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# African American Women, Mass Incarceration, and the Politics of Protection

Kali Nicole Gross

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On November 28, 2013, Marissa Alexander was freed from a Florida prison after serving three years of her twenty-year sentence. Her crime: firing a warning shot during a confrontation with her estranged abusive husband—a man against whom she had a restraining order. Even after her release, however, Alexander was not out of the woods. While Judge James H. Daniel found the original jury instructions flawed and overturned her conviction, he denied her request for a new hearing under Florida’s stand-your-ground law, which had been amended to include warning shots in its allowance of force in the face of imminent threat. On July 21, 2014, Judge Daniel found that the amended statute “could not be applied retroactively.” Alexander’s experience brings into high relief the persistent biases in American justice, particularly given her case’s stark contrast to the George Zimmerman acquittal in 2013. Whereas Zimmerman successfully used the stand-your-ground defense after taking the life of the unarmed black teenager Trayvon Martin in 2012, Alexander was unable to invoke the same protections. No one died and no one was hurt at the hands of the battered black woman, yet she received a twenty-year sentence. Alexander’s new trial was originally scheduled for December 2014, however in November of that year she accepted a plea deal that sent her to the Duval County Jail to serve an additional sixty-five days. The plea also included two years of probation for Alexander under “house detention and wearing a surveillance monitor.” She agreed to these terms rather than face the new charges filed against her—charges that could have amounted to a maximum of sixty years in prison. Alexander’s calamity is rooted in a tangled set of circumstances that ensnare black women when race, gender, violence, and criminal justice collide.<sup>1</sup>

Alexander’s case reflects the legacies of an exclusionary politics of protection whereby black women were not entitled to the law’s protection, though they could not escape its punishment. Structured by colonial and antebellum judiciaries, laws representing the priorities of enslavers effectively negated and criminalized black womanhood by subjecting

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This article is dedicated to Marissa Alexander, who was released from jail on January 27, 2015; to my mother, Mrs. June Maria Gross; and to all black women who have defended themselves against intimate-partner violence.

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<sup>1</sup> On Marissa Alexander’s case, see Mitch Stacy, “Marissa Alexander Gets 20 Years for Firing Warning Shot,” *Huffington Post*, May 18, 2012, [www.huffingtonpost.com/2012/05/19/marissa-alexander-gets-20\\_n\\_1530035.html](http://www.huffingtonpost.com/2012/05/19/marissa-alexander-gets-20_n_1530035.html); Brittney Cooper, “Women’s Lives Don’t Matter: The Lesson of Marissa Alexander,” Oct. 1, 2013, *Salon*, [www.salon.com/2013/10/01/womens\\_lives\\_dont\\_matter\\_the\\_lesson\\_of\\_marissa\\_alexander/](http://www.salon.com/2013/10/01/womens_lives_dont_matter_the_lesson_of_marissa_alexander/); Morgan Whitaker, “Marissa Alexander Released from Jail for Thanksgiving,” Nov. 28, 2013, *MSNBC*, <http://www.msnbc.com/politics/nation/>

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black women to brutality and exploitation and by barring them from lawful avenues for redress. Without institutional safeguards, black women seeking security or justice would have to create those circumstances for themselves, which often placed them on the receiving end of harsh sentences from the same legal system that failed them.<sup>2</sup>

This history is rarely brought to bear on black women's current overrepresentation in the U.S. prison system. If the issue of black female incarceration is raised, it is usually as a tangential afterthought in discussions about the carceral experiences of black men—and even then the role of intraracial gender violence is rarely discussed. This essay will provide a brief overview of the early foundations of racialized, gendered notions of protection. It will also examine how these phenomena contributed to black women's disproportionate incarceration in the late nineteenth and early twentieth centuries. And it will analyze how these legacies influence the relationship among black womanhood, violence, and mass incarceration.

### The Fundamentals of Exclusionary Protection

Black womanhood in the United States is framed by the politics of protection—not simply with respect to the legal system but because of it. Roughly twenty-one years after the arrival of nineteen Africans in Jamestown in 1619, the colonies began to sanction and codify slavery; included among the statutes were laws directly responsible for the denigration of black womanhood. Virginia's December 1662 decree (part of the Virginia Slave Laws) that the children of enslaved Africans and Englishmen would be “held bond or free according to the condition of the mother” did not just counter traditional English practices. The decree also mapped enslaved women's sexual exploitation and, in effect, monetarily incentivized the acts, as their offspring would swell planters' coffers—a prospect boon to countless rapes and instances of forced breeding. Colonial rape laws compounded black women's subjugation by excluding their sexual assault. As Steve Wilf makes plain, “the rape of black women was not acknowledged by early American law.” Mainstream attitudes further negated their victimization with ruinous myths about black women's libidinous sexual proclivities.<sup>3</sup>

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marissa-alexander-released-jail; “Marissa Alexander Trial Moved to July,” Jan. 31, 2014, *News4Jax*, <http://www.news4jax.com/news/marissa-alexanders-trial-moved-to-july/24205044>; Susan Cooper Eastman, “Florida Woman Who Fired ‘Warning Shot’ Denied Self-Defense Hearing,” *Huffington Post*, July 21, 2014, [http://www.huffingtonpost.com/2014/07/21/florida-woman-warning-shot\\_n\\_5606101.html?utm\\_hp\\_ref=marissa-alexander](http://www.huffingtonpost.com/2014/07/21/florida-woman-warning-shot_n_5606101.html?utm_hp_ref=marissa-alexander); and Irin Carmon, “Marissa Alexander Denied New Stand Your Ground Hearing,” July 21, 2014, *MSNBC*, <http://www.msnbc.com/msnbc/marissa-alexander-denied-new-stand-your-ground-hearing>. On Judge James H. Daniels's denial of the retroactive application of Florida's amended stand-your-ground law, see Andres Jauregui, “Florida Extends ‘Stand Your Ground’ to Cover Warning Shots,” *Huffington Post*, June 22, 2014, [http://www.huffingtonpost.com/2014/06/22/stand-your-ground-warning-shots-marissa-alexander\\_n\\_5519168.html](http://www.huffingtonpost.com/2014/06/22/stand-your-ground-warning-shots-marissa-alexander_n_5519168.html). On the details of Alexander's plea deal, see *Free Marissa Now*, <http://www.freemarissanow.org/about-marissa-alexander.html>. On the case and acquittal of George Zimmerman, see Lizette Alvarez and Cara Buckley, “Zimmerman Is Acquitted in Trayvon Martin Killing,” *New York Times*, July 13, 2013, <http://www.nytimes.com/2013/07/14/us/george-zimmerman-verdict-trayvon-martin.html?pagewanted=all>. On the physical, cultural, and political circumstances that can ensnare black women, see Beth Richie, *Compelled to Crime: The Gender Entrapment of Battered Black Women* (New York, 1996), 1–10. On disparate sentencing and for an example of the legacy of politicized protection, see Brenda Stevenson, *The Contested Murder of Latasha Harlins: Justice, Gender, and the Origins of the LA Riots* (New York, 2013).

<sup>2</sup> Lisa Marie Cacho, *Social Death: Racialized Rightlessness and the Criminalization of the Unprotected* (New York, 2012), 4–6.

<sup>3</sup> On the colonial sanctioning and codifying of slavery, see Lawrence J. Hanks, *The Struggle for Black Political Empowerment in Three Georgia Counties* (Knoxville, 1987), 2; Colin A. Palmer, *Passageways: An Interpretive History of Black America*, vol. I: 1619–1863 (Orlando, 1998), 35, 32–41; and Oscar Reiss, *Blacks in Colonial America* (Jefferson, 1997), 9. On the Virginia Slave Laws, see William Waller Hening, *The Statutes at Large; Being A Collection*

Slave labor and practices governing it further eroded black womanhood. Virginia's legislature distinguished black female labor from white female labor by treating black women as "tithable"—classifying them "as field laborers with a productive capacity equivalent to that of men." Planters meted out harsh corporal punishments, often without regard to gender. Countless slave narratives describe the humiliation—including forced stripping—that accompanied whippings. Frederick Douglass's account of his aunt Hester's experience at the hands of her master exposes the carnage as well as the consequences of agency: the master, who desired Hester, caught her returning from a visit to an enslaved man; he hung her from a ceiling joist, stripped her, and beat her bloody. Hester's defiance, and that of scores of others, also evidences resistance—which ranged from exercising spatial mobility to petitioning courts for freedom to taking flight. Black women also violently lashed out against their captors, but punishment for these infractions did not always end on plantations or at the hands of overseers. Rather, they would be punished by the system responsible for their subjection—with the antebellum case of Celia, an enslaved black woman who was executed for killing her rapist-owner in 1855 Missouri, serving as a potent example. Such instances mark the cruel hypocrisies of American justice: black women would be denied protection under the law, only to be fatally condemned by it.<sup>4</sup>

After emancipation, black women's bodies would be the terrain upon which white men aimed to reinscribe old racial hierarchies. Sexual violence visited upon black women took the form of rapes organized by the Ku Klux Klan as well as daily assaults on black domestics. As before, such encounters "were considered consensual, even coerced by the seductions

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*of All the Laws of Virginia from the First Session of the Legislature in the Year 1619* (2 vols., Richmond, 1810), 170. On the incentivization of slave reproduction, see "Excerpt, Interview with Rose, Federal Writers' Project," in *Women and Slavery in America: A Documentary History*, ed. Catherine M. Lewis and J. Richard Lewis (Fayetteville, 2011), 106–9; Thomas A. Foster, "The Sexual Abuse of Black Men under American Slavery," *Journal of the History of Sexuality*, 20 (Sept. 2011), 447; and Jennifer L. Morgan, *Laboring Women: Reproduction and Gender in New World Slavery* (Philadelphia, 2004), 12, 68, 72. On the impact of enslavement on black womanhood, see Hortense J. Spiller, "Mama's Baby, Papa's Maybe: An American Grammar Book," *Diacritics*, 17 (Summer 1987), 77–80. On rape laws and sexual assault, see Steven Wilf, *Law's Imagined Republic: Popular Politics and Criminal Justice in Revolutionary America* (Cambridge, Eng., 2010), 121. On the negation of rape as a crime that might occur between enslaved blacks, see Paula C. Johnson, *Inner Lives: Voices of African American Women in Prison* (New York, 2003), 22–23. On English law treating rape as an act against property and therefore not considering owners as rapists of their own property, see Darlene Clark Hine and Kathleen Thompson, *A Shining Thread of Hope: The History of Black Women in America* (New York, 1998), 170–71. On myths of black women's sexuality, see Deborah Gray White, *Ar'n't I a Woman? Female Slaves in the Plantation South* (New York, 1999), 30–38; bell hooks, *Ar'n't I a Woman? Black Women and Feminism* (Boston, 1981), 52–54; and Kali N. Gross, *Colored Amazons: Crime, Violence, and Black Women in the City of Brotherly Love, 1880–1910* (Durham, N.C., 2006), 23.

<sup>4</sup> On the violence of law, see Saidiya V. Hartman, *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth-Century America* (New York, 1997), 82–86. On racial disparities in justice, see Mary Frances Berry, *Black Resistance/White Law: A History of Constitutional Racism in America* (New York, 1995); and Mary Frances Berry, *The Pig Farmer's Daughter and Other Tales of American Justice: Episodes of Racism and Sexism in the Courts from 1865 to the Present* (New York, 2000). For the story of Celia, see Melton A. McLaurin, *Celia, a Slave* (New York, 1991); and Wilma King, "'Mad' Enough to Kill: Enslaved Women, Murder, and Southern Courts," *Journal of African American History*, 92 (Winter 2007), 37–39. On the harsh conditions that imprisoned enslaved women suffered, see Brett Josef Derbes, "'Secret Horrors': Enslaved Women and Children in the Louisiana State Penitentiary, 1833–1862," *ibid.*, 98 (Spring 2013), 277–90. Harriet Jacobs's narrative is a testament to black female resistance. See Harriet Jacobs, *Incidents in the Life of a Slave Girl, Written by Herself*, ed. Jean Fagan Yellin (1861; Cambridge, Mass., 1987), 80–85, 98–104. Stephanie M. H. Camp, *Closer to Freedom: Enslaved Women and Everyday Resistance in the Plantation South* (Chapel Hill, 2004), 2–7, 62–68; Amrita Chakrabarti Myers, *Forging Freedom: Black Women and the Pursuit of Liberty in Antebellum Charleston* (Chapel Hill, 2011), 1–6. Frederick Douglass, *The Narrative of the Life of Frederick Douglass: An American Slave* (1845; New York, 2013), 19. Kathleen M. Brown, *Good Wives, Nasty Wenches, and Anxious Patriarchs: Gender, Race, and Power in Colonial Virginia* (Chapel Hill, 1996), 115–18, esp. 118. For the argument that there was little distinction between the work that enslaved women and men performed, particularly in the fields, see Daina Ramey Berry, *"Swing the Sickle for the Harvest Is Ripe": Gender and Slavery in Antebellum Georgia* (Urbana, 2010), 13–34.

of black women's lascivious nature." Barriers to protection remained firmly in place, and in those instances when black women deigned to fight back they faced severe punishment, and the violence that was brought to bear tarnished their womanhood that much more. Criminal anthropologists assessed female deviance, in part, by subjects' proximity to, or distance from, Western ideals of femininity, morality, and virtue—standards against which black women failed to measure up. Proponents such as Cesare Lombroso and Guglielmo Ferrero masculinized black women, claiming that their physical "correspondence with the male is very strong"—an aberration reputedly indicative of congenital criminality. These abstractions held multiple consequences for black women, particularly as they entered the criminal justice system.<sup>5</sup>

### Black Women and Disproportionate Incarceration

Black women's exclusion from notions of protection cast a pall over their experiences in the criminal justice system during the late nineteenth and early twentieth centuries. Most black women lived in poverty, due in large part to being limited almost exclusively to domestic service and agricultural work. Domestic service in particular imperiled black women because they were vulnerable to sexual harassment in white homes and also profoundly susceptible to white employers' accusations of theft—whether real or imagined. Although officers routinely arrested black women for sex work and domestic disputes, larceny constituted the lion's share of black women's criminal arrests; and white judges and juries more often trusted the testimony of white employers and other white authority figures over the word of black women. Notwithstanding blatant bias, African American women also battled a general presumption of their guilt, owing to commonly held notions of their low character and lack of morality, as well as to the popularity of racialized caricatures depicting their purported fiendish, criminal ways.<sup>6</sup>

<sup>5</sup> On black women's "lascivious nature," see Tera W. Hunter, *To 'Joy My Freedom: Southern Black Women's Lives and Labors after the Civil War* (Cambridge, Mass., 1997), 33–34; Catherine Clinton, "Bloody Terrain: Freedwomen, Sexuality, and Violence during Reconstruction," *Georgia Historical Quarterly*, 76 (Summer 1992), 321; and Hannah Rosen, *Terror in the Heart of Freedom: Citizenship, Sexual Violence, and the Meaning of Race in the Postemancipation South* (Chapel Hill, 2008). On the presumed licentiousness of black women, even in intraracial seduction cases, see Mary Frances Berry, "Judging Morality: Sexual Behavior and Legal Consequences in the Late Nineteenth-Century South," *Journal of American History*, 78 (Dec. 1991), 849–51. Cesare Lombroso and Guglielmo Ferrero, *Criminal Woman, the Prostitute, and the Normal Woman*, trans. Nicole Hahn Rafter and Mary Gibson (Durham, N.C., 2004), 52. Anne M. Butler, *Gendered Justice in the American West* (Urbana, 1997), 28–29; Paula Giddings, "The Last Taboo," in *Words of Fire: An Anthology of African-American Feminist Thought*, ed. Beverly Guy-Sheftall (New York, 1995), 417–19.

<sup>6</sup> On black females' labor and poverty, see Hunter, *To 'Joy My Freedom*, 4–20, 21–43, 44–73; Jacqueline Jones, *Labor of Love, Labor of Sorrow: Black Women, Work, and the Family from Slavery to the Present* (1999; New York, 2010), 9–41. On black women's informal labors, see Sharon Harley, "'Working for Nothing but for a Living': Black Women in the Underground Economy," in *Sister Circle: Black Women and Work*, ed. Sharon Harley and the Black Women and Work Collective (New Brunswick, 2002), 48–66. On black women's entrepreneurship, see Tiffany M. Gill, *Beauty Shop Politics: African American Women's Activism in the Beauty Industry* (Chicago, 2010). On the fight for economic and social justice, see Mary France Berry, *My Face Is Black Is True: Callie House and the Struggle for Ex-Slave Reparations* (New York, 2006); and Francille Rusan Wilson, *Segregated Scholars: Black Social Scientists and the Creation of Black Labor Studies, 1890–1950* (Charlottesville, 2006). On the presumption of black female guilt, see Gross, *Colored Amazons*, 101–2, 105–7; G. S. Rowe, "Black Offenders, Criminal Courts, and Philadelphia Society in the Late Eighteenth Century," *Journal of Social History*, 22 (Summer 1989), 685–702; Gail L. Thompson, "African American Women and the U.S. Criminal Justice System: A Statistical Survey, 1870–2009," *Journal of African American History*, 98 (Spring 2013), 294, 295–99. On black women's disproportionate arrests for sex work in Chicago, see Michael Willrich, *City of Courts: Socializing Justice in Progressive Era Chicago* (New York, 2003), 197; and Cynthia M. Blair, *I've Got to Make My Livin': Black Women's Sex Work in Turn-of-the-Century Chicago* (Chicago, 2010). Black women walking unescorted faced unsubstantiated solicitation charges. See Cheryl D. Hicks, *Talk with You like a Woman: African American Women, Justice, and Reform in New York, 1890–1935* (Chapel Hill, 2010), 221–22.

These dynamics, together with an increased emphasis on punishing crimes against property, resulted in black women enduring some of the harshest outcomes in early criminal courts. Between 1794 and 1835 in Philadelphia, roughly 72 percent of black women who went before juries were convicted. They also had fewer of their cases dismissed than any other group and were more starkly overrepresented in prison than black men. For example, black women were approximately 47.5 percent of female prisoners, whereas black men accounted for only 29 percent of imprisoned men—both were disproportionately represented however, as African Americans were far less than one-quarter of the city's population. These trends occurred in the North and South. In Tennessee in 1868, 60 percent of male prisoners were black as opposed to 100 percent of the women prisoners. Moreover, the disparities lasted well into the twentieth century, as black men in the South accounted for 72.4 percent of male prisoners in 1880, while black women accounted for 85.8 percent; those numbers grew to 73 percent and 90.2 percent, respectively, by 1904, but dropped to 59.6 percent and 79.6 percent, respectively, in 1923.<sup>7</sup>

Parts of the Midwest witnessed similar rates of confinement, especially for felony convictions. Beginning in the 1860s, when African Americans made up less than 2 percent of the Illinois population, black women were 15 percent of incarcerated female felons in the state, while black men were 7 percent of male felons. In the early part of the twentieth century, those numbers rose to 44 percent for black females and 21 percent for black men. By the 1950s, when blacks made up roughly 9 percent of the state's population, the felon rates would swell to 66 percent and 42 percent, respectively. In the 1960s, when blacks represented just over 11 percent of the population, black women would account for 70 percent of female felons while black men accounted for 46 percent of the males. Moreover, although this essay is principally concerned with the late nineteenth and early twentieth centuries, it is nonetheless important to note that such trends endured. With the advent of stricter drug laws, the arrests of black women in the late 1980s and 1990s for drug-related crimes grew by 828 percent—triple the growth in arrest rate for white women and double that of black men. By the early twenty-first century, roughly one in every three hundred black women had been incarcerated in the United States, as opposed to one in every 704 Latinas and one in 1,099 white females.<sup>8</sup>

Social attitudes undergirding exclusionary notions of protection also influenced the kind of time black women served in prison. In places such as Philadelphia in the late nineteenth century, black women served longer prison sentences: 14.1 months on average, while white women served 8.5 months for comparable offenses. Moreover, young white women and girls found themselves shipped off to newly constructed reformatories in the

<sup>7</sup> On Philadelphia convictions and prison populations, see Rowe, "Black Offenders, Criminal Courts, and Philadelphia Society in the Late Eighteenth Century," 704; Leslie Patrick-Stamp, "Numbers That Are Not New: African Americans in the Country's First Prison, 1790–1835," *Pennsylvania Magazine of History and Biography*, 119 (Jan.–April 1995), 111, table 5; and Gary B. Nash, *Forging Freedom: The Formation of Philadelphia's Black Community, 1720–1840* (Cambridge, Mass., 1988), 137, table 4. For black imprisonment rates in early Philadelphia, see Allen Steinberg, *The Transformation of Criminal Justice: Philadelphia, 1800–1880* (Chapel Hill, 1989), 43; and Erica Armstrong Dunbar, *A Fragile Freedom: African American Women and Emancipation in the Antebellum City* (New Haven, 2008). On Tennessee prison populations, see Nicole Hahn Rafter, *Partial Justice: Women, Prisons, and Social Control* (New Brunswick, 1997), 141–42.

<sup>8</sup> On the Illinois prison population, see L. Mara Dodge, "Whores and Thieves of the Worst Kind": *A Study of Women, Crime, and Prisons, 1835–2000* (DeKalb, 2002), 117. On drug offense arrests in the 1980s and 1990s, see Stephanie R. Bush-Baskette, "The War on Drugs as a War against Black Women," in *Crime Control and Women: Feminist Implications of Criminal Justice Policy*, ed. Susan L. Miller (New York, 1998), 113. On the early twenty-first-century female prisoner numbers, see Thompson, "African American Women and the U.S. Criminal Justice System," 301.

early twentieth century—institutions built with a cottage design and staffed by white matrons aiming to restore white womanhood. Because reformers believed that black women and girls were innately licentious due to “stigmas associated with their African ancestry and legacy of American enslavement,” blacks typically served their sentences at custodial institutions. White middle-class prison reformers “ignored altogether the serious problems faced by young African American women.” If black women were admitted to reformatories, they often languished in segregated units. In custodial prisons, reform was ignored, and black women existed as prey for unscrupulous prison officials.<sup>9</sup>

In southern states African American women performed backbreaking labor on chain gangs alongside black men. There too black women would suffer brutality and defilement. White women, “defined as female, would be protected from the brutal throes of the chain gang;” black women, excluded from this category, “would be routinely forced to labor on public roads and as domestic servants in white homes.” In Georgia, black women did not just work long hours or perform the same tasks as men but they also “were required to do their business right in the cuts where they worked, the same as the men did.” Black women were not spared from mob justice either. They would be lynched—often for fending off sexual attacks. Such retribution is in stark contrast to the kinds of justice meted out on behalf of white female victims, particularly if they named a black man as the culprit.<sup>10</sup>

In instances of defense against intraracial gender violence, most African American women succumbed to the vortex of judicial exclusion. That black women could not expect legal redress for partner abuse was common knowledge. As one historian observed, they were better “prepared to defend themselves, because they knew they could not rely on law enforcement and the courts, which were less likely to try to protect black women against domestic violence.” Yet that defense could put African American women in front of a legal system primed to throw the book at them, no matter the circumstances. In Philadelphia in 1910 a black woman who fatally stabbed an intoxicated man after he attacked her on a streetcar was arrested and tried for murder. Even when black women were murdered by batterers, their victimization could be eclipsed by the rhetoric of their promiscuity. For example, despite having shot and killed his wife in cold blood in 1886, the black Philadelphian William Bush received this surprising defense from the district attorney: “The element of infidelity to him entered into the commission of the crime . . .

<sup>9</sup> Roger Lane, *Roots of Violence in Black Philadelphia, 1860–1900* (Cambridge, Mass., 1986), 88; Rafter, *Partial Justice*, 144–49. On licentiousness caused by the stigmas of African ancestry and enslavement, see Cheryl D. Hicks, “Bright and Good Looking Colored Girl’: Black Women’s Sexuality and ‘Harmful Intimacy’ in Early Twentieth-Century New York,” *Journal of the History of Sexuality*, 18 (Sept. 2009), 419. On prison reformers’ ignorance of black women’s problems, see Mary E. Odem, *Delinquent Daughters: Protecting and Policing Adolescent Female Sexuality in the United States, 1885–1920* (Chapel Hill, 1995), 25. On the origins of benevolent reform, see Estelle B. Freedman, *Their Sisters’ Keepers: Women’s Prison Reform in America, 1830–1930* (Ann Arbor, 1984), 22–31. On segregation in reformatories, see Rafter, *Partial Justice*, 55–59, 152–54. Even in integrated reformatories, black women still faced discrimination. See Hicks, *Talk with You like a Woman*, 165–66, 188–89, 222–24.

<sup>10</sup> Sarah Haley, “‘Like I Was a Man’: Chain Gangs, Gender, and the Domestic Carceral Sphere in Jim Crow Georgia,” *Signs*, 39 (Autumn 2013), 53. David M. Oshinsky, “Worse Than Slavery”: *Parchman Farm and the Ordeal of Jim Crow Justice* (New York, 1996), 157–77. On the experiences of black women and southern justice, see Edward L. Ayers, *Vengeance and Justice: Crime and Justice in the Nineteenth-Century American South* (New York, 1984), 200; and Mary Ellen Curtin, “The ‘Human World’ of Black Women in Alabama Prisons, 1870–1900,” in *Hidden Histories of Women in the New South*, ed. Virginia Bernhard et al. (Columbia, S.C., 1994), 13–14, 20, 25–26. Talitha LeFlouria, “The Hand That Rocks the Cradle Cuts Cordwood’: Exploring Black Women’s Lives and Labor in Georgia’s Convict Camps, 1865–1917,” *Labor: Studies in Working-Class History of the Americas*, 8 (Fall 2011), 47–64. Crystal N. Feimster, *Southern Horrors: Women and the Politics of Rape and Lynching* (Cambridge, Mass., 2011), 172–73.

and operated upon the prisoner's mind. I am, therefore . . . willing to accept a plea of murder in the second degree."<sup>11</sup>

Black women's frustrations with their circumstances are perhaps best expressed by one nurse's lamentation in 1912: "On one hand, we are assailed by white men, and, on the other hand, we are assailed by black men, who should be our natural protectors; and, whether in the cook kitchen, at the washtub . . . we are but little more than pack horses, beasts of burden, slaves!" Indeed, but of different stripes. The way enslavement took form in the American legal system has structured black women's experience and use of violence, and has mediated the type of justice available to them, not just in terms of disparate conviction and sentencing rates for nonviolent offenses but also in how they have been treated in those instances when black women have been "compelled to crime"—namely those spaces where black women had no choice but to defend themselves against lethal violence.<sup>12</sup>

Against this backdrop, Marissa Alexander's experience not only summons the history of the politics of protection in criminal justice but also calls attention to the way that politicized protection has engendered the violence for which black women are often criminalized. The Alexander case also points to the more troubling aspects of the relationship between black womanhood, intraracial gendered violence, and mass incarceration. It gestures toward the murkier aspects of the ways that black women are subject to and are trading in violence domestically but also within larger black communities. This milieu reveals gaps in the historiography and in discourses on mass incarceration. Moreover, this essay is concerned with the historical experiences of black women and intraracial gender violence, but that does not negate the need for historians to also delve more deeply into white violence—interracially and intraracially, historically and currently—especially given the recent spate of mass shootings and their relationship to domestic violence. A 2014 study of Federal Bureau of Investigation data and media reports found that in 57 percent of the cases the shooter had killed a current or former intimate partner and in 20 of 63 cases "the shooter had a prior domestic violence charge."<sup>13</sup>

## Black Womanhood, Gendered Violence, and Mass Incarceration

Beth Richie's book on black women and incarceration notes that the second most common cause of death for black women and girls between the ages of 15 and 25 was homicide, primarily caused by intimate-partner violence. Given the ominous statistics about black men and violent death, black women's equally stark numbers should come as no

<sup>11</sup> Randolph Roth, *American Homicide* (New York, 2012), 272. *Commonwealth v. Bessie Elizabeth Minor Banks*, Jan. 6, 1911, testimony notes, case no. 307, August 1910 Sessions files, Quarter Sessions Court records, RG 21.5: Notes of Testimony 1877–1915 (Philadelphia City Archives, Philadelphia, Pa.). On William Bush's killing of his wife, see *Philadelphia Public Ledger*, April 19, 1887, reprinted in Gross, *Colored Amazons*, 125.

<sup>12</sup> "More Slavery at the South," *New York Independent*, Jan. 25, 1912, pp. 196–200. Richie, *Compelled to Crime*, 1–4.

<sup>13</sup> Charlotte Childress and Harriet Childress, "White Men Have Much to Discuss about Mass Shootings," *Washington Post*, March 29, 2013, [http://www.washingtonpost.com/opinions/white-men-have-much-to-discuss-about-mass-shootings/2013/03/29/7b001d02-97f3-11e2-814b-063623d80a60\\_story.html](http://www.washingtonpost.com/opinions/white-men-have-much-to-discuss-about-mass-shootings/2013/03/29/7b001d02-97f3-11e2-814b-063623d80a60_story.html); Mark Follman, Gavin Aronsen, and Deanna Pan, "A Guide to Mass Shootings in America," *Mother Jones*, May 24, 2014, <http://www.motherjones.com/politics/2012/07/mass-shootings-map>; Michael Kimmel, *Angry White Men: American Masculinity and the End of an Era* (New York, 2013); Melissa Jeltsen, "Mass Shooting Analysis Finds Strong Domestic Violence Connection," *Huffington Post*, July 17, 2014, [http://www.huffingtonpost.com/2014/07/17/domestic-violence-gun\\_n\\_5595898.html](http://www.huffingtonpost.com/2014/07/17/domestic-violence-gun_n_5595898.html); "Analysis of Recent Mass Shootings," July 17, 2014, *Everytown for Gun Safety*, <http://everytown.org/article/analysis-of-mass-shootings/>.

surprise. But in many ways this is the elephant in the room when scholars examine race, gender, and crime. Concerns about unwittingly padding bigoted notions of blackness have fomented uncomfortable silences about intraracial gendered violence. Whereas “blues women” of the 1920s and 1930s found ways to use their craft to create a “public discourse on male violence,” with songs such as Gertrude “Ma” Rainey’s “Sweet Rough Man” and “Black Eye Blues,” historians have been somewhat less successful, particularly in terms of contemplating the connection of male violence to the early legal system or its role in the disproportionate incarceration of black women today.<sup>14</sup>

Structural and systematic impediments to protection have placed black women at a greater risk for violence and abuse—conditions related to increased instances of incarceration. In 1999, for example, 57 percent of female state prisoners were victims of abuse prior to their confinement, 46.5 percent had been physically abused, and 39 percent had been sexually assaulted. By 2011, when upward of 1 million women were either “incarcerated or otherwise under the control of the justice system,” between 85 percent and 90 percent of those women reported a history of domestic and sexual violence as opposed to 22.3 percent of women nationally. Given black women’s representation in the criminal-justice system and their historic and ongoing vulnerability, there can be little doubt that gender violence is a key factor in their disproportionate representation. Indeed, 68 percent of incarcerated black women had been victimized by intimate-partner violence, and, compared to white women, black women are twice as likely to be killed by a spouse. Historicizing racialized and gendered notions of protection helps make clear the relationship between black women’s historical experiences and mass incarceration.<sup>15</sup>

Further, exclusionary notions of protection have created a need for black women to trade in extralegal violence for personal security. Historical accounts are replete with examples of otherwise-law-abiding black women found carrying small knives and other weapons to guard against daily assaults and violations at home and in the workplace—be-

<sup>14</sup> Beth E. Richie, *Arrested Justice: Black Women, Violence, and America's Prison Nation* (New York, 2012), 26. On the concern with historians unwittingly bolstering racism, see Giddings, “Last Taboo,” 414. On silences about intraracial violence, see James Forman Jr., “Racial Critiques of Mass Incarceration: Beyond the New Jim Crow,” *New York University Law Review*, 87 (April 2012), 49–51, 45–47, [http://www.nyulawreview.org/sites/default/files/pdf/NYULawReview-87-1-Forman\\_Jr.pdf](http://www.nyulawreview.org/sites/default/files/pdf/NYULawReview-87-1-Forman_Jr.pdf). For historical works that explore black intraracial, gendered violence, see Jeffrey Adler, “‘Bessie Done Cut Her Old Man’: Race, Common-Law Marriage, and Homicide in New Orleans, 1925–1945,” *Journal of Social History*, 44 (Fall 2010), 123–43; Jeffrey Adler, “‘We’ve Got a Right to Fight. We’re Married’: Domestic Homicide in Chicago, 1875–1920,” *Journal of Interdisciplinary History*, 34 (Summer 2003), 39–46, 48; Roth, *American Homicide*, 395–403; Lane, *Roots of Violence in Black Philadelphia*; and Roger Lane, *Murder in America: A History* (Columbus, Ga., 1997). For explorations of black and Latina female violence, see Butler, *Gendered Justice in the American West*, 112–40. J. Sammy Randall, “Sweet Rough Man,” performed by Gertrude “Ma” Rainey (magnetic tape; Paramount 12926; 1928); Thomas A. Dorsey, “Black Eye Blues,” performed by Gertrude “Ma” Rainey (magnetic tape; Paramount 12963; 1929). On the “public discourse on male violence” and on “blues women,” see Angela Y. Davis, *Blues Legacies and Black Feminism: Gertrude “Ma” Rainey, Bessie Smith, and Billie Holiday* (New York, 1999), 25–27. Richie, *Compelled to Crime*; Richie, *Arrested Justice*; Regina A. Arnold, “Processes of Victimization and Criminalization of Black Women,” *Social Justice*, 17 (Fall 1990), 153–66.

<sup>15</sup> Caroline Wolf Harlow, “Prior Abuse Reported by Inmates and Probationers,” April 11, 1999, *Bureau of Justice Statistics*, <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=837>; “Prison Rape Elimination Act of 2003,” April 29, 2011, *American Civil Liberties Union*, <https://www.aclu.org/prisoners-rights-womens-rights/prison-rape-elimination-act-2003-prea>. For the statistic that 22.3% of women nationally have been victims of intimate-partner violence, see “National Data on Intimate Partner Violence, Sexual Violence, and Stalking,” 2010, *National Intimate Partner and Sexual Violence Survey*, <http://www.cdc.gov/violenceprevention/pdf/nisvs-fact-sheet-2014.pdf>. For the statistic that 68% of incarcerated women have been victims of intimate-partner violence, see Richie, *Arrested Justice*, 26–27. My thinking parallels Heather Ann Thompson’s work in that gendered violence and politicized protection must be interrogated vis à vis black women’s incarceration, historically and contemporarily. Heather Ann Thompson, “Why Mass Incarceration Matters: Rethinking Crisis, Decline, and Transformation in Postwar American History,” *Journal of American History*, 97 (Dec. 2010), 703–34.

haviors gesturing toward their often-overlooked vulnerability. African American women experience domestic violence at a rate 35 percent higher than the rate for white women and roughly 2.5 percent higher than the rate for other races, suggesting that little has changed. These facts are not hidden, yet they rarely seem to be at the forefront of discussions surrounding race, gender, and justice. A similar dynamic seems to be at work in the discourses surrounding the Alexander case. While many have railed against the blatantly racist double standard of her twenty-year sentence vis á vis George Zimmerman's acquittal, there appears to be far less protest about the fact that Alexander had been beaten by a black man, and so terrified of another beating that she discharged a firearm in the family home—actions that spotlight her desperation and fear. Based on the numbers that Richie cites, that fear was more than justified. Save pulling that pistol, the scenario in which Alexander found herself is exactly how women such as she die and have been dying for decades.<sup>16</sup>

Even so, historical explorations of intraracial gender violence are fairly limited, and current examinations of race and mass incarceration largely concentrate on the war on drugs and felony disfranchisement. Both of those topics are important, but given that violent crime represents 50 percent of the charges for which state prisoners are currently serving time (and that drug crimes account for only 25 percent) it seems that a restructuring of priorities might be necessary. The historical role that racism, patriarchy, and misogyny play in African American crime and violence is essential to arresting mass incarceration; this does not discount the socioeconomic factors of crime or the racism embedded in the U.S. legal system but rather points out that they are intimately connected. Long-standing barriers to protection play central roles in the relationship among race, gender, violence against black women, and black female criminalization. Acknowledging this not only will enhance future scholarship on the carceral state but will also begin to upend those historic forces that have pushed black women to the margins of justice.<sup>17</sup>

<sup>16</sup> For examples of law-abiding black women carrying weapons, see *Commonwealth v. Bessie Elizabeth Minor Banks*, Jan. 6, 1911, testimony notes; and Gross, *Colored Amazons*, 114, 88–90. For a discussion of working-class resistance, see Robin D. G. Kelley, *Race Rebels: Culture, Politics, and the Black Working Class* (New York, 1996). For statistics on black women and domestic violence, see “Domestic Violence: Communities of Color,” June 2006, *Women of Color Network Facts and Stats*, [http://www.doj.state.or.us/victims/pdf/women\\_of\\_color\\_network\\_facts\\_domestic\\_violence\\_2006.pdf](http://www.doj.state.or.us/victims/pdf/women_of_color_network_facts_domestic_violence_2006.pdf). Many scholars seem to want to avoid affirming racist ideologies about blackness and crime. For critiques of those racist ideologies, see David Wilson, *Inventing Black-on-Black Violence: Discourse, Space, and Representation* (Syracuse, 2005), 3–6; Khalil Gibran Muhammad, *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America* (Cambridge, Mass., 2011), 1–5, 277; and Khalil Gibran Muhammad, “Playing the Violence Card,” *New York Times*, April 5, 2012, [http://www.nytimes.com/2012/04/06/opinion/playing-the-violence-card.html?\\_r=0](http://www.nytimes.com/2012/04/06/opinion/playing-the-violence-card.html?_r=0).

<sup>17</sup> For works that explore intraracial violence historically, see Gross, *Colored Amazons*, 87–93; Hicks, *Talk with You like a Woman*, 16, 52, 35–37, 145–46; Adler, “Bessie Done Cut Her Old Man”; Adler, “We’ve Got a Right to Fight,” 39–46; Roth, *American Homicide*, 395–403; Lane, *Roots of Violence in Black Philadelphia*; and David T. Courtwright, *Violent Land: Single Men and Social Disorder from the Frontier to the Inner City* (Cambridge, Mass., 1998). For contemporary studies of intraracial violence, see Hillary Potter, *Battle Cries: Black Women and Intimate Partner Abuse* (New York, 2008); and Jody Miller, *Getting Played: African American Girls, Urban Inequality, and Gendered Violence* (New York, 2008). For the percentage of violent crime in state prison, see Forman, 125–26, 127–28. On the roles that racism, patriarchy, and misogyny have played in the criminal justice system, see Richie, *Compelled to Crime*, 4; Giddings, “Last Taboo,” 414; Forman, “Racial Critiques of Mass Incarceration,” 124–26; and Arnold, “Processes of Victimization and Criminalization of Black Women,” 154–56, 159–66.