceive neither themselves nor those around them as victims” (172). However, it more accurately allows for descriptions of the complexity of the experiences of victims and survivors that aligns more with how they experience these relationships.

⁵³ Emilie Townes, *Womanist Ethics and the Cultural Production of Evil* (New York: Palgrave Macmillan, 2006).

⁵⁴ Collins, 164-165. According to Collins, “until the watershed event of Anita Hill’s 1992 public testimony against Clarence Thomas, the blues tradition provided the most consistent and long-standing text of Black women who demanded that Black men ‘change their ways’” (167).

heteropatriarchal constructions of womanhood and manhood as they influence love between Black men and women.⁵⁵ To say women in love are women in trouble then is to begin with the presumption that women's troubles in love arise within a larger context of structural oppression as it shapes everyday interactions. It demands a structural analysis that recognizes, as Collins explains, "gender oppression structured through Eurocentric gender ideology and class oppression...has managed to annex the basic power of the erotic."⁵⁶ As a framework, the love and trouble tradition encourages us to approach clear-eyed both the good and the bad in women's love relationships, to consider the structural basis of their troubles in love, to demand the accountability not disposability of men, and to be cognizant of the ways in which the good is co-opted for systematic evil in order to find new ways to resist it.

Central Tasks and Chapter Outline

Drawing on Townes' concept of the "fantastic hegemonic imagination" and its role in the cultural production of evil, this dissertation examines the cultural, moral and theological imagination that leaves women in love and trouble and the logic that simultaneously buttresses their incarceration while naming prisons necessary for their protection. Engaging with the activism and scholarship of feminists of color and prison abolitionists as they connect interpersonal and state violence against women, this dissertation will flesh out further the relationship between what Angela Davis has called "domestic prison regimes" in the home or "private" sphere with punishment in the "public" sphere through the U.S. prison regime.⁵⁷ To do so, I draw on critical theorist Dylan Rodríguez's understanding of "the prison as a regime" to examine the ways in which the prison reflects modes of domination and control characteristic of

⁵⁵ Collins, 164-165.

⁵⁶ *Ibid.*, 173.

⁵⁷ Angela Davis, "Public Imprisonment and Private Violence: Reflections on the Hidden Punishment of Women," *New England Journal on Criminal and Civil Confinement* 24, no. 339 (1998), 350.

domestic or intimate partner violence and the ways in which the state legitimates “domestic prison regimes” through its own prison regime.⁵⁸ I explore the ways in which intimate partner coercive control is, as Davis notes, “integrally connected to the modes of punishment implemented by the state” and engage further Beth Richie’s concept of gender entrapment, in order to define the moral problem of the incarceration of women “behind a man” as one of carceral gender entrapment in which they are punished by the state for their strategies of surviving entrapment in personal life. Through an accounting of incarceration as a gendered mode of punishment, I seek to give form to a central argument of this dissertation as it advances prison abolition as a project of feminist liberationist ethics: that is, any movement to address incarceration that does not also address gender in theorizing carcerality and penalty will inhibit its elimination because the quintessential prisoner is, in fact, not male but female. In turning to the religious subjectivities of incarcerated women and Black feminist and womanist love-politics as moral praxis, I argue that love-politics is foundational to the abolitionist movement and should be made more explicit as such, particularly in developing further a vision of abolition in which *all* women (and ultimately, all people) are free from prisons in all their forms and in which love is an abolitionist practice of freedom.

The task of this dissertation is two-fold. First, this project is descriptive in that it seeks to name what has been naturalized, taken for granted and even obscured so that: (1) in the project of prison abolition we ensure that we abolish prisons in all their forms and remain vigilant to the ways they might be reconstituted, and (2) so that prison abolition becomes for feminist theological ethics an obvious and undeniably feminist project of urgent concern. The second task is a prescriptive one: in making plain that the liberation of women necessitates the abolition not

⁵⁸ Dylan Rodríguez, *Forced Passages: Imprisoned Radical Intellectuals and the U.S. Prison Regime* (Minneapolis, MN: University of Minnesota Press, 2006), 40. Davis, “Public Imprisonment,” 350.

proliferation of prisons, this dissertation insists that envisioning a world without prisons is a moral imperative for Christian social and feminist liberationist ethics. To achieve these tasks and develop more fully the arguments above, this project follows four movements: (1) laying the groundwork for analyzing the moral problem, (2) examining the context in which marginalized survivors exercise and are punished for their agency to define the moral problem, (3) analyzing the moral tradition that undergirds the incarceration of women, (4) considering feminist and womanist love-politics as moral praxis and carceral resistance, and (5) appealing for the further cultivation of a Christian moral imagination that is both feminist and abolitionist.

I begin by laying the foundation in chapter 1 for a definition and analysis of the moral problem of the incarceration of women “behind a man” by outlining the ways in which women are held criminally responsible for the actions of men, their punishability expanded through the criminalization of their survival strategies and laws that target their reproductive and parenting capacities. I then address dominant presumptions that obscure a feminist and abolitionist definition of the moral problem by individualizing and pathologizing women’s troubles in love and leaving unquestioned a reliance on prisons as the solution to gender violence.

In chapter 2, I situate women’s troubles in love and with the law in the context of their struggle to survive in order to offer a structural definition and critique of the problem as one that limits and smothers agency and personhood. In so doing, I define the problem of the incarceration of women “behind a man” as carceral gender entrapment and compare the exercise of coercive control by intimate partners to that of the state through the U.S. prison regime, to demonstrate further the ways in which misogyny is a carceral logic.

Chapter 3 moves from the contemporary moral context of women’s incarceration, to a genealogy of gendered punishment in the U.S. and the centrality of the Christian mythology of

“the fall” that has profoundly shaped misogyny as a carceral logic, undergirding the incarceration of women, contributing to woman as archetypal prisoner. I explore how the interpretation of Eve as the origin of sin and responsible for the fall of Adam has given rise to constructions of hyper-culpable womanhood and motherhood.

Chapter 4 interrogates the ways in which domination and control disguises itself as a good for women through the auspices of love. It turns to religion and feminist and womanist theological ethics as a resource for carceral resistance, particularly as they challenge the ontological insecurity women face in love. I engage Black feminist and womanist love-politics in which self-love is a project of self-making to argue for love-politics as a strategy for mitigating inequality in love and for building collective power to transform the conditions that lead to such inequality and carceral gender entrapment.

I conclude with a look at the role of moral imagination in social change and the prison abolition movement as a grassroots movement that attempts to render possible what has been deemed impossible within our current political imagination—a world without prisons. This chapter explores how Christian, feminist and abolitionist moral imaginations might converge in facilitating the building of feminist and abolitionist futures through the creation of what Jennifer Nash refers to as affective, nonidentitarian political communities organized around a radical ethic of care.

This dissertation is my attempt to speak of strangulation, of the unspeakable indignities and humiliations patterned to choke off the lives and speech of women. There is no shortage of ways that the lives of marginalized people are threatened with asphyxiation, whether in the stranglehold of a loved one or the state. “I Can’t Breathe” became a rallying cry in nationwide protests lead by the Black Lives Matter movement after the deaths of Eric Garner (2014) and

George Floyd (2020) by police chokeholds. Andrea Circle Bear, a Native incarcerated woman, was the first female prisoner in federal prison reported to die in the pandemic from COVID-19. Notably, the virus attacks the respiratory system and in severe cases leads to pneumonia that causes death by asphyxiation. A part of an incredibly vulnerable population where there is no physical distancing, she contracted the virus while pregnant and in prison and gave birth on a ventilator, dying three weeks later.⁵⁹ While the breadth of such suffering as a result of injustice can be overwhelming, an abolitionist imagination rooted in love-politics, opens up possibilities for building political communities not just through affiliation based on an always tenuous sense of a shared wound but on a shared vision and feelings of love. By looking at the ways in which love has been and continues to be tied to gendered punishment, this project seeks to further feminist ethical discourse that is accountable to those who bear the brunt of systems that suffocate in a variety of ways and is rooted in a love-politics that thoroughly uncouples love and punishment in order to participate in imagining and refashioning ourselves into a world in which women and all marginalized peoples are free from prisons in all their forms.

⁵⁹ Nicholas Bogel-Burroughs and Vanessa Swales, "Prisoner with Coronavirus Dies After Giving Birth While on Ventilator," *The New York Times*, April 29, 2020, <https://www.nytimes.com/2020/04/29/us/coronavirus-inmate-death-andrea-circle-bear.html>.

CHAPTER 1

‘In love and trouble’: The Moral Problem of the Entrapment and Incarceration of Women

They say everything can be replaced
They say every distance is not near
So I remember every face
Of every man who put me here

I see my light come shinin’
From the west down to the east
Any day now, any day now
I shall be released...

—Nina Simone, “I Shall Be Released” (1969)⁶⁰

Ninety percent of us are here because of a relationship with a man. Somewhere in the story, there’s always a man.

—Ramona Brant, President Barack Obama clemency recipient (2015)⁶¹

Introduction

In its depiction of release from sin as well as release from prison, “I Shall Be Released,” originally written and recorded by Bob Dylan (1968), takes on additional meaning when sung by Nina Simone on her album *To Love Somebody*. The shift in subject from Dylan, a white man, to Simone, a Black woman, invokes a more expansive and historical sense of captivity and struggle in the Jim Crow South. Married at the time to a former New York City police detective who abused her, Simone also evokes the “love and trouble tradition.”⁶² That is to say, when Simone

⁶⁰ Nina Simone, “I Shall Be Released,” Track 6 on *To Love Somebody*, RCA, 1969, MP3.

⁶¹ Casey Tolan, “How a First-Time Drug Charge became a Life Sentence for this Mother of Two,” *Fusion*, December 10, 2015, <https://fusion.net/how-a-first-time-drug-charge-became-a-life-sentence-for-1793853465>.

⁶² Simone said of her relationship with Andrew Stroud who was also her one-time manager: “He told me that he had wanted to meet for a long time. And he had come for me. I fell in love with him. Then later, he scared me to death. He was so, you know...He knew what he wanted and he just took over.” *What Happened, Miss Simone?* Directed by Liz Garbus (2015; Moxie Firecracker Films, Netflix and Radical Media), <https://www.netflix.com/title/70308063>. While there is no national data on police officer involved domestic violence, the most recent study (2003) leads researchers to believe that it is “at least as prevalent among law enforcement as it is in the civilian population.” Sarah Childress, “A Systemwide Failure,” *PBS*, November 26, 2013, <http://www.pbs.org/wgbh/pages/frontline/criminal-justice/death-in-st-augustine/a-systemwide-failure/>. However, older studies conducted in the 1990s and earlier reported higher rates of domestic violence among police officer families than the general population. According to the National Center for Women and Policing, “two studies have

becomes the primary subject, we also hear through the lyrics the story of a woman who is incarcerated “behind a man” and for whom release is also liberation from the trouble that love brings.

More than fifty years later, as the story of Ramona Brant attests, love as a site of trouble, discipline and punishment remains a perennial problem for women in relationships with men in general, and for Black women in particular. Brant, a Black mother of two, served twenty-one years of a life sentence for a first time non-violent drug conspiracy charge for her abusive boyfriend’s drug dealings.⁶³ What might have been the love of a lifetime became for her a life

found *at least 40 percent* of police officer families experience domestic violence, in contrast to 10 percent of families in the general population. A third study of older and more experienced officers found a rate of 24 percent, indicating that domestic violence is two to four times more common among police families than American families.” Conor Friedersdorf, “Police Have a Much Bigger Domestic-Abuse Problem Than the NFL Does,” *The Atlantic*, Sept. 19, 2014, http://www.theatlantic.com/national/archive/2014/09-police-officers-who-hit-their-wives-or-girlfriends/380329/?single_page=true. In addition, department responses to officers who batter have been unserious. An investigation in 2013 by *The New York Times* found that “in many departments, an officer will automatically be fired for a positive marijuana test, but can stay on the job after abusing a spouse.” Walt Bodanich and Glenn Silber, “Two Gunshots on a Summer Night: A Deputy’s Pistol, a Dead Girlfriend, a Flawed Inquiry,” *The New York Times*, November 23, 2013, <http://www.nytimes.com/projects/2013/two-gunshots/?hp>. Such a response however, is unsurprising because domestic abuse is consistent in many ways with policing. As Leigh Goodmark notes, “given the attitudes and beliefs of those who become police officers” and the “militarized hypermasculinity” of policing,” it is not surprising “the high levels of intimate partner violence among police officers.” “Officer-Involved Intimate Partner Violence,” *The Politicization of Safety: Critical Perspectives on Domestic Violence Responses*, Edited by Jane K. Stoeber, (New York: New York University Press, 2019), 235. According to journalist Rachel Aviv, “It should not be surprising that domestic abuse appears to predict excessive use of force... The Citizens Police Data Project, in Chicago... found that officers accused of domestic abuse received fifty per cent more complaints than their colleagues for using excessive force.” “What if Your Abusive Husband is a Cop?” *The New Yorker*, September 30 2019, <https://www.newyorker.com/magazine/2019/10/07/what-if-your-abusive-husband-is-a-cop>. Additionally concerning, unlike the average batterer, officers who batter are trained in policing tactics and have access to technologies for policing that can also be used to exercise enhanced coercive control against an intimate partner (e.g. electronic stalking, surveillance, interrogation). Techniques of coercive interrogations reflect my own experience of being subjected to unrelenting questioning for concentrated periods of time that would stem from an accusation. Such interrogations were experienced as epistemic violence that made me fundamentally question my ability to trust what I know and led to feeling hopelessly trapped. According to Christopher Zoukis, modern police interrogation techniques rely on both minimization (offering assurances of leniency and better treatment) and maximization tactics (“making an accusation, interrupting denials, overriding objections, and citing evidence, real or manufactured, in order to render a suspect hopeless”). These psychologically coercive techniques produce false confessions. Christopher Zoukis, “From Abuse of the Body to Abuse of the Mind: Police Use Psychologically Coercive Interrogation Techniques to Produce False Confessions,” *Criminal Legal News*, September 18, 2018, <https://www.criminallegalnews.org/news/2018/sep/18/abuse-body-abuse-mind-police-use-psychologically-coercive-interrogation-techniques-produce-false-confessions/>.

⁶³ Tolan, “How a First-Time Drug Charge.” In 2015, President Barack Obama commuted Ramona’s life sentence and she left prison in January 2016.

sentence.⁶⁴ She tried several times to leave the relationship and she and her family were threatened with and subjected to physical violence. In the end, according to Brant, “When Donald [her ex-boyfriend] finally got caught, they offered him a plea deal so I wouldn’t have to go to jail. But he refused it. He told my cousin: ‘If I can’t have her, nobody will.’ They arrested me at the courthouse on the same day Donald refused his deal.”⁶⁵ In other words, if he couldn’t imprison her, he wanted the state to—and the state readily obliged.⁶⁶

Brant’s story is reflective of the stories of many women in the U.S. who have experienced both entrapment in their personal life and are or have been incarcerated “behind a man” as well as countless more incarcerated and formerly incarcerated women and girls who are survivors of misogynist violence in their relationships, homes, and communities. And yet, the incarceration of women has tended to remain largely unexamined in Christian social and feminist theological ethics. This chapter sets out incarceration as an issue of urgent concern for feminist liberationist ethics by outlining the incarceration of women “behind a man,” largely attributable to the criminalization of survivors of gender violence through a carceral response to domestic

⁶⁴ Like Stroud pursued Simone, Brant’s ex-boyfriend also sought after her. According to Brant, “he pursued me relentlessly. He’d call me every day....He wooed my whole family.” Brandon Stanton, “‘I was just starting out in life. I wasn’t used to all that attention,’” *Humans of New York*, February 2016, <http://www.humansofnewyork.com/tagged/inmate-stories#18>.

⁶⁵ Stanton, “‘I was just.’” This statement made by Donald is one that often comes before instances of femicide. As sociologist Evan Stark explains, “the ultimate expression of property rights is the right of disposal” (208). In Stark, *Coercive Control: How Men Entrap Women in Personal Life* (New York: Oxford University Press, 2007).

⁶⁶ To be clear, the state alone had the power to choose whether to bring charges against Brant. But in refusing the plea deal, Donald did not just act in his own legal interest; he used it as an opportunity to continue to exercise power and control over Brant, even if largely symbolically. In this sense, the state colluded in her abuse, giving her abuser one last opportunity to exert coercive control over her. Scholar-activists Alisa Bierria and Colby Lenz highlight judicial collusion with abusive partners in their structural critique of “failure to protect” prosecutions “which punish survivors for ‘failing to protect’ their children from being exposed to domestic violence or ‘failing’ to prevent their batterer’s abuse of their children” (91). In Bierria and Lenz, “Battering Court Syndrome: A Structural Critique of ‘Failure to Protect.’” *The Politicization of Safety: Critical Perspectives on Domestic Violence Responses*, ed. Jane K. Stoeber (New York: New York University Press, 2019), 91-118. Tragically, Ramona Brant died almost two years after leaving prison. Before her death, Ramona had joined The National Council for Incarcerated and Formerly Incarcerated Women and Girls and had been traveling across the country advocating for women still in prison. Starlene Patterson, “Remembering Our Sister Ramona Brant,” *The #FreeHer Report: The Newsletter of the National Council for Incarcerated and Formerly Incarcerated Women and Girls*, no. 2 (June 2018).

and sexual violence, the war on drugs, the expansion of culpability through accountability laws, and the criminalization of reproductive and parenting capacities through laws punishing pregnancy, abortion, and motherhood. Following this overview, I then offer a set of terms for guiding a feminist abolitionist approach to defining more fully the problem of women in love and trouble with the law that considers emotional investments and relational interactions as they are shaped by political structures and that troubles prisons as a normalized response to intimate-partner violence.

The Incarceration of Women ‘Behind a Man’ in a Prison Nation

The incarceration of women “behind a man” reflects in large part the criminalization of survivors of gender violence. While not every woman who is charged alongside a man has been abused or coerced by him, the incarceration of women in relationship to the men in their life is indicative of women’s continued inequality in love and reflects a criminal punishment system that expands the culpability of women based on their love relationships with men. Both a political and symbolic process that leads to the incarceration of women “behind a man,” criminalization occurs through the legislating of crimes and the enforcement of laws as well as the proliferation of controlling images or stereotypes that render marginalized groups “immoral,” “criminal,” and “hyper-culpable.” While legislators write crime into law, police and prosecutors exercise a substantial amount of discretion and power in criminalizing through enforcement, deciding what illegal activity to prioritize, what areas to police, and who to focus their resources on prosecuting. While policing and prisons are distinctive institutions they overlap as a part of the larger criminal punishment system with policing as central to criminalizing people as prisons are to punishing them.

The incarceration of women “behind a man” is tied to white heteropatriarchal constructions of hyper-culpable womanhood, a conception of womanhood that holds women responsible for the transgressions of men, including the dominance exerted and violence enacted by men against them. Hyper-culpable womanhood has its origins in Christian moral and theological tradition and contributes to the blaming and pathologizing of women with troubles in love by constructing women as overly responsible, especially for the sins of men, and perpetually in need of surveillance, discipline and punishment, Black women especially so.⁶⁷ I draw from the work of Alisa Bierria and Colby Lentz in which they identify hyper-culpable motherhood as a core construct in the legal theory of “failure to protect” to name hyper-culpable womanhood as its foundation and prerequisite.

Survived and Punished, a national coalition organizing against the criminalization of survivors of domestic and sexual violence offers an analysis of the impact of criminalizing gender violence on marginalized survivors, explaining that such an approach creates a division between “good victims” who cooperate with the criminal legal system to punish their perpetrators and “‘non-victim’ criminals” who are already “criminalized for being Black, undocumented, poor, transgender, queer, disabled, women or girls of color, in the sex industry,” substance-using, or formerly incarcerated and convicted, and therefore not recognized as victims.⁶⁸ Many women like Ramona Brant, are survivors of abusive partners who coerced them into illegal activity and are therefore not considered “good victims” but “non-victim criminals” to be punished. In interviews with incarcerated Black women survivors, Beth Richie found that most of them reported engaging in illegal activities as a result of coercion or in response to

⁶⁷ For hyper-culpable womanhood, to be overly responsible is to only ever be blamed for the harmful behavior and failures to men, not credited for their successes, which are largely attributed to them alone.

⁶⁸ “S&P Analysis and Vision,” Survived and Punished, 2016, <https://survivedandpunished.org/analysis/>.

abuse.⁶⁹ Survivors who are already criminalized are not only punished for the violence enacted against them but are made more vulnerable through criminalization to further violence in their relationships, communities, and by representatives of the state and its institutions. Richie explains, “The more stigmatized their social position, the easier it is to victimize them.”⁷⁰

The experiences of the Oklahoma City 13, victims of 27-year-old police officer Daniel Holtzclaw, illustrate the ways in which Black women from marginalized communities are made vulnerable to gender violence through criminalization. In 2014 Holtzclaw was arrested and charged with 32 sex crimes against at least 13 women between 34-58 years of age.⁷¹ Policing the streets of one of the state’s poorest neighborhoods, Holtzclaw preyed on Black women whose warrant checks turned up criminal histories of drug use and sex work. His assaults escalated from groping to rape and he returned to and re-victimized some of the same women. He used threats of jail to illicit compliance. According to one victim’s statement to police, he stopped her on the street and found a crack pipe in her purse, making her destroy it by smashing it on the ground. He then drove her home and she says that while she didn’t invite him in she didn’t refuse him entry because she was on probation and afraid of going to jail. Holtzclaw entered her house where before sexually assaulting her, he told her: “This is better than county.”⁷² The Holtzclaw family used the same vulnerabilities that Holtzclaw targeted to discredit his victims in a statement, challenging the witness and officer testimonies by characterizing them as the “solicited testimony by the police department of felons, prostitutes and others who would have

⁶⁹ Beth E. Richie, *Compelled to Crime: The Gender Entrapment of Battered Black Women* (New York: Routledge, 1996). Another study found that women were forced to engage in shoplifting, check fraud, robbery, homicide, and sex work. Dana D. DeHart, “Pathways to Prison: Impact of Victimization on the Lives of Incarcerated Women,” The Center for Child & Family Studies, College of Social Work, University of South Carolina, 2004.

⁷⁰ Richie, *Arrested Justice*, 15.

⁷¹ Lisa Monahan, “Prosecutors File Six Additional Felony Counts Against OKC Officer,” *News 9*, November 4, 2014, <http://www.news9.com/story/27273283/prosecutors-file-six-additional-felony-counts-against-okc-officer>.

⁷² Adam Kemp and Graham Lee Brewer, “Hunted by Night: Oklahoma City Police Officer Accused of Series of Sexual Assaults,” *The Oklahoman*, September 7 2014, <http://newsok.com/hunted-by-night-oklahoma-city-police-officer-accused-of-series-of-sexual-assaults/article/5339632>.

personal motives beyond the basic truth to fabricate their stories.”⁷³ The prosecution acknowledged the impact of the particular vulnerabilities these women faced, arguing that Holtzclaw was caught because he made a mistake when he pulled over and sexually assaulted a 57-year-old, middle-class grandmother without a conviction history who was not afraid to call the police.⁷⁴ It is not coincidental that a police officer in the capital of Oklahoma, the state that holds the distinction of incarcerating more women per capita than any other at almost twice the national average, patrolled the streets targeting women already in the system.⁷⁵ Rather than providing victims refuge and protection, the simultaneous build-up of policing and prisons has rendered women of color from marginalized communities even more vulnerable to intimate, community and state misogynist violence.

For Black, poor and other marginalized victims, the criminalization of domestic and sexual violence has only expanded the ways in which they might be punished. In the pursuit of convictions, prosecutors have had victims jailed to force them to testify and have fought laws advocated for by survivor advocates designed to end the practice.⁷⁶ Mandatory arrest policies

⁷³ Jessica Testa, “How Police Caught the Cop who Allegedly Sexually Abused Black Women,” *BuzzFeed*, September 5, 2014, <https://www.buzzfeednews.com/article/jtes/daniel-holtzclaw-alleged-sexual-assault-oklahoma-city>.

⁷⁴ Holtzclaw was convicted of 18 of the 32 charges related to 8 of the 13 women and was sentenced to 263 years in prison. Sarah Larimer, “Disgraced Ex-Cop Daniel Holtzclaw Sentenced to 263 Years for On-Duty Rapes, Sexual Assaults,” *The Washington Post*, January 22, 2016, <https://www.washingtonpost.com/news/post-nation/wp/2016/01/21/disgraced-ex-officer-daniel-holtzclaw-to-be-sentenced-after-sex-crimes-conviction/>.

⁷⁵ In 2011, nationally, about 65 out of every 100,000 women were in prison. In Oklahoma, about 121 out of every 100,000 women were in prison. “Incarcerated Women,” Factsheet, The Sentencing Project, last revised December 2012, http://www.sentencingproject.org/doc/publications/cc_Incarcerated_Women_Factsheet_Sept24sp.pdf.

⁷⁶ In one such instance, Louisiana DA Leon Cannizzaro jailed a rape victim explaining that “If I have to put a victim of a crime in jail for eight days...in order to keep the rapist off the street, for a period of years, and to prevent him from raping or harming someone else, I’m going to do that.” Sarah K. Burris, “Rape Survivors Will Go to Jail if They Refuse to Testify in Louisiana,” *The Independent*, April 21, 2017, <https://www.independent.co.uk/news/world/americas/rape-victims-survivors-face-jail-if-dont-testify-court-louisiana-attorney-leon-cannizzaro-a7694061.html>. Samantha Michaels, “Should Rape Victims Have to Spend Time in Jail for Not Testifying?,” *Mother Jones*, April 19 2019, <https://www.motherjones.com/crime-justice/2019/04/should-rape-victims-have-to-spend-time-in-jail-for-not-testifying/>. Texas passed a law named for a jailed rape victim that did not outlaw the jailing of victims to force them to testify but requires they be appointed a defense attorney and given a hearing before a judge signs a court order to jail them. Meagan Flynn, “Senators Unanimously Approve ‘Jenny’s Law,’ Named for Jailed Rape Victim,” *Houston Press*, April 6, 2017, <https://www.houstonpress.com/news/jennys-law>.

that originated from the push for police intervention in domestic violence calls also led to increased arrest rates for women, with women of color and women in poverty disproportionately arrested, including through the practice of dual arrests (in which both victim and perpetrator are arrested for violence regardless of whether one was acting in self-defense) or as a result of a retaliatory complaint made by their abusive partner.⁷⁷ This practice has become less prevalent across the country after the passage of laws that required police to identify a primary aggressor, although it still occurs.⁷⁸

The War on Drugs

Survivor criminalization is perhaps most prevalent through the war on drugs, which has had the greatest impact on women, sharply increasing their rate of incarceration to an extent that it did not for men and it did so at drastically disproportionate rates for Black women compared to white women, leading feminist criminologists to characterize the war on drugs as a war on Black women.⁷⁹ As evident in the cases of the OKC13, the war on drugs has facilitated sexualized police harassment and violence, which is the second most reported complaint of police

law-named-for-jailed-rape-victim-passes-through-senate-unanimously-9334761. "Prosecutor Again Jails Domestic Violence Victim Despite Previous Warnings," *WJHL News Channel 11*, May 24, 2018, <https://www.wjhl.com/news/local/prosecutor-again-jails-domestic-violence-victim-despite-previous-warnings/>.

⁷⁷ A New York City study found that 66% of mandatory arrests of survivors were Black or Latina and 43% were living in poverty. M. Haviland, et al., "The Family Protection and Domestic Violence Intervention Act of 1995: Examining the Effects of Mandatory Arrest in New York City," Family Violence Project, Urban Justice Center, 2001, cited in "Fact Sheet on Domestic Violence and the Criminalization of Survival," Free Marissa Now, <http://www.freemariassanow.org/fact-sheet-on-domestic-violence--criminalization.html>.

⁷⁸ However, a *ProPublica* investigation in 2017 found that in Connecticut the dual arrests rate is nearly ten times the national average. Sarah Smith, "In Connecticut, Calling for Help Carries Risks for Victims of Domestic Violence," *ProPublica*, February 16, 2017, <https://www.propublica.org/article/in-connecticut-calling-for-help-carries-risks-victims-of-domestic-violence>.

⁷⁹ Andrea Ritchie, *Invisible No More: Police Violence Against Women of Color* (Boston, MA: Beacon Press, 2017), 47, referencing the following: Federal Bureau of Investigation, *Crime Statistics in the United States—2004* (Washington, DC: FBI, 2015), <https://ucr.fbi.gov/crime-in-the-u.s/2014/crime-in-the-u.s.-2014>. The FBI reports that between 2010-2014, women's drug arrests increased while men's decreased. From 1986-1995 women's drug arrests increased by 91.1 % while men's increased by 53.8%. Marc Mauer, "The Changing Racial Dynamic of Women's Incarceration," The Sentencing Project, February 2013, <https://www.sentencingproject.org/publications/the-changing-racial-dynamics-of-womens-incarceration/>. Black women were incarcerated 6 times the rate of white women in 2000. They are now incarcerated at 2 times the rate of white women. Barbara Bloom and Meda Chesney-Lind, "Women in Prison: Vengeful Equity," *It's a Crime: Women and Justice*, 4th ed., ed. Roslyn Muraskin (Upper Saddle River, NJ: Pearson Prentice Hall, 2007), 544.

misconduct behind excessive force.⁸⁰ Andrea Ritchie attributes the racial disparities in drug arrests and convictions to law enforcement discretion and encounters with women of color “informed by perceptions of their bodies as vessels for drugs ingested, swallowed, or concealed and of women of color as ‘out of control’ unfit mothers, community members dependent on drugs and men, or coldhearted ‘gangsta bitches’ prone to inhuman violence.”⁸¹ Additionally, the criminalization of mental illness and substance use is often overlooked as it facilitates the criminalization of survivors, whether in cases where substance use is a coping mechanism for survival of past or ongoing abuse, where substance use coercion is used as a tactic of abuse, or where a survivor’s substance use is used by abusers to threaten and prosecutors to discredit and blame them. Research shows that people who have experienced intimate partner violence are more likely to become dependent on substances compared to those who have not.⁸² Survivors use substances to cope with health and mental health consequences associated with experiencing abuse, including trauma and depression with a study finding an association between the number of assaults a woman experienced and the acuteness of her substance use.⁸³ Research shows that women are usually introduced to substance use through “a significant relationship such as a boyfriend, partner, or spouse” and those who use substances are more likely than men to have a partner who also uses.⁸⁴ Substance use coercion is a tactic of abuse that some abusive partners

⁸⁰ National Police Misconduct Reporting Project, “2010 Annual Report,” Cato Institute, http://www.policemisconduct.net/statistics/2010-annual-report/#_Sexual_Misconduct R. See also Matt Sedensky, “Hundreds of Officers Lose Licenses Over Sex Misconduct,” *Associated Press*, October 31, 2015, <https://apnews.com/article/fd1d4d05e561462a85abe50e7eae4ec>.

⁸¹ Ritchie, *Invisible No More*, 51-52.

⁸² “Understanding Research on Intimate Partner Violence and Substance Use,” Fact Sheet, National Center on Domestic Violence, Trauma & Mental Health, 2016, http://www.nationalcenterdvtraumamh.org/wp-content/uploads/2016/09/NCDVTMH_IPV_SU_FactSheet_September2016.pdf.

⁸³ “Caught in the Net: The Impact of Drug Policies on Women and Families,” ACLU, Brennan Center & Break the Chains, April 2005, https://www.aclu.org/sites/default/files/images/asset_upload_file431_23513.pdf, citing the 1989 National Women’s Study.

⁸⁴ Center for Substance Abuse Treatment, *Substance Abuse Treatment: Addressing the Specific Needs of Women*, Treatment Improvement Protocol (TIP) Series 51. HHS Publication No. (SMA)-09-4426 (Rockville, MD: Substance Abuse and Mental Health Services Administration (US), 2009).

use to exercise power and control over their victim. They might do so by forcing a survivor to use substances, controlling their access and the amount they use, as well as forcing them into painful withdrawal. Some of the ways in which abusive partners engage in substance use coercion, according to researchers Carole Warshaw and Erin Tinnon, include using “a survivor’s substance use to undermine and discredit them with sources of protection and support, leveraging a survivor’s substance use to manipulate police or influence child custody decisions, deliberately sabotaging a survivor’s recovery efforts or access to treatment, and/or engaging substance use stigma to make a survivor think that no one will believe them.”⁸⁵ The fear elicited by these threats is justified in that substance-using survivors have been arrested when they call police for help and police find illicit substances present.

The use of conspiracy statutes has also contributed to the incarceration of women through the war on drugs. Through these statutes, women with intimate partners involved in the drug trade are charged and convicted, even if they have little to no knowledge or participation in selling drugs. Conspiracy laws give prosecutors broad discretion to charge people and women have often been the recipients of harsh sentences through mandatory minimums they received for their male intimate partner’s activities.⁸⁶ According to The Sentencing Project’s Marc Mauer, while the legal definition of conspirator refers to someone that knows about an illegal activity and agrees to take part in it, it is interpreted broadly and federal prosecutors have won convictions on the argument that women *should* have known about their intimate partner’s activities.⁸⁷ This presumption of intimacy as indicative of culpability is a common characteristic

⁸⁵ Carole Warshaw and Erin Tinnon, “Coercion Related to Mental Health and Substance Use in the Context of Intimate Partner Violence: A Toolkit for Screening, Assessment, and Brief Counseling in Primary Care and Behavioral Health Setting,” National Center on Domestic Violence, Trauma & Mental Health, 2018, http://www.nationalcenterdvtraumamh.org/wp-content/uploads/2018/03/NCDVTMH_MHSUCoercionToolkit2018.pdf.

⁸⁶ Mauer, “The Changing Racial Dynamic of Women’s Incarceration.”

⁸⁷ David France, “You Be the Jury: Does This Woman Deserve to Be Locked Up for 24 Years?” *Glamour*, 1999.

of cases where women are incarcerated “behind a man.” Conspiracy laws subject co-conspirators to the same mandatory sentence as the underlying crime. As a result, reporter Lauren Krisai explains, “using conspiracy statutes, the government doesn’t have to prove someone ever sold, trafficked, or even possessed in order to sentence them to prison as if they had.”⁸⁸ Whether women are unaware or aid their partner who sells drugs, they tend to lack insider information that would benefit them in negotiating shorter sentences and have received longer sentences than their intimate partner, creating what has been called “the girlfriend problem.”⁸⁹ Prosecutors can win a guilty verdict on the word of a co-conspirator in exchange for a more lenient sentence. Often women who do have information refuse to cooperate to protect their loved ones.⁹⁰ That loyalty, however, is not always returned, as one review of federal drug cases found that men were more likely than women to cooperate with prosecutors to their own benefit even if it put the women in their lives at risk.⁹¹

Self-Defense

The criminalization of survivors for self-defense is perhaps the form of survivor criminalization of which the general public is most aware. This awareness is in large part due to the “battered woman syndrome” defense introduced in the late 1970s by Lenore Walker that offered a psychological explanation for why women remain with an abusive partner and why they use violence in response to ongoing abuse. Nevertheless, it has not significantly helped survivors who kill in self-defense. Women are less likely than men to successfully claim self-defense in homicide cases. An analysis of homicide cases in which the defendant claimed self-

⁸⁸ Lauren Krisai, “How Conspiracy Laws Let Prosecutors Abuse Their Power,” *Reason*, April 29, 2016, <https://reason.com/2016/04/29/conspiracy-laws-ripe-for-abuse/>.

⁸⁹ Mauer, “The Changing Racial Dynamic of Women’s Incarceration.”

⁹⁰ *Ibid.*

⁹¹ “Caught in the Net,” 11, citing Joe Rigert, “Some Win Fight With Depression, Others Lose,” *Minneapolis Star Tribune*, December 15, 1997.

defense, found that men were ten percent more likely to have their killing of another man deemed a justifiable homicide without malicious or criminal intent than women who killed men.⁹² There remains no national data on the role of abuse in the lives of women who are incarcerated. However, two studies have shown that a majority of women incarcerated for killing an intimate partner or family member had been abused by them.⁹³ A study of incarcerated women at a Southeastern state prison found that almost half of the women reported they had been criminalized for responding in self-defense or retaliation for ongoing abuse.⁹⁴ In a literature review of research on women's use of violence with intimate partners, the authors found that women's use of violence is usually in response to their male partner's use of violence against them. They found that men were more likely to use violence with the intent to control, while women, in contrast, were more likely to use violence in self-defense, out of fear, and in defense of their children.⁹⁵ While battered women are generally criminalized for self-defense because they transgress hegemonic gender norms in their use of violence, Black women survivors must also contend with racist and criminalizing stereotypes through which law enforcement, prosecutors, courts and juries interpret their actions. Legal scholar Sharon Angella Allard points out that in contrast to the image of a victim of domestic violence as passive, fearful and submissive, Black women are viewed through stereotypes that deem them emasculating, angry,

⁹² "Caught in the Net."

⁹³ A study in California found the number to be 93% of women incarcerated for killing someone close to them while a New York study found it to be 67%. Victoria Law, "How Many Women Are in Prison for Defending Themselves Against Domestic Violence?" *Bitch Media*, September 16, 2014. <https://bitchmedia.org/post/women-in-prison-for-fighting-back-against-domestic-abuse-ray-rice>.

⁹⁴ Elizabeth Flock, "How Far Can Abused Women Go to Protect Themselves?" *The New Yorker*, January 12, 2020, <https://www.newyorker.com/magazine/2020/01/20/how-far-can-abused-women-go-to-protect-themselves>, citing DeHart, "Pathways to Prison," 2004.

⁹⁵ *Ibid.*, citing Suzanne C. Swan, et al. "A Review of Research on Women's Use of Violence with Male Intimate Partners," *Violence and Victims* 23, no. 3 (2008): 301-314.

aggressive, and immoral.⁹⁶ As a result, they are often not considered victims in need of protection but aggressors deserving of punishment.

Accountability Laws: Felony Murder and 'Failure to Protect'

Accountability laws, particularly felony murder and “failure to protect” statutes, most directly reflect how constructions of hyper-culpable womanhood influence the incarceration of women “behind a man.” When applied as legal theories, accountability laws enable a wider array of charges to be brought beyond the law itself. Bierria and Lentz explain that accountability laws like “failure to protect” drive “criminal prosecutions of survivors charged with child endangerment, abuse, and neglect; accomplice to murder charges using felony murder laws; and first and second-degree murder charges using ‘aiding and abetting’ or other accomplice laws.”⁹⁷ These laws expand who is criminally responsible and often do so through leveraging more serious charges to force plea bargains in order to obtain convictions and enhance sentencing. Bierria and Lentz refer to this “inflation of punishable people” as “culpability inflation.”⁹⁸

Felony murder enables prosecutors to charge someone with homicide if someone is killed during the commission of another felony. In other words, it expands the definition of homicide to include “causing the death of another” regardless of intent. It also enables prosecutors to broaden the scope of who can be charged with murder to include those who did not participate or had little involvement in the underlying felony. Accountability laws like felony murder disproportionately affect women and survivors. A recent survey from California reported that of

⁹⁶ In addition, survivors who are most likely to respond to an abusive partner with violence are those closed off from other resources and options and research shows that Black women are more likely to fight back than white women. Leigh Goodmark, “When is a Battered Woman not a Battered Woman? When She Fights Back,” *Yale Journal of Law & Feminism* 18, no. 1 (2008): 75-129.

⁹⁷ Bierria and Lentz, 97.

⁹⁸ *Ibid.*

all women serving life sentences for felony murder convictions, 72% of them *did not* commit the underlying homicide, meaning that they are serving life in prison for the actions of another.⁹⁹

Women also make up the majority of “failure to protect” prosecutions.¹⁰⁰ The legal theory of “failure to protect” holds parents, largely mothers, criminally responsible for child abuse or homicide for a perceived “failure to protect” their children from harm. “Failure to protect” is often applied as a legal theory to other charges and is often used to prosecute mother-survivors for the violence of their abusers against their children. These laws largely target mothers of color and poor mothers, holding them as or more criminally responsible for the actions of their abuser, as was the case in Tondalao Hall, a Black mother-survivor of three children in Oklahoma, charged for a “failure to protect” her children from her boyfriend’s abuse. Hall received a 30-year sentence for enabling child abuse while her abuser was released after 2 years.¹⁰¹ Bierria and Lentz explain that accountability laws inflate survivor culpability by either equating or transferring responsibility from abuser to survivor.¹⁰² “Failure to protect” assumes that mothers, who are also victims of abuse, have the ability to predict and protect their children from all harm and has at its foundation constructions of hyper-culpable motherhood.¹⁰³ Such prosecutions are less about successfully ensuring the safety of children and more about criminalizing those already vulnerable to being “constructed as blameworthy, violent, deviant,

⁹⁹ Jazmine Ulloa, “California Sets New Limits on Who Can be Charged with Felony Murder,” *Los Angeles Times*, September 30, 2018, <https://www.latimes.com/politics/la-pol-ca-felony-murder-signed-jerry-brown-20180930-story.html>.

¹⁰⁰ In a review of 108 published appellate cases, Linda C. Fentiman found that 87 of the defendants were mothers of the abused children, 11 were fathers, and 10 were married to or partners living with the abusive parent. Linda C. Fentiman, “Child Abuse by Omission: How American Law Holds Mothers Responsible for Their Partners’ Crimes,” *Truthout*, April 1, 2017, <https://truthout.org/articles/child-abuse-by-omission-how-american-law-holds-mothers-responsible-for-their-partners-crimes/>.

¹⁰¹ Supporters organized a clemency campaign with and on Hall’s behalf. Her sentence was commuted in 2019 by Oklahoma’s governor. She was freed after serving 15 years in prison. Aimee Ortiz, “Mother is Freed After 15 Years in Prison for Father’s Abuse,” *The New York Times*, November 8, 2019, <https://www.nytimes.com/2019/11/08/us/tondalao-hall-oklahoma-commutation.html>.

¹⁰² Bierria and Lentz, 97.

¹⁰³ *Ibid.*, 92.

criminal, unfit, illegitimate, or otherwise ‘failed mothers,’ and punishing them.¹⁰⁴ Constructions of hyper-culpable motherhood are also central to the prosecutions of women for their pregnancy outcomes and are more about a pregnant person’s identities and racist hegemonic notions of who should reproduce than concern about their actions.

Criminalizing Pregnancy, Abortion, and Motherhood

Although male intimate partners often contribute to a woman’s pregnancy, the criminalization of the reproductive and parenting capacities of women are not readily considered a means by which women are incarcerated “behind a man.” Paradoxically, it is in such cases of criminalizing pregnant women and denying their bodily autonomy that prosecutors and the courts treat them as autonomous from their male partners. At the same time, fetal homicide laws passed under the pretext of protecting pregnant women from violence, which most often occurs at the hands of an intimate partner, have granted personhood to fetuses in order to enhance the culpability and punishment of someone who harms a pregnant woman and fetus. Despite the fact that survivors are at increased risk of homicide during pregnancy and pregnant postpartum women are at greater risk of death by an intimate partner than non-pregnant women, there is no evidence that these laws protect pregnant people from violence.¹⁰⁵ They have, however, been used against pregnant women who have experienced pregnancy loss, attempted to self-induce an abortion, accidentally injured themselves, or were injured by another.¹⁰⁶ Marshae Jones, a Black pregnant woman in Alabama was indicted for manslaughter and faced up to 20 years in prison

¹⁰⁴ Bierria and Lentz, 95.

¹⁰⁵ SL Martin, et al., “Pregnancy-Associated Violent Deaths: The Role of Intimate Partner Violence,” *Trauma, Violence, & Abuse* 8, no. 2 (2007): 135-148. In Louisiana, homicide was a leading cause of death for pregnant women and girls and the risk of homicide was twice as high than for non-pregnant women and girls. Pooja K Mehta, “Homicide During Pregnancy and Postpartum Period in Louisiana, 2016-2017,” *JAMA Pediatrics* 174, no. 4 (April 2020): 393. See also, Lynn Paltrow and Julie Goldscheid, “Abortion Criminalization Laws Do Not Prevent Gender Violence” [open letter], June 25, 2019, https://mk0nationaladvoc87fj.kinstacdn.com/wp-content/uploads/2020/09/RHA-sign-on-letter-w_-signatures-2020-Final.pdf.

¹⁰⁶ Paltrow and Goldscheid, “Abortion Criminalization Laws Do Not Prevent Gender Violence.”

for a pregnancy loss as a result of being shot in the abdomen. The indictment said that she “intentionally caused the death of...unborn baby Jones by initiating a fight knowing she was five months pregnant.”¹⁰⁷ Police alleged that the shooter, a woman Jones was in a dispute with over the man involved in her pregnancy, shot Jones in self-defense. Prior to the indictment of Jones, the shooter was charged with murder and attempted murder, but those charges were later dismissed by a grand jury. As in “failure to protect” where culpability is inflated, the imputation of personhood on Jones’ unborn child was used to inflate her culpability for her pregnancy loss. The district attorney eventually dropped the charges against Jones after people locally and nationally protested the charges, saying, “there are no winners, only losers in this sad ordeal.”¹⁰⁸

The advancement of laws that grant personhood status to fertilized eggs, embryos, and fetuses and the prevailing racist ideology of motherhood have driven the criminalization of pregnancy, abortion, and motherhood, posing a risk to all with the capacity to become pregnant, but particularly for Black women and other marginalized pregnant people. Pregnant women have been prosecuted for child abuse, chemical endangerment, manslaughter, fetal assault, attempt to procure a miscarriage (a pre-*Roe* anti-abortion law), and other laws in which prosecuting pregnancy outcomes was not the legislative intent.¹⁰⁹ Undoubtedly, prosecuting pregnant people

¹⁰⁷ Carol Robinson, “‘It’s not fair’: Marshae Jones Faces 20 Years in Prison for Unborn Child’s Shooting Death,” *AL.com*, June 27, 2019, <https://www.al.com/news/2019/06/its-not-fair-marshae-jones-faces-20-years-in-prison-in-unborn-childs-shooting-death.html>.

¹⁰⁸ Carol Robinson, “Alabama Woman Loses Unborn Child After Being Shot, Gets Arrested; Shooter Goes Free,” *AL.com*, June 26, 2019, <https://www.al.com/news/birmingham/2019/06/woman-indicted-in-shooting-death-of-her-unborn-child-charges-against-shooter-dismissed.html>.

¹⁰⁹ In 2016, Anna Yocca, a woman in Tennessee was charged with attempted first-degree murder for allegedly attempting to self-induce an abortion using a coat hanger when she was about 24 weeks pregnant. After a year in jail she pled to “attempt to procure a miscarriage” for immediate release from jail. Liam Stack, “Woman Accused of Coat-Hanger Abortion Pleads Guilty to Felony,” *The New York Times*, January 11, 2017, <https://www.nytimes.com/2017/01/11/us/tennessee-abortion-crime.html>. See also Tennessee’s now defunct fetal assault law that state legislators passed in 2014, the first of its kind in the nation that amended the state’s fetal homicide law to include “prosecution of a woman for assault of a fetus based on her illegal use of narcotic drugs while pregnant and creating the affirmative defense that the woman completed an addiction recovery program.” “Tennessee Fetal Assault Law (SB1391),” Legislative Tracker, *Rewire*. <https://rewire.news/legislative-tracker/law/tennessee-pregnancy-criminalization-law-sb-1391/>.

for their pregnancy outcomes aids the criminalization of survivors of gender violence.

Reproductive coercion, the interference of someone in the reproductive decision-making of another with the purpose of exercising power and control in a relationship through behavior that hinders contraception use or interferes with pregnancy, is a tactic of control commonly engaged in by abusive male partners.¹¹⁰ It includes a range of coercive behaviors including birth control sabotage, pressuring or forcing someone into becoming pregnant, and controlling whether a pregnancy is continued or terminated through physical, economic, and emotional abuse.

Violence from an intimate partner is not an uncommon experience among women having an abortion.¹¹¹ For victims of intimate partner violence, the decision to terminate a pregnancy can be for them a survival strategy and means of resisting the abusive partner's long-term access to and control of them. A study of women seeking an abortion found that those who had abortions experienced a reduction in physical violence over time from the man involved in the pregnancy, unlike those who were denied abortions and carried the pregnancy to term.¹¹² The study also found that those who carried the pregnancy to term were more likely to have continued contact with the abusive man involved in the pregnancy.¹¹³ Survivors who use substances to self-medicate or experience substance use coercion also face prosecution for their substance use during pregnancy. Another study on intimate partner violence and pregnancy found that women who experienced intimate partner violence were more likely to use substances during pregnancy

¹¹⁰ Committee on Health Care for Underserved Women, "Reproductive and Sexual Coercion," Committee Opinion No. 554, *The American College of Obstetricians and Gynecologists*, 2013.

¹¹¹ A survey of women having an abortion found that 6-22% of them reported a recent experience of violence from an intimate partner. Sarah Roberts, et al, "Risk of Violence from the Man Involved in the Pregnancy After Receiving or Being Denied an Abortion," *BMC Medicine* 12, no. 144 (2014).

¹¹² Ibid.

¹¹³ Ibid.

and women who experienced multiple forms of violence—psychological aggression, physical assault, and sexual coercion were more likely to use both alcohol and illicit substances.¹¹⁴

The targeting of pregnant women who use substances is another way in which the war on drugs has been a war on Black women. Dorothy E. Roberts details how the crack epidemic in the 1980s as a “public health crisis that cuts across racial and economic lines was transformed into an example of *Black* mothers’ depravity that warranted harsh punishment.”¹¹⁵ Media proliferated images of the black crack baby and pregnant addict and prosecutors singled out Black pregnant crack-users, despite the fact that heavy alcohol use results in far greater harm to the fetus.¹¹⁶ Roberts contends that the prosecution of pregnant women for use of controlled substances is less about concern for illegal activity and the health and futures of unborn children than it is about criminalizing and punishing pregnancy and Black motherhood in particular.¹¹⁷ She explains, “It is important to recognize at the outset that the prosecutions are premised on a woman’s pregnancy and not on her illegal drug use alone. Prosecutors charge these defendants, not with drug use, but with child abuse or drug distribution through the umbilical cord—crimes that only *pregnant* drug users can commit.”¹¹⁸ Substance-using men and substance-using women who are not pregnant do not receive the same harsh penalties as pregnant women.¹¹⁹ Additionally, the legal theory behind such prosecutions is centered on harm to the fetus, not unlawful activity and

¹¹⁴ Sandra L. Martin, et al. “Substance Use Before and During Pregnancy: Links to Intimate Partner Violence, *The American Journal of Drug and Alcohol Abuse* 20, no. 3 (2003): 599-617.

¹¹⁵ Dorothy E. Roberts, *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty* (New York: Vintage Books, 1997), 159.

¹¹⁶ *Ibid.*, 177. A recent long-term study further debunked the misrepresentation of the harm caused by gestational cocaine exposure, found that poverty had a more harmful impact on child development. L. Betancourt, et al. “Adolescents with and without Gestational Cocaine Exposure: Longitudinal Analysis of Inhibitory Control, memory and Receptive Language,” *Neurotoxicol Teratol* 33 (Jan.-Feb. 2011): 36-46.

¹¹⁷ Roberts explains, “In addition to legitimizing fetal rights enforcement, prosecuting crack-addicted mothers shifts public attention from poverty, racism, and a deficient health care system, implying instead that poor infant health results from the depraved behavior of individual mothers. Poverty—not maternal drug use—is the major threat to the health of Black children in America” (178).

¹¹⁸ *Ibid.*, 180.

¹¹⁹ *Ibid.*

pregnant women have been prosecuted for legal behavior that the state alleged caused fetal harm.¹²⁰ Such laws discourage pregnant people from seeking drug treatment despite the lack of treatment options specifically for and available to them and they make abortion the primary option for avoiding criminal charges. Roberts explains, “Women who are punished for drug use during pregnancy, then, are penalized for choosing to have the baby rather than having an abortion. It is the choice of carrying a pregnancy to term that is being penalized. Looked at it this way, we can see that when the state convicts pregnant Black women for smoking crack it is punishing them for having babies.”¹²¹ The punishment of pregnant people for their pregnancy outcomes is state reproductive coercion. It is exercised largely through the inflation of culpability over something that is impossible for all pregnant people—guaranteeing healthy birth outcomes—and making clear that pregnant people are punished more for their identities than their actions. I further examine the ways in which the inflation of moral responsibility, based primarily on identity, contributes to the entrapment and incarceration of women in the chapter that follows. However, I turn first in the remainder of this one to address three dominant assumptions a feminist abolitionist approach must contend with in fully defining and analyzing the moral problem.

A Feminist Abolitionist Approach to Defining the Moral Problem

Moral problems are informed by and arise from our moral context, the situation from which we make choices. Moral context includes the moral norms and values conveyed by moral narratives, the stories we tell about our place and purpose in the world that speak to who we understand ourselves to be, what we consider to be “the good life,” and how we ought to live as a

¹²⁰ Roberts, 180.

¹²¹ Ibid., 181.

result.¹²² Whether sociocultural, economic, national, political, religious, or familial, moral narratives construct meaning, give definition to our world, and shape how we understand ourselves and how we relate to others in it.¹²³ Together, moral norms, values and narratives comprise whole ideologies or systems of belief. As with identities, individuals and communities are influenced by and often hold multiple and competing moral norms, values, and narratives at one time. Moral problems arise when suffering overwhelms our meaning-making capacity, when reality does not reflect our sense of how things ought to be, when our current practice is not in alignment with our values, and when norms and narratives make competing demands on us individually and collectively. What we consider to be a moral problem of social significance then, depends on how the problem is defined. And how the problem is defined is contingent on who is defining it, in service of what ideology, and whether that ideology is in service of or counter to cultural hegemony, what Italian theorist Antonio Gramsci termed the intellectual, moral, and political dominance of one social group over others through the deployment of language and ideas that legitimate the ruling group's control.¹²⁴ As feminist ethicist Carol S. Robb explains, given that dominant ideologies render "natural" a fabricated social hierarchy, unless otherwise defined, "the terms of an ethical problem will tend to reflect assumptions which

¹²² My turn to the language of narrative assumes Marsha Rossiter's premise in "Understanding Adult Development as Narrative," that "meaning is constructed, understood, and expressed in story form."¹²² Marsha Rossiter, "Understanding Adult Development as Narrative," *An Update on Adult Development Theory: New Ways of Thinking About the Life Course*, no. 84, ed. M. Carolyn Clark and Rosemary S. Caffarella (San Francisco: Jossey-Bass Publishers, 1999), 78.

¹²³ Narratives also play a critical role in the criminal legal system. As Leigh Goodmark explains, "narratives are central to the development of the law and the operation of the legal system. Stories are passed from actor to actor, shaping the way that a particular event is understood within a legal context and influencing the legal system's reaction to that event or person....These stories are then told to judges who retell them in findings of fact, conclusions of law, and orders" (81). Goodmark, "When Is a Battered Woman Not a Battered Woman?"

¹²⁴ According to Gramsci, "the supremacy of a social group manifests itself in two ways, as 'domination' and as 'intellectual and moral leadership'...a social group must "already exercise 'leadership' before winning governmental power (this indeed is one of the principal conditions for the winning of such power); it subsequently becomes dominant when it exercises power, but even if it holds it firmly in its grasp, it must continue to 'lead' as well." Antonio Gramsci, "Notes on Italian History," *Selections from, the Prison Notebooks*, ed. and trans. Quintin Hoare and Geoffrey Nowell Smith (New York: International Publishers, 1971), 57-58.

support a dominant ideology. For this reason, the act of defining a problem is a political act; it is an exercise of power to have accepted one's terms of a 'problem.'"¹²⁵ A feminist and abolitionist politics seeks to unmask cultural hegemony and its attendant ideologies rooted in carceral logics, that is, logics of domination justified and enacted through discipline and punishment, that serve to normalize social hierarchies based on categories of race, class, gender, sexuality, and disability. Therefore, a definition of the problem informed by feminist and abolitionist politics must lay bare the assumptions of dominant ideologies that buttress the incarceration and entrapment of women starting, I propose, by setting terms that counter the following three dominant assumptions that: (1) women's troubles in love are their private responsibility; (2) abuse is personal pathology; and (3) prison is the solution to the entrapment of women in personal life.

Term 1: Women's troubles in love are a problem of political significance.

In her study of the stories of incarcerated battered Black women in the mid-1990s, Richie observed that "increasingly, women's problems in contemporary society are blamed on individual character flaws: women are considered masochistic, with self-defeating personality disorders, confused in their decision-making, unable to solve serious problems."¹²⁶ Women continue to be blamed and pathologized for their problems in contemporary life, especially for their troubles in love with men. The individualization and personalization of women's troubles in love has its foundations, I contend, in what sociologist Eva Illouz refers to as the rationalization of love in modernity and in white heteropatriarchal constructions of hyper-culpable womanhood. Hegemonic gender norms have rendered women responsible for maintaining relationships and bearing the load of domestic and emotional labor—with biology as justification—extending

¹²⁵ Carol S. Robb, "A Framework for Feminist Ethics," *Feminist Theological Ethics: A Reader*, ed. Lois K. Daly (Louisville: Westminster John Knox Press, 1994), 15.

¹²⁶ Richie, *Compelled to Crime*, 2.

women's sphere of responsibility beyond themselves. When divorced from biological determinism and hyper-culpable womanhood, love, relational responsibility, and emotional responsiveness are moral norms and values consistent with feminist and abolitionist politics. They are appropriately characterized by feminist psychologist Carol Gilligan in her work on women's moral development as human strength instead of developmental deficiency.¹²⁷ Instead, as I examine further in the following chapters, it is in the weaponization of love against women in service of male domination that these norms have organized the oppression of women, demonstrating the ways in which the good is co-opted for the "cultural production of evil," that is, according to Emilie Townes, "the ways in which a society can produce suffering in relentlessly systematic and sublimely structural ways."¹²⁸

The coalescing of hyper-culpable womanhood and the rationalization of love consigned women's problems in love to their individual responsibility. According to Illouz in *Why Love Hurts* (2012), in which she examines the social conditions that organize contemporary experiences of romantic suffering, the rationalization of love is the result of a cultural process of disenchantment in which modern love has "lost its capacity to be experienced" as "surrender of reason and the self."¹²⁹ Illouz attributes the rationalization of romantic love to scientific investigation and explanations of love in such disciplines as psychoanalysis, psychology, and neuroscience. This transformation from love as spiritual force to psychological process, Illouz

¹²⁷ Carol Gilligan, *In a Different Voice: Psychological Theory and Women's Development* (Cambridge, MA: Harvard University Press, [1982] 1993), 19. I draw the terms relational responsibility and emotional responsiveness from Jo-Ann Krestan and Claudia Bepko in their work on codependency in which they argue that as it is important for women to seek a balance in caring for self and for others, it is necessary for men to take on relational responsibility and emotional responsiveness in efforts to equalize responsibility within relationships. "Codependency: The Social Reconstruction of Female Experience," *Smith College Studies in Social Work* 60, no. 3 (1990): 228.

¹²⁸ Emilie M. Townes, *Womanist Ethics and the Cultural Production of Evil* (New York: Palgrave Macmillan, 2006), 12.

¹²⁹ Eva Illouz, *Why Love Hurts: A Sociological Explanation* (Cambridge, UK: Polity Press, 2012), 162. This is not to say that conceptualizations of and experiences of love as transcendent no longer remain. According to Illouz, the contemporary experience of romantic suffering is a result of these competing conceptualizations and accompanying expectations and demands.

contends, “put love at the center of the constitution of the self” and in doing so contributed to the relegation of “the realm of the romantic and the erotic to the individual’s private responsibility.”¹³⁰ The rationalization of love rendered suffering in love irrational, undesirable, and a symptom of pathology.¹³¹ Therapeutic paradigms that permeated intimate relationships rejected suffering as incompatible with happiness and wellness and equated autonomy and the protection of one’s self-interest with mental health.¹³² As a result, according to Illouz, “to love well means to love according to one’s self-interest.”¹³³ Illouz explains how this shift contrasts with nineteenth century understandings of love where pain was considered a normal part of life experienced in close connection and identification with another and a source of character formation, while it is now regarded as incommensurable with health and a sign of emotional immaturity or a threat to an individual’s sense of social worth.

The de-regulation of marriage markets, the advent of companionate marriage, and the sexual revolution, aligned romantic love with individualist and egalitarian values. They also promoted an unprecedented degree of female autonomy, although circumscribed by race, class, sexuality, and disability. Love came to represent a choice made freely between autonomous individuals.¹³⁴ As a result of this marriage of love and choice, Illouz explains, “romantic love

¹³⁰ Illouz, 162, 4. Illouz continues, “Whether psychoanalysis and psychotherapy intended to or not, they have provided a formidable arsenal of techniques to make us the verbose but inescapable bearers of responsibility for our romantic miseries” (4).

¹³¹ For example, as Illouz explains, “A significant portion of psychological advice claims quite simply that if abandonment and neglectful or detached lovers (or the threat of them) hurt so much, it is because the anxious person has had a traumatic childhood experience in which s/he has experienced (real or imagined) abandonment, neglect, or distance. Thus, even if therapy does not intend to make subjects bear the responsibility for their failures, in practice it demands that they locate the reasons for their failed lives in their private histories, and in their refusal to solve their problems through introspection and self-knowledge” (149).

¹³² Illouz, 164-165.

¹³³ Ibid., 164.

¹³⁴ As I address further in the following chapters, feminist thought has long accounted for the ways in which the egalitarian ideals of romantic love belie the continued impact of male supremacy and the ways in which romantic love perpetuates the oppression of women. For a more in-depth look at the evolution of the institution of marriage and the impact of love in transforming it, see Stephanie Coontz, *Marriage, a History: How Love Conquered Marriage* (New York: Penguin Books, 2005). According to Coontz, in the wake of the Enlightenment and the rise of

thus reinforced within the private sphere the moral individualism that had accompanied the rise of the public sphere.”¹³⁵ Individuals in love came to bear the responsibility for their experiences of suffering as a failure in choosing, concealing the gender differences in political and economic power as they configure personal relationships. Despite the egalitarian ideals of romantic love, romantic suffering is not shared equally in heterosexual relationships because structural inequalities circumscribe the agency of women. Illouz explains, “love circulates in a marketplace of unequal competing actors” and “some people command greater capacity to define the terms in which they are loved than others.”¹³⁶ Women, who command less capacity than men to define these terms, paradoxically tend to shoulder the blame for romantic failings and relationship troubles across a continuum of treatment and behavior by men—from emotional withholding and detachment to intimate partner violence as coercive control.¹³⁷

The pathologizing of women who experiences difficulties in their romantic lives and the tendency to blame women for those difficulties is compounded for women who are abused.¹³⁸ Female victims are often characterized as gullible and easily manipulated with low self-esteem, those who stay or return as “gluttons for punishment,” those who fight back as equally to blame,

the market economy in the eighteenth century, “for the first time in five thousand years, marriage came to be seen as a private relationship between two individuals rather than one link in a larger system of political and economic alliances.” (145-147).

¹³⁵ Illouz., 12.

¹³⁶ Ibid., 6.

¹³⁷ In her sociological study, Illouz found “that women, and only to a much lesser degree men, often hold themselves responsible for their romantic difficulties and failures. That the man has the upper hand in the process of monitoring recognition—initiating it and controlling its follower—is also manifest in that he holds himself far less responsible for the success or failures of the relationship” (153-154).

¹³⁸ This is not to say that intimate partner violence is unrelated to mental health. “Both clinical and population-based studies indicate that victimization by an intimate partner places people at significantly higher risk for depression, anxiety, posttraumatic stress disorder, somatization, medical problems, substance use, and suicide attempts, whether or not they have suffered physical injury.” In addition, disabled people are at higher risk of abuse and mental health coercion is one potential tactic that abusers use. Mental health coercion includes efforts to “intentionally undermine their partner’s sanity or sobriety, interfere with their treatment, control their medication, sabotage their recovery, and discredit them with friends, family, helping professionals, and the courts.” Warshaw, et al. “Coercion Related to Mental Health and Substance Use,” 4.

and those who kill doing so as a result of a mental break or having “snapped.”¹³⁹ Domestic violence interventions, organized largely around the process of leaving, have been heavily influenced by this mental health model in which suffering in love is irrational and a reflection of the one who suffers. As these interventions have become professionalized, reliant on the criminal punishment system, and less concerned with upending gender oppression, they have reaffirmed a private, individualized model of the self. The individualizing of troubles in love in conjunction with images of the “strong Black woman” contributes to the perception that Black women cannot be abused and makes it difficult for some survivors to seek support. As Patricia Hill Collins explains, “many African-American women have had to exhibit independence and self-reliance to ensure their own survival and that of their loved ones. But this image of the self-reliant Black women can be troublesome for women in violent relationships.”¹⁴⁰ This model has also become an organizing characteristic of domestic violence support services. In his article “Neo-liberalism and the Pathologising of Public Issues: The Displacement of Feminist Service Models in Domestic Violence Support Services,” John McDonald contends that the pathologizing perspective has come to dominant domestic violence interventions, displacing feminist service models grounded in political change.¹⁴¹ He attributes this shift primarily to “the ascendancy of a neo-liberal, managerialist ideology that has depoliticized and clinicalised domestic violence.”¹⁴²

¹³⁹ Abusive relationships do not typically start out abusive because victims who are not emotionally and otherwise invested are much more likely to leave at that stage. According to a survivor support resource, “in reflecting back on their relationship, women describe the early period as generally being positive and loving. They didn’t observe abusive behavior until they were committed to the relationship. When women in group counseling list the positive qualities they saw in their partner when they first met him, they always generate a substantial list...none of these women thought abuse could happen to them” (6). Jill Cory and Karen McAndless-Davis, *When Love Hurts: A Woman’s Guide to Understanding Abuse* (New York: New American Library, [2000] 2016). In addition, others are not immune to an abuser’s charms. According to Lundy Bancroft, “one of the most important challenges facing a counselor of abusive men is to resist being drawn in by the men’s charming persona” (69). Lundy Bancroft, *Why Does He Do That?: Inside the Minds of Angry and Controlling Men* (New York: Berkley Books, 2002).

¹⁴⁰ Collins, *Black Feminist Thought*, 172.

¹⁴¹ John McDonald, “Neo-Liberalism and the Pathologising of Public Issues: The Displacement of Feminist Service Models in Domestic Violence Support Services,” *Australian Social Work* 58, no. 3 (August 2005): 275-284.

¹⁴² *Ibid.*, 275.

Though his work focuses on Australia, his analysis reflects a larger shift in Western interventions and aligns with Richie's analysis of the anti-violence movement in the U.S as having "won the mainstream but lost the movement." A member of the early shelter movement in the U.S., Evan Stark attests to this shift from social problem to personal pathology and how it maintains the status quo. As he explains, by the 1980s it became common in the shelter movement to:

hear advocates insist that women in shelter have to be deprogrammed in the same way as prisoners of war. The imagery behinds this approach does more to manage troublemakers than to help women make trouble for abusive partners or for the service institutions that fail to protect them. The shelter remains orderly. But the existing sexual order remains undisturbed.¹⁴³

As a result of the dominance of the pathologizing perspective, women who seek outside support face a professionalized response led by social workers and psychologists who often locate the problem in the histories and psyches of women and characterize their survival strategies and deployment of constricted agency as symptomatic of a psychological disorder or personal defect, instead of structural inequality. Consequently, women's troubles in love have largely been de-politicized.

Women in relationships with men who abuse and mistreat them are further stigmatized because domestic violence interventions have made leaving their focus and the primary measure of agency, despite the fact that not all relationships are the same, that the abuse might be present in varying degrees, and that many women don't want for the relationship to end, just for the abuse to stop.¹⁴⁴ According to feminist political theorist Carisa Showden, "there are significant

¹⁴³ Stark, 78.

¹⁴⁴ As feminist political scientist Carisa Showden explains, "'leaving' has become the holy grail of domestic violence intervention because the legal model has become so dominant" (71). Carisa R. Showden, *Choices Women Make: Agency in Domestic Violence, Assisted Reproduction, and Sex Work* (Minneapolis: University of Minnesota Press, 2011), 71. Vera E. Mouradian, addresses the question of why women stay with an abusive partner, writing: "The short answer is that they don't: most women who are abused by an intimate partner do not stay with their abusers permanently. Most leave eventually, although the process of leaving may take months or years, with many starts and steps. Unfortunately, the end of the relationship does not necessarily mean the end of the abuse. For these reasons, a more fruitful question to ask is: 'What goes into the decision to stay or leave?'" Mouradian, "Battered

problems with positing a clean break as the ur-strategy of agency and resistance,” including the reality that staying is often a part of the leaving process, that material needs might not make leaving possible, and that “in many cases, what women want—and what they can achieve—is ending the abuse without ending the relationship.”¹⁴⁵ Our preoccupation with the question of why women stay and the assumption that leaving is the only desirable response not only puts the onus of ending the abuse on the victim, but minimizes love as a significant and legitimate reason women try and maintain the relationship. The cultural and legal expectation that women leave fundamentally misunderstands the dynamics of intimate partner abuse and the significance of emotional investments, ultimately holding women responsible for the violence of men.¹⁴⁶ Legal scholar Katharine Baker contends that “the emotional investments that complicate violent domestic relationships also confound the criminal law” which does not comprehend that “there is often far too much emotional glue for women to extricate themselves easily from abusive relationships.”¹⁴⁷ The legal presumption that women have a duty to retreat from the home, despite these emotional attachments, reflects this confounding and the general political unintelligibility of women’s troubles in love. It also eschews women’s safety and sovereignty.

Women: What Goes Into the Stay-Leave Decision?” Wellesley Centers for Women, Research & Action Report 26, no. 1 (Fall/Winter 2004): 34.

¹⁴⁵ Showden, 71. Another issue of crucial consideration is that leaving is the most dangerous time for a victim of domestic violence with most domestic violence-related homicides and femicides occurring at separation in an attempt to reestablish control. More than half of all female homicides are committed by intimate partners. JC Campbell, et al. “Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study,” *American Journal of Public Health* 93, no. 7 (2003): 1089-1097, citing Margo Wilson and Martin Daly, “Spousal Homicide Risk and Estrangement,” *Violence and Victims* 8, no. 1 (Spring 1993): 3-15. Also citing Myra Dawson and Rosemary Gartner, “Differences in the Characteristics of Intimate Femicides: The Role of Relationship State and Relationship Status,” *Homicide Studies* 2 (1998): 378-399.

¹⁴⁶ A study on the perceptions of domestic violence victims found that participants blamed victims who returned to their abuser more than those they did not have information on whether or not the victim returned. Niwako Yamawaki, et al. “Perceptions of Domestic Violence: The Effects of Domestic Violence Myths, Victim’s Relationship with Her Abuser, and the Decision to Return to Her Abuser,” *Journal of Interpersonal Violence* 27, no. 16 (2012): 3195-3212.

¹⁴⁷ Katharine K. Baker, “Gender and Emotion in Criminal Law,” *Harvard Journal of Law and Gender* 28 (2005), 457.

According to Showden, the expectation that women leave imposes a paradigm of public relationships onto private ones. She explains:

expecting one to walk away from a relationship—to make a clean break—imposes a public model of relationships on private relations. Although personal relationships are structured by political ones, intimate relations are phenomenologically different than public relationships...where one can walk away without losing something profoundly constitutive of one's self in the process....To say that one must simply walk away to be an agent worthy of respect does not merely miss the contextual ambiguity of women's lived situations: it indicates a fundamental misunderstanding about what is at stake in private life.¹⁴⁸

The persistence and significance of these emotional attachments lie in the fact that what is at stake is in fact integral to the self. As a result of modernity, Illouz suggests, “the self is now ‘essentialized,’ it exists beyond one’s social class. The sense of worth now inheres in the self.”¹⁴⁹ The destabilization of tradition, institutions, and social moorings in modernity as well as the construction of the emotional subject, led to the substitution of romantic love as the primary source of social recognition and self-differentiation and therefore a consequential site for shaping and informing individual agency.¹⁵⁰ Illouz explains, “the sense of self-worth provided by love in modern relationships is of particular and acute importance, precisely because at stake in contemporary individualism is the difficulty to establish one’s self-worth and because the pressure for self-differentiation and developing a sense of uniqueness has considerably increased with modernity.”¹⁵¹ The contemporary experience of suffering in love is characterized by the loss in modernity of what Illouz refers to as “ontological security,” a sense of certainty of one’s

¹⁴⁸ Showden, 77.

¹⁴⁹ Illouz, 114.

¹⁵⁰ The power of romantic love, according to Illouz, is that it “enhances the self-image through mediation of another’s gaze...when in love, the other becomes the object of one’s uncritical attention” such that “to be in love is to overcome a sense of ordinary invisibility, and entails a sense of uniqueness, and an increased sense of self worth.” She continues, “whatever subjective validation love may have provided in the past, this validation did not play a social role and did not substitute for social recognition (except in cases of social mobility, when a person of a higher class married someone of a lower class)” (111-112).

¹⁵¹ *Ibid.*, 112.

position or place and worth which has become largely dependent on romantic entanglements.¹⁵² Ontological insecurity reflects our fundamental dependence on the recognition of others and our performance in relationships to establish our social worth.¹⁵³ The stakes are elevated for women who tend to experience greater ontological insecurity than men. Illouz, explains “because modernity has been marked by a constitution of a private sphere that both shaped women’s identity and disconnected it from the public world, love is central to their social sense of self worth.”¹⁵⁴ With fewer avenues for social recognition, women’s self-understanding and agency became largely entangled with romantic recognition as a reflection of their worthiness, elevating emotional investments in intimate relationships.

To say “women in love are women in trouble” then, is to consider women’s emotional investments not in individualized terms but in social and cultural ones. In resituating the encounters of heterosexual men and women within the social, rather than psychological, Illouz explains that “the failures of our private lives are not the result of weak psyches” instead “the vagaries and miseries of our emotional life are shaped by institutional arrangements.”¹⁵⁵ The assumption that women’s experiences of romantic suffering are their private responsibility obscures the institutional arrangements that have shaped the experience of contemporary romantic suffering, minimizes the risks survivors face in considerations of whether to leave or stay with an abusive partner, including ontological ones, and enables institutional victim-blaming that makes possible the incarceration of survivors.

¹⁵² While ontological security certainly varied prior to modernity based on social location (and social value varied across social groups), there were and are counter-hegemonic traditions and institutions that provide social recognition and affirm worth for those devalued by cultural hegemonic ideologies.

¹⁵³ Illouz, 155. According to Illouz, “Because the experience of love anchors the question of worth, love in modernity has the capacity to produce and stabilize *social* value” (121). With the destabilization of ritual and community and the dominance of moral individualism, romantic love became the primary location of seeking ontological security. In addition, “because the self’s value is not established in advance, it becomes an object of inter-subjective negotiation” (139).

¹⁵⁴ Illouz., 243.

¹⁵⁵ Ibid., 4.

Term 2: Intimate partner abuse is misogynist violence not pathology.

The rationalization of love has also extended pathology to relationships. Relationships are now defined by patterns of engagement considered to be healthy or dysfunctional with dysfunction considered a symptom of individual pathology reflective of those in the relationship. The tendency to characterize relationships in which one partner abuses another as dysfunctional, naturalizes the unequal distribution and exercise of power in them. The ability to maintain and manage relationships has a central place in the moral development, and self-understanding of women, such that pathologizing abuse also often implies for women a personal failure in performing gender.

The codependency construct in particular exemplifies and demonstrates the problems with pathologizing interactions in relationships, especially abuse. Codependency refers to a pattern of behavior in relationships in which one person over-functions such that they are said to “enable” the under-functioning of another. It emerged from a disease model of addiction and a family systems approach to treatment that frames the family as a complex emotional system. Initially, codependency largely referred to the behavior of wives as “enablers” of their husband’s alcoholism. According to Janice Haaken, in her review of codependency literature, codependency has since broadened to a “conception of the dysfunctional family” which “includes a wide range of pathogenic dynamics and impoverished emotional interactions within the family, particularly where avoidance or confrontation or the inability to develop healthy means of resolving conflict predominate.”¹⁵⁶ This conception of the family unit does not account for the family as a social institution structured by gender inequality that informs interactions and conflicts. As Jo-Ann Krestan and Claudia Bepko explain in their analysis of codependency as the social reconstruction of female experience, “it presumes that there is such a thing as a functional

¹⁵⁶ Janice Haaken, “A Critical Analysis of the Co-Dependence Construct,” *Psychiatry* 53, no. 4 (1990): 397.

family not influenced by gender inequality” and that the normal, functional family takes the form of “the traditional, normative white middle-class family.”¹⁵⁷ It also pathologizes feminine identity and agency when, as Krestan and Bepko point out, “overresponsible behavior is the natural outgrowth of women’s socialization in society.”¹⁵⁸ It is also demanded and reinforced by the criminal punishment system. The codependency model attributes to personal psychology behaviors and interactions structured by an underlying social order. It then offers increased autonomy and detachment as the solution to this emotional inequality without consideration for the ways in which the dominance of autonomy is at the very heart of contestations of gender roles, identities, and power in these relationships because women tend to make moral decisions based on a sense of relational responsibility over a more detached adherence to abstract principles.¹⁵⁹

While romantic love as an egalitarian ideal is defined by reciprocal recognition, according to Illouz, recognition is limited by moral individualism’s demand that autonomy be affirmed and preserved. According to Illouz:

Autonomy is established by a very careful monitoring and even withholding of recognition. Romantic relationships contain an intrinsic demand for recognition, but to be performatively successful, the demand and the performance of recognition must be carefully monitored so as to not threaten the autonomy of the self, in both the person giving and the person receiving recognition.¹⁶⁰

The desire for attachment is at odds with moral individualism’s “interactional imperative of autonomy.”¹⁶¹ This imperative is particularly burdensome for women because it is in considerable tension with the ideals of love and care that they also hold. In addition, women often feel as though they have to be diligent in preserving not only their own autonomy but the

¹⁵⁷ Krestan and Bepko, 222.

¹⁵⁸ *Ibid.*, 225.

¹⁵⁹ Gilligan, 19.

¹⁶⁰ Illouz, 131.

¹⁶¹ *Ibid.*, 132.

autonomy of men as well.¹⁶² Women are not positioned in the same way then, to easily demand the recognition they desire. This inequality in emotional options in which women struggle to receive recognition without the same capacity to demand it, is referred to by Illouz as “emotional dominance.” She maintains that men exercise emotional dominance “through greater detachment, and greater capacity to exert choice and to constrain the choice of the other.”¹⁶³ Central to this inequality are the social and political arrangements that enable men to abide by the demand for autonomy more regularly and for a longer time and therefore enables them to “exert emotional dominance over women’s desire for attachment.”¹⁶⁴ Emotional dominance as the primary manifestation of gender inequality in intimate heterosexual relationships also has a political impact. As Stark explains: “Any shift in the relative share of power in personal life that favors men exacerbates the imbalanced distribution of work in the home, further weakens women’s autonomy, and makes them more vulnerable to sex segregation, other forms of job and wage discrimination.”¹⁶⁵ That is, while male dominance in personal life is made possible by political structures, its reconstitution in individual relationships helps normalize it and maintain white male dominance in society. According to Illouz, men benefit from more ontological security than women because they have more access to public avenues for recognition and resources for managing self-doubt. Men are also not constrained in the marriage markets in the same way that the demands of hegemonic femininity constrain women. Women are in the market for less time than men and have fewer partners to choose from because their status is defined more by starting families and having children than public achievements, their reproductive capacity has a biological timeline, and desirability is circumscribed by beauty standards that also

¹⁶² Illouz, 137.

¹⁶³ Ibid., 104.

¹⁶⁴ Ibid., 138.

¹⁶⁵ Stark, 190.

privilege youth.¹⁶⁶ She explains, because men are less “bound by the imperative of romantic recognition, use sexuality as a status, and display autonomy, they tend to have a cumulative and emotionally detached sexuality. Women, by contrast, are caught in more conflicted strategies of attachment and detachment.”¹⁶⁷ These inequalities that shape recognition—from social status, options of partners to choose from, and the capacity to demand it—are also constituted by inequalities in race, class, sexuality, and disability.

As a result of these intersecting dimensions of structural oppression, Black women are the most disadvantaged in marriage markets. They encounter ubiquitous obstructions to accruing social capital and have fewer possible partners from which to choose as a result of institutional racism and its destabilization of black families. As scholar of religion and African American studies, Dianne M. Stewart explains, “the majority of black women in America are single by circumstance, not choice” as a result of “structural forces—racial slavery and terrorism, government welfare programs and mass incarceration” that “have forged the institutional basis for undermining black marriage.”¹⁶⁸ These institutions and policies have systematically torn and kept apart black families and “depleted” the marriage market. In addition, as Illouz notes, “in a marriage market, choice is made following criteria of economic status, physical attractiveness, education, income, and less tangible attributes such as personality, ‘sexiness,’ or ‘charm.’”¹⁶⁹ As a result, Black women are disadvantaged not only by socioeconomic measures and state violence

¹⁶⁶ Illouz, 243.

¹⁶⁷ Ibid.

¹⁶⁸ Dianne M. Stewart, “2019 Marked 400 Years of ‘Forbidden Black Love’ in America,” *The Washington Post*, December 26, 2019, <https://www.washingtonpost.com/outlook/2019/12/26/marked-years-forbidden-black-love-america/>.

¹⁶⁹ Illouz, 243.

but by norms of hegemonic femininity that inform subjective evaluations of desirability through the elevation of whiteness and denigration of blackness.¹⁷⁰

Desirability is structured by the desires of white men as a group and by extension influences dominant evaluations of social worth. Aída Hurtado demonstrates the influence of the desires of white men as a group on white women and women of color as it is informed by and shapes hegemonic femininity, explaining, “white women as a group are subordinated through seduction, women of color as a group, through rejection.”¹⁷¹ That is, white women as a group are seduced into desiring to be the object of white men’s love and affection in order to be near them as “the source of privilege.”¹⁷² They are seduced by a sense of increased ontological security from this intimate connection with power and a sense of “specialness” afforded them by “white men’s need for them.”¹⁷³ Nevertheless, this source of ontological security remains unstable because white women’s social worth is derived from the fiction of white supremacy and requires their continued subordination and subjection to misogynist violence. Black women and women of color, on the other hand, are subordinated through white men’s rejection of them as objects of white men’s love and emotional investment. Black women have instead been the objects of their “sexual power and aggression” which Hurtado suggests “has freed women of Color from the distraction of the rewards of seduction.”¹⁷⁴ Black women and women of color also experience rejection by individual Black men and men of color who adopt hegemonic norms of femininity

¹⁷⁰ In 2014, the co-founder of the online dating site *OkCupid* wrote in a blog post that a review of site user data showed that Black women were rated the least attractive by most men compared to women of other races and ethnicities. Ashley Brown, “‘Least Desirable’? How Racial Discrimination Plays Out in Online Dating,” *NPR*, January 9, 2018, <https://www.npr.org/2018/01/09/575352051/least-desirable-how-racial-discrimination-plays-out-in-online-dating>.

¹⁷¹ Aída Hurtado, “Relating to Privilege: Seduction and Rejection in the Subordination of White Women and Women of Color,” *Signs* 14, no. 4 (Summer 1989): 844.

¹⁷² Hurtado, 844.

¹⁷³ *Ibid.* 844-845. Hurtado explains, “white men need white women in a way that they do not need women of Color because women of Color cannot fulfill white men’s need for racially pure offspring” (844).

¹⁷⁴ *Ibid.*, 846. Citing Adrienne Rich, *On Lies, Secrets and Silence: Selected Prose 1966-1973* (New York: Norton, 1979), 291-95.

and masculinity. In an interview about her research on racism and dating digitally, doctoral candidate Sarah Adyina-Skold explains, “although Black men may show romantic interest in Black women, I also found that Black women are the only race of women who experience exclusion from *both* Black and non-Black men.”¹⁷⁵ Through this culmination of hegemonic gender ideologies and material inequalities, Black women command less capacity to define the terms in which they are loved. The disproportionately high rate of violence they experience in intimate relationships evidences this inequality.¹⁷⁶

At the same time, a feminist abolitionist approach to defining the problem of women’s troubles in love also rejects the pathologizing of abusive men. Black feminists have made clear the need to look at the hegemonic norms and power structures that influence interactions in personal life instead of individualizing and pathologizing the abuse Black men enact against Black women.¹⁷⁷ To better understand the social conditions that enable the exercise of coercive control in intimate relationships, instead of relegating it to a personality deficiency, we must consider the relative benefits that it affords individual men and the project of white male supremacy as a whole. Stark encourages the identification of the benefits men gain from their

¹⁷⁵ Katelyn Silva, “Modern Dating as a Black Woman: Sarah Adeyina-Skild, GR’20, on Digital Dating and its Impact on Gender and Racial Inequality,” *Onia*, School of Arts & Sciences, University of Pennsylvania, 2019. <https://omnia.sas.upenn.edu/story/modern-dating-black-woman>.

¹⁷⁶ This is also evident in the ways that domestic violence interventions have largely benefited white middle-class women, decreasing the vulnerability of married women, such that the risk to single women is now three times that of married women. According to Stark, “the majority of severe assaults on women are committed by men who are single, separated, or divorced” making the risk of partner violence to single women three times higher than married (56). Citing Callie Marie Rennison and Sarah Welchans, *Intimate Partner Violence* (Washington, DC: US Department of Justice, Bureau of Statistics, 2000). While domestic violence has its origins in marriage and the family, domestic violence is no longer primarily sited in marriage. As married women align more closely with hegemonic gender norms that confine sexuality to marriage and were largely the focus of the early anti-violence movement (before the rise in divorce rates), they are afforded more social capital and the image of a more sympathetic victim. As single women, especially mothers, however, transgress these norms, they are not understood as sympathetic victims and are more likely to be blamed by others. As one study found, people blamed victims in dating relationships more than those in marital ones. The researchers suggest that this might be because they view victims in a dating relationship as less invested and with more opportunities for leaving. Yamawaki, et al. “Perceptions of Domestic Violence.”

¹⁷⁷ Collins, *Black Feminist Thought*, 171. Citing Evelyn White, *Chain Chain Change: For Black Women Dealing with Physical and Emotional Abuse* (Seattle: Seal Press, 1985).

abuse and in doing so provides a critical reframing of abuse that is functional, not pathological.

He suggests that:

Much of the tactical repertoire men deploy in abusive relationships is only intelligible as a way for men to protect their investment in a partner in response to her attempts to separate to get help. To this extent, it is men who stay, not their partners. Regardless of whether their dependence on their partner is primarily material, sexual, or emotional, there is no greater challenge in the abuse field than getting men to exit from abusive relationships.¹⁷⁸

In the current economy of love, these investments are a means to shore up ontological security.

The sociopolitical context that disadvantages Black women similarly disadvantages Black men.

Men who face decreased autonomy and social status in the public realm as a result of racial capitalism and racist state violence face more ontological insecurity than other men. Intimate partner violence becomes then, a means to shore up ontological security through the deployment of hegemonic masculinity. Attempts to achieve the social standing of more privileged men in the marriage market and exercise the same level of autonomy and detachment are always tenuous and require constant effort to attain under hegemonic ideologies through which by definition, they cannot be fully assimilated or normalized. Securing their investment in romantic relationships also demands constant vigilance and control because although victims might not have the same ability to set the terms of a relationship, they find ways to resist them. Coercive control becomes then, a means to tighten one's grasp on these investments in order to promote an increased sense of security, worth, and place in the world. And it does so by reasserting male dominance in personal life through individual attempts to align with hegemonic masculinity, although the obstacles to increased ontological security and the conditions that generate

¹⁷⁸ Stark, 130.

insecurity differ based on social positioning.¹⁷⁹ Exerting male dominance is one way to enact a sense of social worth, albeit an unstable and contested one as it also demands the subordination of men of color to white men in exchange for dominance over women of color. Defining abuse as pathology obscures the manifestations of these inequalities in relationships between men and women, normalizing them in relationships in which abuse is not present and reinforcing abuse as a private issue.

The reconstitution of male domination in the less tangible form of emotional dominance in intimate relationships helps to normalize white male dominance in the public sphere. As such, emotional dominance is a defining characteristic of women's contemporary troubles in love with men across a continuum of interactions from emotional detachment to coercive control.¹⁸⁰

Pathologizing abuse also stigmatizes survivors, focusing on their behaviors as symptomatic of underlying disorders and diverting attention from both the abusive partner and the conditions that make the abuse possible. The prison abolition movement is not exempt from this tendency to pathologize people who have caused harm. It has become common in anti-prison organizing to hear the phrase "hurt people hurt people," in attempts to humanize perpetrators of violence and draw attention to the social conditions that contribute to such violence. However, as Stacy Suh, an organizer with *Survived and Punished*, makes clear this pathologizes trauma and abuse and often functions to excuse abuse and evade accountability. She explains, "'Hurt people hurt people' often obfuscates accountability and pathologizes trauma as an inevitable determinant of abuse...there are plenty of survivors who don't inflict the same violence they experienced on others. Trauma should never be used to justify or excuse abuse" (@stacysuh, Dec. 17, 2019).

¹⁷⁹ Collins, 171. According to Stark, "perpetrators are most commonly diagnosed with personality disorders" although "many studies find batterers psychologically indistinguishable from nonviolent men and men in distressed relationships" (68).

¹⁸⁰ Male domination is also reconstituted through coercive control. While emotional dominance is central to coercive control, not all intimate interactions in which men exert emotional dominance are characterized by coercive control.

While the decision to enact hegemonic masculinity might be informed by experiences of trauma that undermine its imperative—primarily, that men are to wield violence against others instead of being the victim of another’s violence—it is the deployment of it that needs to be deconstructed and central to violence interventions and accountability efforts. Any feminist and abolitionist definition of the problem then must not normalize male domination through abuse by pathologizing it but reflect the ways that it is already normalized and reinforced through emotional dominance and social and political structures.

Term 3: Prisons are not the solution to the entrapment of women in personal life but reproduce the problem.

The third critical presupposition to address in defining the terms of the moral problem of the incarceration and entrapment of women is the prevailing idea that prisons are the solution to women’s entrapment in personal life. This assumption operates explicitly in the criminalization of domestic and sexual violence and implicitly in the criminalization and incarceration of survivors of such violence. Julia Sudbury exposes this latter iteration as it is operative in criminological texts, including feminist ones that accept “abuse as the cause of incarceration” which “obscures the broader social disorder signified by mass incarceration” and “sidesteps the question of why the state responds to abused women with punishment.”¹⁸¹ Legal scholar Leigh Goodmark explains that our contemporary reliance on the criminalization and incarceration of gender violence is a result of anti-violence advocacy in the 1970s—the same period that the prison abolition movement emerged—that focused attention on the failures of police to intercede in domestic violence calls.¹⁸² Class action lawsuits elicited a commitment from law enforcement

¹⁸¹ Julia Sudbury, ed., *Global Lockdown: Race, Gender, and the Prison-Industrial Complex* (New York: Routledge, 2005), xvi, xv.

¹⁸² Leigh Goodmark, “Reimagining VAWA: Why Criminalization is a Failed Policy and What a Non-Carceral VAWA Could Look Like,” *Violence Against Women* (2020): 2-3. See also Mimi E. Kim, “The Carceral Creep: Gender-Based Violence, Race, and the Expansion of the Punitive State, 1973-1983,” *Social Problems* 67, no. 2

to approach gender violence as it would other violent crimes.¹⁸³ It was the federal Violence Against Women Act (VAWA), included in the crime bill, however, that came to define this shift to criminalization.¹⁸⁴ Signed into law in 1994, VAWA has since been renewed multiple times. VAWA established and funded programs to serve victims, defined gender violence as a criminal problem, and routed funding to law enforcement.¹⁸⁵ VAWA's reliance on the criminal punishment system presupposes that it will successfully prevent or deter gender violence, neither of which has been supported by rates of reported violence.¹⁸⁶ Rates of intimate partner violence

(May 2020): 251-269. Kim shows how the anti-violence movement transformed from a social movement with no carceral connection to one "occupied by the agents of crime control" and how this transition occurred starting in the early years of the movement.

¹⁸³ Goodmark, "Reimagining VAWA," 2-3.

¹⁸⁴ Although VAWA was introduced by then-Senator Joe Biden in 1990, it was signed into law in 1994 after the Clarence Thomas Supreme Court confirmation hearings that Biden presided over as the chairman of the Senate Judiciary Committee. Biden was criticized for his handling of the questioning of Anita Hill who testified in front of the committee to experiencing sexual harassment from Thomas when they worked together. The treatment of Hill by the committee of all white men included personal attacks and largely angered women across the country, spurring a record number of women to run and be elected to Congress the following year. The treatment of Hill and ensuing response came to be a significant touch point in defining the sexual politics of the 1990s.

¹⁸⁵ Goodmark, "Reimagining VAWA," 1. VAWA was not endorsed by everyone within the anti-violence movement, particularly those concerned with the impact that carceral investment would have on communities of color. See Emily L. Thuma's *All Our Trials: Prisons, Policing, and the Feminist Fight to End Violence* (Urbana, IL: University of Illinois Press, 2019) where she traces the concurrent rise of an anti-carceral feminist politics in the grassroots activism of radical feminists of color and anti-racist white feminists in fighting with and for incarcerated survivors of gender violence.

¹⁸⁶ *Ibid.*, 6. Most rapes go unreported and the vast majority of perpetrators of rape will not be incarcerated. "The Criminal Justice System: Statistics, RAINN, 2017, <http://rainn.org/statistics/criminal-justice-system>, citing Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, National Crime Victimization Survey, 2010-2016 (2017); Federal Bureau of Investigation, National Incident-Based Reporting System, 2012-2016 (2017); Federal Bureau of Investigation, National Incident-Based Reporting System, 2012-2016 (2017); Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Felony Defendants in Large Urban Counties, 2009 (2013). More than half of nonfatal cases of violent victimization were not reported to police. Rachel E. Morgan and Barbara A. Oudekerk, "Criminal Victimization, 2018," U.S. Department of Justice, Bureau of Justice Statistics (Sept. 2019). In addition, Stark points out the area where criminalization made a difference was in lowering spousal homicide yet mainly to the benefit of men. In the 1970s men and women were as likely to be killed by a partner, while today women are three times more likely to be killed by a partner than men. More specifically, according to Stark: "Spousal homicide is down. But men, and particularly black men, are the main beneficiaries of this change" (*Coercive Control*, 79), citing James Allan Fox and Marianne W. Zawitz, *Homicide Trends in the United States* (Washington, DC: Department of Justice, 2004). "In other words, domestic violence interventions appear to have saved the lives of 3.5 men for every woman's life they saved. In 1976, male and female partners were equally likely to be killed in a violent confrontation (1:1.2). Today, a woman's risk of being killed by her partner is three times as great as his... Just as important, the changes that have occurred are race-specific. In 1976, black husbands were 16 times as likely and black boyfriends 20 times as likely as white men to be killed by their female partners... the absolute number of black males killed by intimates dropped an astounding 82%" (Stark, 55). Stark further explains that "interventions led to a sharp drop in fatal violence by female partners because shelters, arrest, and court orders gave them an immediate option to retaliatory violence and allayed their fears of suffering proximate harm" (57).

are also based on reporting that does not provide a full picture of the extent of the problem beyond accounting for incidents of physical violence.¹⁸⁷ Despite the short-term benefits that criminalization might provide for certain survivors, as Stark explains, currently “arrest does not substantially improve women’s overall safety or long-term prospects to be free of abuse” because the framework and focus has been on physical assault instead of the larger manifestation of abuse as coercive control.¹⁸⁸ Criminalization has largely focused on distinct incidences of physical violence, most often resulting in misdemeanor charges and little to no jail time, despite the fact that intimate partner violence is characterized by a pattern of behavior over a period of time and might not always include physical assault.¹⁸⁹ Current interventions are crisis oriented and provide short-term support. As a result, serious injury from physical assault has become the defining characteristic of intimate partner violence, minimizing the depth of harm caused by coercive control.¹⁹⁰ Stark explains, “by subsuming all forms of abuse to violence, we conflate the multiple layers of women’s oppression in personal life, making nonviolent abusive acts seem highly subjective or soft core.”¹⁹¹ The focus on serious injury and physical assault, however, is also reflective of the state’s willingness to punish the “excesses” of misogynist violence in exchange for preserving the patriarchal order. As a result of the collaboration of the anti-violence movement then, coercive control has become normalized.

¹⁸⁷In cases of physical assault, police generally do not prevent violence but respond after the fact. Many victims do not call the police out of fear and mistrust of the police or retaliation from their abuser. Others do not want their loved one to go to jail. One study found that death rates increased for domestic violence victims after an abuser was arrested in comparison to after the abuser received a warning. Black victims were more likely to be killed. Lawrence W. Sherman and Heather M. Harris, “Increased Death Rates of Domestic Violence Victims from Arresting v. Warning Suspects in Milwaukee Domestic Violence Experiment (MilDVE),” *Journal of Experimental Criminology* 11 (2015): 1-20. C.B. Cunradi, et al. “Problem Drinking, Unemployment, and Intimate Partner Violence among a Sample of Construction Industry Workers and their Partners,” *Journal of Family Violence* 24, no. 2 (2009): 63-74.

¹⁸⁸ Stark, *Coercive Control*, 65.

¹⁸⁹ Stark, 69, 63.

¹⁹⁰ According to Stark, “the vast majority of domestic violence is either noninjurious or causes injuries that are minor from a medical or criminal justice standpoint” (95).

¹⁹¹ *Ibid.*, 86.

However, from the beginning of what Mimi Kim refers to as the “carceral creep,” organizers within the anti-violence movement have expressed anti-carceral politics and dissented to such a partnership.¹⁹² Radical feminists of color and their allies protested and continue to protest the harm criminalization has done to the most marginalized survivors and their communities. In her keynote address at “The Color of Violence Against Women” Conference in 2000, Angela Davis questioned the “uncritical reliance” of the anti-violence movement on the state, noting that as “the national anti-violence movement has been institutionalized and professionalized, the state plays an increasingly dominant role in how we conceptualize and create strategies to minimize violence against women.”¹⁹³ And yet, especially in poor communities of color, the state itself contributes to such violence through the very institutions—policing, courts, incarceration—relied upon in strategies for addressing misogynist violence in relationships with male intimate partners. Davis urged activists to examine the “assumption that previously ‘private’ modes of violence can only be rendered public within the context of the state’s apparatus of violence,” explaining that women of color in the anti-violence movement have:¹⁹⁴

helped to develop a more complex understanding about the overlapping, cross-cutting, and often contradictory relationships among race, class, gender, and sexuality that militate against a simplistic theory of privatized violence in women’s lives. Clearly, the powerful slogan first initiated by the feminist movement—‘the personal is political’—is far more complicated than it initially appeared to be.¹⁹⁵

Davis highlighted the contradiction inherent in turning to the state as the solution to gender violence when it is also a purveyor of such violence. The dependence on the criminal punishment system to render public what has been considered private is also incongruous because it

¹⁹² Kim, “The Carceral Creep.”

¹⁹³ Angela Davis, “The Color of Violence Against Women,” *ColorLines*, October 10, 2000, <https://www.colorlines.com/articles/color-violence-against-women>.

¹⁹⁴ Ibid.

¹⁹⁵ Ibid.

“privatizes” violence by attributing it solely to individuals in need of punishment and correction through incarceration. In other words, instead of politicizing the personal, it personalizes the political.

An approach to defining the moral problem of women’s incarceration “behind a man” that is both feminist and abolitionist complicates the “personal is political” to account for the racialized patriarchal violence of the state and questions the inevitability of punishment and prisons in our social landscape. It resists a one-dimensional understanding of intimate-partner violence, opting for a multi-dimensional one to account for the role of state violence in enacting and perpetuating gender violence and in so doing challenge the assumption that the personal is only made public through state recognition and intervention. It rejects a strict division between private and public punishment and the idea that the violence women experience in their intimate relationships and homes is unrelated to the public punishment of incarceration. And it challenges the buildup of the carceral state in the name of survivor safety, recognizing that the work of the carceral state, as Richie explains, “is to reinforce state authority and to reassert hegemonic values under the guise of ‘preventing crime,’ which co-opted the more radical goals of ending women’s oppression.”¹⁹⁶

Conclusion

The incarceration of women “behind a man” is in large part made possible because of a pro-criminalization approach to gender violence and constructions of hyper-culpable womanhood that have increasingly held women criminally responsible for the actions of another, especially male intimate partners. This chapter reviewed the various ways in which women are criminalized for their relationships with the men they love and addressed the dominant assumptions that prevent the crafting of a radical definition of the problem—one that gets at the

¹⁹⁶ Richie, *Arrested Justice*, 104.

root—by personalizing the problems of women in love, pathologizing abuse, and normalizing coercive control through incarceration as a solution to gender violence. I argue that instead of pathologizing abusive relationships and therefore victims and perpetrators of abuse, relationships of love and trouble should be understood as part of a continuum of emotional and material gender inequalities in heterosexual relationships that are organized by structural ones. Through a closer look at these underlying forces as they circumscribe the agency of women in love with men, the following chapter defines and analyzes the unfreedom that marginalized women in love in a prison nation experience as a result of the punishment of their survival strategies, as carceral gender entrapment.

CHAPTER 2

‘You do it to survive’: Moral Agency and Carceral Gender Entrapment in the Context of Intimate and State Coercive Control

Introduction

In a series of stories on the widespread sexual abuse at Florida’s Lowell Correctional Institution, the second-largest prison for women in the country, the *Miami Herald* details degrading conditions of scarcity and violence endemic to prisons including sexual coercion by male correctional officers leveraging “necessities like soap, toilet paper, and sanitary napkins.”¹⁹⁷ According to a lawsuit brought by Luana Santos against the Florida Department of Corrections, assistant warden Marty Martinez threatened her with solitary confinement and the loss of accrued time off of her sentence if she did not comply with his sexual demands.¹⁹⁸ Santos refutes any dismissal of her claims to status as a victim of gender violence, responding: “They say, ‘well you went along with it.’ Well, how can you not go along with it when they have the power over everything? How can you not do it to survive?”¹⁹⁹ Santos’ story is illustrative of the extremely limited ethical choices that incarcerated women face both during and often prior to their incarceration. It is also reflective of survival as a significant dimension of ethical life for victims of gender violence inside as well as outside of prison walls. Angela Davis observes that there is “continuity of treatment from the free world to the universe of the prison” since women “also confront forms of violence in prison that they have confronted in their homes and intimate

¹⁹⁷ Julie K. Brown, “Meeting on Rapes, Degradation at Notorious Florida’s Women’s Prison Draws a Packed House,” *Miami Herald*, August 19, 2018, <https://www.miamiherald.com/news/special-reports/florida-prisons/article216987885.html>. Julie K. Brown, “Beyond Punishment: A Miami Herald I-Team Investigation of Lowell Correctional Institution,” *Miami Herald*, December 13, 2015, <https://www.miamiherald.com/news/special-reports/florida-prisons/article49177115.html>.

¹⁹⁸ Julie K. Brown, “You do it ‘to survive.’ Ex-Inmate at Florida Women’s Prison Tells How Staff Extorted Sex,” *Miami Herald*, August 16, 2018, <https://www.miamiherald.com/news/special-reports/florida-prisons/article216807755.html>.

¹⁹⁹ *Ibid.*

relationships.”²⁰⁰ While Davis focuses largely on the continuity of physical abuse between domestic violence as private punishment and the public punishment of incarceration to show how the lives of marginalized women are “overdetermined by punishment,” it is the continuity of coercive control as the means by which intimate partners and the state entrap and incarcerate women that helps to articulate more deeply the critical relationship between the two modes of gendered punishment.²⁰¹ Through an examination of raced and gendered narratives of victimhood as they define agency and moral individualism as it shapes romantic love and the criminal punishment system, this chapter explores the moral double binds that marginalized survivors of domestic violence confront in order to place their moral decision making and action taking within the appropriate context of their struggle to survive intimate and state coercive control and violence. In doing so, I define the moral problem of women in love and trouble with the law as one of carceral gender entrapment. Through an analysis of domestic and state coercive control and violence as it organizes gendered punishment, I endeavor to advance the argument that the state not only legitimates domestic prison regimes through its own prison regime, but colludes with and further entrenches them.

‘The Fantastic Hegemonic Imagination’ and the Criminal Punishment System

In order to define the problem of women in love and trouble with the law as a moral one for individual women, church, and society, this ethical analysis begins with an examination of moral context in relation to moral agency in order to make visible the social conditions, institutions and moral narratives that expand as well as circumscribe the choices that women make. As with romantic love, moral individualism also organizes the criminal punishment system, which tends to focus on individual actions divorced from their larger contexts, holding

²⁰⁰ Angela Y. Davis, *Are Prisons Obsolete?* (New York: Seven Stories Press, 2003), 79.

²⁰¹ Angela Y. Davis, “Public Imprisonment and Private Violence Reflection on the Hidden Punishment of Women,” *New England Journal on Criminal and Civil Confinement* (Summer 1998), 339.

an individual legally responsible for criminalized actions but rarely questioning their capacity to act much less the conditions that facilitate action or perceived inaction.²⁰² Crime and violence continues to be attributed solely to individual moral failings and flaws, not social and structural ones. I begin with the choices survivors make and the context in which they make them in order to further a structural critique of their entrapment and incarceration.

The criminal punishment system derives its moral authority from moral narratives, images, and political ideologies. These narratives and the underlying moral imagination that produces them—what Emilie Townes calls the “fantastic hegemonic imagination”—help to uphold and perpetuate structural evil through normalizing social stratification, hierarchy, and oppression.²⁰³ The fantastic hegemonic imagination names the constructive capacity and engine of cultural hegemony as it envisions the fantastic, illusory, and unreal in service of a totalizing mythology.²⁰⁴ According to Townes, the fantastic hegemonic imagination:

traffics in peoples’ lives that are caricatured or pillaged so that the imagination that creates the fantastic can control the world in its own image. This imagination conjures up worlds and their social structures that are not based on supernatural events and phantasms, but on the ordinariness of evil...It sets in motion whirlwinds of images used in the cultural production of evil. These images have an enormous impact on how we understand the world, as well as others and ourselves in the world.²⁰⁵

²⁰² I focus here primarily on practice and impact as opposed to legal theory though, in general, legal considerations of agency are often rooted in individual psychology not social context. Competency, the mental ability to understand and make decisions regarding one’s own case is taken for granted unless raised by the defense (rarely the prosecution) and is focused on whether an individual can stand trial. The threshold to meet incompetency is very high. In an insanity defense, the defendant admits to an act but argues a lack of culpability based on mental illness. The insanity defense is used in less than 1% of cases and has a success rate of about 26%. Dahlia Lithwick, ‘The Insanity Defense,’ *Slate*, January 11, 2011, <https://slate.com/news-and-politics/2011/01/if-jared-lee-loughner-is-too-insane-to-be-influenced-he-s-too-insane-to-be-executed.html>. *Mens rea* or “guilty mind” is focused on criminal intent, knowingly breaking the law. Specialized courts like drug court, mental health court, or sex trafficking court, might acknowledge social context but do not attempt to address root conditions, instead coercing people into social services with the threat of incarceration. While mitigating factors might be presented by the defense in a criminal case to provide explanatory context, they are largely used to determine the extent someone should be punished, not whether criminalized actions should in fact be criminalized. If context and its impact on an individual’s agency is to be considered, it would most likely occur when prosecutors exercise prosecutorial discretion in deciding whether and how to pursue criminal charges or in negotiations between defense and prosecution.

²⁰³ Emilie Townes, *Womanist Ethics and the Cultural Production of Evil* (New York: Palgrave Macmillan, 2006).

²⁰⁴ *Ibid.*, 18-20.

²⁰⁵ *Ibid.*, 21.

This dominant imagination sustains systemic violence and oppression through the production of controlling images, norms and narratives that shape our self-understanding, our perceptions of others, and the social systems and conditions that facilitate or inhibit action.²⁰⁶ At the same time, it is in gaps between these competing and contested identities and narratives that agency arises.²⁰⁷

Drawing on womanist ethicist Katie Cannon's analysis of Black women's moral situation through U.S. history in her seminal work *Black Womanist Ethics* (1989), I understand moral agency to be an individual's capacity to act along with options for acting. As Carisa Showden explains:

Having 'agency' involves both deliberating on choices and having choices on which to deliberate. It is thus a product of both autonomy (the individual capacity to act) and freedom (the conditions that facilitate action). A full understanding of agency therefore requires consideration of both the subject who acts and the conditions within which she operates, particularly the conditions that produce her self-understanding.²⁰⁸

Agency is both a capacity and a developmental process, informed by the multiple and competing moral contexts, narratives and identities that shape our understanding of who we are, what we desire, and what we are capable of doing.²⁰⁹ It is intersubjective, constituted in and through relationships, made possible and limited by social conditions, and established and exercised in

²⁰⁶ Patricia Hill Collins defines controlling images as stereotypical images "designed to make racism, sexism, poverty, and other forms of social injustice appear to be natural, normal, and inevitable parts of everyday life" that are reproduced by social institutions (77). Collins, *Black Feminist Thought*. According to Townes, "the cultural production of evil can and does entrap many if not most of us. We often operate out of structurally determined limits that do, at points, offer some creativity and autonomy—but these are controlled and managed by hegemonic forces" (19-20). In addition, it is dependent on collective agency and consent. Hegemony is not the only way of perceiving and understanding the world and Townes draws on Gramsci's notion of counterhegemony to build countermemory as a resource for subverting it. I turn to countermemory and other imaginations that shape moral narratives and moral worlds in chapter 4.

²⁰⁷ According to Showden, "Agency is found in the interstices between identity categories, both public and personal, and between domination and governmentality, where autonomy and freedom meet" (13).

²⁰⁸ Showden, *Choices Women Make*, ix.

²⁰⁹ *Ibid.*, 13.

and through the body.²¹⁰ As informed by feminist theorists, I understand autonomy as self-determination through a sense of the self-in-relation and self-possession as the foundation of autonomy.²¹¹ In order to define and analyze the entrapment and incarceration of women as a moral a problem, we must take into account the systematic subordination of women as it compromises, in the words of Showden, “their ability to choose and act freely,” as well as the ways they “exercise dignity and make choices in the face of subordination.”²¹² While the previous chapter addresses this subordination of women in love in general, we must also understand the moral norms and narratives fundamental to the criminal punishment system in incarcerating them.

Dominant Ethics, the Normative Moral Subject, and Personal Responsibility

The progenitor of womanist ethics, Cannon argues the inadequacy of dominant ethics for marginalized people, especially Black women. She explains that the assumptions undergirding theological ethics, a tradition predicated on white-male experience, implies that “the doing of Christian ethics in the Black community [is] either immoral or amoral.”²¹³ This is because

²¹⁰Showden, 7. The body, as categorized by race, gender, sexuality, and disability, is socially imbued with meaning which shapes how one experiences and comes to know the world and themselves. Showden explains, “embodiment is both font of and limit on agency” (24).

²¹¹Showden, 1. An understanding of the self as relational contrasts with autonomy through moral individualism which is conceived of as self-sufficiency. Illouz notes that this understanding of autonomy as a (Western) hegemonic norm is so pervasive that it has become impossible to envision something outside of or beyond it. At the same time, its dominance makes it necessary for those who are often denied it. She explains, “to the extent that in modernity men have internalized and most forcefully practiced the discourse of autonomy, autonomy has the effect of exerting a form of symbolic violence that is all the more naturalized and difficult to perceive. Consequently, autonomy is (and must remain) at the center of the project of women’s emancipation” (136). Similarly, self-possession as the foundation of autonomy remains of particular import because the exercise of dominance as an attempt at establishing ownership over particular bodies by usurping agency is characteristic of both intimate and state coercive control.

²¹²Ibid., 3.

²¹³Katie Cannon, *Black Womanist Ethics* (Atlanta: Scholars Press, 1988), 2. For example, dominant Christian ethics has long extolled obedience to authority as a virtue, to the detriment of African Americans. White Christians in the antebellum South, used scripture to justify chattel slavery and argue a divine imperative that enslaved persons obey their “masters.” In his “Letter from Birmingham Jail,” the Rev. Dr. Martin Luther King, Jr. writes to white Southern religious leaders who criticized the Civil Rights Movement’s nonviolent demonstrations against segregation and their “willingness to break laws.” He challenges an undiscerning obedience to the authority of the law, outlining civil disobedience as a strategy for changing those laws that are “out of harmony with the moral law,” quoting St.

dominant ethics assumes “that a moral agent is to a considerable degree free and self-directing” without regard for the particular moral contexts from which Black people make decisions and the conditions from which their moral reasoning arises.²¹⁴ As with dominant ethics, the U.S. legal system presupposes a normative moral agent subject to the law who is free and self-directing and is also predicated on white-male experience. As sociologist of religion Paula Coeey explains:

In the United States this individual adult, who serves as normative human or person, initially was exclusively a white male property owner. In addition to land holdings, buildings and nonhuman animals, his property included other human beings, for example, his slaves, his children, and his wife. His rights, designated inalienable, were ascribed negatively as limits placed on the state. They assumed a network of caretakers who bore him, reared him, fed and sheltered him, educated him, and worked his nonhuman property.²¹⁵

While rights under this model have been extended to others previously denied legal recognition, the white propertied male, as seen by the ideological domination of an individualist understanding of autonomy, remains the normative moral agent by which all other groups are judged, regardless of their differing moral contexts and narratives.²¹⁶ The dominant model of personhood in the legal system also remains the autonomous, self-directing individual, obscuring the ways in which agency is intersubjective and rendering invisible the conditions that limit or expand an individual’s moral options, reasoning and capacity for acting.

Augustine that “An unjust law is no law at all.” For Black people in movements fighting systemic forces that subjugate them, disobedience has not been a vice but a moral virtue. Martin Luther King, Jr., “Letter from Birmingham Jail,” 1963, <http://www.letterfromjail.com>.

²¹⁴ Cannon, 2-3.

²¹⁵ Paula Coeey, “Women’s Religious Conversions on Death Row: Theorizing Religion and State,” *Journal of the American Academy of Religion* 70, no. 4 (December 2002), 702-704.

²¹⁶ Feminist and critical race theorists and legal scholars have highlighted the pervasiveness of race and gender bias in the U.S. legal system. See *Critical Race Theory: The Key Writings that Formed the Movement*, Edited by Kimberlé Crenshaw, Neil Gotanda, Gary Peller, Kendall Thomas, (New York: The New Press, 1996). When it comes to the criminal legal system and laws “grounded in the traditional notion of men’s crimes” as Antonia Elize Miller explains, “male bias can be seen in the many layers of the male-dominated legal system, from the prevalence of male decision-makers, to the inherent sex-bias in jury selection, to the male-oriented laws, and to the lingering influence of the ‘reasonable man’ standard.” Antonia Elize Miller, “Inherent (Gender) Unreasonableness of the Concept of Reasonableness in the Context of Manslaughter Committed in the Heat of Passion,” *William & Mary Journal of Women and the Law* 17, (2010): 249-250.

The impact of this paradigm on the lives of system-involved women is evident in the work of sociologists Susan Starr Sered and Maureen Norton-Hawk in *Can't Catch a Break: Gender, Jail, Drugs, and the Limits of Personal Responsibility* (2014) where they identify from their research “an extraordinarily broad cultural pattern—a spoken and unspoken social consensus that attributes suffering to individual failings.”²¹⁷ This moral narrative accompanies the model of personhood that assumes individuals are equally free and self-directing and as a result, “responsible for our own misfortune.”²¹⁸ According to Sered and Norton-Hawk:

On the institutional circuit, women learn that their problems lie within themselves rather than outside in the real world, that their suffering is an expression of personal pathology rather than a manifestation of structural inequalities and violence. Within this ideological frame, an individual is understood to make bad choices because there is something wrong with her or with him. Bad choices made involuntarily, because of physical, mental, or emotional flaws are treated medically. Bad choices made voluntarily, because of moral flaws, are treated with punishment.”²¹⁹

Instead of questioning how the survival of marginalized women is often at odds with social norms, policies and criminal law, moral individualism attributes suffering to individual moral vice or corruption and is often proliferated and reinforced by religious and self-help groups.²²⁰

The moral individualism of romantic love reinforces that of the criminal punishment system such that women who suffer in love are understood to suffer because they chose poorly. Within the criminal punishment system moral individualism, pro-criminalization, and hyper-culpable womanhood coalesce such that punishing women for the actions of their male intimate partners is justified because they voluntarily made a “bad choice” in men. Once in prison, women then

²¹⁷ Susan Starr Sered and Maureen Norton-Hawk, *Can't Catch a Break: Gender, Jail, Drugs and the Limits of Personal Responsibility* (Oakland, CA: University of California Press, 2014), 11.

²¹⁸ *Ibid.*

²¹⁹ *Ibid.*, 12.

²²⁰ *Ibid.*, 125. Sered and Norton-Hawk explain, “the churches in which the women of this project were raised and the churches that most assertively reach out to them, as well as the Twelve Step groups and the quasi-religious institutions and organizations that provide services on the institutional circuit, preach the message, in one form or another, that pain and affliction are the consequences of one’s individual choices and that neither social policies nor God should be blamed for allowing one to suffer.”

encounter therapeutic programming that frames their “bad choice” as an involuntary one driven by unconscious needs unmet in childhood. Either way, the underlying organization of heterosexual relationships as they create trouble for women remains unaccounted for and unquestioned. Those who are marginalized by structural inequalities and violence, including as they manifest in their personal relationships, are made to bear not only the death-dealing effects of but also the blame for it, which is used as further justification for their social subordination. This narrative of personal responsibility also obscures the ways the profiling of bodies affects whether an individual’s actions are interpreted to be good or bad ones and whether these actions reflect pathology or inherent criminality.

Controlling images and moral narratives work to naturalize the moral value and worth of people based on their bodies in order to represent the social order as morally justifiable and just. That is, through the fantastic hegemonic imagination, moral judgments are rendered based not only or even primarily on what we do, but the bodies and identities we inhabit. As political theorist Joy James explains, “the ‘criminal’ is identified not only by his or her act but also by his or her appearance.”²²¹ I examine further in the next chapter on moral tradition, two myths central to criminalizing narratives and constructions of hyper-culpable womanhood and hyper-culpable motherhood: the “black criminal type” and the “fallen woman” through which moral deviance or sin is equated with blackness and the origins of moral deviance or sin are attributed to femaleness. Whether a “bad” choice is considered to be involuntary and requiring medical treatment, a moral failing requiring correction, or a moral defect deserving punishment, is often based on the body one inhabits, which is why historically white women have been more likely to be treated medically or with “rehabilitation” while Black women have been largely treated

²²¹ Joy James, *Resisting State Violence: Radicalism, Gender, and Race in U.S. Culture* (Minneapolis, MN: University of Minnesota Press, 1996), 25.

criminally. Whether a choice itself is considered to be bad or immoral is also shaped by the fantastic hegemonic imagination and the controlling images it produces that make moral deviance appear inherent to particular moral agents based on the bodies they have and the identities they hold, as is evidenced in the criminalization of the survival strategies of Black women and other marginalized survivors of misogynist violence. Making survival strategies a crime, in effect renders judgment on whose existence or survival is permissible and regarded as a moral good and whose is not, such that criminalization serves as both a justification of expendability and a mechanism of it.

Racialized State Violence, Biopolitics, and the 'Slow Death' of Incarceration

Moral judgments on whose lives matter and whose are expendable are a critical part of the moral rhetoric fundamental to the exercise of white supremacy through biopolitics, the realm of state control concerned with maximizing the life of the population and minimizing that considered to threaten it.²²² According to French philosopher Michel Foucault, biopower is the technology of power exercised by the state as the “right to make live and let die.”²²³ Within a political system based on the power to make live, the power of death is made possible through the intervention of racism.²²⁴ That is, white supremacy as a logic of domination justifies the “murderous function of the State” in expending of those who deviate from the norm of whiteness—those who are Black, Brown, poor, trans, queer, disabled—in order to guarantee the health, longevity and purity of the (white) race. This white supremacist logic is classed and gendered in its expression and weaponizes sexuality in its rationalization. While incarceration

²²² Michel Foucault, “11 January 1978,” *Security, Territory, Population: Lectures at the College de France, 1977-78*, Edited by Michel Senellart, François Ewald and Alessandro Fontana (New York: Palgrave MacMillan, 2007), 1.

²²³ Michel Foucault, “17 March 1976.” *Society Must Be Defended, Lectures at the College de France, 1975-76*, Edited by Mauro Bertani and Alessandro Fontana (London: Picador, 2003), 241. According to Foucault, classical sovereignty as “the right to take life or let live” was not erased but instead “came to be complemented by a new right which does not erase the old right but which does penetrate it, permeate it.”

²²⁴ *Ibid.*, 254.

functions at the level of the body to normalize through disciplinary power, it also functions at the level of the population to “*foster* life or *disallow* it to the point of death” by letting die those rendered unproductive and a contaminating presence by white supremacy and capitalism.²²⁵ As sociologist Loïc Wacquant explains, “the mission of today’s prison is thus identical to that of the classical ghetto whose *raison d’être* was precisely to quarantine a polluting group from the urban body.”²²⁶ Inasmuch as marginalized people are, in the words of Wacquant, a part of a “surplus population devoid of market utility” and unassimilable, their survival is framed as a liability to the safety of those whose lives are most valued in the population, as reflected in discourse in which police and prisons epitomize public safety.²²⁷

More than just quarantining, incarceration institutionalizes what literary scholar and cultural theorist Lauren Berlant calls “slow death.” Slow death is:

the physical wearing out of a population and the deterioration of people in that population that is very nearly a defining condition of their experience and historical existence. The general emphasis of the phrase is on the phenomenon of mass physical attenuation under global/national regimes of capitalist structural subordination and governmentality.²²⁸

Indeed, those involved in the criminal punishment system through incarceration experience discrete, violent and life-ending events but incarceration is characterized largely by the ways it disallows life to the point of death through everyday attrition. Prisons are inherently violent institutions as they exercise coercive control and deprive people of the resources and conditions necessary for survival and quality of life. As studies have shown, incarceration shortens life expectancy with every year in prison taking off two years in the life expectancy of an

²²⁵ Michel Foucault, *The History of Sexuality: Volume 1*, Translated by Robert Hurley (New York: Vintage Books, [1978] 1990), 138.

²²⁶ Loïc Wacquant, “Deadly Symbiosis: When Ghetto and Prison Meet and Mesh,” *Punishment & Society* 3, no. 1(2001), 112.

²²⁷ *Ibid.*, 105. In other words, they are expendable when they are no longer useful in maximizing the life of others in other ways.

²²⁸ Lauren Berlant, “Slow Death (Sovereignty, Obesity, Lateral Agency),” *Critical Inquiry* 33, no. 4, On the Case Edited by Lauren Berlant (Summer 2007) 754.

individual.²²⁹ Prisons often serve food that is poor in quality and nutritiously inadequate, provide medical care that is inferior and negligent, and house people in cages that have often been built on toxic waste sites.²³⁰ Incarceration is also a sentence to “social death,” as sociologist Joshua M. Price argues in *Prison and Social Death* (2015), such that those who are incarcerated are also “rendered non citizens, social nonentities” and often “bear a social mark, a stigma.”²³¹ Moreover, as it acts on the soul of the prisoner to foster self-alienation, incarceration can also be characterized as attempted soul murder which playwright Henrik Ibsen defines as “the great, unpardonable sin,” of the destruction of “the love of life in a human soul.”²³² These conditions of scarcity, violence, and neglect are mechanisms of slow death intrinsic to prisons that make evident that, as James argues, “penal incarceration and executions are the state’s procedures for discarding the unassimilable into an external inferno of nonexistence.”²³³ While slow death takes many forms, so does the struggle to survive it. Any ethical reflection on women’s agency in the

²²⁹ Notably, the U.S. incarceration rate has also shortened the overall national life expectancy by five years. Emily Widra, “Incarceration shortens life expectancy,” *Prison Policy Initiative*, June 26, 2017, https://www.prisonpolicy.org/blog/2017/06/26/life_expectancy/.

²³⁰ Wendy Sawyer, “Food for thought: Prison food is a public health problem,” *Prison Policy Initiative*, March 3, 2017, <https://www.prisonpolicy.org/blog/2017/03/03/prison-food/>. Ryan Sabalow, Dale Kasler, and Wes Venteicher, “Toxic water in California prisons: Sickening inmates and costing taxpayers millions,” May 3, 2019, <https://www.sacbee.com/news/politics-government/capitol-alert/article229294374.html>. Candice Bernd, Zoe Loftus-Farren and Maureen Nandini Mitra, “America’s Toxic Prisons: The Environmental Injustices of Mass Incarceration,” *Earth Island Journal*, <https://earthisland.org/journal/americas-toxic-prisons/>.

²³¹ Price utilizes the term as it comes from Orlando Patterson’s analysis of slavery in *Slavery and Social Death: A Comparative Study* (1982). Drawing on interviews with incarcerated people, Price argues that incarceration also reflects three aspects of social death that Patterson identifies as characteristic of slavery: institutional violence, generalized humiliation, and natal alienation. Joshua M. Price, *Prison and Social Death* (New Brunswick, New Jersey: Rutgers University Press, 2015), 3, 5.

²³² As quoted in Leonard Shengold, *Soul Murder Revisited: Thoughts about Therapy, Hate, Love, and Memory* (New Haven, Connecticut: Yale University Press, 2000). The leading cause of death in jails is suicide and the rate is greater than suicide in the U.S. population in general. The rates of suicide have been attributed to the “shock of confinement” for people who are “stripped of their job, housing and basic sense of normalcy” and most suicides in jail occur within the first three days. Maurice Chammah and Tom Meagher, “Why Jails Have More Suicides than Prisons,” *The Marshall Project*, August 4, 2015, <https://www.themarshallproject.org/2015/08/04/why-jails-have-more-suicides-than-prisons>. Jasbir Puar suggests that instead of a framing of suicide as a shortsighted response to a progressively better future we should consider “what kinds of ‘slow deaths’ have been ongoing that a suicide might represent an escape from.” Jasbir Puar, “The Cost of Getting Better: Suicide, Sensation, Switchpoints,” *GLQ: A Journal of Lesbian and Gay Studies* 18, no. 1 (Durham, N.C.: Duke University Press, 2011), 152.

²³³ James, *Resisting State Violence*, 34.

face of their incarceration and entrapment in personal life must begin with an understanding of survival as a significant domain of ethical life.

‘Survival as a Sphere of Moral Life’

As Cannon details in her review of Black women’s moral situation in the U.S. during slavery, the Great Migration, and most of the twentieth century, Black women’s moral reasoning arises from within conditions hostile to their survival. Their ideal moral values and conduct are informed by their positioning on the “lowest rungs of the social, political and economic hierarchy.”²³⁴ She explains that Black women’s “analysis and appraisal of what is right or wrong and good or bad develops out of the various coping mechanisms related to the conditions of their own cultural circumstances. In the face of this, Black women have justly regarded survival against tyrannical systems of triple oppression as a true sphere of moral life.”²³⁵ In other words, to understand Black women’s ethical lives and how they exercise agency, we must place their moral decision-making within the context of their struggle for survival and quality of life.

In *Doing Christian Ethics from the Margins* (2004), Christian ethicist Miguel De La Torre illustrates well the significance of survival as a sphere of moral life in reflecting on his Cuban mother’s moral decision-making when he was a child. His mother, who was not literate and spoke only Spanish, needed a job to care for her and her children. When asked by a potential employer if she had experience waiting tables and if she could read English, she responded “yes,” though she had never waited tables and had only memorized key words and phrases. De La Torre explains:

If she demonstrated the virtue of honesty and confessed she had no work experience, no education, and could barely speak the language, she would never have been hired. Yet, the moral reasoning she employed enabled her to surmount societal structures fundamentally averse to her very existence. ‘Which is more ethical,’ I imagine her asking

²³⁴ Cannon, 7, 4.

²³⁵ Ibid., 4.

me, doing what needs to be done to get the job, or letting the sins of others force us to live on the streets?²³⁶

When taken within the context of survival, what is often extolled as virtue for those who are privileged might undermine the survival of those who are oppressed. This inversion of dominant virtues and vices is evident in Cannon's identification from the writings of Zora Neale Hurston of vices Black women have made into virtues. The first of the three virtues that she identifies and the one that I focus on here is "unshouted courage." Cannon defines "unshouted courage" as "the quality of steadfastness, akin to fortitude in the face of formidable oppression... it involves the ability to 'hold on to life' against major oppositions."²³⁷ It is Black women's self-affirmation in the face of hostility to their existence.

Neither suffering nor the strategies for surviving are virtues in and of themselves. Instead, according to Cannon, "the quality of moral good is that which allows Black people to maintain a feistiness about life that nobody can wipe out, no matter how hard they try."²³⁸ She explains how the virtue of "unshouted courage" differs from a dominant ethical conception of courage as a virtue:

In the dominant ethical systems, responsibility is often understood as inseparable from free will. A range of choices and the sanctions offered are considered to be prerequisites for genuine moral responsibility. Thus, courage from this vantage point is considered as virtue only when it is distinguished from spurious, physical fear.... This notion of courage has proven to be false in the real-lived texture of Black life. Black people live, work and have their being within less gracious boundaries. Often they are compelled to act or refrain from acting in accordance with the external powers and principalities. The Black woman, in particular, is often required to give careful consideration to a will not her own.²³⁹

²³⁶ Miguel De La Torre, *Doing Christian Ethics from the Margins* (Maryknoll: New York, 2004), 13.

²³⁷ Cannon, 144. "Unshouted courage" is one of three virtues that Cannon identifies from the life and writings of Zora Neale Hurston that exemplify Black women's moral agency. She also names "invisible dignity" and "quiet grace."

²³⁸ *Ibid.*, 104.

²³⁹ *Ibid.*, 144. Cannon looks specifically at Alice Gardner who, she writes, "assumed that each person possesses self-determining power with allowance for equal privileges, a wide range of choices and qualified immunities. For her, courage can only be understood as moral character when one has 'the power and determination to follow loyally and reasonably one's own beliefs and principles, irrespective not only of the disapproval of neighbors, but also of painful

Moral courage is often understood as acting free of coercion in consideration of the consequences and choosing to act in alignment with one's principles while "unshouted courage" is self-affirmation and endurance in the face of dehumanizing structures and hostile conditions. Cannon notes how "unshouted courage" might appear to those not similarly positioned as complicity or collaboration, but as a virtue, it is not necessarily readily accessible for external assessment. Cannon elaborates, "'Unshouted courage' as a virtue is the often unacknowledged inner conviction that keeps one's appetite whet for freedom. The ethical speculation is that courage is the staying power of the life of the Black community wherein individuals act, affirming their humanity, in spite of continued fear of institutionalized aggression."²⁴⁰ As a moral virtue, "unshouted courage" resonates with the survival strategies of abuse victims, especially those who are subject to surplus punishment and is instructive of agency as it is exercised within intimate-partner coercive control. Though coercive control circumscribes choices and constrains agency, it is often found in less than ideal choices. Evan Stark contends that when we understand coercive control as targeting a victim's agency and subjectivity, we see "what many victims themselves feel, that they are living in a conscious and self-determining relation to domination, albeit a relation that is severely constrained by objective limits on their choice and action, the idea expressed by the notion that they exercise 'control in the context of

disturbance in one's own mind'" (144). Cannon does note however that for Paul Tillich, "courage is an ethical act when humans affirm their own being in spite of those elements in their existence which conflict with their essential self-affirmation" (147). This is not to suggest that oppressed people do not participate in or uphold structures of domination and subordination. As Townes explains, "The fantastic hegemonic imagination is in all of us. It is found in the privileged and the oppressed...None of us naturally escape it, for it is found in the deep cultural codings we live with and through in U.S. society" (21). Townes, *Womanist Ethics and the Cultural Production of Evil*. This is also not to suggest that all survival strategies are preferable, which is perhaps why Cannon considers the impetus behind them to be the virtue and not necessarily the techniques themselves.

²⁴⁰ Cannon, 144.

no control.”²⁴¹ The exercise of survivor agency is found within their survival strategies where they act in self-affirming ways, whether through open refusal or the less recognized quiet resistance. According to Stark, “women nest their subjectivity in behaviors, physical symptoms, or other manifestations that sabotage the effect of control strategies on personhood while conveying seeming compliance to the perpetrator.”²⁴² What often appears as an acceptance of abuse, complicity, or facilitation of another’s abuse can be a part of a series of survival strategies by which survivors affirm their own being in the face of the ongoing threat of existential violence and death—both at the hands of loved ones and the state. With leaving considered the standard exercise of agency, more subtle but equally significant strategies often go ignored. Showden explains, “resisting domestic violence...is a question of implementing a variety of staying and leaving tactics that intervene in violence while building one’s resources and contributing to one’s life projects.”²⁴³ For marginalized victims of gender violence, the assumptions and expectations around victimization and agency held and promulgated by the criminal legal system and larger culture either discount their agency altogether or punish them for their exercise of it. These norms and ideals derive from dominant notions of victimhood proliferated by the fantastic hegemonic imagination and are raced and gendered in their conceptualization and impact. Conditions characterized by the exercise of coercive control like intimate partner violence and incarceration compromise and violate autonomy, limit possibilities for acting and severely constrain agency. As they impact agency, these conditions comprise moral context, the social, historical, economic, political, and personal conditions under which people make ethical decisions.

²⁴¹ Stark, *Coercive Control*, 215-216. The model of coercive control understands the identity of victim and/or survivor to be rooted in the experience of entrapment instead of individual psychology and the exercise of survivor agency as attempts to defend a “affirmative femininity” from “illegitimate authority” (215).

²⁴² *Ibid.*, 216.

²⁴³ Showden, 68-69.

White Female Victimhood and 'The Paradigmatic Victim' of Domestic Violence

As Kate Manne explains in *Down Girl: The Logic of Misogyny* (2018), to be a victim is “at its heart a moral notion” because the “paradigm case of being a victim involves being morally wronged at the hands of another agent,” wounded as a result, and usually “lowered relative to one’s previous moral-cum-social position” as well as that of “the agent who *made* one his victim in an act of moral wrongdoing.”²⁴⁴ In a normative sense, to be considered a victim is to also be considered blameless and innocent. Claims to and acceptance of claims to victimhood are often based on the social positioning of one party in relation to another and the status of those involved often define the nature of the offense. Whether the actions of one party against another undermine or affirm the hierarchical order is often reflected in who is granted status as victim and whether that status is legitimated by the state through protection and prosecution. Take for instance, the disparities in sentencing in which Black people are sentenced to death at higher rates when the victim is white and women who kill men (often their batterers) are sentenced to more time than men who kill women (often victims of their abuse).²⁴⁵ While there are several contributing factors to these disparities, in an increasingly punitive carceral system that is ever-widening its net, they also reflect raced and gendered narratives of victimhood that tell us who is a victim deserving of protection and who is not.

Contemporary cultural and legal conceptions of victimhood stem from the controlling image of white female victimhood derived in part from colonial and post-emancipation

²⁴⁴ Manne, *Down Girl*, 223-224.

²⁴⁵ Dave Collins, “Yale Study: Racial Bias, Randomness Mar Conn. Death Penalty Cases,” *Boston Globe*, December 11, 2007, http://archive.boston.com/news/education/higher/articles/2007/12/11/yale_study_racial_bias_randomness_mar_conn_death_penalty_cases/. According to Tania Tetlow, the “national average sentence for men who kill their female partners is two to six years in prison. Criminal justice systems and juries do not, on average, treat the murder of women by their husbands terribly seriously. In contrast, women who kill their male partners are sentenced to an average of 15 years, three times as much as male defendants, despite the fact that many of these women killed in self-defense” (Footnote, 93). Tania Tetlow, “Discriminatory Acquittal,” *William and Mary Bill of Rights Journal* 17, no. 1 (2009).

narratives. White colonizers utilized white female victimhood to obscure the realities of white patriarchal power and violence. As scholar-activist Andrea Smith explains, white colonizers painted Native men as “savages” who threatened white women, while white men raped Native women and killed Native people with impunity. This narrative functioned to maintain white racial solidarity despite white women’s own subordinate status to white men. As she elaborates, “the white man *literally* brutalizes [Native women] while *symbolically* brutalizing the white woman through this representational practice. Native men are scapegoated for his actions so white women will see them as the enemy, while white men remain unaccountable.”²⁴⁶ Patriarchal violence, against both Native and white women, according to Smith, serves to naturalize racial hierarchy. Smith contends, “patriarchal gender violence is the process by which colonizers inscribe hierarchy and domination on the bodies of the colonized” and therefore “the colonization of Native women (as well as other women of color) is part of the project of strengthening white male ownership of white women.”²⁴⁷ Post-emancipation narratives of white female victimhood at the hands of Black male “predators,” like that of Native men, served to obscure the brutalization of Black women at the hands of white men as well as the violence of white men against white women. They were also used to reassert white dominance and expand it through mechanisms of the state. According to philosopher Ladelle McWhorter, those narratives were used as a part of the larger effort to maintain a “docile and exploitable underclass” through lynching and served to “camouflage the ongoing growth of what Foucault calls the carceral system.”²⁴⁸ As McWhorter explains, the myth of the black rapist functioned in tandem with the myth that white people lynched because they believed Black men raped. McWhorter asserts, “it

²⁴⁶ Andrea Smith, *Conquest: Sexual Violence and American Indian Genocide* (Cambridge, MA: South End Press, 2005), 22-23.

²⁴⁷ *Ibid.*, 23, 27.

²⁴⁸ Ladelle McWhorter, *Racism and Sexual Oppression in Anglo-America: A Genealogy* (Bloomington, IN: Indiana University Press, 2009), 161, 159.

was very much in the interest of a white elite to perpetuate this second myth, the myth that lynching occurred because whites thought black men were sexual predators” because it enabled governmental inaction against those who lynched and increased action against Black people through “more law enforcement officials, more surveillance, and more extensive prison systems.”²⁴⁹ In her examination of the law, domestic violence, and the limits of patriarchal authority in the antebellum south, historian Laura F. Edwards notes the critical role of the nascent state in enforcing and maintaining the racialized patriarchal order. She explains, “the law had to assert continually the power of white male household heads precisely because, in practice, that power was neither complete nor stable.”²⁵⁰

White female victimhood and the patriarchal ideal of white womanhood that informs it, generally prescribed women to the roles of wives and mothers who should be submissive, chaste, and pious. British historian Garthine Walker suggests that one of the critical sites in which victimhood becomes gendered is through Christianity where through “the message that suffering was redemptive and valuable,” it “constructed the qualities of idealised femininity—the passive acceptance of suffering, humility and meekness—as victimhood.”²⁵¹ Narratives of white female victimhood functioned to preserve hegemonic masculinity by serving as a rhetorical proxy for challenges to white male dominance, transferring and transforming the threat as the victimization of white women. At the same time, the law continued to increasingly criminalize a range of violent acts against white men, give them leeway in their use of violence against others and treated violence against them more seriously because it challenged the public order.²⁵²

²⁴⁹ McWhorter, 160-161. McWhorter notes this does not mean that white people did not believe this myth but that as evidenced in lynching statistics they did not need rape as an excuse to lynch.

²⁵⁰ Laura F. Edwards, “Law, Domestic Violence, and the Limits of Patriarchal Authority in the Antebellum South,” *The Journal of Southern History* 65, no. 4 (Nov. 1999), 740.

²⁵¹ Garthine Walker, *Crime, Gender and Social Order in Early Modern England* (Cambridge, England: Cambridge University Press, 2003), 50.

²⁵² Edwards, 755.

Male-oriented laws and narratives of white female victimhood continue to influence cultural and legal constructions of the paradigmatic victim, especially of intimate partner violence, who is considered to be white, female, straight, passive, fearful and without agency.²⁵³ Sharon Angella Allard argues that as a legal defense rooted in white female victimhood, battered woman syndrome is inapplicable to Black women.²⁵⁴ Allard explains, “While a white woman’s conduct in killing may be viewed as inapposite to traditional gender roles, the same conduct by a Black woman may be viewed as typical of her character.”²⁵⁵ It is this fundamental distinction between the ability to align with norms through behavior and the inability to align regardless of behavior that underlies criminalizing stereotypes and the “good victim” and the “non-victim criminal” dichotomy. At the same time, in that it devalues and renders invisible survivor agency altogether, conceptualizations of victimhood rooted in the controlling image of white female victimhood, are insufficient for grappling with the lived experiences of all survivors. As Showden notes, “domestic violence is one of the primary areas of political contestation over the nature of women’s agency, particularly in terms of placing ‘victimization’ in direct opposition to agency.”²⁵⁶ Employing such a simplified understanding of agency, the criminal legal system both

²⁵³ Goodmark, “When is a Battered Woman not a Battered Woman?,” 91. While most victims of domestic violence are female and most perpetrators are male, this paradigm is harmful for those who most deviate from it as it prevents them from receiving the support and resources they need as well as increases the likelihood of their criminalization. In looking at the experiences of queer Black incarcerated girls who are victims of male violence, Beth Richie notes in “Queering Antiprison Work: African American Lesbians in the Juvenile System,” that “the strategies they use to ensure even minimal safety and small measures of protection are so far outside the dominant understanding of crime and justice that even those who advance a progressive racialized analysis of mass incarceration leave them politically and programmatically unprotected” (80). These strategies include a reliance on relationships with similarly situated men for protection from other men (such as pimps and boyfriends to “hide” their stigmatized sexual identity and mitigate male harassment) while simultaneously rendering them vulnerable to the violence of those they have aligned with for protection as well as vulnerable to the criminal legal system. Beth Richie, “Queering Antiprison Work: African American Lesbians in the Juvenile Justice System,” Edited by Julia Sudbury, *Global Lockdown: Race, Gender, and the Prison-Industrial Complex* (New York: Routledge, 2005).

²⁵⁴ *Ibid.*, 198.

²⁵⁵ Sharon Angella Allard, “Rethinking Battered Woman Syndrome: A Black Feminist Perspective,” *Domestic Violence at the Margins: Readings on Race, Class, Gender, and Culture*, Edited by Natalie J. Sokoloff and Christina Pratt, (New Brunswick, New Jersey: Rutgers University Press, 2005), 200.

²⁵⁶ Showden, 37.

discounts and punishes survivor agency, creating moral double binds that exemplify the nature of carceral gender entrapment.

Moral Double Binds, Carceral Gender Entrapment, and the Punishing of Survivor Agency

The criminal punishment system is preoccupied with culpability for the purpose of apportioning blame in order to administer punishment. With this exclusive focus on guilt and punishment, the understanding of victimization as incompatible with agency facilitates institutional victim blaming and punishes survivor agency in cases of gender violence because expressions of survivor agency are used as evidence of culpability. For victims of sexual assault, for instance, any expression of sexual agency and engagement in norm violating behaviors is re-inscribed as evidence of culpability and the sexual assault as punishment for it. At the same time, while expressions of agency are used as evidence of culpability in cases of gender violence, the presumption of agency alone is enough to blame victims. According to legal scholar Tania Tetlow, in the twentieth century, as women's rights expanded, juries became less likely to convict abusive partners of domestic violence. She explains, "Juries seemed to worry less about men's violence than about blaming female victims who did not exercise their supposed new autonomy to leave their abusive husbands."²⁵⁷ While rights once only afforded white propertied men have been extended to others, the normative moral agent based on the white male subject remains intact and the norm by which all others are measured. As a result, battered women are presumed to have a level of autonomy and agency without the institutional and interpersonal power to secure and fully exercise it.

The criminalization of survivors for self-defense and the prosecution of mother-survivors under the legal theory of "failure to protect" are two instances that demonstrate the impact of victimization as conceived in opposition to instead of coincident with agency such that victims

²⁵⁷ Tetlow, 93.

who are already criminalized and deemed inherently culpable are doubly punished, by the abusive partner and the state. The notion of the passive and helpless domestic violence victim is largely tied to the development of battered woman syndrome as a psychological explanation for why a victim of intimate partner violence responds with violence. As a defense available to criminalized survivors of domestic violence who use force or kill their abuser, battered woman syndrome has been used to explain the victim's perception of imminent danger as reasonable in cases that do not match traditional confrontational self-defense in male-oriented homicide law.²⁵⁸ Battered woman syndrome seeks to carve out an exception to female violence as an expression of agency by pathologizing it as an irrational action that is morally and legally wrong but the result of a psychological defect for which a battered woman should not be held accountable. In contrast, Stand Your Ground law provides an affirmative defense justifying the use of deadly force. According to legal scholar Mary Anne Franks, these different laws have created a "two-track system of self-defense" that is gendered and "has far-reaching implications outside of the courtroom," explaining that:²⁵⁹

Battered Women's Syndrome sends the legal and social message that women should retreat even from their own homes in the face of objective, repeated harm to their bodies; Stand your Ground sends the legal and social message that men can advance against strangers anywhere on the basis of vague, subjective perceptions of threats. Male violence is not only tolerated, but celebrated; women's violence is not only discouraged, but stigmatized.²⁶⁰

²⁵⁸ As Allard explains, "the circumstances under which a battered woman kills her batterer often do not reflect standard notions of imminent danger: a battered woman might strike out against her batterer when his back is turned or when he is asleep or [otherwise] inattentive. Such an action may be perceived as unreasonable because the woman was not necessarily in imminent harm. The classic, male orientation of the law of self-defense, coupled with gender stereotypes, limits the ability of judges and jurors to perceive a battered woman's conduct as reasonable" (196).

²⁵⁹ Mary Anne Franks, "Real Men Advance, Real Women Retreat: Stand Your Ground, Battered Women's Syndrome, and Violence as Male Privilege," *University of Miami Law Review* 68, (Sept. 2014): 1105-1108.

²⁶⁰ Franks, 1102-1103. According to Franks, advocates of Stand Your Ground laws appropriate women's right to self-defense in defense of expanding self-defense doctrine, masking "the law's hostility towards women's use of force" and obscuring "the real achievement of such legislation: the normalization and promotion of (often white) male violence in an ever expanding variety of scenarios" (1099). In 2014, South Carolina prosecutors came out and said that Stand Your Ground does not apply to victims of domestic violence, arguing that the law only covers intruders. Nicole Flatow, "South Carolina Prosecutors Say Stand Your Ground Doesn't Apply to Victims of

In cases of self-defense, the stigma of women's violence is difficult to overcome. To effectively present a battered woman defense survivors must present themselves as passive victims without any agency, even though they do not experience themselves as such. Katherine Baker explains, "This defense often fails because when real women get into court, the jury hears a story of a woman who struggles, emotionally if not physically. Such struggles show signs of initiative and agency that are inconsistent with battered women's syndrome."²⁶¹ If a victim of intimate partner violence is to demonstrate agency, they must do so in the ways deemed appropriate by the state and that is in line with gendered expectations that they retreat rather than respond with violence.²⁶²

Women who use violence do so largely as defensive behavior or out of frustration in response to coercive control and violence. While defensive behavior might be considered self-defense, violence out of frustration—including as a way to provoke and break tension that arises from periods of increasing dominance, control, and volatility—or any emotion other than fear deviates from this victim ideal. While fear is constructed as a passive emotion, anger and frustration are constructed as active, often aggressive ones and therefore indicative of agency.

That victims cannot demonstrate emotions other than fear is an oversimplification of the

Domestic Violence," *ThinkProgress*, October 14, 2014, <http://thinkprogress.org/justice/2014/10/14/3579407/south-carolina-prosecutors-say-stand-your-ground-doesnt-apply-to-victims-of-domestic-violence/>.

²⁶¹ Katherine K. Baker, "Gender and Emotion in Criminal Law," *Harvard Journal of Law & Gender* 28 (2005), 460.

²⁶² Where courts recognize that abuse has occurred, they often use expressions of survivor agency to minimize the impact of the abuse. Taylor Partlow, a Black woman survivor of domestic violence convicted of manslaughter for stabbing her abusive boyfriend, petitioned to be sentenced under New York's recent Domestic Violence Survivors Justice Act that allows judges to consider a lesser sentence for survivors. Although five people testified to witnessing her boyfriend attempt to strangle her, drag her by her hair and beat her, leave her with a swollen eye, and keep her under surveillance by calling her on the phone and demanding her constant availability, the judge at sentencing said that "The abuse, No. 1, was not substantial abuse and not a significant contributing factor to your behavior" and referred to their relationship as "mutually abusive." In addition, he included in his decision mention of her substance use prior to the stabbing. Despite his denial of the impact of abuse, Partlow received a sentence of 8 years instead of the possible 25 years. Patrick Lakamp, "'Epitome of a Domestic Violence' victim or Not, She's Still Going to Prison," *The Buffalo News*, September 8, 2019, https://buffalonews.com/news/local/epitome-of-a-domestic-violence-victim-or-not-shes-still-going-to-prison/article_53129e5d-5ae5-5845-a58b-d1325352982f.html.

complex way that emotions shape agency and punishes victims for emotions that are vital to their survival. For Black women stereotyped as angry and aggressive, in which anger is already attributed to them, any expression of anger only further undermines their claim to victimhood. While anger is not automatically disqualifying in Stand Your Ground cases, as Franks explains for battered women, Black women especially, “There’s this idea that anger and fear are mutually exclusive. Black women are not allowed to get mad about the fact that someone is allowed to beat them.”²⁶³ And yet, anger is integral to a victim’s survival and agency, especially in relationships with others. Beverly Harrison explains that anger is a “feeling-signal that all is not well in our relation to others...a sign of some resistance in ourselves to the moral quality of the social relations in which we are immersed.”²⁶⁴ It is a core motivating emotion for victim’s in seeking help and change, including choosing to eventually leave. Thus, survivors are punished by the system for the internal resource they need to muster in order to do what is prioritized and demanded of them by the system.²⁶⁵ When such anger is suppressed, it is often turned inward and has dire consequences for the mental health and safety of victims of abuse, including their resignation to and acceptance of the abuse as warranted punishment.

Battered woman syndrome as a defense often fails because of the contradiction of agency inherent within it. That is, to be considered a victim one must be without agency but to survive is to demonstrate agency. To be considered a victim one must demonstrate fear, but to survive, one must tap into anger as a resource for action. As a result, claims to victimhood remain largely out

²⁶³ Irin Carmon, “Can Women Stand their Ground? Depends on the Target,” *MSNBC*, March 17, 2014. <https://www.msnbc.com/msnbc/can-women-stand-their-ground-msna288011>.

²⁶⁴ Beverly Wildung Harrison, *Making the Connections: Essays in Feminist Social Ethics*, Edited by Carol S. Robb, (Boston: Beacon Press, 1985), 14.

²⁶⁵ The anger of survivors threatens not only the control of the abuser but when directed to action, the social order itself such that the suppression of survivor agency by punishing it is to the benefit of maintaining white male dominance. According to Harrison, “Where anger arises, there the energy to act is present...all serious human moral activity, especially action for social change, takes its bearings from the rising power of human anger. Such anger is a signal that change is called for, that transformation in relationship is required” (Harrison, *Making the Connections*, 14-15).

of reach for survivors who fight back because victimhood by definition excludes their exercise of agency. Consequently, survivors who fight back are damned if they do, dead if they don't.

As with survivors criminalized for self-defense, mothers whose abusive partners also abuse their children face similar moral double binds. Survivors are expected to report the abuse against themselves and their children even though they risk losing their children and retaliation from their abusers when they do.²⁶⁶ In their description of “failure to protect” as a political ideology focused on inflating culpability and increasing punishable people, Bierria and Lentz highlight the moral double binds it creates for survivors explaining:

Survivors have been found guilty if they do not successfully defeat their abusive partner and if they fight back, if they do not escape and if they try to escape, if they take their child to receive medical help and if they try to tend to their children themselves, if judges believe that they are genuinely victims of domestic violence and if judges believe that they are lying about the abuse. Any scenario can be manipulated into ideological alignment in order to blame mothers for their abuser's actions.²⁶⁷

In “failure to protect” cases, survivor agency is used to either deny or minimize the impact of abuse on the survivor and inflate their culpability. It is also used to punish survivors for “failing” to exercise it in the manner prescribed by racist idealized notions of motherhood which elevate self-sacrifice as the highest virtue. In this idealized conception of motherhood, a “good mother” is instinctually nurturing and protective and this “innate” desire to mother overrides any concern for the self. Hyper-culpable motherhood constructs mothers as overly responsible for harm done

²⁶⁶ In a yet released study, researcher Joan S. Meier, reports that in 64% of custody cases the court did not accept the story of mother's abuse, even with corroborating evidence. When the mother accused the father of domestic violence or child abuse, she lost custody to the father in 28 percent of cases while when roles reversed, fathers lost custody in only 12% of cases. Samantha Schmidt, “A gendered trap”: When mothers allege child abuse by fathers, the mothers often lose custody, study shows,” *The Washington Post*, July 29, 2019, https://www.washingtonpost.com/local/social-issues/a-gendered-trap-when-mothers-allege-child-abuse-by-fathers-the-mothers-often-lose-custody-study-shows/2019/07/28/8f811220-af1d-11e9-bc5c-e73b603e7f38_story.html.

²⁶⁷ Bierria and Lentz, 95. They reference Evelyn Nakano Glenn's work on motherhood ideology as she names the contradictions that characterize it. That is, mothers are constructed as selfless and smothering, all-powerful and powerless (95). Evelyn Nakano Glenn, “Social Constructions of Mothering: A Thematic Overview,” *Mothering: Ideology, Experience, and Agency*, Edited by Evelyn Nakano Glenn, et al. (New York: Taylor & Francis Group, 1994).

to their children, demanding they overcome any and all obstacles to protecting them and the inability to protect their children from harm is rendered a moral failure or individual flaw. When the criminal legal and child protection systems acknowledge abuse of the mother, they often leverage the abuse against her to blame her for “putting her children in harm’s way,” separating the mother-survivor’s compromised agency as a victim of abuse from her agency as a mother. However, child abuse is one way that abusive partners abuse women *as mothers*. According to Lorraine Radford and Marianne Hester in *Mothering Through Domestic Violence* (2006), abusers attempt to “gain power and control over women through their mothering” with their efforts directed “towards women’s experience of mothering and their identities as ‘good enough’ or ‘failed mothers.’”²⁶⁸ Abusers target a woman’s identity as a mother by inhibiting her ability to protect and care for her children. The criminal legal and child protection systems reinforce this abuse of women as mothers by blaming them for the harm done to their children and framing it as their “failure” in mothering. Although “failure to protect” is applied to behaviors characterized as both passive and active, it is often used to punish perceived inaction in cases in which the protective strategies of mother-survivors are overlooked or misread. As research has shown, “maternal protectiveness involves a host of more subtle practices than previously realized.”²⁶⁹ Mother-survivors often try to calm their partner down, avoid leaving their children alone with their partner, and reassure them through demonstrating their love. They might also administer physical “punishment” in the abusive partner’s stead in an attempt to mitigate harm and injury that the abuser would do.

²⁶⁸ Lorraine Radford and Marianne Hester, *Mothering through Domestic Violence* (London, England: Jessica Kingsley Publishers, 2006), 29.

²⁶⁹ Nicole T. Moulding, et al. “Untangling Self-Blame and Mother-Blame in Women’s and Children’s Perspectives on Maternal Protectiveness in Domestic Violence: Implications for Practice,” *Child Abuse Review* 24 (May 2015): 250.

Statements from the prosecutor and judge in the case of Arlena Lindley, a Black mother whose abuser assaulted her and killed her three-year-old son, reflect the demands of idealized motherhood that are used to blame and punish mothers. During Lindley’s sentencing, Carmen White, a Dallas prosecutor appealed to this ideology and asked the judge to send a message “that mother is supposed to step outside of all that, step outside of protecting herself and lay her life, if she has to, on the line for her child.”²⁷⁰ While fathers are expected to kill for their children, mothers are expected to die for them, even though they can only protect and care for them if they are alive. Their survival is presented as evidence of their selfishness, the gravest moral flaw for a mother to possess. In his sentencing of Lindley to 45 years for the offense of injury to a child by omission, the judge stated, “The evidence showed me you were more worried about yourself than your child....You failed to protect him from that horrible beast you were living with. You had a duty to protect your son, and you let him down. You didn’t nurture him when he needed you the most.”²⁷¹ He declares selfishness her moral flaw and insufficient nurturing her moral failing, thus reiterating and reenacting the abuse of her as a mother by targeting her identity and declaring her a “bad” or “failed” mother.

The assumption that a woman’s desire for a man exceeds her desire to be a mother often lies beneath charges of her selfishness. The accusation that a woman is guilty of loving her abuser more than her children is usually implied and made explicit on occasion. At the closing of the trial of Amanda Hamm, a white mother in Illinois prosecuted for “failing to protect” her three children from her abusive boyfriend and his alleged plan to kill them, the prosecutor referred to him as her “addiction.” He then told the jury that her name tells them all they need to know about

²⁷⁰ Lindley Sentencing Transcript, <https://www.documentcloud.org/documents/1277580-lindley-sentencing-transcript.html#document/p219/a176737>.

²⁷¹ Lindley Sentencing Transcript.

her priorities: “A man duh. The first four letters of her name are A Man.”²⁷² According to the state at trial and a later custody hearing, she was not only guilty of choosing the wrong man, but giving herself over to disordered desires. While the assumption that mothers who stay with their abusive partner love their abusers more than their children is a judicial fiction, it is indicative of the underlying narratives of hyper-culpable womanhood that enable the incarceration of women “behind a man”—that women are to blame for the men they love, for surrendering to “dangerous” desires, and for “loving too much.”

The policing and punishing of the desires of women, especially those of mothers, is emblematic of gendered carceral interventions. Sociologist Lynne A. Haney finds in her comparison of two residential facilities for incarcerated mothers at two different periods in time, a programmatic shift from a rehabilitative model focused on promoting self-sufficiency and discouraging dependence on the state to a therapeutic one focused on the psyche and regulating physical and emotional attachments and desires. Haney explains, “‘alternative’ state institutions that once centered on women’s relationship to the state in an attempt to break their public

²⁷² Edith Brady-Lunny and Steve Vogel, *The Unforgiven: The Untold Story of One Woman’s Search for Love and Justice* (BookBaby, 2019), 221. Hamm was prosecuted along with her boyfriend for the death of her three children who drowned in what they said was an accident. Despite a distraught 9-1-1 call, detectives were immediately suspicious of Hamm and Maurice LaGrone who was black, eventually suggesting that LaGrone convinced Hamm to help him kill her children so that they could be free of them. LaGrone abused Hamm but there was no evidence that he ever abused her children and questions remain about the state’s claims that their deaths were intentional and the early efforts of investigators to convince Hamm to implicate LaGrone (60). Nevertheless, LaGrone and Hamm were both tried separately and Hamm was convicted of child endangerment. She served 19 month in prison in addition to the more than three years she had already served awaiting trial. At her sentencing hearing, Amanda read a statement that said: “I regret that I formed a relationship with Maurice LaGrone, not because he was an evil person, but because he was immature, selfish and unwilling to be a responsible partner. He contributed little to our little ‘family’ financially and was more concerned about his wants and needs than those of others” (232). She concluded by promising to avoid similar relationships in the future. After Hamm was released, she met and married another man, also black. After having two children, Hamm was pregnant a third time and went to the hospital for blood pressure concerns days before the baby was due. She was recognized by her doctor who reported her to the Illinois Department of Children and Family Services based on her child endangerment convictions in relationship to the deaths of her three children and after the birth of her son, DCFS removed him and her other two children. At a custody hearing, the prosecutor argued that “central to the case was Amanda’s pattern of choosing the wrong man whose propensity for verbal and physical abuse, combined with a lack of motivation to work and support a family, always ended badly for her and her children” (247). The judge also said in ruling against custody that Hamm was “‘unable’ to be a good mother” (254).

‘dependencies’ had become fixated on ridding women of their ‘dangerous desires’ and steering them toward ‘healthy pleasures.’”²⁷³ The punishing of women’s desires is fundamental to the punishing of their agency because desires are generally considered to arise from the subject alone and the ability to pursue them unimpeded, considered hallmarks of autonomy and freedom. However, as political scientist Nancy Hirschmann contends, desire is a product of social and material conditions that shape identity and self-understanding and heteropatriarchy and male domination play a part in producing it.²⁷⁴ Women are punished then for desires that extend from these identities, including emotional investments made because male recognition through romantic love is a primary site of women’s sense of social worth, resulting in carceral gender entrapment.

Beth Richie defines gender entrapment as the process through which battered Black women are punished for behavior that is the logical extension of their “racialized gender identities, their culturally expected gender roles, and the violence in their intimate relationships.”²⁷⁵ She proposes gender entrapment to name not only the coercion of survivors to criminalized activities by their abusers but the process by which they are punished for it. Richie’s definition of gender entrapment helps to demonstrate that the moral double binds that survivors face are a result of their identities, desires, and cultural and community expectations. It also lends itself to a better understanding of gendered punishment as it circulates between personal life and the state. However, in expanding further an analysis of the organization of intimate partner and state coercive control in personal life and through incarceration, I suggest it is better termed *carceral* gender entrapment and understood not only as the process by which they are punished,

²⁷³ Lynne A. Haney, *Offending Women: Power, Punishment, and the Regulation of Desire* (Berkeley, CA: University of California Press, 2010), 4.

²⁷⁴ Nancy J. Hirschmann, *The Subject of Liberty: Toward a Feminist Theory of Freedom* (Princeton, NJ: Princeton University Press, 2003), 200.

²⁷⁵ Richie, 4.

but the condition and experience of unfreedom that results. The incarceration of women “behind a man” illuminates the entrapment of women in love and trouble more generally. As a result, I draw on both Richie and Stark, in defining gender entrapment as both the condition of unfreedom created by coercive control and the process by which women in love are punished in their intimate relationships for desires and behavior that are extensions of their racialized gender identities, culturally expected gender roles, and inequality in love. Carceral gender entrapment describes the nexus of intimate-partner and state violence as they are connected through discipline and punishment and is exemplified in the moral double binds that marginalized survivors of gender violence face in a carceral state that is fueled by a pro-criminalization ideology that functions to expand its reach and maximize punishment. As both self-defense and “failure to protect” cases demonstrate, survivors of gender violence face moral double binds shaped by dominant ideologies, narratives and norms that influence a survivor’s self-understanding and possibilities for action while also entrapping them between intimate partner and state violence such that their legal options are death or imprisonment in the home or by the state. As a result, survivors who are criminalized and incarcerated move from a domestic prison regime to a state-run one.

Domestic and State Prison Regimes, Power, and ‘The Art of Punishing’ Women

In *Forced Passages: Imprisoned Radical Intellectuals and the U.S. Prison Regime* (2006), Dylan Rodríguez conceptualizes “the prison as a regime,” that is, “as a dynamic state-mediated practice of domination and control.”²⁷⁶ In doing so, he shifts from more common analyses of the prison as an institution and its related networks to the prison as a “technology of violence” centered on domination and control that is “a constitutive logic of the state’s

²⁷⁶ Rodríguez, 40.

production of juridical, spatial, and militarized dominion.”²⁷⁷ While the U.S. prison regime is unprecedented and unparalleled, according to Rodríguez, the significance of understanding it as a regime is how it has come to model and inform power relations in our everyday lives and communities.²⁷⁸ It is this model of power relations as well as shared logics and technologies of violence, I argue, that connects the U.S. prison regime to domestic ones in which women are entrapped in personal life. According to Rodríguez, “The specificity of imprisonment as a regime of power is its *chattel logic*, or structure of abject and non-human objectification: to the extent that the prisoner or ‘inmate’ is conceived as the fungible property of the state...the captive is both the state’s abstracted legal property/obligation and intimate bodily possession.”²⁷⁹ Sexual abuse is part and parcel to incarceration as gender violence precisely because of its chattel logic in which the prisoner is considered to be legal property and intimate bodily possession. Such abuse is normalized through strip and cavity searches as well as through the abuses of individual agents like assistant warden Martinez from the story that opens this chapter.²⁸⁰ As Rodríguez explains, “an essential (warfare) technology of the prison regime is its circulation of violence *through* its legitimated practitioners—the bodies of designated agents (guards, doctors, wardens, prison educators) and guardians of the dominion—and simultaneous performance and

²⁷⁷ Rodríguez, 41.

²⁷⁸ Dylan Rodríguez, “The Disorientation of the Teaching Act: Abolition as Pedagogical Position,” *Radical Teacher*, no. 88 (Summer 2010): 7.

²⁷⁹ *Ibid.*, 41-42.

²⁸⁰ Such institutionalized sexual violence is considered legal in the name of security. The U.S. Court of Appeals for the 7th Circuit ruled legal a 2011 training exercise for incoming cadets at Lincoln Correctional Center, an Illinois women’s prison, in which women were rounded up by a tactical unit “armed with batons and shields,” made to strip, remove menstrual products, and “ordered to lift their breasts and hair, to cough and squat, and then, finally, to bend over and spread open their vaginal and anal cavities” in view of male guards. According to the ruling, “because the guards didn’t physically probe the women while conducting the visual body cavity searches, the judges ruled, the women’s Fourth Amendment rights to privacy weren’t violated.” Meagan Flynn, “Female inmates were forced to expose their genitals in a ‘training exercise.’ It was legal, court rules.” *The Washington Post*, July 19, 2019, <https://www.washingtonpost.com/nation/2019/07/19/female-inmates-were-forced-expose-their-genitals-training-exercise-it-was-legal-court-rules/>.

materialization *on* the bodies of an immobilized captive population.”²⁸¹ Domestic or intimate partner violence is also characterized by chattel logic, sexual violence integral to it. While women are no longer the legal property of their male partners, the subordination and entrapment of women by men in personal life can be understood as an attempt to reestablish such a social relationship. As Stark explains, domestic violence as coercive control emerged as the strategy for individual men seeking to maintain male dominance in liberal democracies where women are the putative “legal equals” of men and not their legal property.²⁸² While there are numerous examples of currently existing legal inequality, marital rape, which was still legal in the 1980s in some states exemplifies a more contemporary vestige of chattel logic as expressed in men’s property right of women as intimate bodily possession. We also see remnants of it expressed most explicitly in intimate partner violence through femicide because, as Stark explains, “the ultimate expression of property right is the right of disposal.”²⁸³ Property right is also expressed in more subtle ways as well. Stark argues that “men have devised coercive control to offset the erosion of sex-based privilege in the face of women’s gains, filling the void created as institutional support for male domination is disassembled by installing patriarchal-like controls in personal life.”²⁸⁴ The violence of men, in part, is an expression of their frustration with a lack of power to which they are presumed to be entitled. Coercive control in the context of intimate relationships is distinctive from that exercised by the state, he suggests, in that it is “personal and individualized in nature” and this is reflected in the “privileged access” abusers have and

²⁸¹ Rodriguez, *Forced Passages*, 46.

²⁸² Stark, 171.

²⁸³ *Ibid.*, 208.

²⁸⁴ *Ibid.*

maintain to their victims.²⁸⁵ Privileged access refers to “the presumption of intimacy” and the “personal knowledge intimacy affords.”²⁸⁶ Stark elaborates:

the personal nature of coercive control begins with the controller, whose individual needs are the focus of everything he does, and extends to the means deployed. Only in coercive control do perpetrators hone their tactics to their special knowledge of everything from a victim’s earnings and phone conversations to her medical problems, personal fears, sexual desires, and illicit activities.²⁸⁷

While abusive partners do not have the resources or reach of the state to exert control, their privileged access helps to explain why even when partners are separated, they are able to continue the abuse. Intimate partner coercive control is distinctive as a form of abuse not only because of the privileged access that an abusive partner has to their victim but also because of the nature of the relationship that enables this access. Therapeutic programming in carceral settings often demand a level of privileged access to incarcerated women, requiring that they share their innermost thoughts, desires, and histories with “legitimated practitioners” and often publicly. Such information can be and often is used by others against them. For instance, a warden at a Hawaii prison made women engage in what he called “shame therapy” which entailed filming them as they stood at a lectern and shared their detailed sexual histories in front of other staff and prisoners.²⁸⁸ He had them watch pornographic films, called them “whores” and asked them what they thought about during sexual activity. While a more egregious example of this wielding of privileged access to women’s inner lives in prison, it was made possible because of the extent that the therapeutic model and self-confession have become normalized in carceral institutions. Nevertheless, while both prisons and abusive partners have privileged access, love

²⁸⁵ Stark, 206.

²⁸⁶ Ibid., 207.

²⁸⁷ Stark, 206.

²⁸⁸ “Hawaii Warden Subjected Female Prisons to ‘Shame Therapy,’” *Prison Legal News*, January 10, 2017, <https://www.prisonlegalnews.org/news/2017/jan/10/hawaii-warden-subjected-female-prisoners-shame-therapy/>. Jennifer Sinco Kelleher, “Court Revives Dismissed Hawaii Jail Sex Therapy Lawsuit,” *StarTribune*, August 29, 2017, <https://www.seattletimes.com/nation-world/court-revives-dismissed-hawaii-jail-sex-therapy-lawsuit/>.

makes a difference in the quality and level of access, knowledge, and harm. Abuse takes on another character altogether when it is intimate and enacted by someone you love.

Stark also suggests that coercive control is distinctive because it lacks institutional support and therefore coherence and consistency because individual men “must rely on their wits, inventing and personalizing their tactical oppression as they go along, a process that is fraught with the potential for error, retaliation and harm.”²⁸⁹ The exercise of coercive control varies among individual men as a result of their differing context, social power and access to resources, and therefore is inconsistent in ways that institutions are not, Stark fails to consider state coercive control as exercised through incarceration as a resource for coercive control in personal life. Gendered punishment in the home has long reflected state modes of punishment. In seventeenth-century Britain, women were punished with instruments of torture that had been imported into the household such as the “gossip’s bridle or ‘branks’,” a headpiece with an iron bit designed to literally silence them, (a similar device was used on enslaved persons) employed by their husbands who identified them as “quarrelsome and unaccepting of male dominance.”²⁹⁰ Husbands were able to do so because they also exercised sovereign power in the household as a “kingdom” in miniature. In addition, as Rodríguez seeks to convey through the prison as a regime, is the ways in which it extends beyond the prison itself, through carceral logics and techniques and power relations as they organize our everyday lives. In overlooking the connection between misogynist violence in the private and public spheres, Stark frames coercive control as a liberty crime, proposing that it be criminalized using state coercive control to punish it. In so doing, he misses the way that as a site of the violation of women’s liberty rights, the U.S.

²⁸⁹ Stark, 195.

²⁹⁰ Davis, *Are Prisons Obsolete?*, 41. As Joy James notes in *Resisting State Violence*, “Greater obedience is demanded from those whose physical difference marks them as aberrational, offensive, or threatening. Conversely, some bodies appear more docile than others because of their conformity in appearance to idealized models of class, color, and sex; their bodies are allowed greater leeway to be self-policed or policed without physical force” (26).

prison regime validates and normalizes domestic ones through the exercise of coercive control.²⁹¹ A pro-criminalization approach to coercive control as the means of protecting and supporting “women’s liberty rights” fails to account for the continuity of gender punishment between intimate relationships through entrapment and the state through imprisonment. While there are important differences that distinguish incarceration in prisons from women’s entrapment in personal life, intimate partner and state coercive control both target an individual’s subjectivity, bodily autonomy and agency and they do so through coercive control as the exercise of disciplinary power complemented by sovereign power and the utilization of tactics of surveillance, isolation, control, and immobilization. Isolation from others, constant surveillance, detailed rules for behavior, restricting access to basic necessities, and restricting movement are techniques abusive partners use that are also instrumental in the exercise of state coercive control in prisons.

Surveillance, Isolation, and the Microregulation of Gender

In *Discipline and Punish*, Foucault details the emergence of modern penality in which the penitentiary replaced public torture as the generative form of public punishment. According to Foucault, as a result of this shift from a medieval impulse for retribution and the desire to punish to a curative or corrective one, “the body as the major target of penal repression disappeared” as it was replaced by a “gentler way in punishment” that “acts in depth on the heart, the thoughts, the will, the inclinations,” in order to do more than punish the crime itself.²⁹² In this historical shift, the spectacle ceases to be the pain inflicted on the body which elicits pity for the condemned while placing the shame of the violence on the executioner. Instead, “physical pain, the pain of the body itself, is no longer the constituent element of the penalty. From being an art of

²⁹¹ Stark, 4.

²⁹² Foucault, *Discipline and Punish*, 8, 16.

unbearable sensations punishment has become an economy of suspended rights.”²⁹³ The modern shift in penalty represents the move from a centralized sovereign, such as the King, exercising sovereign power to a decentralized model in which power is exercised everywhere, on, between and through bodies and institutions. Disciplinary power trains and corrects through the “meticulous control of the operation of the body” and “the soul, too, but in so far as it is the seat of habits.”²⁹⁴ However, while incarceration functions at the level of the body to normalize through disciplinary power, as Joy James explains in her critique of Foucault’s assertion that sovereign power exercised on the body disappeared, state repression, in fact, remains. She argues that disciplinary power relies on sovereign power, explaining that the norms to which we conform without direct physical punishment are still enforced by the threat of state violence and that racialized and gendered violence comes down most harshly on those “bodies that cannot be normalized no matter how they are disciplined.”²⁹⁵ It is this coalescing of disciplinary and sovereign power that I argue characterizes coercive control as exercised in the U.S. prison regime and domestic ones.

Intimate partner coercive control relies on the vestiges of male sovereign power as the right to take life in defense of threats to sovereignty. Mirroring the shift from the scaffold to incarceration, as “wife beating” as gender punishment was increasingly challenged for its brutality and shame was increasingly placed upon the abuser, coercive control emerged as a less visible means to reassert male dominance in personal life.²⁹⁶ Physical assaults might be used less

²⁹³ Foucault, *Discipline and Punish*, 11. Notably, Stark characterizes the primary harm of intimate partner coercive control as political in its “deprivation of rights and resources that are critical to personhood and citizenship” (5).

²⁹⁴ *Ibid.*, 128 and 137.

²⁹⁵ James, *Resisting State Violence*, 27.

²⁹⁶ Stark explains that coercive control as a “regime of isolation, intimidation or regulation” was not needed by men “as long as women’s daily regiment of obedience was fully regulated by religion, and custom or sexism was codified in the law” (194).

frequently but the threat of violence and death are utilized to enforce adoption of the disciplinary regime. While abusers can and do confine and immobilize their partners, they also exercise control according to Stark, through:

spatially diffuse pattern of rules, stalking, cyber-stalking, beepers, cell phones, and other means that effectively erase the difference between confinement and freedom by extending surveillance and behavioral regulation to all those settings where victims might restore their identity or garner support, including work, school, church, service, family, and shopping sites....So extensive and penetrating are control tactics that many victims conclude their partner is omnipresent, a feeling that is a major source of their depression, substance use, and suicide attempts.²⁹⁷

This feeling of omnipresence recalls the prison model of the Panopticon, designed by English philosopher Jeremy Bentham, which captures for Foucault the essence of the exercise of disciplinary power. The logic behind the prison design was that in making it possible for all individually housed prisoners to be observed by a single supervisor without being able to observe the supervisor themselves, prisoners would behave as though they were being observed at all times. As a result, the model of the Panopticon offers “a perfect eye that nothing would escape and a centre towards which all gazes would be turned.”²⁹⁸ In other words, surveillance is the “mechanism that coerces by means of observation” and the individual internalizes this gaze, which disciplines to hegemonic norms.²⁹⁹ This coercion through surveillance is also characteristic of intimate partner coercive control. Stark explains that “women’s fear that their stolen moments of autonomy will be detected, invaded, and evoke physical or other reprisals can be so intense that they precensor ‘dangerous thoughts’ that might lead to independent action and harm.”³⁰⁰ Abusive partners use surveillance to limit and control the movements of their victims. They have also successfully weaponized technology to stalk their victims, “effectively eras[ing]

²⁹⁷ Stark, 208, 209.

²⁹⁸ Foucault, *Discipline and Punish*, 173.

²⁹⁹ *Ibid.*, 170.

³⁰⁰ Stark, 209.

the difference between confinement and freedom.”³⁰¹ The technological abuse that survivors experience through electronic surveillance is potentially instructive for the prison abolition movement in confronting the increasing reliance by legislatures and the courts on electronic monitoring in place of prisons, as it illustrates coercive control as the continuation of the violence of incarceration outside prison walls.³⁰²

Both prisons and abusive partners depend on surveillance to enforce isolation, assert control, punish, and mediate reality. Social isolation through confinement is intrinsic to the punishment of prisons and prisons further deploy isolation as punishment within the prison through solitary confinement, which is used disproportionately to punish Black women.³⁰³ Isolation as punishment is gendered in its impact in that women’s identities and agency is reliant on their socialization to maintain and nurture relationships, which is often restricted through prison policies that regulate expressions of physical affection and monitor emotional attachment for evidence of sexual relationships that are prohibited. The isolation of prisoners also keeps hidden from public view the conditions that prisoners face and abuses they experience and they do so not only through confinement but through the close monitoring of communication and visits with those on the outside. Similarly, abusive partners isolate intimate partners from family, friends, and other potential social resources in order to keep them from disclosing the abuse to others and to foster their dependence. Isolation enables prisons and abusive partners to control

³⁰¹ Stark, 208. Electronic surveillance is also a way that the state can collude, even unwittingly, with abusers of survivors on electronic monitoring, both making them easier to locate and by hindering their ability to flee or seek resources without the risk of violating probation or parole and facing incarceration.

³⁰² The options for stalking and monitoring a victim continue to proliferate. There are now over 100 phone applications available that abusers can use to digitally monitor their victims. Electronic surveillance and tracking of victims through GPS is not just for stalking a victim without their awareness but are also used by abusers with their victim’s knowledge control their movements and know their location at all times. Jennifer Valentino-DeVries, “Hundreds of Apps Can Empower Stalkers to Track Their Victims,” *The New York Times*, May 19, 2018, <https://www.nytimes.com/2018/05/19/technology/phone-apps-stalking.html>.

³⁰³ Melinda Tasca, Juillian Turanovic, “Examining Race and Gender Disparities in Restrictive Housing Placements,” National Institute of Justice W.E.B. Du Bois Program of Research on Race and Crime, Project Summary (August 2018), <https://www.ncjrs.gov/pdffiles1/nij/grants/252062.pdf>.

information and preempt possible challenges to their control and authority. Abusive partners use isolation and the control of outside information to mediate reality and limit a victim's exposure to others who might share with them a sense of themselves other than that put forth by the abusive partner. Stark explains, "by cutting women off from alternative sources of information and support and inserting themselves between victims and the world, controllers become their primary source of interpretation and validation....The victim of coercive control is isolated from the moorings of her identity and, because identity is first and foremost a social construction, from her own unique personhood."³⁰⁴ Self-alienation as the estrangement from one's own agency is the result of usurping and mastering a partner's subjectivity and is made possible through isolation. According to Rodríguez, in the U.S. prison regime, "the structured violence of self-alienation, which drastically compounds the effect of formal social alienations, is at the heart of the regime's punitive logic."³⁰⁵ Self-alienation demonstrates why the impact of coercive control is no less devastating than physical assaults. Stark explains that people "cannot thrive if they are unfree, their capacities for self-creation are choked off, or they are constrained to subsume their needs, purposes, or pleasures to the needs, aims, or pleasures of another."³⁰⁶

In addition to surveillance and isolation, coercive control is characterized by disciplinary power's reliance on microregulation of the body of prisoners, as they are, according to Foucault, subject to a "whole micro-penalty" of time, behavior, speech, body, and sexuality.³⁰⁷ As prisons exercise control over the body and autonomy of prisoners from when they eat, sleep, and move, abusers also exercise control over basic aspects of their partner.³⁰⁸ Stark explains:

³⁰⁴ Stark, 262.

³⁰⁵ Rodríguez, 229.

³⁰⁶ Stark, 298.

³⁰⁷ Foucault, 178.

³⁰⁸ The practices of jails, filled with a majority of people who have not yet been convicted of a crime, are often particularly disruptive to sleep. In addition to checking on people at regular intervals often rousing them awake to make sure they are still alive, they often wake people up for things like medication or laundry and then again for

The entrapment of women in personal life is also hard to discern because many of the rights it violates are so basic—so much a part of the taken-for-granted fabric of the everyday lives we lead as adults, and so embedded in female behaviors that are constrained by their normative consignment to women—that their abridgement passes largely without notice. . . . Most people take it for granted that normal, healthy adults determine their own sleep patterns or how they drive or laugh or make love.³⁰⁹

This microregulation of all aspects of a woman's life serves to micromanage gender. Women are measured and punished as they fail to conform to the norm of appropriate femininity and ideals of womanhood both by abusive partners and prisons. Stark notes that abusers regulate “the most obvious facets of female gender—how women look (such as pick out their clothes or destroying clothes that are sexy) clean, cook, care for or discipline their children, whether they work, how they make love and to whom.”³¹⁰ In addition, their tactics “build on practices that are governed by gender norms in relationships, such as ceding major financial decisions to men or quitting work to ‘make a home,’ or target devalued activities to which women are already consigned, like cooking, cleaning, and child care.”³¹¹ Similarly, prisons micromanage gender in numerous ways, including through self-help, religious, and therapeutic programming that seeks to “rehabilitate” behaviors and desires so that they align with gender norms, through prohibiting and punishing same sex relationships, and through vocational courses such as culinary arts and office administration.³¹² Reproductive coercion is also a prevalent but often overlooked tactic for

breakfast, usually before 6 AM. At one California jail for women—in a schedule that is not uncommon—lights went out at 11 PM followed by a 2:30 AM med call where nurses would deliver medication, and a 4 AM breakfast. A judge ordered the jail to stop waking the female prisoners up at all hours of the night, questioning how administering medication in the middle of the night and eating breakfast so early “served any legitimate purpose” noting that sleep is “critical to human existence” and sleep deprivation has already been found to be cruel and unusual punishment for those convicted of crimes. Meagan Flynn, “‘Sleep is Critical to Human Existence’: Judge Orders County Jail to Stop Constantly Waking Up Female Inmates,” *The Washington Post*, March 28, 2019, <https://www.washingtonpost.com/nation/2019/03/28/sleep-is-critical-human-existence-judge-orders-county-jail-stop-constantly-waking-up-female-prisoners/>.

³⁰⁹ Stark, 15.

³¹⁰ *Ibid.*, 211.

³¹¹ Stark, 211.

³¹² Adam Harris, “Women Take Home Economics, While Men Take Carpentry,” *The Atlantic*, April 30, 2018, <https://www.theatlantic.com/education/archive/2018/04/the-continuing-disparity-in-womens-prison-education/559274/>.

regulating gender. Taking control of another's reproductive decision-making is a tactic of intimate partner abuse that legislatures and the criminal legal system employ in systematic ways. Through the criminalization of pregnancy outcomes, coerced birth control, forced pregnancy, sterilization, and the shackling of pregnant people, the criminal legal system regulates gender through reproductive coercion as it attempts to control who can reproduce and parent and who cannot, according to white heteropatriarchal constructions of womanhood and motherhood. In addition, both prisons and abusive partners assert domination and control through what Orlando Patterson has termed natal alienation. Natal alienation is the condition of being permanently separated from one's children. According to Price, it is "intrinsic to the modern penitentiary" and "a structural condition and institutional arrangement" whose "violence does not depend only on the feelings of a particular person about parenting."³¹³ In the U.S., natal alienation has its origins in the institution of slavery and the tearing of children born into slavery away from their mothers. Price explains that the prototypical instance of natal alienation is "watching one's kin whipped by the slave master and being unable to intervene," such that natal alienation "captures this state of helplessly witnessing harm done to one's parents and children."³¹⁴ The abuse of women as mothers by intimate partners through disrupting attachments with their children, threatening to harm or abduct their children, harming or abducting their children, threatening to call child protective services for the removal of their children, seeking sole custody of their children, and killing their children, all reflect natal alienation as a part of the tactical regime of coercive control. Through the surveillance, isolation, intimidation, immobilization, and the microregulation of gender, coercive control institutes and maintains relationships of gender

³¹³ Price, *Prison and Social Death*, 23, 24.

³¹⁴ *Ibid.*, 24, 37.

domination and subordination that are characteristic of and mutually reinforcing for both the U.S. prison regime and domestic ones.

Conclusion

As womanist ethics demonstrates, survival is a sphere of moral life for those who are marginalized by systems of oppression that foster slow death. This chapter sought to situate the agency exercised by survivors of intimate partner violence in moral terms and locate it as it is exercised in suboptimal conditions, in order to challenge the evaluations of the choices survivors make based on the autonomy and freedom of the white male normative subject and conceptions of white female victimhood that are used to justify their criminalization and incarceration. It defined the moral problem of the incarceration of women “behind a man” as carceral gender entrapment as it results from the moral double binds and compromised agency that survivors experience in the context of intimate partner and state coercive control and violence, in order to demonstrate the continuity and reinforcement of gender punishment between the U.S. and domestic prison regimes. This next chapter turns to Christian theological and moral tradition to further examine the construction of hyper-culpable womanhood and motherhood and the carceral logic of misogyny as it undergirds the carceral gender entrapment of women.

CHAPTER 3

‘Who loves well, punishes well’: The Christian Moral Tradition and the Carceral Logic of Misogyny

Introduction

After firing a warning shot to ward off her abusive, estranged ex-husband who had threatened her, Marissa Alexander was arrested and denied use of Florida’s Stand Your Ground law that would have provided her immunity from prosecution for self-defense. Though Gray had been arrested twice on charges of domestic battery and Alexander had a restraining order against him, she was convicted of three counts of assault with a deadly weapon and sentenced to 20 years in prison. Alexander successfully appealed her conviction and while she prepared for retrial, Florida’s Stand Your Ground law was amended to include the use of warning shots. Nevertheless, the judge denied her a new Stand Your Ground hearing and facing a 60-year sentence sought by the prosecution, Alexander signed a plea deal that required she serve an additional 65 days to the 1,030 she had already spent in jail. She was also required to wear an electronic monitoring device for two years.³¹⁵ As a Black woman acting in self-defense, Alexander was denied the status of victim, transgressing the norm of the “good victim” by virtue of the body she inhabits and the actions that she took. The court’s unwillingness to grant Alexander immunity from prosecution through Stand Your Ground reveals the lingering influence of male-oriented legal doctrines with their origins in preserving and enforcing racialized patriarchal authority in the public and private spheres. As legal scholar Mary Anne

³¹⁵ Sam Sanders, “Florida Woman in ‘Stand Your Ground’ Case Accepts Plea Deal,” *National Public Radio*, 25 November 2014, <http://www.npr.org/blogs/the-two-way/2014/11/25/366567307/florida-woman-in-stand-your-ground-case-accepts-plea-deal>. Steven Nelson, “Marissa Alexander Now Faces 60 Years for ‘Warning Shot’ at Abusive Husband,” *U.S. News & World Report*, March 3, 2014, <http://www.usnews.com/news/articles/2014/03/03/marissa-alexander-now-faces-60-years-for-warning-shot-at-abusive-husband>.

Franks explains, Stand Your Ground is an extension of the “castle doctrine” and has not been readily available to victims of intimate partner violence as a defense because “one of the historic problems with the ‘castle doctrine’ is that it presumes situations in which a stranger violates the sanctity of the home; such a conception obviously overlooks the situation of violence between cohabitants, in which the victim and attacker share the same ‘castle’.”³¹⁶ From its inception, the castle doctrine was not applicable to women who were considered to be under the control of the family patriarch whose authority was largely viewed as sovereign over his household. Corporal punishment was well within the scope of his governance while violence against him by his wife was considered a form of treason.³¹⁷ An illustration in JJ Grandville’s *Les cent proverbes* (1845) that depicts a man spanking a child in the foreground and another beating a woman in the background above a caption which translates “who loves well, punishes well,” represents the patriarchal logic that the authority vested in husbands included a responsibility for physically chastising and disciplining their wives and children as an expression of love.³¹⁸

The refusal of the criminal legal system to grant Alexander use of self-defense law illustrates the lingering hostility toward women’s use of force against male intimate partners and betrays the ways in which men and women still remain unequal in love and the law. It also suggests that the fact that a majority of incarcerated women have experienced domestic and sexual violence prior to their incarceration is not coincidental to but indicative of gendered punishment more broadly. These connections are easily missed because, according to Angela Davis, “the underlying complexities of women’s punishment” are rendered invisible because the “patriarchal circuits from the state to the home” are “disconnected by the ideological division of

³¹⁶ Mary Anne Franks, “Real Men Advance, Real Women Retreat: Stand Your Ground, Battered Women’s Syndrome, and Violence as Male Privilege,” *University of Miami Law Review* 68, no. 4 (2014), 1111.

³¹⁷ *Ibid.*, 1112.

³¹⁸ Angela Davis, *Are Prisons Obsolete?* (New York: Seven Stories Press, 2003), 77.

the ‘public’ and the ‘private’.”³¹⁹ This chapter seeks to make visible these complexities by outlining a genealogy of gender punishment that includes an analysis of the racing of gender and gendering of race. Through a closer look at the history of the incarceration of women in the U.S. and the controlling images and moral and theological narratives that undergird it—particularly the myth of women’s subordination to men as divinely-ordained punishment for “the fall” in Genesis as it undergirds constructions of hyper-culpable womanhood and motherhood—I argue that when we look closely at the patriarchal circuits from the state to the home, we discover that the quintessential prisoner is not male, but female. We also discover that the incarceration of women “behind a man,” that is, holding women responsible for the sins of men, is not ancillary to woman as quintessential prisoner but constitutive of it.

‘Patriarchal Circuits’ of Punishment from the State to the Home

Feminist theorists and activists have routinely connected violence against women at the hands of loved ones to the subordination of women in public life. In particular, domestic or intimate-partner violence has its roots in an ideology of the household as analogous to the commonwealth or state. According to Garthine Walker, this ideology “conflated personal and public authority in a patriarchal and Christian vision in which the rule of husbands, fathers, magistrates, ecclesiastics and monarchs legitimated the other” and established the household as “the foundation upon which governance rested. Household order was a microcosm of that desired elsewhere, in parish, county, kingdom and even the cosmos.”³²⁰ In his examination of the role of punishment and patriarchal power in the early American Republic, Mark Kann explains that manhood was defined not only by a man’s liberty and individual autonomy but by his

³¹⁹ Angela Davis, “Public Imprisonment and Private Violence: Reflections on the Hidden Punishment of Women,” *New England Journal on Criminal and Civil Confinement* 24, no. 339 (1998), 342.

³²⁰ Garthine Walker, *Crime, Gender and Social Order in Early Modern England* (Cambridge, England: Cambridge University Press, 2003), 9-11.

sovereignty and the power he exercised over women and other subordinates in the household through “governing” or “disciplining” them.³²¹ He notes that men’s power over women was not absolute. They were expected to use discretion in their governance and were subject to sanctioning for maltreatment, although it was often excused. He explains that the husband “was expected to treat [his wife] with respect and affection, make her a partner in family matters, and serve as her protector. If he mistreated her, he could be accused of anything from poor judgment to brutality. Still, neighbors and magistrates usually tolerated a husband’s bad behavior and deferred to his status as master of his household.”³²² There were some legal protections that placed limits on the worst behavior but other violence could be justified as a response to a wife’s provocation or a reflection of moral character endemic to persons of a particular social class.³²³ The law would punish the “excesses” of patriarchal violence while preserving patriarchal authority and power.

The sovereign power exercised in the home reflects Foucault’s description of power exercised by the sovereign as the locus of political control. According to Foucault, the ancient form of sovereign power, derived from the *patria potestas*, which gave the father of the Roman family an absolute right to take the life of his children or slaves, is “considerably diminished in form.”³²⁴ The only time in which the sovereign can claim the right to death or the right to kill is when the sovereign itself is threatened. Foucault explains, “viewed in this way, the power of life and death was not an absolute privilege: it was conditioned by the defense of the sovereign, and his own survival.”³²⁵ It is in this limited form that Foucault describes the sovereign’s right to life

³²¹ Mark E. Kann, *Punishment, Prisons and Patriarchy: Liberty and Power in the Early American Republic*, (New York: New York University Press, 2005), 65.

³²² Kann, 65-66.

³²³ Ibid.

³²⁴ Foucault, *History of Sexuality*, 135.

³²⁵ Ibid.

and death as “dissymmetrical.”³²⁶ The sovereign has the ability to let someone live or have them put to death. It is only through the sovereign that the subject is granted the right to be alive and the sovereign’s right of life is only made evident when the sovereign can kill.³²⁷ Sovereign power, then according to Foucault, can be described more accurately as “the right to take life or let live.”³²⁸ The sovereign exercises this right through war (for external threats) and the administration of the death penalty (for internal threats such as treason). Notably, under English common law, strangulation was a form of execution used for women accused of treason after burning them alive became untenable for public sensibilities. Women accused of treason were then killed by strangulation before their corpse was burned. Most contemporary scholarship that offers a gender analysis of the death penalty tends to focus on the hesitancy of the state to execute women and the vast majority of men on death row without recognition of the disconnection between the private and public that obscures the continuity between the two. I contend that we must account for the homicide rates of women killed by intimate partners when we consider gender and the death penalty because when the private and public are connected, strangulation and in general femicide are more clearly the attempt to symbolically and physically punish treason (in the case of strangulation, putting to death treasonous speech) as it threatens male sovereignty.³²⁹ This exercise of male sovereignty is legitimated by the state’s own reproduction of white masculinities through the death penalty.³³⁰

³²⁶ Foucault, *History of Sexuality*, 136.

³²⁷ Ibid. According to Foucault, “the very essence of the right of life and death is actually the right to kill: it is at the moment when the sovereign can kill that he exercises his right over life” (136).

³²⁸ Ibid.

³²⁹ Joan W. Howarth, “Executing White Masculinities: Lessons from Karla Tucker,” *Oregon Law Review* 81 (2002): 183-229.

³³⁰ Ibid. Howarth argues that as primarily “the gender violence of men against men,” the death penalty performs masculinities that are “proven in relation to the masculinities of the condemned” (2). As a result, the execution of women then is symbolically a “gender mistake” that places “the masculine authority of the state at risk” (2).

As I demonstrated in the previous chapter, the general shift that Foucault traces away from punishment as spectacle to the more internalized reliance on disciplinary power by the state is reflected in the shift from wife beating and torture to the exercise of coercive control in domestic or intimate partner violence. The transformation in the exercise of power in both spheres is directly tied to political shifts toward liberal democracy and its emphasis on individual rights and liberties. When prisons were initially designed, they were designed for men because, as Foucault explains, prisons are “the penalty *par excellence* in a society in which liberty is a good that belongs to all in the same way” such that its loss is an “‘egalitarian’ punishment.”³³¹ Since white male punishment was “linked ideologically to penitence and reform” white men “recover these rights and liberties” through moral rehabilitation to be found in the practices of “self-reflection, religious study, and work.”³³² White women were largely assumed to be under the disciplinary “rule of the father” with enslaved Black men and women under that of the “slave master.” The extension of rights and liberties that were originally denied to women and people of color has been central to the shift to and utilization of coercive control in both spheres to maintain the racialized patriarchal order and male dominance. To analyze gender punishment as meted out by the state, we must start with the role that race and gender have played in constructions of the criminal and the prisoner.

The Myth of the “Black Criminal Type” and the Unintelligibility of Female Criminality

Michelle Alexander notes that mass incarceration depends upon a figuring of “the criminal” as a “black or Latino man who must be locked into prison.”³³³ In addressing the symbolic production of race, Alexander argues that “the term white criminal is confounding,

³³¹ Foucault, *Discipline and Punish*, 232.

³³² *Ibid.*, 67-70.

³³³ Davis, “Color of Violence.”

while the term black criminal is nearly redundant.”³³⁴ What Angela Davis addresses in more depth elsewhere and Alexander omits altogether, is how woman as criminal is also confounding since “the criminal” is also figured as male.³³⁵ As Davis explains further, race has always constituted constructions of criminality in the U.S.³³⁶ The Black Codes, legislation passed after slavery by former slave states revising the Slave Codes with the purpose of imposing restrictions on the behavior of free Black people in ways reminiscent of slavery, illustrates clearly the role of race in constructions of criminality.³³⁷

In *Racism and Sexual Oppression in Anglo-America: A Genealogy*, Ladelle McWhorter explains how historically, this figuring of the black man as criminal ideologically served the reproduction of a white elite class. According to McWhorter, through biological sciences, medicine, and psychiatry, scientific racism “sought to intensify and augment and improve human intelligence, productivity, and mastery of nature.”³³⁸ Racial difference became coded as developmental difference and appearance became a “manifestation of a developmental process.”³³⁹ People of color, imbeciles, criminals, sex workers and all others considered “underdeveloped abnormals” were deemed a threat to the purity of the “highly evolved Nordic germ plasm.”³⁴⁰ Scientific racism was preoccupied with protecting the boundaries of the human race as it is embodied in its most “superior” representatives and the eugenics movement sought to remove this threat through isolation, sterilization, and even elimination.

As a result of this racism, black sexuality, particularly black male sexuality, posed a threat to the evolution of the Nordic race. Africans, considered developmentally inferior and

³³⁴ Alexander, *The New Jim Crow*, 198.

³³⁵ See “How Gender Structures the Prison System” in Davis’ *Are Prisons Obsolete?*

³³⁶ Davis, *Obsolete*, 28.

³³⁷ Ibid.

³³⁸ McWhorter, 140.

³³⁹ Ibid., 139.

³⁴⁰ McWhorter, 140.

uncivilized, were depicted as prone to hypersexuality and a lack of self-control that might often result in rape. The myth of the “black male criminal” is therefore a myth of black sexual aggression as well. The “threat” of black sexuality continues to undergird our criminal punishment system today through the myth of the “black criminal type” concerned with black male sexual aggression and black female aggression, promiscuity and reproduction. Womanist theologian Kelly Brown Douglas explains that the sexualization of Black women has also led to their criminalization because:

While not regularly portrayed as particularly predatory, she is often portrayed as criminally immoral and most times mean and angry. The Jezebel has morphed into the ‘welfare queen. Various studies have shown that the image of the black female welfare offender is just as implanted within the public consciousness as the criminal black male.³⁴¹

White culture’s attack on black sexuality has been a means of asserting the inferiority of Black people by disparaging their character and “maligning their sexuality.”³⁴² Brown Douglas attributes the maligning of black sexuality to platonized Christianity, the integration of Platonic and Stoic thought with Christian theology. She contends that platonized Christianity “characteristically fosters dualistic ways of perceiving the world as well as relating to the non-Christian world. It utilizes a dichotomous sexualized ethic to discern the acceptability/holiness of various people. It essentially dehumanizes people based on a sexualized characteristic of them.”³⁴³ The criminalization and incarceration of Black people has been made possible as a result of this dehumanization and the assailing of their character, their inherent “immorality” justification for their incarceration.

³⁴¹ Kelly Brown Douglas, *Stand Your Ground: Black Bodies and the Justice of God* (Maryknoll, New York: Orbis Books, 2015), 84.

³⁴² Kelly Brown Douglas, *Sexuality and the Black Church: A Womanist Perspective* (Maryknoll, New York: Orbis Books, 1999), 23.

³⁴³ *Ibid.*, 28-29.

Historically, while black criminality has been normalized, female criminality has been considered aberrant because it was a transgression of the cultural norms of womanhood that prescribed women to the roles of wives and mothers who should be in possession of the “attributes of domesticity, submissiveness, piety, and purity.”³⁴⁴ Womanist ethicist Marcia Riggs details the history of the normative ideal for women as it took form in the nineteenth century “cult of true womanhood” which defined what was appropriately feminine, explaining that:

In effect, the ‘cult of true womanhood’ was a classist and racist ideology of womanhood. . . On the one hand, upper-class white women of leisure were best able to maintain some semblance of this ideal of womanhood, and white middleclass women sought to align their behavior with the ‘cult’ as a vehicle for social mobility. On the other hand, working class and all Black women were considered transgressors of the ‘cult.’³⁴⁵

As historian Catherine Clinton shows in *The Plantation Mistress: Woman’s World in the Old South* (1982), the “cult of true womanhood” took on regional variations in the form of the northern maiden and the southern lady or southern belle.³⁴⁶ In the South, the southern lady served to help uphold the institution of slavery. According to Clinton, “planters necessarily chose for their women the role that would most flatter the image of plantation life that southern slaveowners were striving to project; hence the formulation of the mythical ideal of the southern lady.”³⁴⁷ Slaveowners in the antebellum South embraced rather intensely the ‘Roman Revival’ that had arisen during the Revolutionary era across the country and in addition to naming those enslaved after Roman statesmen, the Roman matron became the model for the plantation mistress. This influence further entrenched the patriarchal division of gender and was

³⁴⁴ Marcia Y. Riggs, “A Clarion Call to Awake! Arise! Act!,” *A Troubling in My Soul: Womanist Perspectives on Evil and Suffering*, Ed. Emilie M. Townes, (Maryknoll, New York: Orbis Books, 2005), 67-68.

³⁴⁵ Riggs, 67-68.

³⁴⁶ Catherine Clinton, *The Plantation Mistress: Woman’s World in the Old South*, (New York: Pantheon Books, 1982), 8. The text can read at times as an apology for plantation mistresses and even in her efforts to recognize race, Clinton often defaults to the universal notion of woman in speaking of white women. Nevertheless, Clinton provides important insight into the figure of the southern lady as a cultural symbol in the south that continues to linger in contemporary notions of womanhood.

³⁴⁷ *Ibid.*, 88.

characterized in part, by restrictions on their mobility (no travel without a suitable male escort) and legal participation (no administering of their own legal affairs).³⁴⁸ As Clinton, notes, “the contrived parallel in cultural styles between these two slaveowning societies is striking, especially in light of the centuries between the Roman Empire and the Cotton Kingdom.”³⁴⁹ This Roman Revival is also significant in light of the marrying of love and punishment in Christianity through the Roman household code. Christian ethicist Christine Gudorf explains that the Roman household code played a noteworthy role in shaping Christian scriptural and cultural expectations of women’s submission to men, particularly as it considers physical chastisement compatible with love. She explains that the Roman household code as included in Ephesians, admonishes: “Wives, be submissive to your husbands as to the Lord” and ends with a note to husbands to “love their wives as their own bodies. He who loves his wife loves himself” (Eph 5:22; 28 NRSV). However, as Gudorf notes, love of self was predicated on pain and suffering as tools for honing virtue:

Love was not understood to forbid one from inflicting pain and suffering on the love object, but, in fact, love, whether of self or other, frequently demanded inflicting pain in order to produce virtue in the other. Inflicting body pain was legitimated because the body was not the self, but only the dangerous shell that the real self, the spiritual soul, inhabited.³⁵⁰

Gudorf suggests that this idea that husbands are responsible for physically disciplining their wives (and children) to produce virtue still influences Western cultural responses to domestic violence.

In the antebellum South, the southern lady was exalted as a paragon of Christian virtue and sexual purity while also considered as women to be intrinsically sinful. This conflict in

³⁴⁸ Clinton, 21.

³⁴⁹ Ibid., 22.

³⁵⁰ Christine E. Gudorf, *Body, Sex, and Pleasure: Reconstructing Christian Sexual Ethics*, (Cleveland: The Pilgrim Press, 1994), 164.

attitudes toward and expectations of women in planter society was ultimately resolved through discipline. That is, since virtue was not innate in them, it had to be produced through discipline. According to Clinton, “femininity was rooted in vice, but women could be raised to a state of virtue. This process of redemption was the sacred duty of planter parents. Daughters were rescued from their sinful natures by stiff doses of discipline and the improving examples of Christian mothers, themselves already ‘saved.’”³⁵¹ Women then, could be redeemed depending on how well they were disciplined to “true womanhood.”

Historian Victoria Bynum sheds light on how the experiences of women who regularly came into contact with the law, whose “misbehavior was regularly a part of the public record,” illuminate the racial and gender hierarchy that undergirded slavery in her study involving poor white women and free Black women in three Piedmont counties in antebellum North Carolina in *Unruly Women: The Politics of Social & Sexual Control in the Old South* (1992).³⁵² She describes the patriarchal structure of slaveholding society in which white men exercised control over all subordinates in their household, explaining:

The sole sexual possession of white women by white men assured perpetuation of the dominant ‘pure’ white race. Possession of a black woman by a white man, whether of her person, labor, or body, demonstrated the powerlessness of the black man, who could not claim sole rights of possession even to women of his own race. Black women were especially vulnerable. Subjected to sexual exploitation because of their gender, they were denied protection against sexual harassment on account of their race.³⁵³

Women who fell “outside” of the power of white men in the “private” sphere, were especially threatening to the social order. According to Bynum, through the courts, the state functioned as

³⁵¹ Clinton, 93.

³⁵² Victoria E. Bynum, *Unruly Women: The Politics of Social & Sexual Control in the Old South*, (Chapel Hill: The University of North Carolina Press, 1992), 10.

³⁵³ *Ibid.*, 96-97. Bynum continues, explaining that “the sexual possession of both white and black women symbolized men’s power, but in very different ways. At a basic level, such possession signified the dominance of men over women. White women, however, were prizes: the higher a particular woman’s family status, the better it spoke of the man who ‘won’ her. Possession of black women, by contrast, symbolized a man’s virility more than his honor, a virility manifested in racial domination” (97).

patriarch for these women, asserting control of their sexuality and reproduction for different ends. She explains:

Women who lived outside the family structure and lacked economic independence were a familiar sight in local courts, where they were summoned by judges empowered to regulate their sexual and reproductive behavior. Although apparently unburdened by paternalistic responsibilities, the state assumed the role of patriarch in governing the lives of women who lacked proper male figures of authority in control of them.³⁵⁴

Women who were not subordinate to patriarchal power in the home—poor white women and free Black women—were more likely to be criminalized. With prisons only built for men, the first women sentenced to prison were incarcerated with them. Historian Mary Ellen Curtin explains in *Black Prisoners and Their World, Alabama, 1865-1900* (2000) in the South after slavery “authorities saw women prisoners, therefore, as aberrations.”³⁵⁵ As “requiring” public punishment, the domain of men, they were *abnormal* abnormals and as such regarded as “far more threatening to society than their numerous male counterparts” and beyond redemption.³⁵⁶

The female criminal is hyper-visible and sexually deviant and female criminality is considered especially threatening to society because the female criminal, I suggest, is a fugitive from the prison of domestic discipline and gender norms. In her study of the incarceration of women in Tennessee from statehood to the 20th century, historian Nicole Hahn Rafter finds that after the abolition of slavery when southern prisons were filling up with newly freed Black men and women, marital status was a contributing factor in Black women’s higher rate of conviction and incarceration compared to white women. Rafter attributes the disparities to an influx of recently emancipated, migrating women with few economic opportunities or communal ties and to the role marital status played on a court’s decision to imprison a convicted woman. More

³⁵⁴ Bynum, 110.

³⁵⁵ Mary Ellen Curtin, *Black Prisoners and Their World, Alabama, 1865-1900*, (Charlottesville: University of Virginia Press, 2000), 115.

³⁵⁶ Davis, *Obsolete*, 66.

generally, as observed by Donald Black, in *The Behavior of Law*, “The single are...subject to more law.”³⁵⁷ As a threat to the patriarchal order without a man to govern them, single women are especially so. That the single are subject to more law holds true today with a majority of incarcerated women unmarried and a large number being single mothers. However, not only are single women subject to more law, they are also subject to more punishment. As Evan Stark remarks, single women are now three times more likely than married women to be victims of intimate partner assault. Single women are subject to more punishment because they are not bound to and patriarchal authority in traditional ways.

With women as the fastest growing jail and prison population, the prison system arguably fills in as the patriarchal household—the rule of the father in the “private” sphere—further declines. At the same time, as Davis notes, “women have been incarcerated in psychiatric institutions in greater proportions than in prisons” suggesting that “deviant men have been constructed as criminal, while deviant women have been constructed as insane.”³⁵⁸ Like the construction of female criminality, the construction of female madness is raced. As Davis explains, taking into account race and class on imaging “the feminine,” deviancy in white affluent women “tends to serve as evidence for emotional and mental disorders, but for black and poor women, it has pointed to criminality.”³⁵⁹ This gendering of the disordered psyche is also tied to the gendering of punishment. As a result of a failure to commit to and provide alternative means for needed care after the widespread deinstitutionalization of severely mentally ill people and closures of state hospitals in the U.S., criminalization and incarceration have become the primary response to the resulting mental health crisis for people of all genders. However, mental

³⁵⁷ Cited in Nicole Hahn Rafter, *Partial Justice: Women, Prisons, and Social Control* (New Brunswick: Transaction Publishers, [1985] 2004), 141.

³⁵⁸ Rafter., 66.

³⁵⁹ *Ibid.*, 67.

illness is reportedly more prevalent among incarcerated women than it is for incarcerated men and programming in women's prison is largely organized around therapeutic models.³⁶⁰

Sociologist Jill McCorkel concludes from her study of incarcerated women in a drug treatment program, "surveillance in women's prisons is intimately related to the process of diagnosis, rather than simply existing to prevent the occurrence of behaviors that threaten institutional security, however broadly conceived."³⁶¹ McCorkel attributes this difference to the construction of the typical criminal as a male whose actions are considered "rational, self-interested calculations" while women's crimes are considered inexplicable.³⁶² McCorkel explains, "their crimes are not seen as rational responses to structural conditions in the way that men's crimes are" and as a result of the seeming irrationality of their behavior, they are pathologized and considered diseased. An interview with the warden at her site of study, evidences this pathologizing, especially as it relates to gender deviancy:

'Poor men stick somebody up or sell drugs. To me, as strange as this may sound coming from a warden, that is understandable. I can see how you would make that choice. Women degrade themselves. Selling themselves, you should hear some of the stuff they do. There is no sense of self-respect, of dignity... There is something wrong on the inside that makes an individual take up those kind of behaviors and choices.'³⁶³

In addition, McCorkel suggests that a study of women in prison reveals an "embodied surveillance" that differs from the disembodied surveillance discussed by Foucault.³⁶⁴ That is, in the drug treatment program, residents are encouraged to watch and report on one another.

³⁶⁰ Doris D. James and Lauren E Glaze, *Mental Health Problems of Prison and Jail Inmates* 1 (United States Department of Justice Bureau of Justice Statistics, Sept. 2006), <http://www.bjs.gov/content/pub/pdf/mhppji.pdf>. Black women with mental illness often do not receive the treatment and mental health care they need because their problems are more likely to be attributed to inherent criminality instead of pathology. See Melissa Thompson, *Mad or Bad?: Race, Class, Gender and Mental Disorder in the Criminal Justice System* (El Paso, TX: LFB Scholarly Publishing LLC, 2010).

³⁶¹ Jill A. McCorkel, "Embodied Surveillance and the Gendering of Punishment," *Journal of Contemporary Ethnography* 32, no. 1 (February 2003), 67.

³⁶² *Ibid.*, 68.

³⁶³ *Ibid.*, 69.

³⁶⁴ *Ibid.*, 64.

According to McCorkel, embodied surveillance occurs when the “observer and the observed are known to each other” and in the drug treatment program, this surveillance serves to legitimate therapeutic diagnoses.³⁶⁵ In other words, the truth of the diagnosis did not come from the authority of the professional present, but through the verification of “the delinquent’s” behavior by other observers.³⁶⁶ In this sense, while Foucault traces the connection between psychiatry and surveillance to the shift to modern penality, the history of women’s confinement in psychiatric hospitals and the emphasis on therapeutic diagnosis in prisons that McCorkel highlights, reveals the ways in which this sense of women’s deviancy is reiterated as a (gender) disorder located inside of them—as both aberrant women and aberrant criminals who are unintelligible to the criminal punishment system doing what they need to survive in a world in which they do not have the same acceptably “rational” options available to men.

The Quintessential Prisoner as Female

While the female criminal is hyper-visible and aberrant, the female prisoner is invisible and taken for granted. That is, woman as the archetypal prisoner is disciplined to docility *prior to criminality* as she is considered an inherent threat to patriarchal authority. The emphasis is placed on the prisoner as preceding the criminal, pointing to the theological figure of “the fallen woman” traced to Eve in the biblical text who is punished *prior to the law*. The female criminal was originally thought to be “beyond reform” because she was already evidence of the failure to be disciplined to docility sufficiently in the private sphere. She only becomes visible, then, inasmuch as she is the female criminal in need of the state’s discipline.

As Foucault argues, the form of the prison arises prior to its incorporation into the penal system through disciplinary power, disciplining bodies to docility. His own canon suggests the

³⁶⁵ McCorkel, 64.

³⁶⁶ *Ibid.*, 67.

co-evolution of criminality and insanity with the institutions of the prison and asylum. He explains, “the general form of an apparatus intended to render individuals docile and useful, by means of precise work upon their bodies, indicated the prison institution, before the law ever defined it as the penalty *par excellence*.”³⁶⁷ As feminists have noted in both critiquing and utilizing Foucault however, he omits disciplinary power as it genders docile bodies.³⁶⁸ And yet, though he does not name gender as a dimension shaping disciplinary regimes here, in one of the few passages in which he mentions incarcerated women, he positions them as the model example of prison labor, explaining:

The perfect image of prison labour was the women’s workshop at Clairvaux; the silent precision of the human machinery reminiscent of the regulated rigour of the convent: ‘On a throne, above which is a crucifix, a sister is sitting; before her, arranged in two rows, the prisoners are carrying out the task imposed on them, and, as needlework accounts for almost all the work, the strictest silence is constantly maintained...It seems that, in these halls, the very air breathes penitence and expiation.’³⁶⁹

Literary scholar and cultural theorist Anne Schwan questions why Foucault would choose incarcerated women’s labor as the “perfect image” asking, “Does this point to implicit assumptions that female inmates have to be more ‘docile’? Could this equally reflect Foucault’s own gendered expectations—that women are and should be more disciplined?”³⁷⁰ The gender assumption that women should be more disciplined and female prisoners should be more docile bears out in prisons themselves where women are subject to more discipline and punishment than men. An *NPR* investigation indicates that women *in prison* are disciplined at two to three times

³⁶⁷ Foucault, *Discipline and Punish*, 231.

³⁶⁸ See Anne Schwan, “Disciplining female bodies: Women’s imprisonment and Foucault,” <http://www.gradnet.de/papers/pomo01.paper/Schwan01.pdf>.

³⁶⁹ Foucault, 243-244. In *Unruly Women*, Bynum’s description of the lives of unmarried white women in the South resonates with Foucault’s “perfect image” of docility: “The letters of Anna Bingham, Jr. of Redimon, Tennessee, to her married sister in Orange County reveal the isolation and drudgery that characterized the lives of unmarried women, who were expected by white southerners of the propertied classes to live a celibate, dependent existence in the home of married relatives. These letters, written between 1845 and 1869, catalog unending spinning and weaving, nursing of family members, and teaching in the community for little pay” (44).

³⁷⁰ Schwan, “Disciplining female bodies,” 5.

more than men and for more minor, non-violent infractions. The report found that “women were more likely to get punished for nonviolent and often subjective violations, like disobeying or talking back to a corrections officer.”³⁷¹ While men are disciplined for violence, women are disciplined for “disorderly” behavior under charges of insolence or disobedience and the punishments for minor violations often have “significant consequences” with women losing phone and visitation privileges, the ability to purchase food and hygiene products, and “good conduct credits” that remove time off their prison sentence. Solitary confinement is also used in response to these minor infractions and Black women receive some of the harshest punishments.³⁷²

The Warden at Logan Correctional Center in Illinois attributes this gender disparity to the disciplining of emotion instead of concern for safety and security explaining that women are more likely to talk back, are more communicative, and more expressive of their emotions.³⁷³ As a result, many corrections officers, mostly men, consider female prisoners to be more “difficult” than male prisoners. The former assistant director at the Department of Corrections in Illinois explains that for women, “they want to talk to you. They want to talk about their children. They want to talk about their experiences. If they see an injustice with another woman in prison, or something that happened, they want to fix it.”³⁷⁴ The sentiment that incarcerated women are more difficult than men is not a novel one. In 1845, inspectors of Alton Penitentiary in Illinois

³⁷¹ Joseph Shapiro, “In Prison, Discipline Comes Down Hardest on Women,” *NPR*, October 15, 2018, <https://www.npr.org/2018/10/15/647874342/in-prison-discipline-comes-down-hardest-on-women>.

³⁷² While Black women make up 23% of women in prison, they are 40% of those placed in solitary confinement. Joseph Shapiro, “Federal Report Says Women in Prison Receive Harsher Punishments Than Men,” *NPR*, February 26, 2020, <https://www.npr.org/2020/02/26/809269120/federal-report-says-women-in-prison-receive-harsher-punishments-than-men>, citing “Women in Prison: Seeking Justice Behind Bars,” Briefing Report, The United States Commission on Civil Rights, February 2020, <https://www.usccr.gov/pubs/2020/02-26-Women-in-Prison.pdf>.

³⁷³ Shapiro, “Federal Report.”

³⁷⁴ *Ibid.*

reported, “One female prisoner is of more trouble than twenty males.”³⁷⁵ The characterization of the female prisoner as troublesome reflects an underlying assumption that women are inherently disruptive that is reflective of the narrative of Eve in the Garden with Adam as she precipitates the fall and loss of Paradise through her disobedience to God. That the “perfect image” of incarcerated women’s labor for Foucault is reminiscent of a convent intimates the influence of the Christian tradition on the gendering of punishment, particularly the role of the Eve myth in shaping the implicit assumption that women need more discipline and deserve more punishment.

The Christian Theological Tradition in Blaming Women for the Sins of Men

In the nineteenth century, women who were criminalized as they transgressed the cultural ideals of womanhood were, in effect, manifestations of Eve as “the fallen woman” and considered beyond hope of reform. This image of the fallen woman is derived from the theologically undergirded figure traced to “woman” in Genesis as the author of human sin, *prior to law*, resulting in her increased pain in childbearing and desire for her husband who “shall rule over” her (Gen. 3:16, NRSV). She must be monitored lest she be led astray and she must be subjugated lest she lead men astray. This guilt and accompanying punishment has been justified theologically as women’s biological, moral, and social inheritance as “daughters of Eve.” In the South, the fallen woman was also raced. Black women, who always already transgressed the notion of the ideal woman, embodied the “fallen woman” such that “Black women prisoners were seen as inherently immoral, while white women prisoners convicted of sex crimes lost their racial privilege,” according to Curtin.³⁷⁶ While the woman criminal transgressed the dominant

³⁷⁵ L. Mara Dodge, *Whores and Thieves of the Worst Kind: A Study of Women, Crime, and Prisons, 1835-2000* (DeKalb, IL: Northern Illinois University Press, 2006), 29, citing W. David Lewis, *From Newgate to Dannemora: The Rise of the Penitentiary in New York, 1796-1848* (Ithaca, NY: Cornell University Press, 1965), 159, and Russell P. Dobash, R. Emerson Dobash, and Sue Gutteridge, *The Imprisonment of Women* (London: Basil Blackwell, 1986), 45.

³⁷⁶ Curtin, 115.

culture's definition of womanhood, she was deemed "criminal" because violations of norms of womanhood were criminalized. For example, while sex work was illegal, it was not a threat to the racial order. Thus, white women were not imprisoned for it. White women who threatened the racial order, on the other hand, lost their racial privilege and were seen as "criminal" with the courts cracking down on white women who openly cohabitated with Black men. In the eyes of the courts, such women were [sic] no longer deserved to be treated as white and thus could be placed with black women in prison."³⁷⁷ Like "the black male criminal," female criminality, Davis notes, has also been tied to sexual deviance. She explains, "The notion that female 'deviance' always has a sexual dimension persists in the contemporary era, and this intersection of criminality and sexuality continues to be racialized. Thus, white women labeled as 'criminals' are more closely associated with blackness than their 'normal' counterparts."³⁷⁸ The nineteenth-century reformers leading the women's reformatory movement reinforced and even arguably expanded the reach of the state in disciplining and punishing "fallen women." Historian Estelle B. Freedman details the women's reformatory movement in *Their Sisters' Keepers: Women's Prison Reform in America, 1830-1930* (1981), reading the efforts of middle class reformers to establish separate prisons for women as a humanitarian one focused on improving the deplorable conditions that also was based on an underlying sense of sisterhood.³⁷⁹ Rafter disputes this interpretation arguing instead that the "women's reformatory movement was an attempt...to increase middle-class control over white working-class women, who through their actions,

³⁷⁷ Curtin, 115.

³⁷⁸ Davis, *Are Prisons Obsolete?*, 68. Joy James also notes "in racialized societies such as the United States, the plague of criminality deviancy, immorality, and corruption is embodied in the black because both sexual and social pathology are branded by skin color (as well as by gender and sexual orientation)." James, *Resisting State Violence: Radicalism, Gender, and Race in U.S. Culture* (Minneapolis: University of Minnesota Press, 1996), 26.

³⁷⁹ Estelle B. Freedman, *Their Sisters' Keeper: Women's Prison Reform in America, 1830-1930* (Ann Arbor: The University of Michigan Press, 1981), 45.

increasingly challenged conventional standards for the behavior of ‘true’ women.”³⁸⁰ The reformatory approach focused not on female felons but on misdemeanants who, according to Rafter, were “not yet subject to state punishment—vagrants, unwed mothers, prostitutes, and other ‘fallen’ women who seemed more promising material for their attempts to uplift and retrain.”³⁸¹ As a result, women were incarcerated for lesser offenses for which men were not imprisoned and the length of the terms of their sentences were greatly increased.³⁸² The loss of racial privilege began to change for white women when, following Elizabeth Fry, reformers argued that “fallen women” could be redeemed. They did not question the idea of the “fallen woman” and the assumptions it made about a “woman’s place,” they only questioned the assertion that these women could not be saved. As a result, they advocated for separate facilities from men with a distinctly feminine approach to punishment—one that sought reform through domesticity.³⁸³ Reformers also advocated a new image of the female criminal “from that of a morally depraved monster to that of an errant child.”³⁸⁴

The reformatory approach meant that white affluent women, though “fallen,” retained their racial privilege because they were not irrevocably so. As Davis, explains, “Feminized modes of punishment” designed to reform white women, relegated “women of color in large part to realms of public punishment that made no pretense of offering them femininity.”³⁸⁵ On the other hand, “poor women (and especially black women),” were steered into domestic service in the ‘free world,’ becoming “maids, cooks, and washerwomen for more affluent women” upon

³⁸⁰ Rafter, *Partial Justice*, xiii.

³⁸¹ *Ibid.*, xxviii.

³⁸² *Ibid.*, 23.

³⁸³ Davis, *Are Prisons Obsolete?*, 70.

³⁸⁴ Rafter, xxxii.

³⁸⁵ Davis, *Are Prisons Obsolete?*, 70. In the South, after the abolition of slavery, Davis notes, “black women endured the cruelties of the convict lease system unmitigated by the feminization of punishment; neither their sentences nor the labor they were compelled to do were lessened by virtue of their gender,” arguably a continuation of the treatment of black women as “work ox” as in slavery (72).

release instead of “stay-at-home skilled wives and mothers.”³⁸⁶ Black and Native American women imprisoned in reformatories were often segregated from white women. They also tended to be disproportionately sentenced to men’s prisons.³⁸⁷ This structuring in effect created a tiered system of white affluent women capable of redemption and working class and poor white women and women of color who could not be redeemed but could become efficient and productive laborers.

The reformatory movement did not catch on in many parts of the South, however, and women continued to be incarcerated in custodial institutions—those resembling and closely related to men’s institutions in many parts. Tennessee, for example, did not establish a completely separate prison for women until the 1960s.³⁸⁸ According to Rafter, Black women comprised the majority of women prisoners in the state from the first woman admitted to Tennessee penitentiary to 1934, the end of her data period. After the Civil War, whites were often screened out of southern prisons. Citing Frances Kellor who documented the treatment of Black prisoners after a tour of Southern penal systems, Rafter explains how the treatment of Black women differed from white women: “The black female offender, [Kellor] wrote, ‘is first a negro and then a woman-in the whites’ estimation’; black women did not benefit from the ‘chivalry’ extended to white females. A North Carolina report of 1922 described one institution as being so horrible that ‘the judge refuses to send white women to this jail, but negro women are sometimes sent.’”³⁸⁹ That Black women were not considered “true” women is reflected in their

³⁸⁶ Davis, *Obsolete*, 70.

³⁸⁷ *Ibid.*, 72.

³⁸⁸ Rafter, xxi.

³⁸⁹ *Ibid.*, 134.

presence in the convict lease system in Tennessee during the period of 1865-1900 where they were leased to farm and mine alongside Black men.³⁹⁰ Rafter explains:

sex and race thus interact to increase the involvement of black women with the criminal justice system. Certainly criminal women in general have long been viewed as virile; ‘masculine qualities,’ wrote Lombroso in 1895, ‘prevent the female criminal from being more than half a woman.’ If (as seems probable) black women in general were considered less feminine than white, black female *offenders* were especially likely to have been viewed as masculine and hence undeserving of protection.³⁹¹

Over time, Tennessee’s penitentiary made accommodations for women prisoners, eventually hiring a matron, separating women from the main population in the 1880s and eventually building a women’s prison physically separate, though on the same property and under the same administration in 1930.³⁹² According to Rafter, the Women’s Prison would most likely have been mistaken by visiting reformers from the North for a men’s prison because “instead of utilizing the cottage plan, it was cruciform in shape and contained cell blocks with tiers four stories high. As in maximum security men’s prisons, a corridor separated the cells from barred windows” and according to the Department of Institutions, it was “almost purely custodial. Practically nothing is done in the way of treatment and training.”³⁹³

According to Davis, eventually “women’s prisons became as strongly anchored to the social landscape as men’s prisons, but even more invisible” across the country. She attributes the invisibility of women’s incarceration to a “reflection of the way women’s domestic duties under patriarchy were assumed to be normal, natural and consequently invisible” as well as the “relatively small numbers of women incarcerated in these institutions.”³⁹⁴ This invisibility is also a reflection, I would argue, of the female prisoner as the quintessential prisoner. While the

³⁹⁰ Rafter, 143.

³⁹¹ Ibid., 86.

³⁹² Rafter, 9.

³⁹³ Rafter, 87

³⁹⁴ Davis, *Are Prisons Obsolete?*, 71.

majority of incarcerated people are men, as Black feminist and womanist methodology has demonstrated, numbers alone are not sufficient for a power analysis. In *Abolition Democracy: Beyond Empire, Prisons, and Torture* (2005), Davis connects the use of domestic prisons to torture and U.S. military imperialism to explain that when violence like lynching is institutionalized, “white bodies can also bear the brunt of racist violence.”³⁹⁵ Similarly, as prisons represent the institutionalization of the subjugation of and hostility toward the feminine through discipline and punishment, male bodies have also borne misogynist violence.³⁹⁶ That incarcerated men are also subject to gendered punishment is evidenced by former Arizona Sheriff Joe Arpaio’s insistence that male prisoners be dressed both in convict stripes and pink underwear, socks, and gloves.³⁹⁷ Incarceration is punishment precisely because it means finding yourself suddenly subordinate to one who locks you in at night. The cultural attribution of hyper-masculinity to male criminality and masculinity to female criminality overcompensates for this “feminine position” of the prisoner as the state’s “bitch.”

The Myth of Eve and Woman’s Primordial Punishment

The quintessential prisoner as female can be traced to the patriarchal myth of Eve as the source of sin. Presented as the first woman, Eve comes to symbolize all women. In his effort to uncover the images and narratives that justify violence against women, Charles Ess, begins by examining the mythic image of Eve as she “stands as a primordial definition of ‘woman as

³⁹⁵ Angela Davis, *Abolition Democracy: Beyond Empire, Prisons, and Torture* (New York: Seven Stories Press, 2005), 54.

³⁹⁶ See Angela P. Harris, “Gender, Violence, Race, and Criminal Justice,” *Stanford Law Review* 52, no. 4 (April 2000): 777-807.

³⁹⁷ Jacques Billeaud, “Arpaio loses appeal on pink-underwear case,” *The Arizona Republic*, March 4, 2013, <http://www.azcentral.com/news/politics/articles/20130304joe-arpaio-pink-underwear-appeal.html>. A 9th Circuit court has ruled against Arpaio in a suit against him, saying that the underwear is punishment without legal justification and that “it’s fair to infer that the selection of pink as an underwear color is meant to symbolize the loss of prisoners’ masculinity...Arpaio’s attorneys wanted the nation’s highest court to examine whether having pink boxers as part of the standard jail uniform can constitute punishment before a trial is held” but the U.S. Supreme Court declined to hear Arpaio’s appeal.

such.”³⁹⁸ He considers the Eve myth to justify the subjugation of women by establishing the nature of Eve and therefore woman, as inferior to man and prone to disobedience. Ess contends that the myth proliferates an understanding of the nature of woman, as “*intrinsically* disruptive or disorderly—a ‘chaos agent’ who threatens the patriarchal order,” necessitating misogynist violence to preserve it.³⁹⁹

Augustine’s doctrine of Original Sin is arguably the most significant source in the Western tradition for the mythic image of Eve as the origin of sin and the downfall of man. Augustine relies on the interpretation of Genesis 2-3 found in 1 Timothy in developing the doctrine. According to feminist theologian Rosemary Radford Ruether, along with an interpretation of Eve as the primary agent responsible for sin, Pauline theology reads “Adam was formed first, then Eve” (1 Timothy 2:13, NRSV) as an indication of woman’s inferiority to man as justification in the re-subordination of women in the Christian Church, after its early egalitarianism.⁴⁰⁰ Ruether explains, “Christian theology interpreted this passage as largely exonerating Adam from base motives in accepting the apple from Eve. Unlike Eve, who acted from ignorance, vanity, and greed, Adam merely ‘went along’ out of affection for Eve and unwillingness to be parted from her and again be alone.”⁴⁰¹ This reading is then cemented and expanded upon by Augustine who teaches that the fall of Adam resulted in the alienation of humanity from its original state of harmony with nature, one another, and God and can only be reconciled through the death of Christ. The doctrine of Original Sin emphasizes the inherently sinful nature of human beings as a result of the fall of man that was precipitated by woman.

³⁹⁸ Charles Ess, “Reading Adam and Eve: Re-Visions of the Myth of Woman’s Subordination to Man,” *Violence Against Women and Children: A Christian Theological Sourcebook* (New York: The Continuum Publishing Company, 1998) 92-93.

³⁹⁹ Ess, 93-94.

⁴⁰⁰ Rosemary Radford Ruether, *Sexism and God-Talk: Toward a Feminist Theology* (Boston: Beacon Press, [1983] 1993), 167.

⁴⁰¹ *Ibid.*, Chapter 7, Footnote 6, 278.

Reading from his social and political context in fourth century Roman North Africa, Augustine assumes the *patria potestas* in naming disobedience the primary sin.⁴⁰² According to Ess, in so doing, Augustine “renders obedience to authority as the highest virtue, whether the authority in question is God, monarch, or husband.”⁴⁰³ In the myth, Eve’s disobedience to (patriarchal) authority is her primary sin—a challenge to God’s sovereignty—and her subjugation is justified as her punishment. The primary example of this disobedience and punishment for it, for Augustine, is an inability to control the sexual organs and therefore sexual desire. Their “defiance of the will” according to Augustine, serves as an unrelenting reminder and “clear testimony of man’s first sin” (14.20).⁴⁰⁴ The primary concern with lust for Augustine is that corrupted by sin, the body cannot be governed by the will or reason. Woman becomes then, not only inherently disobedient and at fault for the human condition, but a sexual temptress who causes men to sin by eliciting sexual desires that the will cannot govern.⁴⁰⁵ Ruether explains that the patriarchal mythology of Eve “translates female evil into ontological principle. The female comes to represent the qualities of materiality, irrationality, carnality, and finitude, which debase the ‘manly’ spirit and drag it down into sin and death.”⁴⁰⁶ In other words, femaleness comes to signify the origin of sin.

The image of woman as chaos agent not only undergirds misogynist violence in the private realm but has also justified women’s exclusion from the public realm. Feminist political theorist Carole Pateman explores the exclusion of women from public life in the work of Rousseau and other political theorists who “regard women as a permanently subversive force

⁴⁰² Augustine writes in *City of God*: “But by the precept He gave, God commended obedience, which is, in a sort, the mother and guardian of all the virtues in the reasonable creature, which was so created that submission is advantageous to it, while the fulfillment of its own will in preference to the Creator's is destruction” (14.12). Augustine of Hippo, *City of God*, Henry Bettenson, trans., (New York: Penguin Classics, [1974], 2004).

⁴⁰³ Ess, 122.

⁴⁰⁴ Augustine, *City of God*.

⁴⁰⁵ Ess, 100.

⁴⁰⁶ Ruether, 168-169.

within the political order.”⁴⁰⁷ As chaos-agents, women threaten the patriarchal order of the state. Consequently, while they are considered fitted to domestic life and the realm of love, they are considered incapable of developing a sense of justice and therefore lack the capacity to participate in civil life.⁴⁰⁸ At the same time, because of their role in childbearing and rearing, they are considered the guardians of morality in the private realm. According to Pateman, “because the family is the ‘foundation’ of social life in the sense that it is the point of ‘procreative origin’ of society and because it stands directly at the border with nature, women are seen as guardians of order and morality as well as inherently subversive. It is women who reproduce and have the major responsibility for educating the next generation.”⁴⁰⁹ In his look at prisons in the early American Republic, Kann explains that first-generation Americans appointed to women the task of preventing men from behaving immorally, criminally, and corruptly. According to Kann “Bad wives and mothers were identified as a significant source of male misbehavior” however, unlike contemporary pro-criminalization policies, penal reformers “did not believe that women should be punished for men’s criminal behavior.”⁴¹⁰ As guardians of morality who are by nature troublesome, however, virtue is not intrinsic to them but must be imposed through patriarchal authority as it monitors, disciplines, and punishes them to it. This paradox further reinforces the idea that women are duplicitous by nature and that as both moral examples and threats to the moral order, they cannot be trusted.

It is through the myth of Eve that we uncover the quintessential prisoner as female. Woman’s imprisonment under male control is her primordial punishment for her disobedience to patriarchal authority. Relegated to the private sphere, she is isolated and excluded from full

⁴⁰⁷ Carole Pateman, “‘The Disorder of Women’: Women, Love, and the Sense of Justice,” *Ethics* 91, no. 1 (October 1980), 20.

⁴⁰⁸ *Ibid.*, 24.

⁴⁰⁹ Pateman, 29.

⁴¹⁰ Kann, *Punishment*, 256.

participation in public life in the name of preserving the divinely instituted hierarchy. Punished prior to the law for disobedience to patriarchal authority, she requires more discipline to be made docile. Her punishment is justified because she is responsible not only for authoring sin and causing man to sin but for introducing sin and therefore death into the world and to all of humanity. In a letter to his friend Laetus, Augustine writes a warning to him regarding his mother, “Beware, lest she pervert you and drag you down to a lower one. What difference does it make whether it is a wife or a mother, when a man has to guard against Eve in every woman?”⁴¹¹ Hyper-culpable motherhood extends from hyper-culpable womanhood, as motherhood read as a part of woman’s punishment for disobedience and becomes a central part to constructions of woman. Both responsibility for the sins of men and the capacity for motherhood are constitutive then, of both the hyper-culpability of womanhood and the quintessential prisoner as female.

Hyper-culpable Womanhood and Motherhood

Constructions of hyper-culpable womanhood and motherhood at their core hold women responsible for the sins of men. In the criminal punishment system, women are increasingly held criminally responsible for the actions of men through pro-criminalization policies that rely on these constructions to expand the number of punishable women. Hyper-culpable womanhood increases the criminalization of women based on proximity to criminalized men and those involved in illegal activity alone. Given the hyper-criminalization, policing and incarceration of Black people and communities, Black women who are already more likely to face arrest are also punished for their proximity to Black men.⁴¹² In the case of Breonna Taylor, a 26-year-old Black woman in Louisville, KY, her punishment was death. Taylor was killed by police as they

⁴¹¹ Augustine, *Letters, Volume 5 (204-270)*, (Catholic University of America Press, 1956), 225.

⁴¹² Phillip M. Bailey, Darcy Cosello, and Tessa Duvall, “Exclusive: Breonna Taylor Had Nothing to Do with Illegal Drug Trade, Ex-Boyfriend Says,” *Courier Journal*, August 27, 2020, <https://www.courier-journal.com/story/news/local/breonna-taylor/2020/08/27/breonna-taylor-had-no-ties-drugs-ex-boyfriend-says/5641151002/>.

executed a no-knock warrant in a drug investigation involving her ex-boyfriend while she and her boyfriend were sleeping. They used a battering ram to enter her apartment and her boyfriend fired a shot with his legally owned gun at the intruders. Police returned fire and Taylor was hit five times. A police report written after Taylor's death attempted to tie Taylor to her ex-boyfriend in the selling of drugs, although no drugs or money were found at her apartment and her ex-boyfriend denied she had anything to do with selling drugs. The warrant application said "Glover [her ex-boyfriend] listed her address as his, and that police confirmed that with 'multiple computer databases.'" The initial police explanation and justification for her death rested on a presumption common to law enforcement and the criminal punishment system, that Taylor and women in relationships with criminalized men or men participating in illegal activity are guilty by association and therefore already punishable, regardless of their lack of participation in or knowledge of a crime.⁴¹³ This assumption relies on a presumption of intimacy to establish a woman's moral and therefore criminal culpability and responsibility. This moral culpability is rooted in the Eve myth in which woman is to blame for the sins of men. The prosecution of women for the crimes of men is often based on three assumptions that derive from this myth. Women are often rendered responsible for the crimes of men because of the assumption that: (1) their proximity to a man should give them knowledge of his crimes, (2) they likely tempted, provoked, encouraged, or masterminded his crimes, or (3) they failed to prevent his crimes and fulfill their role as guardian of morality in the home or private sphere.

As the guardian of morality in the home, mothers are not only responsible for the crimes of men; they are also responsible for those of their children. As patriarchal authority in the home has receded, white middle-class mothers have increasingly come under the surveillance of the

⁴¹³ In this case, police acted on a primary presumption of the legitimacy of the no-knock warrant and when that was called into question, they relied on the common presumption of intimacy to justify her death.

state, because the purity of the white race relies on their reproductive and mothering capacities. For Black mothers, surveillance and interventions have long been characteristic of their experience of mothering and natal alienation. As Lynn Haney explains, “while poor women have always had their lives regulated by the state indirectly, through social policies, laws, and encounters with caseworkers, more of them are living and raising children quite literally within the state—often for long stretches of time.”⁴¹⁴ Grounded in hyper-culpable womanhood, hyper-culpable motherhood inflates even further the punishability of women.⁴¹⁵

As femaleness signifies the origin of sin and blackness signifies sin, Black mothers are found guilty for reproducing sin. Black motherhood is the epitome then, of hyper-culpable womanhood. Brown Douglas demystifies the construction of blackness as sin, in her examination of the socio-cultural and religious narratives that have enabled a culture in which Black people have no ground to safely stand on in *Stand Your Ground* (2015). She traces blackness as sin to an Anglo-Saxon rendering of natural law that considers the subordination of Black people divinely ordered and therefore equality a violation of eternal law. According to Brown Douglas, “the free black body is a sinful black body” because it is contrary to its essence as chattel.⁴¹⁶ Blackness as sin is also constructed according to Brown Douglas through the hyper-sexualization of the black body (which serves to justify abuse of it). Hyper-sexualization ascribes sin to blackness because of theological traditions that portray sexual desire and sexuality as intrinsically sinful.

Dorothy Roberts suggests that the criminalization of Black mothers is a result of the vilification of Black motherhood through stereotypes of Black maternal unfitness based on her

⁴¹⁴ Lynne A. Haney, *Offending Women: Power, Punishment, and the Regulation of Desire* (Berkeley: University of California Press, 2010), 7.

⁴¹⁵ For more on the use of foster care to punish poor families and mothers, see, Stephanie Clifford and Jessica Silver-Greenberg, “Foster Care as Punishment: The New Reality of ‘Jane Crow,’” *The New York Times*, July 21, 2017, <https://www.nytimes.com/2017/07/21/nyregion/foster-care-nyc-jane-crow.html>.

⁴¹⁶ Brown Douglas, *Stand Your Ground*, 58.

sexuality, the conditions in which she raises her children, and the conditions of her community. These stereotypes deem them “bad mothers” who are to blame for the disintegration of Black families and communities—largely as they are stereotyped as crime-ridden centers of criminality. That is, they are responsible for birthing sin. As Brown Douglas explains, “the portrait that Daniel P. Moynihan painted of black women fifty years ago still lingers: breeders of the tangle of black criminal pathology. Black mothers are viewed as responsible for raising the ‘criminalblackman.’”⁴¹⁷ As a result of this hyper-culpability, their survival and care strategies as mothers are often criminalized.⁴¹⁸

In the case of Marissa Alexander, she was not only criminalized for self-defense but for her attempt to protect and care for her children who were in the house at the time of her warning shot.⁴¹⁹ The prosecutor cited the safety of Alexander’s children as the reason she was seeking 60 years, blaming Alexander for “endangering” them while ignoring that she was attempting to protect herself and them as well.⁴²⁰ In 2012 Tanya McDowell, a Black mother in Ohio was arrested and sentenced to five years in jail for sending her son to a better school. She was

⁴¹⁷ Brown Douglas, *Stand Your Ground*, 84. See Juan Floyd-Thomas “Welfare Reform and the Ghost of the ‘Welfare Queen,’” *New Politics* 16, no. 1 (Summer 2016), https://newpol.org/issue_post/welfare-reform-and-ghost-welfare-queen/. Floyd-Thomas looks at how the specter of the controlling image of the “welfare queen” continues to impact public policy, particularly more recent GOP efforts to significantly undermine public assistance programs like Temporary Assistance for Needy Families (TANF) by relying on “dog-whistle” politics that uses racially coded language to gain support from white voters for policies that primarily benefit the wealthy. Floyd-Thomas argues that progressives and anti-poverty activists need to adopt a “train-whistle” politics—that is, “loud and resounding resistance to oppressive policies and those who enact them” in order to interrupt this demeaning image of welfare.

⁴¹⁸ Journalists Sharona Coutts and Zoe Greenberg report of courts severing women’s parental rights for minor crimes. “‘No Hope for Me’: Women Stripped of Parental Rights After Minor Crimes,” *Rewire*, April 2, 2015, <https://rewirenewsgroup.com/article/2015/04/02/hope-women-stripped-parental-rights-minor-crimes/>.

⁴¹⁹ See the case of Nan-Hui Jo, an undocumented mother charged with child abduction for fleeing her abusive husband and taking her daughter with her to South Korea. She was arrested when she returned, her daughter now in the care of her husband while she faces deportation. Anita Little, “Stand with Nan-Hui: Stop the Deportation of a Domestic Violence Survivor,” March 12, 2015, *Ms. Magazine*, <http://msmagazine.com/blog/2015/03/12/stand-with-nan-hui-stop-the-deportation-of-a-domestic-violence-survivor/>. See also, the 78 mothers held at Karnes County Residential Center in South Texas, most seeking asylum with their children from Guatemala and El Salvador, with some of the highest femicide rates in the world. They have started a second hunger and work strike protesting their detention. Aura Bogado, “Why Mothers are on Strike at Karnes Immigrant Detention Center,” *Colorlines*, March 31, 2015, <http://www.colorlines.com/articles/why-mothers-are-strike-karnes-immigrant-detention-center>.

⁴²⁰ Nelson, “Marissa Alexander.”

criminalized for seeking better opportunities for her children—something that would otherwise be considered behavior characteristic of a “good” mother. The hyper-culpability of motherhood, especially Black motherhood means that Black mothers are punished for employing strategies of survival and care not only for themselves but for their children as well.⁴²¹

Conclusion

I have sought to upend the assumption that the quintessential prisoner is male by tracing the patriarchal circuits between the private and public spheres to demonstrate instead that the paradigmatic prisoner is female. The quintessential prisoner as female is traced to Christian theological and moral tradition, primarily Augustine’s doctrine of Original Sin as it has shaped the myth of Eve through which woman is constructed as “chaos-agent.” As a threat to the patriarchal order, her subjugation to man is justified as punishment for authoring sin and causing man to sin. The quintessential prisoner as female is in this sense incarcerated “behind a man.” My intention in recognizing that the quintessential prisoner is female is to highlight the particular vulnerability of women in love with men to carceral gender entrapment.

⁴²¹ Associated Press, “Mother who stole son’s education gets 12 years in prison,” *WFSB*, April 23, 2013, <http://www.wfsb.com/story/16988714/tonya-mcdowell-to-plead-guilty>. Just as Black men and women are overrepresented in jails and prisons, Black children are overrepresented in the foster care system, which law professor Dorothy Roberts looks at in *Shattered Bonds: The Color of Child Welfare* (New York: Basic Books, 2002), 8.

CHAPTER 4

‘That I May Own Myself’: Feminist and Womanist Love-Politics as Ethical Praxis and Carceral Resistance

Alone from night to night you’ll find me
Too weak to break the chains that bind me
I need no shackles to remind me
That I’m just a prisoner of love

For one command I stand and wait now
For one who’s master of my fate now
I can’t escape for it’s too late now
That I’m just a prisoner of love

—Etta James, “Prisoner of Love” (1962)⁴²²

Freedom to me means love itself may not be chained & that I at the very least may own myself.

—Alice Walker, “Lost” (2010)⁴²³

Introduction

As with Nina Simone’s cover of “I Shall Be Released,” so too, when considered autobiographically, blues artist Etta James’ rendition of “Prisoner of Love” invokes the entrapment of women in personal life.⁴²⁴ “Prisoner of love” is more than metaphor for James who fell in love with a man who beat her, the same year she recorded the song. In her autobiography, she refers to him as “a jail keeper who ruled my life for a period of time.... More and more, I knew I had to get away from him, yet more and more I felt trapped.”⁴²⁵ For women who do not command the same capacity as men to define the terms by which they are loved, for

⁴²² Etta James, “Prisoner of Love,” Track 10 on *Etta James Sings for Lovers*, Argo Records, 1962, MP3. “Prisoner of Love” was originally recorded in 1931 by baritone Russ Columbo. Etta James met the man she refers to in her autobiography as the Pimp in New York in 1962. Struggling with a heroine addiction, James also spent time in the Cook County Jail in Chicago as well as rehab.

⁴²³ Alice Walker, *Hard Times Require Furious Dancing* (Novato, CA: New World Library, 2010), 25. “Prisoner of Love” was originally recorded in 1931 by baritone Russ Columbo.

⁴²⁵ Etta James and David Ritz, *Rage to Survive: The Etta James Story* (Cambridge, MA: Da Capo Press, 1995), 131.

whom romantic love is a primary source of recognition and social worth, and for whom love has demanded their submission to another, love often entraps them and makes them a prisoner.

This dissertation has attempted to provide thus far, a structural critique of the incarceration of women “behind a man” by challenging the tendency to attribute women’s troubles in love to personal pathology and instead frame it as a reflection of their experiences on a continuum of emotional dominance and coercive control as the manifestation of structural gender inequality in personal, social, and institutional life. This chapter seeks to continue this critique by examining the ways in which love has been appropriated for the cultural production of evil, particularly in perpetuating the subordination of women through the norm of love as self-sacrifice. At the same time, this dissertation seeks to honor women’s moral agency as they make decisions in less than ideal conditions and to recognize their strategies for carceral resistance. Since women continue to yearn to love and be loved and remain largely unwilling to disavow men altogether, this chapter turns to the cultivation of feminist agency through the process of self-making or soul-making, as both an intermediary strategy for building power to command a greater capacity to define the terms in which they are loved and for opening up the possibilities of feminist and abolitionist futures through collective struggle in transforming the conditions that circumscribe their agency and entrap them. Drawing on Black feminist theorist Jennifer Nash’s reading of Black feminist and womanist love-politics as a practice of self-work and feminist theologian Rosemary Radford Reuther’s feminist *metanoia* as soul-making, I turn to feminist and womanist theological ethics and religion as a resource for resistance to and transformation of the public and intimate manifestations of love as it incarcerates women.⁴²⁶

⁴²⁶ Jennifer Nash, "Practicing Love: Black Feminism, Love-Politics, and Post-Intersectionality," *Meridians: Feminism, Race, Transnationalism* 11, no. 2 (2013): 1-24.

The Co-optation of Love for the Cultural Production of Evil

That evil disguises itself as good is a longstanding theme in the Christian tradition and moral discernment is consequently a critical task to Christian social and feminist liberationist ethics. Christian ethicist Cynthia D. Moe-Lobeda observes that the nature of structural evil is that it cloaks itself and remains hidden from the consciousness of those who perpetrate it. She explains, “evil and good intermingle and may seem confoundingly indistinguishable” making it difficult to recognize “injustice where it is so entangled with good.”⁴²⁷ The co-optation of love for the cultural production of evil is also particularly insidious because it helps to sustain women’s subordination by presenting it as a moral good that they desire and have freely chosen.

Prisoners in Love

Feminists have long identified love as a site of trouble for women, contesting the idea that women are primarily responsible for their suffering in love and identifying hegemonic gender and moral norms that entrap them and perpetuate their subjugation, such as that of love as self-sacrifice and self-abnegation. Kathryn P. Morgan considers romantic love one of the areas in which women face moral double binds that often results in moral confusion which is then wielded to further undermine their subjectivity and agency. Morgan contends, “women are socialized to aspire to life situations which involve them in self-destroying moral double-binds” that can “lead to a general sense of confusion and of moral madness which is then cited, in a patriarchal culture, to further discredit a woman’s moral subjectivity.”⁴²⁸ For women who are socialized to be caretakers and overly responsible, romantic love as selflessness only contributes to their subordination, demanding self-abandonment and absorption into the identity of another.

⁴²⁷ Cynthia D. Moe-Lobeda, *Resisting Structural Evil: Love as Ecological-Economic Vocation* (Minneapolis: Fortress Press, 2013), 67.

⁴²⁸ Kathryn P. Morgan, “Women and Moral Madness,” *Canadian Journal of Philosophy* 13 (1987), 202.

That is, women lose themselves in what they initially consider as the key to self-actualization.

According to Morgan:

In attempting to create and realize her own identity in the name of moral self-determination, the woman in love enters precisely the kind of relationship which, by its very nature, will make that moral self-determination impossible and which will likely lead to terrifying servility on her part. What promises her fulfillment ends up destroying her.⁴²⁹

This moral double bind is a result of considerable differences in what loves means for men and women. As French philosopher Simone de Beauvoir explains in *The Second Sex*, “the word love has by no means the same sense for both sexes, and this is one cause of the serious misunderstandings that divide them.”⁴³⁰ That is, while men remain sovereign subjects in love who want to “possess” them, women risk losing their self and identity for male recognition and emotional attachment. Eva Illouz locates the trouble in contemporary love for men and women in the “profoundly split and dual aspect of love—both as a source of existential transcendence and as a deeply contested site for the performance of gender identity—that characterizes contemporary romantic culture.”⁴³¹ Romantic love in heterosexual relationships is a site of a gendered power struggle in public life—over autonomy and self-determination—that is borne out in personal life. In the face of continued male domination whether through emotional dominance or coercive control, the struggle for women in love with men remains the struggle to possess themselves.

As bell hooks details in her exploration of the female search for love, as a result of the cultural denigration of femaleness, women experience inequality in love early in life when they

⁴²⁹ Morgan., 218.

⁴³⁰ Simone de Beauvoir, *The Second Sex*, Translated and edited by H.M. Parshley, (New York: Vintage Books, [1949] 1989), 642.

⁴³¹ Illouz, 9.

first learn that for them, love must be earned, while for boys it is their birthright.⁴³² According to hooks:

All girls continue to be taught when they are young, if not by their parents then by the culture around them, that they must earn the right to be loved—that ‘femaleness’ is not good enough. This is a female’s first lesson in the school of patriarchal thinking and values. She must earn love. She is not entitled. She must be good to be loved. And good is always defined by someone else, someone on the outside.⁴³³

Girls are primed to appropriate and make as their own the norm of love as self-sacrifice, because they learn early on that love is something they must earn and selflessness, devotion, and loyalty become the expressions of love through which they seek to earn it.

Agape as Self-Sacrifice

Feminist theologians have critiqued a heavy emphasis in dominant, male-centered theology and ethics, on *agape* love as other-regard exemplified in self-sacrifice—the highest expression of Christian love. *Agape* as self-sacrifice is epitomized by Jesus’ death on the cross as atonement for the sins of humanity, serving as the moral example of Christian charity. However, as feminist and womanist theologians and ethicists have long critiqued and “women have demonstrated,” Barbara Andolsen explains, “excessive self-regard is not the sole root of human evil.”⁴³⁴ Instead, excessive other-regard disguised as love has served to reproduce structural evil because selflessness has been a defining norm in female experience and largely detrimental to and prohibitive of the survival and flourishing of women. Profiled and socialized as nurturers, women have long been expected to care for others at the expense of themselves, tasked with maintaining relationships and social ties, tending to the needs of men, children and the elderly. As a result, according to Andolsen, “*Agape* defined exclusively as other-regard or self-sacrifice

⁴³² hooks, bell. *Communion: The Female Search for Love*, (New York: HarperCollins, 2002), xii.

⁴³³ Ibid.

⁴³⁴ Barbara Hilbert Andolsen, “Agape in Feminist Ethics,” *Feminist Theological Ethics: A Reader*, Edited by Lois K. Daly, (Louisville: Westminster John Knox Press, 1994), 156.

is not an appropriate virtue for women who are prone to excessive selflessness.”⁴³⁵ Womanist theologians and ethicists have pointed out that love as excessive other-regard is particularly detrimental to Black women who have historically been forced to also assume the caretaking work of middle-class and affluent white women.⁴³⁶ Womanist theologian Delores Williams names Black women’s oppression as social role surrogacy in which they have historically been forced to take on roles that usually would be filled by someone else. In the antebellum South, as Williams explains, Black women were forced to take on roles of white people in the areas of “nurturance, field labor and sexuality” and this forced surrogacy continued post-emancipation through domestic work, hard labor and the role of “mammy” requiring she act as nurturer and protector of white children.⁴³⁷

For women incarcerated “behind a man,” sacrificial love often takes the form of devotion and loyalty to a man. Hegemonic constructions of gender and heterosexuality construct absolute loyalty to a man as an imperative for women as an expression of love. This gendered expectation of loyalty as a primary expression of love and commitment has been reinforced in culturally popular ways. While referring to someone as a “ride or die” has extended beyond intimate partner relationships to friends and family, the hip hop trope from which it originates, the “ride or die chick,” has reinforced expectations of women’s loyalty to men, particularly that of Black women’s loyalty to Black men. While portrayed mutually as “partners in crime,” for women incarcerated “behind a man,” such loyalty is not always reciprocated.

⁴³⁵ Andolsen, 151.

⁴³⁶ Ruchika Tulshyan, “Women of Color Get Asked to Do More ‘Office Housework.’ Here’s How They Can Say No,” *Harvard Business Review*, April 6, 2018, <https://hbr.org/2018/04/women-of-color-get-asked-to-do-more-office-housework-heres-how-they-can-say-no>.

⁴³⁷ Delores S. Williams, *Sisters in the Wilderness: The Challenge of Womanist God-Talk* (Maryknoll, New York: Orbis Books, 1993), 60, 62.

Black feminist theorist Gwendolyn Pough critiques this trope and its implications for Black women in particular who have comprised the fastest growing prison population over recent decades.⁴³⁸ While “ride or die” has been appropriated from biker terminology wherein motorcyclists claimed they would rather die if they couldn’t ride, and now popularized in the hip hop lexicon as an affirmation of black love and racial solidarity for the one who will ride and stick by your side to the end, within the context of intimate partner and state coercive control, “ride or die” often becomes a demand of women’s absolute loyalty to men under the threat of violence. As such, the “ride or die chick” is not simply a self-avowed naming but also an impossible demand to “Ryde or Die, Bitch,” in the words of the 1999 single from The Lox featuring Eve and Timabland. For many women incarcerated “behind a man,” it is often a hard-won realization, a moment of feminist consciousness, if you will, that the loyalty they have shown their male intimate partners is not necessarily returned in kind. That loyalty is a gendered expression of love, premised on the sacrificial love of women is evident in something as basic as the disparity in visitors that incarcerated men and women receive. In New York City, a reporter found that men incarcerated at Rikers received twice as many visitors compared to women incarcerated there and experts suggest that this disparity is reflected across the nation.⁴³⁹ Sophia Benitez, a married mother of four incarcerated at Rikers commented on this disparity, explaining that “women are naïve; we want to be there for our man and help, but when we are inside, the roles are not reversed.” While loyalty is presented as an expression of love that is by nature

⁴³⁸ Gwendolyn Pough, “What It Do, Shorty?: Women, Hip Hop, and a Feminist Agenda,” *Black Women, Gender and Families* 1, no. 2 (Fall 2007): 78-99.

⁴³⁹ The lack of visits adversely impacts women who are largely mothers filled with the guilt of “abandoning” their children while men are largely supported by spouses, girlfriends, and mothers who bring their children to see them. Christina Boyle, “Women at Rikers Island Get Fewer Visitors Than Men Inmates,” *The New York Daily News*, August 14 2011, <https://www.nydailynews.com/news/crime/women-rikers-island-visitors-men-inmates-article-1.945039>.

reciprocated, it is often instead a condition to which women must submit if they desire male recognition and love.

Women's troubles in love stem in large part from their inequality in love. That is, they command less capacity than men to define the terms in which they are loved because of larger social inequalities but also because for women, male recognition through romantic love has been constructed as a primary source of their social worth and identity in a way in which it is not for men making, as Carissa Showden explains, "one's relationship with an intimate partner...the core field within which one acts."⁴⁴⁰ I turn to the religious lives of incarcerated women in the face of dehumanization and social devaluation as they might be instructive for how women might amass a variety of resources from which to manage self-doubt and ontological insecurity, outside of romantic relationships such that it might free them of the sociological need for male recognition and better position them to negotiate the terms of their love relationships.

Religion as a Site of Carceral Resistance

In her personal account of her time incarcerated in the House of D, a jail for women in New York City, Angela Davis writes of religion but minimizes its significance, relegating it to "another method used to fill time."⁴⁴¹ She explains that she was surprised at the number of prisoners in attendance in Sunday's chapel, "But soon I realized that many of the women had ulterior motives unrelated to any serious religious feelings. It was one of the two consistent meeting places where women from one part of the jail could see and converse with their friends from other floors."⁴⁴² Davis seems to discount the significance of the religious space by questioning the religious motivations of the participants. In doing so, I argue, she misses religion, including religiously designated spaces, as sites of possible resistance for incarcerated women.

⁴⁴⁰ Showden, 70.

⁴⁴¹ Angela Davis, *Angela Davis: An Autobiography* (New York: International Publishers, 1988), 50-51.

⁴⁴² Ibid.

The role of religion in women's incarceration has received little attention from scholars and activists alike. Even in her important and thorough work on the invisibility of women prisoners resistance in *Resistance Behind Bars: The Struggles of Incarcerated Women* (2009), in which she details how women prisoners resistance is often overlooked because it doesn't always take the same form as that of incarcerated men, Victoria Law does not include the role of religion in prisoner resistance.

While religion is implicated in both domestic and state prison regimes, and has shaped woman as prisoner through the myth of Eve and resulting constructions of hyper-culpable womanhood and motherhood that hold women responsible for the transgressions of men, to read religion as only in collusion with the regime of prisons is to overlook the ways in which religion in the context of incarceration is also shaped by what religious scholar Anthony Pinn suggests shapes religion as he looks at the role of black religion in the struggle against racist dehumanization—"the quest for complex subjectivity."⁴⁴³ Paula Cooley demonstrates this quest in her examination of women's religious conversions on death row in which she argues that appeals to religious conversion as rehabilitation registers as resistance to the state's authority to kill and challenges the universal moral person subject to the law. At the same time, Cooley notes the role of disciplinary power in religion explaining, "religious practices within prisons socialize prisoners to docility even as they may, on occasion, register resistance to state authority in unintended ways."⁴⁴⁴ Ministries allowed by the state create countercultures "which create communities within which alternative subjectivities are intentionally cultivated through religious discipline."⁴⁴⁵ While these alternative subjectivities can be resistive, she argues, these

⁴⁴³ Anthony Pinn, *Terror and Triumph: The Nature of Black Religion* (Minneapolis: Fortress Press, 2003), 173.

⁴⁴⁴ Paula M. Cooley, "Women's Religious Conversions on Death Row: Theorizing Religion and State," *Journal of the American Academy of Religion* 70, no. 4 (December 2002), 710.

⁴⁴⁵ *Ibid.*, 711.

countercultures also discipline participants to a “particular variation on the state’s version of morality, insofar as it coincides with the morality of the particular group” including femininity and compulsory heterosexuality.⁴⁴⁶ Nevertheless, as Cooley demonstrates, “religious conversion produces a reconstituted self, reconstituted by an authority that is not altogether subject to the state’s power, namely, an authority conceived as a transempirical reality” which both collaborates and conflicts with “interacting regulative networks.”⁴⁴⁷ Cooley’s work further illuminates the value of religion and disciplinary power in challenging state violence. Not only does she expose the possibility of using “the soul” as a resource to leverage the system, but the possibility for ministries to create communities in which alternative subjectivities which counter state violence and affirm the humanity of the incarcerated, are intentionally cultivated. In so doing, they might also resist the “terror” of an over-determined subjectivity through the cultivation of a complex one.

In her recently published work *Women Doing Life: Gender, Punishment, and the Struggle for Identity* (2016), sociologist Lora Lempert offers the most in-depth look at religion and incarcerated women’s agency to date in her study of women serving life sentences. From her interviews with incarcerated women, she categorizes the women’s “agentic strategies”—the ways they negotiate power, cope and resist their confinement—around “four axes of decision making”:

- (1) normalizing chosen activities inside using ‘as if’ outside world analogues; (2) maintaining individualized action orientations generally described as ‘staying busy’; (3) forming affective and instrumental relationships with peers inside; and (4) developing and sustaining a self-defined spiritual center, often expressed as having ‘a personal relationship with God.’⁴⁴⁸

⁴⁴⁶ Cooley, 711.

⁴⁴⁷ Ibid., 712.

⁴⁴⁸ Lora Lempert, *Women Doing Life: Gender, Punishment, and the Struggle for Identity* (New York: New York University Press, 2016), 183. Lempert explains how incarcerated women’s agency is not always visible: “Agency, or the choice to act autonomously, is not always visible materially or recognizable in institutional terms. Sometimes the

Lempert characterizes the women's engagement with religion as a self-actualizing behavior that is pervasive within the prison and lives of incarcerated women. Prayer is the most reported strategy that women used to create "meaningful lives" in confinement.⁴⁴⁹ She explains,

Religion matters inside. Spiritual practice and belief in a higher power provide women with a sense of direction and purpose. When all other problem-solving avenues are closed, denied, or unavailable, prayer is accessible. It is one of the few activities that prison administration cannot sanction or control. Prayer is an empowerment strategy that women actively employ to connect with a higher power, to diffuse tense situations, to maintain hope, to reinterpret their lives, and to support them as they engage in self-actualizing behaviors.⁴⁵⁰

Prayer is also an open-ended address in which the woman speaks, presumably uninterrupted, the very opposite of the silencing of speech, such as through asphyxiation.⁴⁵¹ Also notable from Lempert's study is the ways in which incarcerated women interpreted a masculine deity in light of their experiences, especially for women who are incarcerated in connection to the men in their lives. Lempert reports:

For many women, sentenced 'behind a man,' who have been manipulated by men, who were abused by men, who had been 'gullible' and 'stupid' in the service of men, who aided and abetted violent men, or who murdered their brutal male partners, it is only in a spiritual incarnation as God that the male figures in their lives are experienced as nurturing, loving, and dependable. In such iterations God becomes emblematic of the ideal partner or father, the essentialized, idealized version of a physical man who honors, comforts, and protects women. In focus-group discussions, God was often, if unwittingly presented as a male figure substitute. For example, when *Jannel* was first charged and sentenced, she reported going through a phase of hating men. Yet, she also claimed, 'it

women's resistance and self-determination appear passive as when they work to keep their minds active through reading, developing expertise on correctional department policies, or researching their cases in the law library; sometimes women employ ruses and protests to fill an institutional gap; sometimes they form groups, write letters, or engage in confrontation. Often their expressions of agency are interpreted as resistance and defined by a male model as evading or overcoming the imposition of power" (16).

⁴⁴⁹ Ibid., 16-17 and 225. Interestingly, the role of religion also took a unique form for women: "Like their male counterparts, women found that religious practices were helpful in dealing with the guilt resulting from their crimes, but, unlike the men, in a gendered spin the women also prayed for relief from the guilt of leaving their children and families behind" (219).

⁴⁵⁰ Ibid., 224.

⁴⁵¹ Thank you to Dr. Lisa Guenther for this observation.

was God, the man, who has held me...and comforts me.' 'I don't depend on earthly men, I have a heavenly father.'⁴⁵²

In addition, they are not held responsible for Jesus' sins, but in evangelical and atonement theology, he takes responsibility for theirs. Since the tradition of feminist theological ethics has critiqued sexism within God-talk, including the gendering of God as male, it would be helpful to know more about the role that Jesus played in the women's God-talk. Womanist theologian Jacquelyn Grant critiques white feminist theologians in her work *White Women's Christ and Black Women's Jesus: Feminist Christology and Womanist Response* (1989), for centering white women's experiences in feminist theology in general and Christology, in particular. For Black women, she argues, it was not Jesus' maleness that was of significance but his humanity with which they identified.⁴⁵³ She explains,

for Christian Black women in the past, Jesus was their central frame of reference. They identified with Jesus because they believed that Jesus identified with them. As Jesus was persecuted and made to suffer undeservedly, so were they...But Jesus' suffering was not the suffering of a mere human, for Jesus was understood to be God incarnate...Black women's affirmation of Jesus as God meant that White people were not God.⁴⁵⁴

Similarly, it seems, for incarcerated women, their affirmation of God as male/father reiterates a distinction that Mary Daly does not make room for, that is, that God as father means that fathers and men are *not* God.⁴⁵⁵

In her analysis of the religious conversions of two women convicted of capital murder and later executed—Karla Faye Tucker, a white heterosexual woman in Texas and Wanda Jean Allen, a Black lesbian in Oklahoma—Paula Cooley argues that both cases demonstrate resistance through religion to the state's authority to “impose death by positing a distinctive religious

⁴⁵² Lember, 221-222.

⁴⁵³ Jacquelyn Grant, *White Women's Christ and Black Women's Jesus: Feminist Christology and Womanist Response* (Atlanta: Scholars Press, 1989).

⁴⁵⁴ *Ibid.*, 212-213.

⁴⁵⁵ Mary Daly, *Beyond God the Father: Toward a Philosophy of Women's Liberation* (Boston: Beacon Press, [1973] 1985). Daly suggests “if God is male, then the male is God” (19).

subjectivity, that of evangelical Christian convert, counter to the state's presumption of a universal moral person subject to the law."⁴⁵⁶ Both women and their advocates used their conversion narratives in an appeal for a life sentence. Their appeals depended upon an understanding of conversion as rehabilitation, as both women were said to have become "model prisoners who sought to minister to their fellow inmates with the intention of rehabilitating them."⁴⁵⁷

According to Cooley, while the "substance of the identity of the converts as converts appears to display in part conformation to the very moral accountability characteristic of the universal person subject to the law," the "transformation occurs, however, on grounds that are neither universal in a religiously neutral sense nor subject to secular law as ultimate for its authority."⁴⁵⁸ Instead, the converts new identity derives from a transcendent authority, Jesus Christ, who "escapes state control—indeed, challenges the state's authority both to define in absolute terms what constitutes a universal, moral agent and to declare the law as the ultimate judge of worth altogether."⁴⁵⁹ Cooley further attends to the political ambiguity around this alternative subjectivity and the authority of the state noting the role of disciplinary power in religion explaining "religious practices within prisons socialize prisoners to docility even as they may, on occasion, register resistance to state authority in unintended ways."⁴⁶⁰ Ministries allowed by the state create countercultures and as she explains, "these countercultures create communities within which alternative subjectivities are intentionally cultivated through religious discipline."⁴⁶¹ While these alternative subjectivities can be resistive, these countercultures also

⁴⁵⁶ Paula Cooley, 710.

⁴⁵⁷ Ibid., 707.

⁴⁵⁸ Ibid., 710.

⁴⁵⁹ Ibid.

⁴⁶⁰ Ibid.

⁴⁶¹ Ibid., 711.

discipline participants to a “particular variation on the state’s version of morality, insofar as it coincides with the morality of the particular group” including femininity and compulsory heterosexuality.⁴⁶² Nevertheless, as Cooley demonstrates, “religious conversion produces a reconstituted self, reconstituted by an authority that is not altogether subject to the state’s power, namely, an authority conceived as a transempirical reality” which both collaborates and conflicts with “interacting regulative networks,” in these two cases, life over death. According to Cooley:

within this conflict, the oppressive, coercive side of religious institutions notwithstanding, each subject staked out her own agency as one who was valued by an authority that challenges the state’s definition of her as expendable. This agency does not exist apart from the socialization of the state or of the religious tradition, as both collude and contest with one another over the identities of Tucker and Allen; rather, Tucker and Allen assimilated elements of both systems. Nevertheless, both Tucker and Allen, in effect if not by intention, defied the state’s attempts to define them as deviant and deserving of execution.⁴⁶³

Though Cooley focuses on the religious subject as agent, she emphasizes the political nature of religious conversion within the context of incarceration. This leads Cooley to conclude that: “Rather than isolated events of individual piety, both conversions exemplify how inextricably piety is bound up with politics, how conversion may serve as the occasion of both political and religious resistance.”⁴⁶⁴ I want to suggest that the Christian religiosity that Cooley describes does some additional resistive work. Many incarcerated Christian women speak of Jesus not just as some distant higher authority, but also as an intimate companion and friend who loves nonviolently and unconditionally and who has sacrificed himself for them. In addition to the countercultures, this seems to also resist the forced isolation and structure of domination that thwarts opportunities for intimacy and love. As religion both undergirds carceral logics and is a resource for carceral resistance, I argue that feminist and womanist ethics can serve as a

⁴⁶² Cooley, 711.

⁴⁶³ Cooley, 712.

⁴⁶⁴ Ibid., 713.

corrective to the co-optation of the good for the cultural production of evil, particularly through the development of feminist agency and the adoption of feminist love-politics as ethical practice.

Feminist Love-Politics as Moral Praxis

Building on agentic strategies Feminist agency is cultivated through the development of feminist consciousness, which helps to reshape one's desires and open up what is possible. According to Ruether, in light of the oppressive structures that institute and sustain the subjugation of women, women's liberation necessitates that they claim their own quest for selfhood or "soul-making." For Ruether, "Soul-making happens through transformative *metanoia*, which occurs through both sudden insight and also slow maturation of a grounded self in relationship or community, able to be both self-affirming and other affirming in life-enhancing mutuality. It is both a gift and a task, grace and work."⁴⁶⁵ Although a labor of the self, soul-making is not an individual but shared and collective work, rooted in collective action. As she explains:

The woman who experiences dissenting thoughts alone, without any network of communication to support her, can hardly bring her own dissent to articulation.... Only where there is a feminist movement that has been able to survive, to develop networks of communication, and to provide some alternative vision of life is feminist consciousness a real possibility.⁴⁶⁶

Soul-making is also a critical project for survivors of intimate partner violence, because, as Showden explains, "being in violent relationships alters one's sense of the world and her place in it. As it takes time to become oneself, it takes time to 'rebecome' and recreate one's sense of self in relationship."⁴⁶⁷ In turning to soul-making, I want to again avoid the tendency to blame women for the abuse they experience. That is to say, regardless of a woman's acceptance of hegemonic gender norms and desires or lack of feminist consciousness, she should not be subject

⁴⁶⁵ Ruether, *Sexism*, 75.

⁴⁶⁶ *Ibid.*, 184-185.

⁴⁶⁷ Showden, 70.

to male violence, because despite the fact that identity is central to one's agency, abuse remains the exercise of power that does not rest solely on gender norms but wields them as they are of benefit to achieving their ends. That is, abusive partners are also successful in the ways in which they co-opt counterhegemonic norms and narratives. Feminist agency and consciousness, however does help to reshape desires and imagination, opening up what is possible, including other avenues for self and social worth outside of romantic relationships. As a project of the self, in romantic relationships, it is a mitigating strategy for building power and commanding greater capacity to set the terms of how one is loved. That is, the more options available to someone, the more outside resources they can gather, the better positioned they are to choose in marriage markets to negotiate the terms of a relationship. While not the answer to violence on its own or structural change overall, it serves as an intermediate strategy for women who, in the words of bell hooks "long to be loved" and "long to be free."⁴⁶⁸

Womanist Ethics and Redemptive Self-Love

In "Practicing Love: Black Feminism, Love-Politics, and Post-Intersectionality," Jennifer Nash argues that Black feminist and womanist love-politics "has long been invested in the 'open end,' in radical possibility, orienting itself toward a yet-unknown future."⁴⁶⁹ Black feminist love-politics for Nash is more than "love as simply a practice of self-valuation."⁴⁷⁰ Instead, she considers "black feminisms pleas for love as a significant call for ordering the self and transcending the self, a strategy for remaking the self and for moving beyond the limitations of selfhood" through political communities organized around radical care and affect rather than identity and a shared wound.⁴⁷¹

⁴⁶⁸ hooks, xix.

⁴⁶⁹ Nash, "Practicing Love," 16.

⁴⁷⁰ Ibid., 3.

⁴⁷¹ Nash, 3.

Nash calls writer Alice Walker's generative definition of womanism the "clearest black feminist attempts to stake out a particular black feminist politics and one of the clearest articulations of love as black feminist politics."⁴⁷² Walker centers love in her definition of the womanist subject, with self-love as the mainspring. For Nash, importantly, Black feminist love-politics is not characterized by romantic love. However, as she explains:

that is not to say that there is no room for love of others within black feminist love-politics, but the political thrust of their notion of love is that it is a labor of the self, not a romantic attachment to an Other. Part of what makes the work of second-wave love-practitioners so radical is a fundamental investment in love as a practice of self-work.⁴⁷³

As writer June Jordan explains in "Where is the Love?" when she speaks of Black feminism, she is "talking about love, about a steady-state deep caring and respect for every other human being, a love that can only derive from a secure and positive self-love."⁴⁷⁴

Drawing from Alice Walker's definition of womanist, from *In Search of Our Mothers Gardens*, Stacey M. Floyd-Thomas gleans four tenets of womanist ethics that when taken together, offer a guide to the process of soul-making: radical subjectivity, traditional communalism, redemptive self-love, and critical engagement. Radical subjectivity is embodied truth; it is a process of conscientization in which Black women "come to understand agency as the ability to defy a forced naïveté" and "incite resistance against marginality."⁴⁷⁵ In the words of RevSisRaedorah, it is the true imago Dei, "Feeling a whole lot like God."⁴⁷⁶ The second tenet, traditional communalism, is the support and bonds formed among Black women marked by "the acts of inclusivity, mutuality, reciprocity, and self-care practiced" within their own communities

⁴⁷² Nash, 10.

⁴⁷³ Ibid.

⁴⁷⁴ June Jordan, "Where is the Love?," *Some of Us Did Not Die: New and Selected Essays of June Jordan* (New York: Basic/Citivas Books, 2003), 272.

⁴⁷⁵ Floyd-Thomas, 16.

⁴⁷⁶ Ibid.

in which they “create, re-member, nurture, protect, sustain and liberate.”⁴⁷⁷ Redemptive self-love, the third tenet of womanism, is the assertion and affirmation of “the humanity, customs, and aesthetic value of Black women” over and against the normative white supremacist culture’s stereotyping and denigrating of Black women.⁴⁷⁸ The fourth tenet, critical engagement, is “the epistemological privilege of Black women borne” of their experience with the tri-dimensional system of race, class and gender oppression and their strategies for undermining them.⁴⁷⁹

Womanist ethics conceives of a radically relational moral agent that engages in mutuality and reciprocity. Love, in womanist ethics is relational but primacy is given to the relationship with the self—that is, self-love. Redemptive self-love is the foundation on which the struggle for justice is laid. The telos of womanist ethics, according to Delores Williams, is survival/quality of life for Black women and the whole people. This telos lends itself to the prison abolitionist aim in its goal to build up healthy communities and through non-punitive practices, restore and transform harm for the quality of life for all people, especially those the most marginalized women as they face carceral gender entrapment. At the same time, self-love as a norm for women is a strategy that helps build power and the capacity of individual women to define the terms in which they are loved, as it relocates the source of social worth from male recognition and romantic love.

Self-love as a project of self-work or soul-making, with its foundation in self-possession, is a mitigating strategy for women with troubles in love. That is, while the fact remains that individually, women have less capacity to define the terms in which they are loved as a result of social and structural inequalities, self-love as self-making shifts the source of social worth from male recognition and romantic love to alternate sources for ontological security and a radical

⁴⁷⁷ Floyd-Thomas, 78.

⁴⁷⁸ *Ibid.*, 142.

⁴⁷⁹ *Ibid.*, 208.

community of care. In its grounding in self-love is a foundation of self-possession, outside of male recognition and social worth and helps mitigate as an intermediate stop-gap (though ultimately not the solution to violence on its own) in building capacity and power to negotiate and set the terms in which they are loved.

Feminist Ethics and Mutuality

In its conceptualization of love as mutuality, feminist ethics also offers a resource for rethinking love counter to its appropriation in service of male dominance. If the task of feminist liberationist ethics, in the words of Marilyn J. Legee, “is to engender a ‘justice imaginable,’” how might feminist ethics help us to more fully imagine and engender a world in which women are no longer prisoners of love?⁴⁸⁰ Feminist theological ethics understands sin largely in terms of the structural violence of sexism, racism, and classism, which manifests itself within our interpersonal relationships and keeps us from cultivating healthy communities. Ruether offers a different story of sin from the classical one in which sin is the:

condition of alienation from God, rooted in a primordial ‘fall,’ which we inherit biologically. The possibility of being rescued from this alienation from God has been laid through the sacrifice of Christ, but we have to include ourselves or be included in that saving event through baptism and personal experience of conversion. We can then grow in grace through being incorporated into this new life in Christ. This is the traditional Christian prescription for ‘soul-making.’⁴⁸¹

Instead, Ruether argues, our understanding of sin should begin, not with alienation from God, but from one another. It is then, she explains, that we can “go on to understand how alienation from one another expresses itself in personal relations and social relations of negation of others, as well as self-negation, that are sick-making and violent.”⁴⁸² Sin then, is the historical

⁴⁸⁰ Marilyn T. Legge, “Visions for Power-in-Relation: A Bibliographic Survey,” *Journal of Feminist Studies in Religion*, Vol. 9, No. ½ (Spring-Fall, 1993), pp. 233-238.

⁴⁸¹ Rosemary R. Ruether, *Introducing Redemption in Christian Feminism* (Sheffield, England: Sheffield Press, 1998), 69.

⁴⁸² *Ibid.*, 70.

reproduction of exploitative and unjust social relations through social systems and it is found in distorted relationships not “distorted” people.⁴⁸³ According to Ruether, sin is the misuse of freedom to exploit others and therefore the “relations that sustain life,” which “is sustained by a biotic relationality in which the whole attains well-being through mutually affirming interdependency. This is a fancy way of saying that life is sustained by love.”⁴⁸⁴ This approach to sin is particularly fitting if we take into account Carol Gilligan’s explanation that women tend to understand maturity in terms of relationships and interdependence. Sin viewed through this lens reveals the way in which self-abnegation is a diminishment of an integral part of the whole and thus a diminishment of the whole itself.

For feminist ethics, salvation is the creation and recreation of institutions and the reconstituting of relationships of hierarchy to ones of mutuality in order that women and communities flourish. Justice is the prerequisite to liberation. The theological image of justice, according to Harrison is a “metaphor of right relationship which shapes the *telos* of a good community and serves as the animating passion of the moral life.”⁴⁸⁵ In its norm of justice as right relationship, feminist social ethics offers an alternative model of power and relationality that is not based on domination and subjugation and that helps further engender a vision of the “unimaginable.” “Mutuality, or shared communal expression of power,” according to Legge, “is another name for the feminist norm of justice.”⁴⁸⁶ She continues:

The task of feminist ethics, then, is to envision and shape an understanding of moral life and community in light of women’s experience of struggle against all concrete structures of oppression. As a means to empowering women’s moral agency, understood as taking responsibility for our lives in community, we aim not to develop a set of moral guidelines

⁴⁸³ Ruether, 74.

⁴⁸⁴ Ibid., 71.

⁴⁸⁵ Beverly W. Harrison, *Justice in the Making: Feminist Social Ethics*, Edited by Elizabeth M. Bounds, Pamela K. Brubaker, Jane E. Hicks, Marilyn J. Legge, Rebecca Todd Peters, and Traci C. West, (Louisville: Westminster John Knox Press, 2004), 16.

⁴⁸⁶ Legge, 234.

that will be binding for all persons (or all feminists) in all circumstances, but to employ a social ethical framework towards a collective praxis of liberation.⁴⁸⁷

Such a feminist norm of justice advances prison abolition's aim of undoing networks of domination and relationships that structure our world by making explicit a norm by which we might reconstitute our interpersonal and social selves and structures.

In "The Dream of a Common Language: Toward a Normative Theory of Justice in Ethics," Harrison challenges the very political ordering of our society which Foucault suggests makes prisons *the* perfect penalty. In a liberation perspective, society, she explains, is not "conceived of as a contractual ordering of common life between already existent autonomous individuals, such that liberty and equality struggle in a perpetual trade-off."⁴⁸⁸ Instead, individual wellbeing is understood to be deeply tied to communal wellbeing. Since, according to Harrison, "Liberty is a *nonrelational* notion...it has so little usefulness in moral discourse or in theories of justice."⁴⁸⁹ Instead, Harrison and feminist ethics advance a moral anthropology that women's experiences bring forth and human life attests to—that we are deeply relational and embodied beings. For Harrison, "'individualism'—a sense of the self as genuinely autonomous and independent, experienced as unrelated existence—is the result of misunderstanding who we are as persons....To be fully a person is to be deeply related to others."⁴⁹⁰

Both feminist and womanist ethics advance moral anthropologies based on the significance of relationships in the moral lives of women and understand that individual wellbeing is tied up in communal wellbeing. It is precisely the role of relationships in women's moral development and self-understanding that abusers and the state exploit in entrapping and incarcerating them and they are able to do so, in part, because agency is intersubjective. This

⁴⁸⁷ Legge, 234.

⁴⁸⁸ Harrison, *Justice in the Making*, 22.

⁴⁸⁹ *Ibid.*, 23.

⁴⁹⁰ *Ibid.*, 58.

means that we are both strengthened and made vulnerable to coercion and violence precisely because of our relationality. The relationality of the self is both the site of our fragility and our salvation. We are vulnerable to others because of our radical relationality. Harrison calls this vulnerability the “the awe-ful, awe-some truth that we have the power through acts of love or lovelessness literally to create one another” and suggests that “because we do not understand love as the power to act-each-other-into-well-being we also do not understand the depth of our power to thwart life and to maim each other.”⁴⁹¹ At the same time, as Legge notes, social relations offer us a means by which to analyze our social landscape and evaluate differing and conflicting moral claims. “The affirmation of our ‘power in relation,’” she explains, “includes recognition that this power is always partial and finite, and underscores that we are morally accountable for our world under concrete limitations set by social location, our relatedness to others and to our environment.”⁴⁹² The partiality and finiteness of our power is also a site of infinite possibility in relation with others. As Harrison argues, “Personal well-being and deeply grounded relationship to others are *intimately interstructured possibilities*” such that when love’s essence—bodily integrity, self-respect, and mutuality “are present in relationship, that relationship evokes simultaneously self-enhancement and community or deep intimacy.”⁴⁹³ While sacrificial love as a norm has been detrimental to women, it has largely been so because of their inequality in love. Andolsen points out that sacrificial love is an essential part of loving relationships. She explains, “mutually loving relationships can be sustained only by a religious norm of *agape* (or sacrificial love). Only when each party acts on behalf of the other without excessive regard for personal return do loving relationships blossom.”⁴⁹⁴ Mutually loving

⁴⁹¹ Harrison, *Making the Connections*, 11.

⁴⁹² Legge, 233-234.

⁴⁹³ Harrison, *Justice in the Making*, 58.

⁴⁹⁴ Andolsen, 147-148.

relationships demand that relational responsibility and emotional responsiveness from all. Love as mutuality demands that we transform conditions to make heterosexual relationships more equitable, including structural ones. According to Andolsen:

Agape redefined as mutuality cannot be a norm applicable within only one sphere of life. It must serve as a norm for political and economic life as well as family life. It must serve as a norm for political and economic life as well as family life. When mutuality is used as a norm for judging public life, it becomes apparent that the structures of society will have to undergo profound change.⁴⁹⁵

As a norm for loving relationships, mutuality helps us to reimagine and demand equality in love and it does so as a collective project, transforming the ways in which we relate to one another.

As Moe-Lobeda explains, “While structural sin transcends individual moral agency, it does not transcend collective agency....Social movements demonstrate that people, working together, can indeed counter structural sin.”⁴⁹⁶ Love as mutuality is a norm not just for private life but public life as well and demands the abolition of prisons and heteropatriarchy because they are constituted by relations of domination and reproduce them in our everyday lives.

In “Can We Be Different But Not Alienated?” womanist Katie G. Cannon and white feminist Carter Heyward begin an intimate exchange of letters to speak the truth of their lives to one another in an attempt to begin a “reciprocal process of give and take.”⁴⁹⁷ In her very first letter, Cannon answers the question “*Can we be different but not alienated?* Only if there is mutuality in our relating.”⁴⁹⁸ Mutuality, according to Cannon, is a “reciprocal process of give and take” and one that challenges that white feminists to give as much as we take and to stay when we are challenged. White feminists, Cannon explains, must resist our immediate impulse to flee, which “is often what white women do when they’re not in front of the line, calling the

⁴⁹⁵ Andolsen, 156.

⁴⁹⁶ Moe-Lobeda, 62.

⁴⁹⁷ Katie G. Cannon and Carter Heyward, “Can We Be Different but not Alienated?,” *Feminist Theological Ethics: A Reader*, Edited by Lois K. Daly, (Louisville: Westminster John Knox Press, 1994), 61.

⁴⁹⁸ *Ibid.*, 59.

shots, or in charge of the dynamics between themselves and women of color. They take their toys, their funds, their programs, their printing press, and go home, where they can perch on a ledge and not have their boat rocked. This in itself is privilege.”⁴⁹⁹ Ultimately, white feminists must follow the lead of womanist ethicists in making explicit ““when and where [we] enter”” so that we can more reflexively engage in liberative ethics through a process of appropriation and reciprocity.⁵⁰⁰ What might self-love as love-politics look like then, for white women as a part of an ethics that seeks to be accountable to Black women and women of color? In other words, what does appropriation and reciprocity look like?

For white women, I want to suggest, self-love in part means learning to value the self without propping up white supremacy. That is, self-love as self-making is rooting out the ways in which notions of superiority based on whiteness are entrenched in our self-concept. While white women can be brutalized and victimized by white male violence, a love-politics needs to include uprooting white supremacy such that white women no longer leave women of color to bear the brunt of racist heteropatriarchal violence. White women need to take responsibility, not for the work of others but for the work that is ours to do, including divesting from the criminal punishment system that claims to offer us safety but is only concerned with our safety inasmuch as it can be used to legitimate white supremacist violence to be wielded against communities of color. In starting with a truly radical self-love, we learn to love others as well. Jordan so poignantly outlines her feminist commitment to self-love in this way:

And it is against such sorrow, and it is against such suicide, and it is against such deliberated strangulation of the possible lives of women, of my sisters, and of powerless peoples—men and children—everywhere, that I work and live now, as a feminist trusting that I will learn to love myself well enough to love you (whoever you are), well enough

⁴⁹⁹ Cannon and Heyward, 61-62.

⁵⁰⁰ Letty M. Russell, “Lavender Celebrates Purples,” in *Deeper Shades of Purple*, ed. Stacey Floyd-Thomas, 260-264. New York: New York University Press, 2006.

so that you will love me well enough so that we will know exactly where is the love: that it is here, between us, and growing stronger and growing stronger.⁵⁰¹

Conclusion

This chapter seeks to move from an understanding of agency in the context of survival and extend it to personal and collective transformation and social change. By recognizing that love has been appropriated for the cultural production of evil, particularly in service of the subordination of women to men, disguising it as a moral good and virtue, this chapter turned to religion as a site of carceral resistance as it helps to cultivate countercultures and alternative subjectivities that resist structural dehumanization and an overreliance on male recognition for social worth and selfhood. I then looked at both the feminist and womanist norms of self-love and mutuality as they might help women in love engage in both soul-making and social change. As Black feminist and womanists make clear, love-politics, rooted in self-love must be the bedrock on which our movements for justice rest upon. As a norm for loving relationships, mutuality helps us to reimagine and demand equality in love. At the same time, self-love as a norm for women is an intermediary strategy that helps build power and the capacity of individual women to define the terms in which they are loved, as it relocates the source of social worth from male recognition and romantic love to one that is already established and transcends inter-subjective negotiation—in religious language, the *imago dei* or Divine image—and is affirmed and reflected through radical communities of love. Love-politics is not just the admonition to love yourself but to create a world—to transform the conditions in which self-love and self-care are difficult or impossible. Love—as both self-love and mutuality—is an abolitionist practice of freedom.

⁵⁰¹ Jordan, “Where is the Love?,” 274.

CONCLUSION

‘Another World is Possible’

Conceiving of Safety

Several summers ago, I was awakened at 2:30 am by a phone call from Jane, a woman I knew from her time incarcerated at the county jail. She called to ask me to come get her from the motel she was staying at with her abusive boyfriend. He had left and she had an opening to leave. He was taking her paychecks and had “smoked away” all her money. She explained that she would be waiting for me in the lobby where other people were present. She called me back several minutes later, just as I was about to exit the interstate to the motel, to say: “it was a miscommunication.” I could tell by her tone and short answers that he had returned. I asked if she was sure and she responded “yes.” She did not use our designated word to indicate I should call for further help. Uneasily, I headed back home for the night.

Later that week, we planned to meet in person and make a safety plan. I picked her up from downtown after she met with her probation officer. Her abuser called and we had to change our plans. Instead of sitting down somewhere to talk, I drove toward the place she was to meet him. She had told him she would take the bus. In my car we arrived more quickly than she would have if she had been on the bus, so I pulled over out of sight on a side street. This gave us only a brief opportunity for me to check in with her and talk through a safety plan. She had a noticeable scar on her upper lip where he had hit her that was not there the last time I had seen her, a permanent, visible reminder of his violence.

We discussed a safety plan. Her main concerns were both related to her probation and conviction history. She was worried about going back to jail—whether as a result of seeking help from law enforcement or a probation violation. Maintaining employment was a part of her

probation requirements and she was afraid if she attempted to leave, he would not only show up at her work and threaten/enact violence but that she would be fired. Her probation restrictions also prohibited her from being around illicit substances and associating with anyone convicted of a felony or engaged in criminal activity, all of which were violated by being in her abuser's presence. Conditions of her probation also prohibited her from leaving the judicial district without permission, required her to give at least ten days notice of any change in residence, and mandated a curfew. All of these restrictions limited her ability to seek safety at a moment's notice. She had to manage the coercive control of both her abuser and the state, simultaneously, to avoid further punishment from both.

Jane was afraid to call the police for help, not only because it would likely escalate his violence against her but because as someone with a conviction history who was also on probation, she did not trust law enforcement, fearing arrest because she was primarily seen by them as a "felon" and "probationer," not a victim. She also did not want her abuser to be arrested because she loved him and knew all too well what it meant to be incarcerated. As a formerly incarcerated survivor who was at increased risk of criminalization, the criminal punishment system only created more obstacles to accessing safety.

Months later I scheduled to take a tour of a victim advocacy center that had opened about two years prior in the courthouse, in search of resources that could have helped Jane and might help others. The city built the advocacy center in response to recommendations in a report commissioned by the mayor primarily on the criminal legal system's response to domestic violence, to provide a safe place for victims throughout the court process and to help increase follow through on prosecutions.

At the entrance of the advocacy center, I was immediately struck by the image it recalled—it clearly resembled the entrance of a jail. It was guarded by a woman in uniform that I instantly recognized as a sheriff’s office employee who had worked at the front entrance of the county jail and there was a set of heavy sliding doors that open and close one before the other, common to jails and prisons. My tour guide explained that these elements of security were a part of the trauma-informed design of the advocacy center. In contrast to the exterior, I found the inside of the center to be warm and welcoming. Breakfast and coffee were made available. There were also toys to occupy children. In the center victims could learn what to expect in court, case workers would help connect them to resources and they would meet with prosecutors outside of the courtroom. A year later when I called the center on behalf of a survivor who was in jail facing prosecution for the violence of her abuser, I learned that these resources were not available to her. The moment she became a defendant she was not longer considered a victim worthy of their services but a “non-victim” criminal.

Intended to provide and convey safety to survivors, this victim advocacy center seeks to address domestic and intimate partner violence through a criminal response and works in close collaboration with the criminal punishment system. Its design is a clear illustration of the pervasive assumption in our social, cultural, and political imagination that prisons are equated with safety. For marginalized survivors who too often move from one prison to another, it also represents a massive failure of imagination.

While too many women are unsafe in their relationships and homes, prisons, I have sought to demonstrate, do not and cannot make us safer because misogyny is a carceral logic that undergirds domestic and state prison regimes. The U.S. prison regime reproduces and legitimates domestic prison regimes through its own and is responsible for the carceral gender entrapment

and asphyxiation of marginalized women. At most, the criminal punishment system punishes the “excesses” of interpersonal gender violence but it does so in order to preserve the larger racialized patriarchal order. It does not challenge but relies upon the constructions of hyper-culpable womanhood and motherhood to hold expand punishable people by holding women responsible for the actions of men.

How then, might we create a world in which *all* women are free from prisons in all their forms? I conclude this analysis of the entrapment and incarceration of women by asking how we might cultivate a Christian feminist moral imagination—that is, the creative capacity to envision or conjure moral worlds, values, images, narratives, and ethical practices—that participates in a vision of abolition counter to the fantastic hegemonic imagination as it buttresses the domestic and state prison regimes. In other words, how might we more fully imagine and en flesh the impossible—a world without prisons?

The Moral Imagination and Prison Abolition

While punishment, as Foucault traces in *Discipline and Punish*, has “gradually ceased to be a spectacle” and has instead “become the most hidden part of the penal process,” the theatrical ritual of criminal justice now focuses on not only the investigation of the crime and discovery of who committed it, but the truth of the “soul” of the accused and how best to rehabilitate it.⁵⁰² The shift from the spectacle of punishment—now invisible in the form of prisons and executions closed but to a privileged few—to the spectacle of law and order, unfolds not on the scaffold, but in the (often televised) courtroom. This spectacle pervades our media through incessant news coverage, “ripped from the headlines” crime drama plotlines, and entire cable channels devoted to preserving our faith in law and order and prisons as sources of safety, obscuring the fact that more than 90 percent of criminal cases never make it to trial and that defendants (who are

⁵⁰² Foucault, *Discipline and Punish*, 9.

supposed to be presumed “innocent until proven guilty”) might spend years in jail *prior to* a trial, regardless of a conviction.⁵⁰³ In other words, the spectacle of law and order hides the reality that prisons serve an extra-penological function, warehousing Black people, poor people, and people of color in order to keep them “‘in their place’, i.e. in a subordinate and confined position in physical, social, and symbolic space,” condemning them to slow death.⁵⁰⁴

As is the case with police procedurals and courtroom dramas, popular culture is saturated with images of prisons. While the majority of Americans may never step foot behind prison walls, the prison is firmly fixed within the collective conscious. Cultural critic Gina Dent attributes this in part to the history of images of prisons in film and the resulting visuality of the prison. She explains:

The history of film has always been wedded to the representation of incarceration. Thomas Edison’s first films (dating back to the 1901 reenactment presented as newsreel, Execution of Czolgosz with *Panorama of Auburn Prison*) included footage of the darkest recesses of the prison. Thus, the prison is wedded to our experience of visuality, creating also a sense of its permanence as an institution. We also have a constant flow of Hollywood prison films, in fact a genre.⁵⁰⁵

Characterized by this “simultaneous presence and absence,” prisons are taken as a given in our cultural imagination.⁵⁰⁶ In his genealogy of the modern penitentiary Foucault suggests this is because eventually the novelty of prisons as the general form of punishment wore off as they “‘appeared so bound up and at such a deep level with the very functioning of society that it banished into oblivion all other punishments that eighteenth-century reformers had imagined.’”⁵⁰⁷ The “self-evident character” of prison as punishment has everything to do with the political order

⁵⁰³ Michelle Alexander, “Go to Trial: Crash the Justice System,” Opinion, The New York Times, March 10, 2012, <https://www.nytimes.com/2012/03/11/opinion/sunday/go-to-trial-crash-the-justice-system.html>.

⁵⁰⁴ Wacquant, “Deadly Symbiosis,” 97.

⁵⁰⁵ Gina Dent, “Stranger Inside and Out: Black Subjectivity in the Women-in-Prison Film,” *Black Cultural Traffic: Crossroads in Black Performance and Black Popular Culture*, Edited by Harry Elam and Kennel Jackson (Ann Arbor: University of Michigan Press, 2008), quoted in Davis, *Are Prisons Obsolete?*, 17-18.

⁵⁰⁶ Ibid., 15.

⁵⁰⁷ Foucault, *Discipline and Punish*, 232.

in which it arose, thus guaranteeing its persistence today. It also persists, according to Foucault, because “prison ‘reform is virtually contemporary with the prison itself: it constitutes, as it were, its programme. From the outset, the prison was caught up in a series of accompanying mechanisms, whose purpose was apparently to correct it, but which seem to form part of its very functioning.”⁵⁰⁸ Even when the failings of prisons are recognized, Angela Davis explains, responses focus on prison reform, further reinforcing the prison’s place in our political and social imagination. In its failings, which Foucault details as contributing to rather than diminishing crime, causing recidivism, and producing delinquents, the prison ensures its own “necessity.”⁵⁰⁹ As the history of the prison evidences, though we are aware of its many failings, it rarely occurs to us that prisons are not inevitable and in fact have a fairly modern history as a generalized form of punishment. Foucault explains, “We are aware of all the inconveniences of prison, and that it is dangerous when it is not useless. And yet one cannot ‘see’ how to replace it. It is the detestable solution, which one seems unable to do without.”⁵¹⁰

As a result, the suggestion that we do away with prisons altogether is often considered implausible and absurd. Prison abolition is rendered not only impossible to achieve, but impossible to even *imagine*. And yet, scholars and activists like Davis who have been exercising the imagination of such an “impossibility” for decades argue for prison abolition as both an analytical lens and political strategy for undoing our reliance on prisons as the solution to economic, social and political problems. Queer and trans abolitionists speak of abolition as both impossible and yet our only possibility and Eric Stanley in *Captive Genders* further characterizes

⁵⁰⁸ Foucault., 234.

⁵⁰⁹ Ibid., 264-268.

⁵¹⁰ Ibid., 234.

it in terms resonate with feminist theological interpretations of the “kindom of God” as “both yet to come and already here.”⁵¹¹

Fantastic Hegemonic Imagination and Countermemory

In *The Image of the Future*, Fred Polak posits that the Western world has lost both capacity and will to image the future.⁵¹² He argues, “Nihilistic images are paralyzing us into an inability to forge more positive and constructive ones. Western man must never stop thinking and dreaming the materials of new tomorrows, for he has no choice but to dream or to die.”⁵¹³ According to Polak, the ability to engage a future imagination is crucial for human survival. As Emilie Townes demonstrates, this survival strategy is necessitated by an imagination *already* at work that sustains the cultural production of evil. Given the cultural, historical, and ideological persistence of these images and constructions, particularly the black criminal type, fallen woman and hyper-culpable womanhood and motherhood, how do we, in the words of feminist ethicist Beverly Harrison, “undo what history has done?”

In resistance to the “fantastic hegemonic imagination,” Townes turns to “countermemory” as a strategy for challenging images that “denigrate and asphyxiate.”⁵¹⁴ Countermemory is a “reconstitution of history” and “insists that to deconstruct and eradicate systems of evil demands that we engage in exposing the truth of the multiplicities that form us—nationally and globally—with as much precision as we can.”⁵¹⁵ As Townes explains, “to understand evil as a cultural production is to recognize, from the outset, that the story *can* be told

⁵¹¹ Eric Stanley, ed., *Captive Genders: Trans Embodiment and the Prison Industrial Complex*, (Oakland: AK Press, 2011), 8. See Ada Maria Isasi-Diaz’s *Mujerista Theology* (1996) for the use of “kindom” and Serene Jones’ *Feminist Theory and Christian Theology: Cartographies of Grace* (Minneapolis, MN: Fortress Press, 2000) for this eschatology.

⁵¹² Fred Polak, *The Image of the Future*, (Amsterdam: Elsevier Scientific Publishing Company, 1973), 14.

⁵¹³ *Ibid.*, 21.

⁵¹⁴ Townes, 27.

⁵¹⁵ *Ibid.*, 47, 27.

another way.”⁵¹⁶ The abolitionist imagination is one such example of countermemory as it tells the story another way, denaturalizing prisons, bringing to the fore a history of abolition, unmasking the realities buried beneath these stereotypical figures, and sharing a radically different vision of the future.

The Abolitionist Imagination

Envisioning a world beyond prisons, as Davis suggests, “requires a great feat of the imagination” because of the “self-evident” and “self-perpetuating” nature of prisons in our political, economic, social, and moral order.⁵¹⁷ We accept prisons as inevitable, she argues, because we prefer to avoid “the realities they produce,” including the reality that we could be incarcerated ourselves.⁵¹⁸ We engage a collective imagination in avoiding these realities, however, when we buy into the figuring of the “criminal” as a person of color, female “criminality” as more aberrant and dangerous, and prisons as inevitable.⁵¹⁹ Davis continues, prisons relieve “us of the responsibility of seriously engaging with the problems of our society, especially those produced by racism, and, increasingly, global capitalism.”⁵²⁰ In denaturalizing prisons, an abolitionist imagination makes note of the ways in which imagination is *already* at work and resists the current order by daring to imagine another one. To suggest that another world is unimaginable is to suggest that the one we currently inhabit is not fueled and mediated by our imaginations. Foucault’s detailing of the history of modern penality and the work of Black feminists in unmasking of the racist, classist, and heterosexist imagination at work in sustaining the U.S. prison regime, demonstrate that inasmuch as prisons are products of imagination, an abolitionist imagination renders abolition a possibility.

⁵¹⁶ Townes, 7.

⁵¹⁷ Davis, *Are Prisons Obsolete?*, 19.

⁵¹⁸ *Ibid.*, 15.

⁵¹⁹ *Ibid.*, 16.

⁵²⁰ *Ibid.*

Michelle Alexander notes challenges to incarceration as punishment in the U.S. are in no way new. She explains:

These days, activists who advocate ‘a world without prisons’ are often dismissed as quacks, but only a few decades ago, the notion that our society would be much better off without prisons—and that the end of prisons was more or less inevitable—not only dominated mainstream academic discourse in the field of criminology but also inspired a national campaign by reformers demanding a moratorium on prison construction.⁵²¹

Notably, at the time of the moratorium campaign, in 1972, “fewer than 350,000 people were being held in prisons and jails nationwide, compared with more than 2 million people today,” which, perhaps contributes to the sense of impossibility in its abolition today, since at the time, anti-prison activists, such as Davis who became involved in the late 1960s were “astounded to learn that there were then close to two hundred thousand people in prison” and could not imagine the numbers today unless the country had “[plunged] into fascism.”⁵²²

Less visible than efforts at prison reform, prison abolition, deliberately invokes the historical campaign to end slavery in order to highlight the US prison system as an inheritance of slavery while simultaneously opening up the possibility of the end of another racist institution. As Davis explains, “The prison is not the only institution that has posed complex challenges to the people who have lived with it and have become so inured to its presence that they could not conceive of society without it.”⁵²³ She turns to slavery, lynching and segregation as examples of other institutions that enable us to imagine abolition by shifting our attention from the impossibility of prison abolition to the abolition of institutions that were once considered to be as everlasting as the sun.⁵²⁴ And yet, given that mass incarceration is a reconstitution of the racial caste system perpetuated by these former institutions, it is not surprising that prison abolition is

⁵²¹ Michelle Alexander, *The New Jim Crow*, 8-9.

⁵²² *Ibid.*, and Davis, *Are Prisons Obsolete?*, 11.

⁵²³ *Ibid.*, 22.

⁵²⁴ *Ibid.*, 24.

considered not only impossible to imagine, but impossible to en flesh. The enormity of the task at hand is evidenced in Stanley's explanation of abolition as that which:

necessarily moves us away from attempting to 'fix' the PIC and helps us imagine an entirely different world—one that is not built upon the historical and contemporary legacies of the racial and gendered brutality that maintain the power of the PIC...abolition radically restages our conversations and our ways of living and understanding as to undo our reliance on the PIC and its cultural logics.⁵²⁵

How do we imagine an entirely different world that abolition demands? How do we do the impossible work of envisioning *and* creating a world without prisons everyday?

An Ethics of Impossibility

In "Building an Abolitionist Trans and Queer Movement" Morgan Bassichis, Alexander Lee, and Dean Spade argue that the stakes are too high *not* to envision a different world, suggesting that the prison abolition movement embrace the seeming impossibility of such a political vision:

In an age when thousands of people are murdered annually in the name of 'democracy,' millions of people are locked up to 'protect public safety,' and LGBT organizations march hand in hand with cops in Pride parades, being impossible may just be the best thing we've got going for ourselves: *Impossibility may very well be our only possibility.* What would it mean to *embrace*, rather than *shy away from*, the impossibility of our ways of living as well as our political visions? What would it mean to desire a future that we can't even imagine but that we are told couldn't ever exist?⁵²⁶

In *Normal Life: Administrative Violence, Critical Trans Politics, and the Limits of the Law*, Spade more explicitly addresses this notion of impossibility and political action as gleaned from trans experience. Spade proposes a politics derived from the "so-called 'impossible' worldview of trans political existence" an existence characterized by institutions that insist "the existence of

⁵²⁵ Stanley, 8.

⁵²⁶ Morgan Bassichis, Alexander Lee, and Dean Spade, "Building an Abolitionist Trans and Queer Movement with Everything We've Got," *Captive Genders: Trans Embodiment and the Prison Industrial Complex*, Edited by Eric Stanley and Nat Smith (Oakland: AK Press, 2011), 36.

trans people is impossible and/or that our issues are not politically viable.”⁵²⁷ Impossibility both signals a foreclosing and opening of possibility simultaneously. As Sara Ahmed suggests, accepting the foreclosures that come from “inhabiting the negative,” opens us to new possibilities.⁵²⁸

In *The Promise of Happiness*, Ahmed takes on Lee Edelman’s challenge of futurity, asking “whether all forms of political hope, all forms of optimism as well as utopianism, all dreams of ‘some more perfect order,’ can be described as performing the logic of futurism, which in turn would require negativity to be located in those who cannot inherit this future.”⁵²⁹ In *No Future: Queer Theory and the Death Drive*, Lee Edelman critiques the dominant national narrative of hope, which he refers to as “reproductive futurism,” as heteronormative and reproductive. Reproductive futurism, he argues, shapes national political discourse under the guise that the aim of securing the future transcends the political and it does so through appeals to the image of the “Child whose innocence solicits our defenses” and which “invariably shapes the logic within which the political itself must be thought.”⁵³⁰ As the vision of the future, the Child, remains the assumed beneficiary of all political interventions.⁵³¹ A proponent of what has been termed the anti-social thesis in queer theory, Edelman argues that the only productive response to this political framework is to accept queerness as it is defined, as that which “names the side of those not ‘fighting for the children’” because “queerness attains its ethical value precisely insofar as it accedes to that place, accepting its figural status as resistance to the viability of the social while insisting on the inextricability of such resistance from every social structure.”⁵³²

⁵²⁷ Dean Spade, *Normal Life: Administrative Violence, Critical Trans Politics, and the Limits of Law* (Brooklyn, New York: South End Press, 2011), 12.

⁵²⁸ Sara Ahmed, *The Promise of Happiness* (Durham: Duke University Press, 2010), 161.

⁵²⁹ Ibid.

⁵³⁰ Lee Edelman, *No Future: Queer Theory and the Death Drive*, (Durham, N.C.: Duke University Press, 2004), 2.

⁵³¹ Ibid., 3.

⁵³² Ibid.

Queerness, disparaged as that which cannot reproduce, should not reproduce this vision precisely because of who and what it occludes. And yet, as Ahmed notes, “Edelman is still affirming something in the act of refusing affirmation.”⁵³³ She explains, “I find something rather optimistic and hopeful about Edelman’s polemic, where hope rests on the possibility opened up by inhabiting the negative.”⁵³⁴ In embracing prison abolition as an impossibility, might we, in “inhabiting the negative” open up its very possibility?

Refashioning Our Communities, Ourselves

Drawing on Ahmed’s suggestion that affirmation is constitutive of “the act of refusing affirmation,” I turn to Scott’s “Fanonian Futures?” as he repositions Frantz Fanon’s anticolonial “criticisms and hopes,” in *The Wretched of the Earth* in order to “stake a positive claim on politics beyond the present.”⁵³⁵ For Scott, Fanon’s narrative of liberation is a historically situated vision that assumes a terrain that we no longer inhabit. In Fanon’s work:

colonial power constitutes a total regime of systemic and systematic brutality, occupying simultaneously physical and psychological space, inscribing its effects in the very organization of desire of the colonized. It is a form of power that is, moreover, resistant to reason and therefore to negotiation” and will only yield when confronted with greater violence. . . . In this project therefore decolonization can have little meaning unless it, like the power it is displacing, is total, absolute.⁵³⁶

Fanon envisions the nation-state as the solution for the ex-colonized, as it provides the “privileged political space of freedom” in which they are “restored to their own history and their humanity.”⁵³⁷ His narrative of liberation assumes a progressive linearity that connects the present and history of domination to an anticipated future of liberation, as well as an essential human

⁵³³ Ahmed, 161.

⁵³⁴ Ibid.

⁵³⁵ Scott, 200-201.

⁵³⁶ Ibid., 202-203.

⁵³⁷ Ibid., 203.

nature “that is prior to the imposition of the historical repression.”⁵³⁸ Scott challenges Fanon’s assumption of the inevitability of progress and a core self, suggesting that in our current postcolonial moment, the value of nation-state sovereignty has diminished such that Fanon’s vision of liberation is no longer intelligible today.⁵³⁹

Scott turns to Foucault, arguing that because Foucault understands power as productive of the subject, not repressive of some essential nature, “a different and more useful set of questions animates his concern,” particularly, “what is the relation between the colonized/postcolonized subject and the games of truth into which s/he is inserted, through which s/he has been produced as a colonized/postcolonized subject?” and “what are the practices of self-formation in which the colonized/postcolonized subject is engaged? How do these practices operate in relation to the hegemonic practices of colonial/postcolonial power?”⁵⁴⁰ In shifting our understanding of power as negative to productive, the ethical practices of liberty as a work of self-fashioning become of vital importance for Foucault.⁵⁴¹ Scott explains that while Foucault embraces the “overthrow of a colonial regime *as* a liberation,” he is doubtful that the political processes by which liberation as a break of state domination is “produced are adequate to the task of constructing the ethical practices of freedom through which the *postcolonial* community is to be fashioned,” because “every political order produces an exclusion.”⁵⁴² According to Scott, resistance is found in Foucault not in a break from or overthrow of power, but through the self’s

⁵³⁸ Scott, 206.

⁵³⁹ Ibid.

⁵⁴⁰ Ibid.

⁵⁴¹ As Scott explains, Foucault is skeptical about “whether the political processes of liberation” are “adequate to the task of constructing the ethical practices of freedom through which the *postcolonial* community is to be fashioned” (206).

⁵⁴² Ibid., 206-207.

realignment of power invested in and through it, “turning it elsewhere, turning it toward itself.”⁵⁴³ Scott continues his reading of Foucault:

He wants to understand, that is to say, the ways in which the self produces effects of power upon the self—by the application of exercise, for example, by a dietary regimen, an imposition of interdictions, or a regular and progressive shaping of movements. These are practices of freedom, then, not because they are beyond power (for Foucault there are no such practice), but because they are practices by means of which the subject deliberately acts upon the self in an effort to alter the dimension already imposed upon it, to reconstitute the energies already shaped by existing relations of power.⁵⁴⁴

This self-fashioning, self-making, or soul-making, becomes the process by which to practice freedom within the existing relationships of power and violence. As abolitionist conceptualizations of the U.S. prison regime and its constitutive networks of racist, classist, and heterosexist violence suggest, the only place from which to “practice freedom” or struggle is in the here and now.

And yet, Scott retains Fanon because he pushes us to envision and imagine a radically different future in which the “captives are set free.” Such a vision is imperative, Scott suggests, “because politics depends upon decision, sometimes radical—but always *affirmative*—decision.”⁵⁴⁵ An abolitionist ethics of impossibility makes an affirmative “claim on a politics beyond the present” through its abolitionist imagination that dares to risk envisioning a world without prisons. In inhabiting the negative, the impossibility of abolition, we also affirm a vision from which to ground our everyday refashioning. As outlined in *Instead of Prisons: A Handbook for Abolitionists*, “a vision or continuing plan of action helps us to assess our day-to-day work, enabling us to see how our small piece of work fits into the whole.”⁵⁴⁶ Abolition is not limited to any one strategy or model. Part of the work of visioning is the development and trying out of

⁵⁴³ Scott, 213.

⁵⁴⁴ Ibid.

⁵⁴⁵ Ibid., 219.

⁵⁴⁶ *Instead of Prisons: A Handbook for Abolitionist*, Prison Research Education Action Project, 1976, Republished by Critical Resistance, 2005, 62.

multiple and varied models and strategies. Abolition is the clear-eyed acknowledgment that we do not have the answers but love and freedom demand that we try something new and different, making a way forward for ourselves. However, a strategy is only abolitionist inasmuch as it abides by the goal to “not add improvement or legitimize the prevailing system.”⁵⁴⁷ In other words, resistance occurs as we redirect and realign power through abolitionist practices and strategies. In one such model, the “attrition model”—wearing “down by friction”—reflects the persistent and continuing strategy necessary to diminish the function and power of prisons in our society.⁵⁴⁸ It seeks to do so through the following five strategies: a moratorium on jail and prison construction, the decarceration or release of as many people as possible through changes to sentencing and parole, excarceration, that is, stopping incarceration by decriminalizing non-violent, victim-less crimes, and ending pretrial detention, for example, the restraint of “the few” for a brief period of time in humane conditions, and the building of a caring community.⁵⁴⁹

These strategies illustrate the other part of visioning—the envisioning of processes and struggle, of ethical practices of freedom through which we might be refashioned as a prison-free society.⁵⁵⁰ As the handbook explains, “visualizing our long range goal of prison abolition as a chain of shorter campaigns makes the work manageable.”⁵⁵¹ The impossibility of prison abolition as that which we cannot fully imagine—limited by those terms we already know—and yet impossibility as perhaps our only hope of a future, registers a symbiosis between the here and now and the not yet, the future and the everyday. Stanley articulates more concretely this vision of abolition as it is both now and in the future:

⁵⁴⁷ *Instead of Prisons*, 62.

⁵⁴⁸ *Ibid.*

⁵⁴⁹ *Ibid.*, 63.

⁵⁵⁰ Scott, *Refashioning Futures*, 200-201.

⁵⁵¹ *Instead of Prisons*, 62.

Abolition is not some distant future but something we create in every moment when we say no to the traps of empire and yes to the nourishing possibilities of and practiced by our ancestors and friends. Every time we insist on accessible and affirming healthcare, safe and quality education, meaningful and secure employment, loving and healing relationships, and being our full and whole selves, we are doing abolition. Abolition is about breaking down things that oppress and building up things that nourish. Abolition is the practice of transformation in the here and now and the ever after.⁵⁵²

The Already/Not Yet of Religion and Prison Abolition

An impossible or unthinkable vision of the future is not unique to activists that seek to create a world without prisons. In Luke, after his baptism, the inauguration of his ministry, Jesus, in Nazareth, goes into the synagogue on the Sabbath and reads the words of the prophet Isaiah proclaiming:

‘The Spirit of the Lord is upon me,
because he has anointed me
to bring good news to the poor.
He has sent me to proclaim release to the captives
and recovery of sight to the blind,
to let the oppressed go free,
to proclaim the year of the Lord’s favour.’

And he rolled up the scroll, gave it back to the attendant, and sat down. The eyes of all in the synagogue were fixed on him. Then he began to say to them, ‘Today this scripture has been fulfilled in your hearing’ (Luke 4:17-21, NRSV).

After commenting, “no prophet is accepted in the prophet’s home town,” Jesus is subsequently run out of town. This scriptural text is often referred to, alongside Jesus’ association in his ministry with women, sinners, strangers, and the poor, as signaling a “kingdom ethics”—that is, how Christians are to live as followers of Jesus who preached and embodied the kingdom of God—the realm in which God’s love pervades. “In saying that this scripture “has been fulfilled in your hearing,” Jesus signals that the kingdom of God is both here now while also yet to come. What then, is this kingdom or *kingdom* of God, if not an impossibility that is both already and not yet? This vision is the manifestation of a deep desire to live *now*, while rooted in the hope, the

⁵⁵² Stanley, 36-37.

possibility, of a future where all might flourish. It is the both now and not yet of our existence. It is the proclamation and the living out the release of those held captive. The work of the kindom is the impossible work of re-fashioning us to a new way of being in the world and engendering such a vision imaginable—and through everyday practices of loving ourselves and our neighbors. An abolitionist imagination recalls us to the work of the kindom, proclaiming release to the captives through the struggle for prison abolition in the day to day. It enhances the kindom vision as an impossibility that we create every moment as we refashion ourselves and our communities through practices of abolition, practices of radical transformation and freedom.

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