Under Siege

Black Women, the Choreography of Law, and the Public Carceral Sphere

By

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This work is dedicated to the many Black women whose lives have been violently interrupted by the State, and whose deep injuries have gone unacknowledged. Thank you for your courage. Thank you for your resistance through living.

I also dedicate this work to Deaconess Ella Mae Lewis of Orlando, Florida whose life showed me the power of unconditional love.

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Under Siege: Black Women, the Choreography of Law, and the Public Carceral Sphere

"The way to right wrongs is to turn the light of truth upon them."
–Ida B. Wells

"All we could think about was what this place would mean for us, and what new forms our bondage might take."[1]
–Daniel Black

Introduction
"It's Just One Woman": Trishawn's Story

A mounted overhead security camera recorded the activity taking place on Sunday morning March 1, 2015, just before police arrived at 545 South San Pedro Street in downtown Los Angeles.[2] The Los Angeles Police Department, without their sirens on, rushed to the scene in their vehicles cutting across on-coming traffic on the clear Los Angeles day. The weather was uncharacteristic of March in Los Angeles, as downtown Los Angeles and surrounding cities of Southern California recorded their highest temperatures for March "since record keeping began in 1877."[3] The security camera showed Charly Leundeu Keunang flipping the tent of a man he had been arguing with about a cell phone.[4] Approximately twenty-five minutes later, four police officers, brought their vehicles to a stop, exited them, and approached the tent of Keunang—who is also known as Africa among Skid Row residents. After speaking with police officers for a few moments Africa retreated to his tent, terminating the dialogue between himself and the officers.

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[1] Daniel Black, *The Coming* (New York: St. Martin's Press, 2015), 85.
[2] Matt Tinoco, "LAPD Officers Shot and Killed a Man on Skid Row in Broad Daylight Sunday," *Vice*, March 2, 2015. Accessed March 25, 2016, http://www.vice.com/read/lapd-officers-shot-and-killed-a-man-on-skid-row-in-broad-daylight-sunday-302.
[3] Veronica Rocha, "March was the warmest on record for downtown L.A.," *Los Angeles Times*, April 2, 2015, Accessed May 8, 2016, http://www.latimes.com/local/lanow/la-me-ln-warmest-march-on-record-20150402-story.html; a subsequent video taken on a cell phone by a witness, which had sound, reveals officers did not have their sirens sounded or lighted as they approached the scene, see footnote 6.
[4] Los Angeles Board of Police Commissioners, Abridged Summary of Categorical Use of Force Incident and Findings by the Los Angeles Board of Police Commissioners (Los Angeles: Los Angeles Police Department, 2015), 2. Accessed March 1, 2016, http://assets.lapdonline.org/assets/pdf/018-15%20PR%20(OIS)%20Central.pdf.

What is not clear, as the overhead surveillance video has no audio, is whether or not Africa was informed by police that he was being detained or placed under arrest.[5] After he entered his tent, police officers immediately drew their weapons. In the background appeared a small frame Black woman, as Africa responded to weapons of the State being focused on him by fighting back. In a flash, Africa was thrown to San Pedro's concrete sidewalk and tazed by officers, as an officer shouted "he's reaching for my gun." As Africa was pinned to the sidewalk by four police officers while simultaneously being punched in the face, two additional officers arrived to the scene from the direction of East 6th Street, the same direction which the petite Black woman was walking. Three of the four officers restraining Africa moved away. Africa was motionless on the ground, presumably from being tazed multiple times. A few seconds later, at point blank range, an officer fired six bullets into Africa killing him.[6] Thirty-seven minutes after LAPD arrived, Charly 'Africa' Keunang was pronounced deceased at the scene of the shooting by the Los Angeles Fire Department.[7] The coroner's autopsy report identified two chest wounds which were described as "contact gunshot wounds," due to gunpowder being present on Africa's skin, as well as soot being inside the point of penetration.[8] At a later news conference LAPD displayed a picture of a scraped leather gun holder to prove there was a wrestle for the officer's weapon; however, this could have also been the result of the officer making contact with the pavement and not necessarily Africa (who was pinned to the sidewalk by police at the time) reaching for the

[5] Many reports allege police were responding to a robbery call, which the overhead security camera did not contain footage of Africa doing.
[6] For this project I used two video-perspectives of the incident to gather the necessary information: Victims of Police, "Charly Leundeu Keunang killed by Las Angeles Police," *YouTube*, April 9, 2015. Accessed March 25, 2016, https://www.youtube.com/watch?v=vxyy8mMh2JM; Holly Yan and Kyung Lah, "Homeless Man Shot by LAPD: Who was 'Africa'?, *CNN*, March 3, 2015. Accessed March 25, 2016, http://www.cnn.com/2015/03/03/us/who-is-lapd-shooting-man-shot/. The footage uploaded to YouTube was originally recorded by Los Angeles resident Anthony Blackburn who, via his CNN interview, reported that he did not see Africa reach for the officer's gun.
[7] Ajay J. Panchal, M.D. "Case Report: Charly Leundeu Keunang," (County of Los Angeles: Department of Coroner 2015), 1.
[8] Ibid.

officer's gun. No weapon or stolen items were found on Africa; LAPD refused to release footage captured by the officers' involved body cameras.[9] On February 2, 2016 the LAPD Board of Police Commissioners found both the shooting and murder of Charly Keunang to be "within policy."[10] The officer who punched Africa repeatedly was "reminded to consider other force options prior to using fist strikes to bony areas" as punishment.[11]

As this act of State[12] violence was taking place, an officer dropped his baton from his left hand so that he could grab his gun from its holster to point it at Africa, who was already being subdued by other officers. As the officer who dropped his baton rushed in closer to Africa, another officer who had just arrived on the scene charged in the direction of Trishawn Cardessa Carey—the small Black woman—who was in close proximity to the State-caused altercation. Carey is observed in a witness' cell phone video to momentarily pause as the officer rushed toward her (but ended up going toward the scuffle). As the officer was making his approach toward the scuffle, which many officers were already involved in, Carey bent down to pick up the dropped baton, presumably to protect herself. Contrary to many reports, Carey did not wave

[9] Ibid, 2; Melissa Pamer, et al, "Homeless Man Killed by LAPD on Skid Row Was Convicted Bank Robber, Wanted for Probation Violation," *KTLA*, March 4, 2015. Accessed March 25, 2016, http://ktla.com/2015/03/03/homeless-man-killed-by-lapd-on-skid-row-was-convicted-bank-robber-report/.

[10] The Times Editorial Board, "Editorial: LAPD's wall of secrecy has to go," *Los Angeles Times*, February 4, 2016. Accessed March 25, 2016, http://www.latimes.com/opinion/editorials/la-ed-0204-lapd-shooting-20160203-story.html.

[11] LAPC, 10.

[12] In this work I capitalize "State" to represent the personhood of the State. Quentin Skinner in his work asserts, "When the members of the multitude agree, each with each to appoint a sovereign representative, theirs is a covenant of authorisation embodying a declaration that a body of rights has been transferred…what the members of the multitude agree is 'to conferre all their power and strength upon one Man, or upon one Assembly of men'…it gives them a single will and voice, thereby converting them into one person, the person of the state. But it also creates a representative of that person in the sovereign, who is given the job of 'bearing' or 'carrying' the person of the State." The multitude of persons who established the US, agreeing together to appoint a sovereign, were White men—or the founding fathers. Politicians and public servants, such as police officers, since that time has had the responsibility of "bearing" or "carrying" the person of the State. See Quentin Skinner, "Hobbes and the Purely Artificial Person of the State," *The Journal of Political Philosophy* 7, no. 1 (1999). I also capitalize other commonly personed lowercased words such as "imprisoned" and "prisoner" as a method of resistance in prose to recognize the being of a subject as opposed to the subject's often conveyed objecthood by way of lowercase denotation.

the dropped baton in the air. Rather, she held the baton defensively in front of her body. Soon thereafter two police officers charged Carey, forced her down and arrested her.[13]

Carey was charged with assault with a deadly weapon against a police officer and resisting arrest—two charges which videos from the scene do not support. As a result, Carey faced twenty-five years to life in prison due to her previous encounters with the law and California's three strikes statute modeled after the federal three strikes legislation enacted by former US President Bill Clinton.[14] Further impacting the State's perception of Carey at sentencing was her previous charges; two were identified as serious and/or violent crimes. These crimes took place in 2002 and 2006. In the first, Carey punched a robbery victim in the head; in the second she assaulted a shopkeeper with a deadly weapon—a ceramic figurine.[15] However, underlying all of Carey's encounters with the law and her interactions with society is her extensive history of both medical and cognitive health challenges, many of which resulted in hospital stays for "acute episodes of psychosis."[16] Carey's condition, as a member of society with confirmed and documented needs as it relates to her psychological well-being, should have granted her the legal protections of proposition 8, the "Victim's Bill of Rights," passed in California in 1982. However, Carey's psychological needs were not acknowledged, denying her access to California's iteration of the McNaghten rule in prop 8—a rule which allows for the plea of legal insanity, requiring that a legally insane defendant prove that they were not capable of

[13] For the description of this interaction I am observed the cellphone video referenced in footnote 34.
[14] Gwen Ifill, "White House Offers Version of Three-Strikes Crime Bill," *New York Times*, March 2, 1994. Accessed March 25, 2016, http://www.nytimes.com/1994/03/02/us/white-house-offers-version-of-three-strikes-crime-bill.html; Paul Richter, "Clinton Hails 'Three Strikes' Sentence: Crime: He says federal life term proves worth of the bi-partisan-backed crime bill. He argues similar support to adopt his anti-terrorism legislation," *Los Angeles Times*, August 20, 1995. Accessed March 25, 2016, http://articles.latimes.com/1995-08-20/news/mn-37177_1_federal-crime-bill.
[15] Gale Holland, et al, "A homeless woman hoisted an LAPD nightstick during the skid row shooting—and could get life in prison," *Los Angeles Times*, July 23, 2015. Accessed March 25, 2016, http://www.latimes.com/local/crime/la-me-homeless-woman-baton-20150723-story.html.
[16] Ibid.

understanding the nature of their crime or that they are incapable of distinguishing right from wrong. Instead, Carey, in all of her interactions with the State, was presumed to be inherently criminal in nature, despite her attorney submitting to the court a detailed report of her illnesses and Carey stating in an interview with the *Los Angeles Times* that she did not remember picking up the baton, but was "surrounded by yellow and black police tape,"—a element that was not present during Carey's interaction with LAPD.[17]

On July 22, 2015, after spending nearly five months in jail restrained by a whopping one million dollar bail and without any provision for her health needs, Carey was granted a bail hearing. As Carey was wheel chaired into the courtroom, her list of needed prescriptions also came with her: clonazepam for seizures and panic, methocarbamol for muscle spasms and quetiapine for spells of psychosis.[18] Carey also lived with delusions, paranoia, and schizoaffective disorder.[19] As Milton Grimes, Carey's attorney, petitioned the court for a lower bail, supporters of Carey and Skid Row activists, such as Suzette Shaw, a member of Los Angeles Community Action Network's Downtown Women's Action Coalition, asserted "[Trishawn's] excessive charges are just updated Jim Crow."[20] Shaw's statement positioned Carey's experience within the larger historical narrative of African Americans in the United States regarding incarceration. Deputy District Attorney Gregory Denton rebuffed Shaw's assertions and the claims of Carey's attorney stating Carey intended to strike an officer by picking up the baton; he further added, "it's just one woman," in an attempt to separate Carey's

[17] Ibid.
[18] Marissa Gerber and Richard Winton, "Homeless woman's case sharpens focus on justice system and mentally ill," *Los Angeles Times*, July 23, 2015. Accessed March 25, 2015, http://www.latimes.com/local/countygovernment/la-me-homeless-woman-20150724-story.html.
[19] Ibid.
[20] Holland, "A homeless woman hoisted an LAPD nightstick."

narrative from the African American lived experience.[21] District Attorney Denton's comment suggest that the position of the State of California regarding Black women is one of disposability—that Black women do not hold any value in Californian society, except to be considered as corporeal locales whereby the State may produce and signify its power, as well as freely perform State violence. Furthermore, Denton's comment dehumanized Carey; from his perspective as district attorney Carey was adequately described as "it" as opposed to 'she' or using her name. For Denton, Carey was impossible to see as a subject, rather she was an animate object who could not suffer any illness and was fit for the most extreme punishment California could offer by way of the March 1 incident: life in prison.

Denton's assertion, in its quantitative analysis, that Carey was "just one woman" could not have been further from the truth. Nationally, Black women make up 30% of all incarcerated women in the US, despite Black women being only 13% of the US female population.[22] More specifically, for Carey, of Skid Row's residents (number at about 10,000 according a 2013 survey) roughly a quarter are women, and of that figure 57.4% are Black, and are also aging with increasing health needs.[23] Carey's arrest and incarceration dovetails with the heavily criminalized women of Skid Row: 44% of whom has been arrested and 37% of whom have been cited.[24]After considering the evidence, Carey's life experience, and testimonies offered, Judge Ray Jurado reduced Carey's bail to 50,000 dollars and made her release contingent upon Carey

[21] Ibid.
[22] "Facts About the Over-Incarceration of Women in the United States," *ACLU*. Accessed March 26, 2016, https://www.aclu.org/facts-about-over-incarceration-women-united-states. Note: This figure may be considerably higher if Black trans women are also figured into this number. This number reflects birth-determined gendering.
[23] Audrey Kuo, 2013 Downtown Women's Needs Assessment (Los Angeles: Downtown Action Women's Coalition, 2013), 6. Accessed March 25, 2016, http://issuu.com/dwac/docs/dwacneedsassessment2013_report_appe/35?e=12987176/11313632.
[24] Ibid, 19.

entering A New Way of Life—a housing and support services foundation for formerly incarcerated women.[25]

On July 24, 2015 at 12:30 a.m. Carey's bail was posted by her supporters, who had done significant fundraising for her. After being evaluated by both a psychiatrist and medical professional at the jail, Carey was taken to USC Medical Center, despite orders from Judge Jurado that she should be released to A New Way of Life. Marvin Southard in an interview with the *Los Angeles Times* stated, "there was no indication on the court remand order of 7/22 that she be released to the care of anyone."[26] After being left at the emergency room entrance, Carey soon found herself back on Skid Row and in violation of court orders. As Carey found her way back to Skid Row her legal team and supporters reported that they were not notified by the bail bondsmen or the jail that Carey was released; and only found out she was released when they called.[27] Thankfully, Carey was found among the residents of Skid Row at the exact place she witnessed Africa die at the hands of the State. However, unfortunately for Carey this location also represented a region in which the city of Los Angeles approved an injunction which placed Skid Row residents under the constant surveillance of 150 police officers—over-exposing Carey once again to State violence and the possibility of going back to county jail as she navigated the most policed space in the world outside of Palestine.[28]

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[25] Gale Holland, "Mentally ill woman in LAPD assault a case study in system's lapses," *Los Angeles Times*, August 10, 2015. Accessed March 25, 2016, http://www.latimes.com/local/crime/la-me-homeless-release-lapse-20150811-story.html.
[26] Ibid.
[27] Ibid.
[28] Gale Holland, "Dozens protest LAPD shooting of homeless man on skid row," *Los Angeles Times*, March 7, 2015. Accessed March 25, 2016, http://www.latimes.com/local/california/la-me-0308-lapd-protest-20150308-story.html; Ryan Vaillancourt, "Trutanich Cracks Down on Skid Row Drug Trade," *Downtown News*, April 7, 2010. Accessed March 25, 2016, http://www.ladowntownnews.com/news/trutanich-cracks-down-on-skid-row-drug-trade/article_e338c9bd-cd61-57d1-8a89-cc595d22f492.html; see Lisa Gay Hamilton, et al, *Downtown Blues: A Skid Row Reader* (Los Angeles: Freedom Now Books, 2011).

On March 14, 2016 jurors prepared to hear Carey's case. However, before the case began a plea deal was extended by the prosecutor's office reducing Carey's resisting arrest charge, a felony, to a misdemeanor and dropping the charge pertaining to assault with a deadly weapon against a police officer.[29] The plea deal was contingent upon her agreeing to three years' probation.[30] This plea deal, accepted by Carey, came after a previous plea deal which required that she plead guilty to a felony with the understanding that it would be reduced to a misdemeanor upon completion of a treatment program.[31] While the prosecutor's office did not give a reason as to why they offered a last minute plea deal, Deputy District Attorney Denton did request that "Carey not be released to the residential program at [A New Way of Life], because she was previously housed there and left before finishing treatment."[32] However, Los Angeles Superior Court Judge Drew E. Edwards saw Carey's case from a different perspective. Considering Carey had already served nearly a year in jail on a charge which was now a misdemeanor, Judge Edwards approved Carey's release to A New Way of Life.[33]

The Public Carceral State

This project endeavors to make an intervention in the discourse of carcerality by unapologetically placing the experiences of Black women at center while moving beyond the concrete and barbed wire walls of State and Federal prison facilities to explore the ways in which the public sphere is transformed into a carceral space constituted by heightened surveillance, policed attire, delimited behavior, disempowerment, social isolation, dispossession, and

[29] Marisa Gerber, "Homeless woman charged with assault after fatal LAPD shooting will avoid jail time," *Los Angeles Times*, March 14, 2016. Accessed March 26, 2016, http://www.latimes.com/local/lanow/la-me-ln-homeless-lapd-baton-20160314-story.html.
[30] Ibid.
[31] Ibid.
[32] Ibid.
[33] Ibid.

suppressed constitutional rights just to name a few. To guide this project the following question is offered: how might exploring the lives of Black women and carceral public space expand and redefine our understanding of incarceration and its extent, causes, and impact? Allowing this question to guide this project permits this work to interrogate how racial regimes of incarceration shape seemingly non-punitive spaces, and how carceral structuring encompasses an expansive terrain beyond prison walls.

Approaching incarceration in this way illuminates areas that are not often considered when imprisonment is the subject matter at hand. Placing Black women at the center allows both constitutional and reproductive rights to be included in the discourse of incarceration. Gendering the phenomenon of incarceration also permits incarceration to be conceptualized in alternative and various geographical spaces and locations, as opposed to being limited to static institutional facilities. Indeed, scholar Katherine McKittrick asserts, "…racism and sexism produce attendant geographies that are bound up in human disempowerment and dispossession;" McKittrick also notes, "Black geographies produce unsettling questions about how knowledge and ideas about race and difference are incorporated into social, political, and economic patterns."[34] With this in mind I conceptualize the existence of the public carceral sphere positioning the State of California, particularly the city of Los Angeles, as a case study.

The public carceral sphere, for the purposes of this work, is defined as public spaces that are both explicitly defined and delimited by law, thus impacting the citizenship experiences and rights[35] of those residing within its boundaries; public carceral spheres may exist simultaneously,

[34] Katherine McKittrick, *Demonic Grounds: Black Women and the Cartographies of Struggles* (Minneapolis: University of Minnesota Press, 2006), 3; 14.

[35] By citizenship experiences and rights, I mean how citizens understand themselves in relation to the State, how they experience the State and public spaces, as well as what rights are afforded and prevented the individual citizen.

multi-regionally, are mobile, and subjective. Furthermore, it is important to note the public carceral sphere is merely a single component of a larger State phenomenon. As a result, I further advance in this work there exist in the State a practice of networked carceral spheres which are linked by way of a symbiotic relationship that is animated by law working to constrain the body, delimit rights, and showcase State power to dispossess and kill. Public carceral spheres are also often superimposed on communities, thus they become a part of daily life and are inescapable. Moreover, public carceral spheres may also be corporeal in nature (e.g. most wanted lists), and as a result trails a particular named individual in whatever space(s) they may occupy. The spheres of carcerality are many, however, important to this work is the public carceral sphere, in addition to the existing infrastructure of both the county and State carceral spheres. In conceptualizing the public carceral sphere this thesis focuses on those who are significantly impacted within its spaces—Black women, who are subjected to compounded hypervigilance and legalized State violence. As Black women navigate the public carceral sphere, their constitutional and reproductive rights are denied—revealing how the conceptualization of the public carceral sphere expands the ways in which Black women understand themselves in relationship to the State, while also exposing the far reach and impact of mass incarceration. This project is primarily descriptive and inductive in its approach, permitting the narratives of Black women to expand the epistemological terrain of State violence and incarceration, the choreography of law, and how geographical spaces become sites of public carcerality.

A particular concern that may be raised is that all modes of behavior and boundaries are circumscribed by and produced through law and limits, so how might the public carceral sphere differ from other public places that are defined and delimited by law? Or simply, what makes a public space carceral? Dylan Rodriguez in his work, *Forced Passages*, explores the development

of imprisonment in the United States. Rodriguez found that "a radical genealogy of the U.S. prison regime is necessary because it simultaneously contextualizes and sites the emergence of imprisonment as a central 'constitutive logic' of the American social/racial formation, which historically—and currently—inscribes its coherence through the durable, white-supremacist institutionality of technologies of immobilization and bodily disintegration."[36] Rodriguez also notes "the prison regime as a specific mobilization of (state) power that relies on a particular reified institutional form ('the prison') while generating a technology of domination that exceeds the narrow boundaries of that very same juridical-carceral structure."[37] Similarly, Ruth Gilmore in *Golden Gulag* asserts that "prisons…[satisfy] the demands of reformers who largely [prevail] against bodily punishment, which nevertheless endures in the death penalty and many torturous conditions of confinement…the rise of prisons is coupled with two major upheavals—the rise of the word *freedom* to stand in for what's desirable and the rise of civic activists to stand up for who's dispossessed."[38] Gilmore further asserts "the justification for putting people behind bars rests on the premise that as a consequence of certain actions, some people should lose all freedom," and that "during most of the modern history of prisons, those officially devoid of rights…rarely saw the inside of a cage, because their unfreedom was guaranteed by other means."[39] What makes a space carceral, as argued by both Gilmore and Rogriguez, is profound dispossession, conditions of torture, laws that promote immobilization and bodily disintegration, the administering of law beyond permissible legal limits resulting in the domination of a specific group of persons, the securing of freedoms for one group by the dispossession and containment

[36] Dylan Rodriguez, *Forced Passages: Imprisoned Radical Intellectuals and the U.S. Prison Regime* (Minneapolis: University of Minnesota Press, 2006), 39-40.
[37] Ibid, 40.
[38] Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (Berkeley: University of California Press, 2007), 11-12.
[39] Ibid, 12.

of another, and the loss of all freedom. This work presents the public carceral sphere as a State-constructed technology of public imprisonment whereby Black women's "unfreedom" was made possible primarily through these means.

In conceptualizing the public carceral sphere Sarah Haley's "Like I was a Man," and Dennis Child's *Slaves of the State* are particularly informative. Each work explores the ways in which incarceration are carried out by the State. Child's work begins with the experience of slavery as a site of incarceration, then advances to chain gangs and the modern prison facility. Key in Child's text is his insight regarding "land based slave ships" (or as they are more commonly known chain gang cages). Child's examination of chain gang cages permits the understanding that the geography of the US permitted for carceral zones to not only be physical sites (as in jails), but also capable of being mobile—inhabiting various public spaces simultaneously. As chain gang cages navigated earthly terrain to its eventual work destination, not only did the spaces it traversed take on heightened alertness, but the destination at which the chain gang cage would eventually arrive, allowing the members of the gang out to do the State's bidding, would take on the same surveillance, disempowerment, and bodily control as was present in the physical prison itself. The public spaces which members of the chain gang occupied would become literal public carceral spheres. These spaces would then resume their normative functioning and right-bearing conferring capacity once the Imprisoned departed.

Sarah Haley's work expands upon this notion of differing sites as carceral spheres. In her work, "Like I was a Man," Haley examines the convict leasing system, arguing that arrangements made between the State and private individuals constituted what she terms as the domestic carceral sphere. Within in the domestic carceral sphere Haley explores Black women who were leased to private individuals and were subjected to the demands of the leasee,

hypervigilance, threats, and myriad forms of corporeal violence. Haley also explores the non-gender discriminative nature of the chain-gang, particularly how women in likeness to men, were subjected to its horrors.[40]

Other key secondary text to this work are Ana Muniz's *Police, Power and the Production of Racial Boundaries*; Dorothy Roberts' *Killing the Black Body*; and, Katherine McKittirck's *Demonic Grounds*. Muniz's text explores the formation of neighborhoods along racial lines. She traces how changes in zoning, housing, and school demographics not only established neighborhood boundaries, but also gave rise to gang injunctions. Muniz argues that "in order to develop and implement repressive policies, law enforcement needs a geographical target area to criminalize. They need to be able to distinguish the target area as exceptional and threatening to justify such policy changes."[41] Muniz's work allows her reader to understand that State discrimination is not only carried out by means of race and class, but is also superimposed in geography.

Here, McKittrick's work, *Demonic Grounds*, becomes useful and insightful as well. McKittrick's work presents a solid argument against the often held belief that geographies are neutral. McKittrick notes, "existing cartographic rules organize human hierarchies in place and reify uneven geographies in familiar, seemingly natural ways."[42] This organizing, as advanced by McKittrick, has particular implications for Black women—particularly when considering the ways in which social meaning and value is often conveyed via geographical location. McKittrick's work allows public carceral spheres, in likeness to the slave ships she explores in

[40] Sarah Haley, "Like I Was a Man: Chain Gangs, Gender, and the Domestic Carceral Sphere in Jim Crow Georgia," *Signs*, vol. 39 no.1 (2013).
[41] Ana Muniz, *Police, Power, and the Production of Racial Boundaries* (New Brunswick: Rutgers University Press, 2015), 31.
[42] McKittrick, X.

her work, to be conceptualized as non-static, ever-changing, mobile, and sites of violent subjugation.[43] Accordingly, twenty-first century public carceral spheres are more than sites of State imposed hyper surveillance and corporeal regulation—they also spatialize difference and perform domination by way of geography. In respect to this, public carceral spheres are a continuum of the relationship between Black communities and geography, and as such, "allows us to engage with a narrative that locates and draws on black histories and black subjects in order to make visible social lives which are often displaced."[44] McKitttrick, along with Childs, Haley, and Muniz informs this work's understanding of carcerality vis-à-vis geography, compelling this work to explore the ways in which present day twenty-first century geographies also contain the capacity for carcerality via law.

When marginalized Black populations are centered they are often done so via the narratives of heteronormative-cis Black males. However, Dorothy Roberts' insightful text, *Killing the Black Body*, compels this project to center the experiences of Black women within the discourse of carcerality, violence, law, and society. Roberts argues in her text, "a persistent objective of American social policy has been to monitor and restrain [the] corrupting tendency of Black motherhood."[45] This observation dovetails with State authorities' rationale to surveil particular geographical locations; but, moreover, also links law, politics, healthcare and reproduction—both productive and reproductive. The conclusions reached from State surveillance allows the State to justify its sparse support for needed social programing because (at least within the mindset of the State) no amount of aid can cure the seemingly inherent degeneracy of Black women. Accordingly, this approach shifts the responsibility of poverty and marginality from the

[43] Ibid, XII.
[44] Ibid, X.
[45] Dorothy Roberts, *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty* (New York: Vintage, 1997), 8.

arrangements of white social and political power structures to the bodies of Black women, who are then, in turn, used to justify the need for the public carceral sphere.[46]

These texts and findings help this project to establish its claim that incarceration in the twenty-first century, in likeness to past centuries in the US, includes spaces beyond the infrastructure of prisons and jails, manifesting itself as what I term in this work as the public carceral sphere. This thesis is undergirded by a myriad of sources to advance its claims. Most important is case law and city statutes. This work also pulls heavily from both non-profit studies and reports as well as newspaper accounts. The studies and reports used in this work are particularly important as they provide quantitative data for a conceptual and theoretical claim. These studies also assist to capture the experiences of Black women in nuanced ways that are otherwise difficult to locate. To understand the experience of Trishawn Cardessa Carey it was necessary to observe multiple videos of the incident in which she was involved. While observing the incident via videotape, police archived records, public statements, and maps were also analyzed for their accuracy and standpoint. For its framework of analysis this work employs intersectionality. This allows, as Kimberle Crenshaw asserts, Black women's multidimensional experiences to disrupt single-axis assessments and "reveal[s] how Black women are theoretically erased," as well as makes known the limitations of both feminist and anti-racist analyses.[47] Crenshaw further opines that, "with Black women as the starting point, it becomes more apparent how dominant conceptions of discrimination condition us to think about subordination as disadvantage occurring along a single categorical axis…single-axis frameworks erases Black women in the conceptualization, identification, and remediation of race and sex

[46] Ibid.

[47] Kimberle Crenshaw, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics," *University of Chicago Legal Forum* 140 (1989), 139.

discrimination."[48] With Crenshaw's theory in mind, this project not only analyzes sources by way of an intersectional lens, but also conceptualizes the public carceral sphere through the experiences of Black women.

Accordingly, this project is guided by three topics which allow the work to move beyond conventional understandings of incarceration: formation of the public carceral sphere, the delimiting of rights, and the politics of ownership. Each topic is unique in that it illustrates the far reach of mass incarceration as well as discriminative State authority and power. These topics are explored through the legal narratives of Black women. Among the Black women centered in this work is Trishawn Cardessa Carey of Los Angeles, California. Carey's particular account is important in that it permits an understanding of the qualitatively different experiences Black women encounter at the hands of State authorities, namely police. Moreover, Carey's narrative is located at the intersection of gender, race, class, and ability—allowing for a deeper understanding of the importance and impact of the public carceral sphere. Further supporting this approach, legal Scholar Mario Barnes notes, "narrative methodology, which has been central to Critical Race Theory and Critical Race Feminism, remains essential to the project of charting the space between law as it is imagined and law as it is experienced."[49]

The first chapter uncovers the history and formation of the public carceral sphere. Key to the formation of the public carceral sphere is the development of law and its ability to superimpose bias in particular geographical regions. The legal technologies by which public carceral spheres are primarily constructed are gang injunctions—first used in Los Angeles, California in the 1980s—municipal codes, subjective police orders, city initiatives and the like. This chapter is

[48] Ibid, 140.
[49] Mario Barnes, "Black Women's Stories and the Criminal Law: Restating the Power of Narrative," *University of California, Davis Law Review*: vol 39, no. 941 (2006), 941-990. http://shain003.grads.digitalodu.com/blog/wp-content/uploads/2014/09/Black-Womens-Stories-and-Criminal-Law.pdf.

important in that it helps the reader to understand not only does incarceration envelop, in a very real way, public spaces but also that public carceral spheres has a significant impact on Black women, their rights, and their relationship with the State. Informing this chapter's insight and progression is the development of law in the city of Los Angeles, California and *Jones v. Los Angeles*.

Following the conceptualization of the public carceral sphere, chapter two turns to explore the lived experience within its space(s). This chapter highlights how over exposure, implicit and explicit bias (due to perceptions and stereotypes), prevent not only Fourth and First Amendment right protections but also deny Eight Amendment rights as well. This chapter also explores how California's carceral network via law both imprisoned and restricted the rights of Black women. Undergirding this chapter is *Brown v. Plata* adjudicated by the United States Supreme Court in 2011.

Chapter three examines the unique gendered duress of Black women who reside within a carceral sphere through the lens of State enforced dispossession in prison. This chapter is guided by the experiences of Black transwomen and the injury of gendered duress they share with Black non-trans women who are both imprisoned and 'free.' Significant to this chapter is the narrative of Dee Deirdre Farmer, who in 1994 made known the multidimensionality of Black womanhood before the Supreme Court, and whose early 1991 federal case signaled the widespread injustices Black women experienced in 1991 as Bill Clinton campaigned for president of the United States.

The experience of overexposure and living within the boundaries of a public carceral sphere has particular implications for Black women. Political scientist, Melissa Harris-Perry asserts, "…black women in America live under heightened scrutiny by the State…[and] must contend with hypervisibility imposed by their lower social status. As a group, they have neither the

hiding place of private property nor a reasonable expectation of being properly recognized in the public sphere."[50] The hypervisibility and consistent presence (and actions) of police within any carceral sphere, be it public or otherwise, encumbers the productive and reproductive work of Black women.[51] Moreover, Black women located in a public carceral sphere are not only subject to over policing, but are, in fact, rationalized as the impetus of it. Dorothy Roberts notes, "poor Black mothers are blamed for perpetuating social problems by transmitting defective genes, irreparable crack damage, and a deviant lifestyle to their children."[52]

Trishawn Carey's life represents the importance of Crenshaw's theory of intersectionality and is simultaneously representative of Black women who reside within a given carceral sphere. Carey's narrative helps us to understand that a critique of law cannot be limited to law, and suggests that any analysis of law must be intersectional, interdisciplinary, and take the position of the subject under consideration seriously. Carey's experience with the LAPD compels us to consider the ways in which law permits incarceration to be facilitated by way of the public sphere. Carey's narrative also places a demand on critical legal scholars to move beyond a concentrated focus on First and Fourth Amendment analysis and violations so that other constitutional terrain may be assessed as to its impact in the lives of persons that are raced and gendered. Further, by giving attention to Black women we are permitted to engage a dialogue that contemplates the politics of ownership as well as the legal barriers that both afford and prevent it.

Who and What We Talk About When We Talk About Incarceration

[50] Melissa V. Harris-Perry, *Sister Citizen: Shame, Stereotypes, and Black Women in America* (New Haven: Yale University Press, 2011), 39.
[51] By social reproductive work, I mean the everyday tasks undertaken by Black mothers to provide for themselves and/or their children. This work can be remunerative in some instances, but in most instances is not. It is also worth noting within the scope of this project 'mother' is not limited to biological determination.
[52] Roberts, 3.

According to the Institute for Criminal Policy Research, the United States leads the world with the greatest number of persons currently incarcerated. The US incarcerated population is 2,217,000, nearly double that of China which is ranked second at 1,657,812.[53] The remaining countries placed in the top ten, imprison less than 700,000 people. Among these countries are Iran, with 225,624 (placed eight), and Russia with 646,085 (placed third). When the United States is examined within its continental geography of North America, the numbers become more startling. The world's leading and most powerful nation's closest continental competitor is Mexico with 225,138 imprisoned, and Canada with 37,864.[54] What these numbers suggests is that the United States either has citizens that are exceptionally criminal or has laws which aggressively criminalize human behavior.

A closer look at the United States reveals a peculiar trend in incarceration within the nation. A recent report from The Bureau of Justice Statistics found that persons identified as Black make up the majority of those incarcerated.[55] Further, between the years of 2013 and 2014, while the imprisonment rate of both Black men and women marginally decreased, Black individuals still made up the vast majority of those imprisoned.[56] While both Black men and women are significantly impacted by incarceration in the US, we come to understand the problematics of imprisonment—its causes, impact, extent, and solutions—primarily by way of Black men. The experiences of incarcerated Black women, which remain largely hidden in unexplored statistical

[53] Institute for Criminal Policy Research, *World Prison Brief: Highest to Lowest-Prison Population Total* (London: Institute for Criminal Policy Research). Accessed February 20, 2016. http://www.prisonstudies.org/highest-to-lowest/prison-population-total?field_region_taxonomy_tid=All.
[54] Ibid.
[55] E. Ann Carson, *Prisoners in 2014* (Washinton, DC: U.S. Department of Justice, 2014), 15. Accessed February 20, 2016. http://www.bjs.gov/content/pub/pdf/p14.pdf.
[56] Ibid, 8. ; E. Ann Carson, *Prisoners in 2013* (Washinton, DC: U.S. Department of Justice, 2014), 15. Accessed February 20, 2016. http://www.bjs.gov/content/pub/pdf/p13.pdf. Black Female population 23,100 (2013), 22,600 (2014); Black Male population 526,000 (2013), 516, 900 (2014).

data, are rarely, if ever, given serious consideration within the larger discourse of incarceration. However these lived experiences cease to be merely statistical data when we intentionally center the lives of Black trans and non-trans women who are mis-gendered by the State and forced into sex-determined carceral facilities by way of State biological determinism.

On September 15, 2015 Ta-Nehisi Coates, via *The Atlantic*, publicized a short video titled "The Enduring Myth of Black Criminality."[57] The brief animation film details how various social problems in Black America—namely unemployment, homelessness, drug addiction, mental illness, and illiteracy—are inscribed as issues of criminality. As the film proceeds, illustrations of Black men are offered to help convey the overall point of the film: mass incarceration is a problem. To illustrate the impact of mass incarceration Coates explores the unemployment and incarceration rates of Black men. Similarly, in her famed work, *The New Jim Crow*, Michelle Alexander, uses as a point of departure the arrest of a Black male: "…I was immediately reminded of the harsh realities of the New Jim Crow. A black man was on his knees in the gutter, hands cuffed behind his back, as several police officers stood around him talking, joking, and ignoring his human existence."[58]

Both Coates and Alexander have emerged as popular leading voices on the topic of mass incarceration. Though their work has caused many to become aware of the injustices and injuries which take place in the United States, a peculiar element remains the same, as with most Black liberation movements and texts: the lens of analysis to understand the depth of a particular social problem impacting Black Americans is measured nearly exclusively by the condition of Black men. Moreover, when speaking about mass incarceration, not only is the mode of analysis

[57] The Atlantic, *The Enduring Myth of Black Criminality*. Online. Director: Jackie Lay. 2015; Washington, DC: Atlantic Media Company, 2015. http://www.theatlantic.com/video/index/404674/enduring-myth-of-black-criminality/.
[58] Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2010), 2.

primarily Black men, but, the scope of mass incarceration is limited to State and/or Federal prisons. However, a critical examination of the lives of Black women reveal otherwise: the carceral state is comprised of a broader geography which criminalizes and incarcerates otherwise innocent persons in public spaces that become carceralized by law, then transfers those persons to jails and/or prisons.

Moreover, when women and imprisonment are discussed within public spaces as a serious issue to be addressed white women are centered. A recent report found that the racial dynamic of women and incarceration is changing dramatically.[59] The report suggests that white women are quickly becoming the face of mass incarceration as it relates to female prisoners, "in 2000 black women were incarcerated in state and federal prisons at six times the rate of white women. By 2009 that ratio had declined by 53%...this shift was a result of both declining incarceration of African American women and rising incarceration of white women."[60] This approach permits solutions, legislation, and the condition of prisons for women to be centered in the needs and experiences of white women. Affirming the condition of white women in prison, the Bureau of Justice Statistics found that the incarceration rate of white women increased between 2013 and 2014, while the incarceration rate of Black women decreased.[61] However, if these findings are critically engaged from the standpoint of Black women the narrative becomes quite different: white women are becoming the recipients of State-improved care, housing, and services, as Black women are pushed out. Stated differently, as white women are gradually occupying prisons, prisons are becoming increasingly responsive to the needs of women by way of

[59] Marc Mauer, *The Changing Racial Dynamic of Women's Incarceration* (District of Columbia: The Sentencing Project, 2013). http://sentencingproject.org/doc/publications/rd_Changing%20Racial%20Dynamics%202013.pdf.
[60] Ibid, 1-2.
[61] Carson, 8 (2013); 15 (2014). Black Women 23,100 (2013), 22,600 (2014); White Women 51,500 (2013), 53,100 (2014).

whiteness. As this takes place, Black women are relegated to new forms of incarceration that are void of the resources and funding that give attention to their needs as women, thereby ungendering them and situating them by law in an ambiguous inbetween. Indeed, Robert Brown of the National Institute of Corrections, in a US Department of Justice 2014 report stated,

> Correctional policy and procedure drives decisions in the management and rehabilitation of offender populations. The continuously emerging research on female offenders highlights differences from their male counterparts, particularly in the areas of health, mental health, substance abuse and risk. Yet correctional policies rarely reflect those differences and where adaptations are made it is often not in policy or directive, contributing to tremendous inconsistency in the management of women offenders. One of the most common requests received from the women offender initiative at the National Institute of Corrections is assistance in revising policy that is consistent with the department mission but reflects the differences between men and women.[62]

Brown's statement paired with the changing racial dynamics of incarcerated women in prison suggests that the injustice and injuries of prison along with the particular needs of women are not acknowledged and go unfulfilled until the condition of incarceration (and its resulting harms) are mapped onto the bodies of white women. In other words, as far as the State is concerned, all the women are white.[63]

Research conducted by the Center for American Progress found that "incarceration doesn't end when women are released."[64] This suggest that there is a continuation of incarceration beyond the walls of secure State facilities. The Center for American Progress also found that, "many states even impose statutory bans on people with certain convictions working in certain industries such as nursing, child care, and home health care—three fields in which many poor

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[62] Erica King and Jillian E. Foley, *Gender Responsive Policy Development in Corrections: What We Know and Roadmaps for Change* (District of Columbia: US Department of Justice), 1. Accessed May 6, 2016, https://s3.amazonaws.com/static.nicic.gov/Library/029747.pdf.

[63] See *All the Women are White, All the Black are Men, But Some of Us Are Brave: Black Women's Studies*, eds. Gloria T. Hull, Patricia Bell Scott, and Barbara Smith (New York: The Feminist Press at CUNY, 1982).

[64] Julie Ajinkya, *Rethinking How to Address the Growing Female Prison Population* (District of Columbia: Center for American Progress, 2013). https://www.americanprogress.org/issues/women/news/2013/03/08/55787/rethinking-how-to-address-the-growing-female-prison-population/.

women and women of color happen to be disproportionately concentrated."[65] This uniquely positions Black women who were previously incarcerated to be placed at greater risk—surviving without consistent employment, healthcare, shelter, and sustenance (as is the case with Trishawn Cardessa Carey, whose story is utilized as a point of departure for this project). Indeed, the American Civil Liberties Union found that upon release "women of color often do not have social networks from which they can borrow money or arrange housing," and as a result often return to spaces with which they are most familiar.[66]

What follows is the legal history of Los Angeles and how that history came to impact Trishawn Cardessa Carey and other Black women in their lived experience in the City of Angels. As this project progresses, Black women, as opposed to law or Black men, are centered so as to highlight the gendered limitations of much of the current analysis regarding carcerality, as well as the ways in which Black women have been deeply marginalized, if not completely rendered invisible in some instances, in "The New Jim Crow." Centering Black women also requires that we shift our understanding of carcerality, as the very idea of carcerality itself is constituted at the intersection of race, gender, citizenship, and geography, and therefore must be understood together.

[65] Ibid.
[66] "Words From Prison: Did You Know?" (New York: American Civil Liberties Union). https://www.aclu.org/words-prison-did-you-know#_edn62.

Chapter 1
"Houses Not Jail":
Law, Assault with a Bodily Weapon, and Formation of the Public Carceral Sphere

In a letter dated September 26, 2006 Rockard J. Delgadillo, the then City Attorney of Los Angeles, replied to City Council's request that his office "provide interim guidelines to the Los Angeles Police Department for enforcement of Los Angeles Municipal Code section 41.18(d) in Skid Row."[67] The correspondence was in response to the holding in *Edward Jones v. City of Los Angeles*. *Jones v. Los Angeles* was centered on the constitutionality of what Judge Kim McLane Wardlaw termed "one of the most restrictive municipal laws regulating public spaces in the United States."[68] 41.18(d) mandated, in part, that "No person shall sit, lie or sleep in or upon any street, sidewalk or other public way."[69] The Los Angeles Municipal Code (LAMC) effectively criminalized homelessness. What was particularly significant about the code was that in its execution it punished status as opposed to conduct—the exact opposite of what a California District Court argued in its ruling.

LAMC 41.18(d) was adopted in 1968, just as Richard Nixon's presidential bid committed to "restore the first civil right of every American."[70] For Nixon this meant the right to be safe and to live without fear and violence.[71] Nixon's call for the 'first civil right' to be acknowledged came just as the Civil Rights Movement gained great ground—namely the Civil Rights Act of 1964 and the Voting Rights of Act of 1965. However, Nixon's civil rights discourse was peculiar. Scholar Naomi Murakawa states Nixon's civil rights discourse "established a rank

[67] Rockard J. Delgadillo, Status of Interim Guidelines for the Los Angeles Police Department's Enforcement of Los Angeles Municipal Code Section 41.18 (d) in Light of the Ninth Circuit's Panel Decision in Edward Jones v. City of Los Angeles (Los Angeles: Office of the City Attorney, 2006). Report number R06-0342.
[68] *Edward Jones v. City of Los Angeles*, 444 F.3d 1118 (9th Cir. 2006)
[69] Ibid.
[70] Naomi Murakawa, *The First Civil Right: How Liberals Built Prison America* (Oxford: Oxford University Press, 2014), 2.
[71] Ibid.

order: the implicitly white right to safety was paramount, not to be threatened by special 'minority' and 'criminal' rights." Murakawa further asserts "following Nixon's 1968 call to fight 'narcotics peddlers' and 'merchants of crime,' lawmakers…enacted mandatory penalties and funded prison construction, facilitating the septupling of the incarcerated population from 1968 to 2010."[72] Among the many laws adopted across the United States was LAMC 41.18(d), which if an individual was cited for mandated a fine of up to 1,000 dollars and/or imprisonment up to six months.

Although 41.18(d) had been a part of the LAMC since 1968, it was not consistently enforced. James Hahn, who served as the Los Angeles City Attorney from 1985 to 2001, decided not to prosecute homeless individuals via the municipal code.[73] Hahn refused to do so because Skid Row only had capacity to shelter 9,000 to 10,000 persons despite its population being 11,000 to 12,000.[74] Further impacting Hahn's decision making was the rate for a single occupancy room, which was on average 379.00 dollars. Welfare received by most Skid Row residents (as well as other homeless residents of Los Angeles County) was only 221.00 dollars—158.00 dollars short of the average cost for a room.[75] Taking into consideration Los Angeles County as a whole, Hahn was faced with increasingly deplorable numbers: there were 50,000 more homeless persons than available beds.[76] Accordingly, 41.18(d) framed approximately 2,000 Skid Row residents as criminals, along with the approximately 50,000 of Los Angeles County who were considered the same. Although Hahn refused to prosecute these individuals, soon

[72] Ibid.
[73] *Jones v. City of Los Angeles*
[74] Ibid.
[75] Ibid.
[76] Ibid.

residents of Skid Row would be cited and jailed when William Joseph Bratton became chief of the Los Angeles Police Department.

Among those fined under LAMC 41.18(d) were Janet Jones and Patricia Vinson. Although Jones received 375.00 dollars per month from a Los Angeles relief program, it only covered the first two weeks of any given month.[77] Jones was further impacted because she lived with a disability and often looked to her husband for assistance in navigating daily life. After spending her relief funds on shelter in November of 2002, Jones and her husband had no choice but to sleep at the corner of Industrial and Alameda Streets.[78] On November 20, 2002 at 6:30 a.m. Janet and her husband were awakened by the Los Angeles Police Department, who cited the Jones' for violating LAMC 41.18(d).

Similarly, Patricia Vinson found herself in the crosshairs of LAMC 41.18(d) as well. Vinson and her husband used their funds to lodge in motels each month, and then shelters when their funds were exhausted. On December 2, 2002, twelve days after Janet Jones' encounter with LAPD, Vinson had spent her day looking for work as well as a stable place to live. After a grueling day of searching Vinson and her husband decided to take a bus that would drop them off at a shelter in which they could sleep. By the time the Vinsons arrived at the appropriate bus stop they had missed the last bus to the shelter.[79] Vinson and her husband were forced to sleep on the sidewalk at the corner of Hope and Washington Streets.[80] At 5:30 a.m. on December 3, 2002 the Vinsons were cited by LAPD for violating Los Angeles' notorious municipal code.

Despite many studies citing the causes of homelessness to be mental illness, substance abuse, domestic violence, low-paying jobs, and a lack of affordable housing, not only were

[77] Ibid, 5.
[78] Ibid.
[79] Ibid.
[80] Ibid.

services not extended to meet these needs, but persons impacted by these particular life experiences and became homeless as a result were often denied relief in California by way of cases such as *Joyce v. City and County of San Francisco*.[81] Accordingly, the LAPD, under the leadership of then Chief William Bratton, arrested many in droves. Chief Bratton's position was simple: "If the behavior is aberrant, in the sense that it breaks the law, then there are city ordinances…you arrest them, prosecute them. Put them in jail. And if they do it again, you arrest them, prosecute them, and put them in jail, it's that simple."[82] In Bratton's eyes, he was not targeting homeless residents, rather he was targeting criminals and simultaneously in step with President Bill Clinton's efforts to get tough on crime.[83] Braton's position humanized law while simultaneously dehumanizing the lives of those living in Skid Row. This stripped the ability of Skid Row residents to have a cognizable status before the law and resulted in the Skid Row populous being perceived as mere animate objects by the State whose presence offended law; thus the being of the 'object' itself became an offense behavior. Stated differently, law itself became the invisible State embodied and took on the human capacity to be offended and transgressed, while those with tangible bodies became objects.

In pursuit of justice and social equality, and in an effort to humanize themselves, Janet Jones and Patricia Vinson along with four other residents of Skid Row, via the American Civil Liberties Union (ACLU), filed a complaint in the United States District Court "seek[ing] a permanent injunction against the City of Los Angeles and LAPD Chief William Bratton and Captain Charles Beck (in their official capacities), barring them from enforcing section 41.18(d)

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[81] Ibid, 11.
[82] Ibid, 2-3.
[83] See Jeff Stein, "The Clinton dynasty's horrific legacy: How 'tough-on-crime' politics built the world's largest prison system," *The Salon*, April 13, 2015. http://www.salon.com/2015/04/13/the_clinton_dynastys_horrific_legacy_how_tough_on_crime_politics_built_the_worlds_largest_prison/.

in Skid Row between the hours of 9:00 p.m. and 6:30 a.m."[84] Jones and Vinson asserted that 41.18(d) not only was enforced twenty-four hours a day, but also that Los Angeles was "criminalizing the status of homelessness in violation of the Eight and Fourteenth Amendment."[85] The district court ruled in favor of the City of Los Angeles citing that the municipal code "does not violate the Eight Amendment because it penalizes conduct, not status" affirming Bratton's position.[86]

The ruling of the district court dealt a devastating blow to the residents of Skid Row. They were now legally without constitutional protections, subject to police bias, and were to be in motion at all times. This meant that homeless persons were not allowed to rest or utilize tents nor sleeping bags as housing; stability among the homeless became illegal, not because a crime was committed but because the status of homeless was considered "aberrant" to society and deprived white business owners of their first civil right to feel safe as they placed profits before people. As this was taking place, Skid Row's geography and its residents became further criminalized and a site of commodification for the city's coffers. Additionally, the *Los Angeles Times* published a report which found that "local hospitals and law enforcement agencies from nearby suburban areas [had] been found 'dumping' homeless individuals in Skid Row upon their release."[87] These same individuals were fined and jailed, becoming both the collateral of Los Angeles' criminal economy[88] and the means by which Los Angeles' more affluent and white

[84] *Jones v. City of Los Angeles*, 5.
[85] Ibid; the compliant was also originally filed claiming violation of 42 U.S.C § 1983, but was later abandoned in favor of 14th amendment violations.
[86] Ibid.
[87] Ibid, 2.; also see Cara Mia DiMassa and Richard Winton, "Dumping of Homeless Suspected Downtown," *Los Angeles Times*, September 25, 2005. http://articles.latimes.com/2005/sep/23/local/me-dumping23.
[88] By criminal economy I mean the monetary funds that are gained by criminalization and/or incarceration of a particular populous. This is not limited to homeless persons, and can be applied to any population which secures an economy for an entity via criminalization. In example incarcerated individuals secure an economy for Starbucks, AT&T, Bank of America, McDonalds, etc. (see "Boycott Companies That Use Prison Labor https://www.buycott.com/campaign/companies/504/boycott-companies-that-use-prison-labour).

residents were guaranteed their 'first civil right.' By criminalizing the status of homelessness the affluent were able to establish their rights to profits and property due to their owning a business in the downtown area. With business owners using their businesses as a right bearing apparatus, not only were they able to secure their right to safety and claim their preferred location in downtown, but they also, in part, determined where the homeless could and could not go, permitting white downtown business owners to act in concert with Chief Bratton and the State to delimit the mobility of black bodies. The delimitation of black bodies in downtown Los Angeles was tantamount to soldiers who are prisoners of war. Not only were the homeless confined to a defined space but they were also to be in motion at all times thereby legalizing sleep deprivation—a violation of the Geneva Conventions. Regarding sleep deprivation, a group of leading health professionals, Gerald P. Koocher former president of the American Psychological Association among them, found that "sleep deprivation, induced hypothermia, stress positions, shaking, sensory deprivation and overload…can have a devastating impact on the victim's physical and mental health. They cannot be characterized as anything but torture and cruel, inhuman, and degrading treatment."[89] Interestingly, in 1997 the 105th Congress of the United States in its first session made violations of the Geneva Conventions a felony if the violation was committed against or by an American.[90] No Los Angeles official has ever been charged or convicted as a result of adopting or implementing LAMC 41.18(d).

[89] "PHR and Seven Leading Health Professionals Call for Prohibition of Abusive CIA Interrogation Tactics in Detainee Treatment and Trial Bill; Congress Must Not Cede Interpretation of Geneva Conventions to President," *Physicians for Humans Rights*, September 22, 2006. Accessed March 1, 2016, http://physiciansforhumanrights.org/press/press-releases/news-2006-09-22.html?referrer=https://www.google.com/.

[90] U.S. Congress, Committee of the Judiciary, *Expanded War Crimes Act of 1997: Report (to accompany H.R. 1348)*, 105th Cong., 1st sess., 1997, H. Rep 105-204, 1-12, https://www.congress.gov/105/crpt/hrpt204/CRPT-105hrpt204.pdf.

Two more years passed before Jones and Vinson's appeal would be heard in the Ninth Circuit of the United States Court of Appeals. The court's opinion found that LAPD's behavior deprived the "Appellants' personal liberty…property, and cause [the Appellants] to suffer shame and stigma."[91] Moreover, the court also found that the incongruence between available lodging and residents would cause the criminalized *behavior* to persist, and would also cause "direct and irreparable injury from enforcement of section 41.18(d)."[92] Although the Court of Appeals reversed the summary judgment of the lower court and granted judgement to the Skid Row residents, the court's ruling did more harm than good—ultimately being a contributing factor in Trishawn Carey's encounter with the Los Angeles Police Department.

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The Court of Appeals' ruling seemingly signaled relief for the residents of Skid Row. Indeed the opinion of the court read, in part, "the Eighth Amendment prohibits the City from punishing involuntary sitting, lying, or sleeping on public sidewalks that is an unavoidable consequence of being human and homeless without shelter in the City of Los Angeles."[93] In objective reasoning by law the court sided with Bratton that homelessness was a behavior; yet in its subjective rationale the court spoke to homelessness as a status. Despite recognizing the criminalization of homelessness the court provided a loophole for the city:

> We do not suggest that Los Angeles adopt any particular social policy, plan, or law to care for the homeless. We do not desire to encroach on the legislative and executive functions reserved to the City Council and the Mayor…the city is free to address in any way that it sees fit, consistent with the constitutional principles we have articulated…all we hold is that…the city may not enforce section 41.18(d) at all times and places throughout the City against homeless individuals…appellants are entitled to a narrowly

[91] Ibid, 7.
[92] Ibid.
[93] Ibid, 16.

> tailored injunction against the City's enforcement of section 41.18(d) at certain times and/or places.[94]

The constitutional principal which the court laid out as a guideline for Los Angeles was that the Eight Amendment allowed the city to cite, jail, and prosecute so long as the *conduct* being criminalized was avoidable—providing an escape for the blatant punishment of status. In other words, the constitutional guideline now permitted police: (1) a greater measure of surveillance to ensure adherence to LAMC 41.18(d), (2) to criminalize behaviors associated with LAMC 41.18(d), as well as criminalize other behaviors which were perceived to violate other parts of § 41, which banned behaviors by those in public passage ways that "annoy[s], or molest any pedestrian thereon or so as to obstruct or unreasonably interfere with free passage," and (3) a means by which to legally conceal their bias toward status, so long as they could justify their assault of an individual in a behavior that was considered "unreasonable"—of course behavior which was considered "unreasonable" was solely within the subjective purview of any given police officer.[95]

The court ruling also permitted a legal means of imposing a 'lights out' time in the city of Los Angeles, in particular Skid Row. Hence, in his September 26, 2006 letter to City Council, City Attorney Delgadillo wrote, "we believe that non-nighttime enforcement, between the hours of 6:00 a.m. and 9:00 p.m., is now permissible within the fifty-block area used to define Skid Row in *Jones*."[96] Utilizing a 'lights out' nighttime non-enforcement approach to LAMC 41.18(d) between the hours of 9:00 p.m. and 6:00 a.m. had yet another peculiar impact in the City of Los Angeles, indeed Skid Row: it mandated that persons residing in public passageways cease

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[94] Ibid.
[95] For more on implicit bias see, Jerry Kang, et all, "Implicit Bias in the Courtroom," *UCLA Law Review* 59 (2012): 1124-1186. http://faculty.washington.edu/agg/pdf/Kang&al.ImplicitBias.UCLALawRev.2012.pdf.
[96] Delgadillo

movement at 9:00 p.m., thereby criminalizing movement and demanding by way of law that residents of Skid Row perform the impossible: to not move—even for the purposes of naturally occurring functions of the body. Understanding the implications of the ruling, Police Chief William Bratton stated that LAMC 41.18(d) was "a very effective tool in securing the downtown area."[97] Exactly who was being "secured" in downtown Los Angeles and how they would be secured was primarily placed in Chief Bratton's hands.

The *Jones* decision permitted the City of Los Angeles and Chief Bratton to act with virtual impunity regarding those in public passageways so long as the city provided a time when the homeless could rest (interestingly a minimum requirement of rest time was not set by the court). Given such broad authority by the court, the City of Los Angeles initiated the Safer Cities Initiative (SCI) in 2005, the same year as the *Jones* court ruling. The initiative was guided by Police Chief William Bratton. SCI used as its framework broken window theory, which argues "public offenses signal that neighborhood residents either do not care to maintain their neighborhood or do not have the resources to do so," accordingly, "if a window is broken and left unrepaired in a neighborhood, it is a sign that no one cares about the neighborhood enough to repair it" thus inviting more crime to the area while permitting existing crime in the area to persist.[98] The program in its inception was scheduled to last just over fifteen months to mitigate crime and victimization in and around the Skid Row area. However, SCI inverted the perspective of who were criminals and victims as "hostilities between advocates for the homeless and the business community flared as Los Angeles moved ahead with plans to revitalize downtown."[99]

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[97] Sarah Gerry, "Jones v. City of Los Angeles: A Moral Response to One City's Attempt to Criminalize, rather than Confront its Homeless Crisis," *Harvard Civil Rights-Civil Liberties Law Review* 42 (2007), 240. Accessed February 20, 2016, http://www.law.harvard.edu/students/orgs/crcl/vol42_1/gerry.pdf.

[98] "Program Profile: Safer Cities Initiative, National Institute of Justice" (U.S. Department of Justice: Office of Justice Programs). Accessed March 1, 2016, https://www.crimesolutions.gov/ProgramDetails.aspx?ID=182.

[99] Gerry, 241.

More directly stated, businesses of downtown were positioned as victims being kept from making a profit, while residents of Skid Row, who are primarily Black, were seen as criminals preventing access to and hindering the production of Los Angeles' downtown economy.

As a result of its beginning 'success,' on September 17, 2006 the Safer Cities Initiative transformed from its initial small scale pilot to being applied widely in downtown Los Angeles.[100] An additional fifty officers were placed in the downtown area where they "broke up homeless encampments, issued citations, and made arrests."[101] Moreover, these fifty full-time officers were joined by officers placed on foot patrol, a mobile command center near Skid Row, undercover vice teams, and a "special undercover squad" focused on robberies.[102] This heightened policing resulted in the homes of Skid Row residents being declared a "public nuisance", portable restrooms being removed, sex workers and drug addicts becoming heavily criminalized, and behaviors interpreted as offense by law enforcement resulting in arrest.[103] SCI dovetailed with the decision in *Jones* to enforce twenty-four policing and the legal delimitation of bodies in the area encompassing "Third Street to the north, Seventh Street to the south, Alameda Street to the east, and Main Street to the west."[104] This legally defined area became a public carceral sphere comprised of fifty city blocks and represented the new realm of incarceration and justice in the State of California.

The Safer Cities Initiative was more than about crime prevention and securing the downtown area. SCI also monetized the bodies of those who had become criminalized. In his report "Policing Our Way Out of Homelessness?" Gary Blasi found that:

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[100] *Program Profile: Safer Cities Initiative*.
[101] Ibid.
[102] Ibid.
[103] Ibid.
[104] *Jones v. City of Los Angeles*, 2.

> George Kelling, Professor of Criminal Justice at Rutgers and a Senior Fellow at the conservative Manhattan Institute, was author with [James Q.] Wilson of the original "broken windows" article. He was also a member of Chief Bratton's transition team and put under contract with the City for an initial $20,000 for a three month period beginning November 1, 2002, one month after Chief Bratton assumed command. Over the next four years, through June 30, 2006, Kelling and his Hanover Justice Group, LLC, received contracts totaling $458,000 for consulting services related to the Safer Cities Initiative. Shortly after the commencement of the Safer Cities Initiative in Skid Row, the Mayor asked for another $108,000 for Kelling's group, bringing the total to $556,000.[105]

Kelling's profits from SCI via the new realm of incarceration in Los Angeles mirrored the behavior of for profit privatized prisons in the State of California,[106] indeed across the United States, of which the American Civil Liberties Union asserts many "supporters of private prisons tout the idea that governments can save money through privatization…in fact in some instances [the privatizing of prisons] cost more than governmental ones."[107] The ACLU also found that "the private prisons have also been linked to numerous cases of violence and atrocious conditions."[108]

Indeed in its first ten months SCI resulted in 10,342 citations, of which nearly 90% were written by the additional fifty officers required by the Safer Cities Initiative.[109] Many of the citations were given were for signal violations (walking on 'don't walk' signal, etc), jaywalking, or walking in the roadway.[110] Beyond being issued citations that they could not pay, many within Skid Row were herded into Los Angeles' jails, as SCI resulted in approximately 750 arrests per month—most of these arrests were for non-serious/non-violent 'crimes.'[111] Moreover, those

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[105] Gary Blasi, *Policing Our Way Out of Homelessness? The First Year of the Safer Cities Initiative on Skid Row*, (Los Angeles: UCLA School of Law Fact Investigation Clinic, 2007), 25. Accessed May 25, 2016, http://www.ced.berkeley.edu/downloads/pubs/faculty/wolch_2007_report-card-policing-homelessness.pdf.
[106] See Paige St. John, "California adds another private prison," *Los Angeles Times*, April 2, 2014. http://www.latimes.com/local/political/la-me-ff-california-adds-another-private-prison-20140402-story.html.
[107] "Private Prisons," *American Civil Liberties Union*. Accessed May 25, 2016, https://www.aclu.org/issues/mass-incarceration/privatization-criminal-justice/private-prisons.
[108] Ibid.
[109] Blasi, 29.
[110] Ibid.
[111] Ibid, 32.

arrested in drug sting operations, which were frequent in the Skid Row area, were made ineligible for treatment programs by way of California's Proposition 36, which denied rehabilitation to those who were convicted of either selling or possessing narcotics.[112]

As the Safer Cities Initiative was nearing its end, as the program was only approved to last 68 weeks, Chief Bratton constructed a new means by which to make the decision in *Jones* retain its power and reach as it did when paired with SCI. In March of 2008 Chief Bratton announced Special Order 11 (SO 11). The order was publicized as a means to combat both foreign and domestic terrorism and, "authorize[d] LAPD officers to gather street-level intelligence and information based entirely on observed behavior."[113] Accordingly, SO 11 granted officers of LAPD the ability to criminalize and report virtually anyone without question: "A Suspicious Activity Report (SAR) is a report used to document any reported or observed activity, or any criminal act or attempted criminal act, which an officer believes may reveal a nexus to foreign or domestic terrorism. The information reported in a SAR may be the result of observations or investigations by police officers, or may be reported to them by private parties."[114]

SO 11 had the effect of further criminalizing those already under surveillance—they were now potential terrorists and as such their every move was observed as the larger war on terror in the United States was also being carried out. Among the inexhaustible list of suspicious behavior that triggered police was: engaging in pre-operational surveillance (defined as using binoculars, taking pictures, and drawing diagrams), abandoning suspicious packages or items (defined to be

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[112] Ibid, 36.

[113] Larry Aubry, "New LAPD Order Still Criminalizes Innocents," *Los Angeles Sentinel*, March 22, 2012. Accessed March 23, 2016, https://lasentinel.net/new-lapd-order-still-criminalizes-innocents.html.

[114] *Findings and Recommendations of the Suspicious Activity Report (SAR) Support and Implementation Project* (New York: American Civil Liberties Union), 36. Accessed March 28, 2016, https://aclu-wa.org/sites/default/files/attachments/LAPD%20SAR%20Program.pdf.

suitcases, backpacks, bags, boxes, etc—which had significant implications for the homeless), and stockpiling unexplained large amounts of currency (of course what was considered 'large amounts' varied depending on one's position in society). This placed Los Angeles residents who were Black, Chicana/o, Latino/a, homeless, and low income under particular scrutiny. SO 11 was presented as a preventative policing measure—stopping crimes before they happen—however it had the impact of presuming guilt, forcing an individual to impossibly prove their innocence for a crime which had not taken place. Also intertwined in the implementation of SO 11 was the radical redefinition of persons. Those under surveillance were no longer considered citizens of the United States who were entitled to rights and constitutional protections. Instead their personhood was radically redefined, positioning them beyond the bounds of the State, and as such, it became cruel and unusual punishment for the State not to surveil these persons for the sake of white safety—resulting in the policing of Black and Brown futurity.

Indeed between 2008 and 2012 SO 11 caused between 3697 and 4968 reports to be filed and the persons affiliated with the reports to be framed as probable terrorists.[115] Most of the suspicious activity reports filed were for abandoned items and testing existing security measures (defined as breaching fencing, doors, causing false alarms, etc.).[116] For many Angelenos SO 11 did not occur in a vacuum, rather, the millennial order crafted by Chief Bratton and continued by present LAPD Chief Charles Beck as Special Order 1, was emblematic of LAPD's Red Squad and the city's prominent role in COINTELPRO.[117] As many residents of Los Angeles were

[115] Stop LAPD Spying Coalition, A People's Audit of the Los Angeles Police Department's Special Order 1 (Los Angeles: Stop LAPD Spying Coalition, 2013), 12. Accessed March 28, 2016, http://stoplapdspying.org/wp-content/uploads/2013/03/PEOPLES-AUDIT-FINAL.pdf. (the discrepancy in numbers reflect the number of reports LAPD reported, 3697, the number of SARs stated as filed by a Public Records Act, 4325, and another document provided by the California Public Records Act which placed the number at 4968).
[116] Ibid.
[117] Aubry

contesting the Safer Cities Initiative and Special Order 11 (later Special Order 1) the City of Los Angeles positioned itself to aggressively employ another tool which the city first tested in the 1980s.

Gang Injunctions hit the City

Although LAMC 41.18(d) was adopted in 1968, in 1987 another technology of law colluded with 41.18(d) causing both racialized and gendered persons to be both heavily policed and placed under constant surveillance. This legal technology guaranteed Nixon's "First Civil Right" to Los Angeles' white residents which depended on, as scholar Sarah Haley found in her work regarding nineteenth century incarceration in the South, an appeal to white supremacy which reinforced the position of other.[118] As a result, the City of Los Angeles in 1987 filed suit against a Cadillac-Corning (a predominantly Black residential neighborhood of Los Angeles) group of youngsters identified as the Playboy Gangster Crips. In court, police officers described youth who were in possession of currency and goods they presumably should not have owned: "can you imagine meeting 15 year old kids who have $5,000 cash in their back pocket? Or meeting a high school junior who has the keys to a brand new Mercedes?"[119] Within the context of Southern California—home to Santa Monica, Pacific Palisades, Westwood, Brentwood, and Hollywood—the answer to this question could easily be yes. However, the youth that police were speaking of were twice stricken by race and geography—those who lived in Cadillac-Corning should only be non-white and drive non-luxury vehicles. Anything other than this exposed a resident of Cadillac-Corning to suspicion and surveillance.

[118] Sarah Haley, *No Mercy Here: Gender, Punishment, and the Making of Jim Crow Modernity* (Chapel Hill: University of North Carolina Press, 2016), 20.
[119] Muniz, 33.

As police officers completed their testimony, arguing that jailing and probation did not work in Cadillac-Corning, the officers requested a more potent legal tool to force the youth of Cadillac-Corning to comply with pre-determined racial and gendered expectations for Black residents of Los Angeles. Accordingly, the court issued Los Angeles' first gang injunction. The advent of the gang injunction made waves throughout Southern California, permitting the region to become a model for gang injunctions and related legislation for the rest of the United States.[120] According to sociologist Ana Muniz, "as of January 2013 there were 46 gang injunctions targeting over 80 neighborhoods in the City of Los Angeles alone," making injunctions to be most prevalent in Southern California.[121] Gang injunctions, as described by Muniz are, "civil lawsuits against neighborhoods based on the claim that gang behavior is a nuisance to nongang-involved residents," and are also able to "restrict the movements of those labeled gang members."[122] Los Angeles used gang injunctions for two purposes: (1) to legally stigmatize, confine, and hyper-surveille well defined regions, and (2) to delimit particular persons from participating in certain legal behaviors—among the behaviors are: being in groups of two or more, standing for more than five minutes in public, wearing particular attire and colors, and making certain gestures.[123]

Interestingly, at the time the gang injunction was approved by the court for the Cadillac-Corning area, the neighborhood did not lead Los Angeles in murders or assaults, it was however, as Muniz uncovered in her work, close "to the boundaries of white, middle- and upper-class areas."[124] Restricting and surveilling movement in Cadillac-Corning meant not only that white

[120] Ibid, 35.
[121] Ibid, 34.
[122] Ibid.
[123] Ibid.
[124] Ibid, 35.

citizens could enjoy their neighborhood and roam freely without surveillance (as police officers were primarily concerned with Black Cadillac-Corning), but also that white people's first civil right which Nixon advocated for—the right to be safe, free from fear, and domestic violence (terrorism)—was guaranteed by the restriction of Black citizens. In her work *Talking to Strangers*, Danielle S. Allen opines "the hard truth of democracy is that some citizens are always giving things up for others…people who benefit less than others from particular political decisions…preserve the stability of political institutions. Their sacrifice makes collective democratic action possible."[125] Properly viewed, gang injunctions did more than restrict, they were superimposed political and judicial sacrifices for white freedom in California so that white people could enjoy public spaces without being exposed to Black citizens. Stated directly, gang injunctions are the progeny of segregation, legally disguising the hatred and moral crisis of white people under the moniker of safety and crime prevention. The injunctions also served as a mechanism by which white residential neighborhoods and businesses could keep their communities and clientele just that—white. Moreover, California's new legal technology was a tool by which police were able to justify hyper-surveilling and delimiting an entire race of people by stigmatizing the space they inhabited or by identifying persons they presumed to be affiliated with gangs. Indeed, Muniz asserts, "through gang-association charges, entire families, groups of friends, and neighborhoods become entangled in gang injunction restrictions or torn apart by prohibitions on socializing."[126] Moreover, the information police officers gather via Special Order 11 and gang injunctions is entered into California's state-wide Gang Database.

[125] Danielle S. Allen, *Talking to Strangers: Anxieties of Citizenship since Brown v. Board of Education*, (Chicago: The University of Chicago, 2004), 28-29.
[126] Muniz, 38.

From 1987 to present, gang injunctions aggressively multiplied, being approved in areas primarily African American, Latino/a, Chicana/o, and poor. Among the many areas gang injunctions were ordered for is Skid Row. As residents of Skid Row were already under the watchful eye of LAMC 41.18(d), Special Order 11, and the Safer Cities Initiative as homeless persons, they were soon to become criminalized and presumed gang members—as their proximity to gang activity linked Skid Row residents with it. In 2010 Los Angeles City Attorney Carmen Trutanich announced the Century City Recovery Zone. The recovery zone effort was in fact a gang injunction. The injunction City Attorney Trutanich announced was hybrid in nature: it named eighty individuals and the Grape Street Crips, and the injunction also carceralized a new section of the city: Third Street on the north, Ninth Street on the south, Brodway on the west, and Central to the east.[127] Trutanich, flanked by LAPD Chief Charlie Beck, County Sheriff Lee Baca, and Anthony Bales of the Union Rescue Mission, asserted that the gang injunction was for the exclusive purposes of targeting crime in the area, however, studies have proven that gang injunctions only reduce crime for little over a year, and in many cases result in a spike in crime.[128] Trutanich's announcement did not come without resistance. Skid Row residents, along with their allies, chanted loudly "housing not jails."[129] What is clear from this declaration is that Skid Row residents understood that they soon would be living in a new public carceral space that would further compound their problems and increase the transfers of Skid Row residents from the public carceral sphere of Downtown Los Angeles to county or State carceral facilities. By

[127] Brian Watt, "DA, City Attorney Announce Skid Row Gang Injunction," *Southern California Public Radio*, April 7, 2010. Accessed February 24, 2016, http://www.scpr.org/news/2010/04/07/13870/da-city-attorney-announce-gang-injunction/.
[128] Ibid.; also see: Beth Caldwell, Criminalizing Day-to-Day Life: A Socio-legal Critique of Gang Injunctions, *American Journal of Criminal Law,* Vol 37:3, and Judith A. Greene and Patricia Allard, The More Things Change, the More they Stay the Same, *Justice Strategies*, 2013. http://www.justicestrategies.org/publications/2013/more-things-change-more-they-stay-same.
[129] Watt.

way of their chant for "housing not jails," Skid Row residents were also asserting their right to a home and privacy as they understood themselves to be part of the public, and as such was entitled to use and claim public space for themselves.[130]

This is the space in which Trishawn Cardessa Carey lived in and encountered the Los Angeles Police Department on March 1, 2015. The officers which serviced the incident within the carcerated space of Skid Row on March 1 had over 37 years of combined policing experience.[131] Undoubtedly, the officers knew what the Board of Police Commissioners was likely to forgive should the officers encounter a "life-threating" situation. In reviewing the events of March 1, the Board of Police Commissioners in its incident report found that "subject 2" confronted officers shouting "take me to jail now. Take me to jail now," and that officer B, who had a little over a year experience on the force, instructed Subject 2 to "move back."[132] However, there is a problem with the Commissioner's findings: in a pedestrian video which had sound Subject 2 is not speaking, nor did "officer B" inform Subject 2 to move back. What did happen was that an officer tripped Subject 2 as Subject 2 was walking by the incident. Perhaps the Commissioner's findings should have been anticipated as Subject 2 was not listed as an involved party on the report of the incident. Rather, subject 2 is a marginal actor in the incident summary. Subject 2 is not gendered. Subject 2 is not given the recognition which the six officers and Charly Leundeu Keunang are given. There was space on the Commissioner's report to list Subject 2 as an involved party, and further, as one that was either "wounded" or "non-hit." The

[130] The opinion in *Jones v. Los Angeles* also supported this position as there were more homeless persons than available places of lodging. As such the opinion supported the claim that those without homes should be able to claim space without harassment.
[131] Los Angeles Board of Police Commissioners, Abriged Summary of Catergorical Use of Force Incident and Findings by the Los Angeles Police Commissioners: Officer-Involved Shooting-018-15. (Los Angeles: LAPD Categorical Use of Force Archives). http://www.lapdonline.org/categorical_use_of_force.
[132] Ibid.

Commissioners declined to do either. As a result, Subject 2's trauma went unrecognized and was rendered non-cognizable to the State by way of white male police officers and the death of a Black man. Subject 2's full story on public record is articulated by white men in the context of Black death: "Subject 2 was told to go away six times, Subject 2 stood over Sergeant B positioned to swing a dropped baton, Subject 2 was arrested."[133] None of these things happened except the arrest. Subject 2 in the Commissioner's report is Trishawn Cardessa Carey.

What took place on South San Pedro Street in downtown Los Angeles exposes a paradox within the public carceral sphere and among police officers who patrol its spaces. On the morning of March 1 numerous cameras were present: the overhead security camera, the cell phone video of Anthony Blackburn, and several body cameras on police officers; yet only two have been made public: the overhead security camera and Mr. Blackburn's. The commissioner's report failed to reference which videos they reviewed to reach their decision; however, what the commissioners did make clear was that they would not release footage from the body cameras of the officers who were involved. This suggest that the body cameras police officers wear in Los Angeles, indeed body cameras police officers wear across the United States, further comprises the lives of those in the public carceral sphere instead of protecting them—as the selective recognition of recordings come to constitute a technology of police power. As a result, the use of body cameras protect the interests of the State, as opposed to ensuring proper ethical behavior and that the rights of citizens are recognized. In the era of Black Lives Matter and seemingly escalating uncontrollable detrimental police behavior, State manipulation of body cameras are emblematic of the corrupt moral psychology of law in the twenty-first century.

[133] Ibid, 3-5

Los Angeles' many legal technologies allows permissible harm to those who live within the spaces of a public carceral sphere. These persons are denied their personhood and are redefined in law via such measures as LAMC 41.18(d), SO 11, the Safer City Initiative, gang injunctions and the like. As these persons are targeted by way of status it becomes impossible for them to not always be in opposition to the State because they are always outside of legality. As a result, they are often exposed to war like conditions of torture. This mode of State-imposed living ensures the quality of life for Los Angeles' affluent white citizens and downtown business owners as they are able to present their whiteness or businesses as an instrument whereby their first civil right may be acknowledged.

What is known for sure about March 1 was that Charly 'Africa' Keunang was publicly executed by the State. Although Keunang's death was caused by the State, this must not be thought of as the ultimate end of the State, law, and carcerality. At the moment of his death Keunang ceases to be a continuing subject whereby State violence and carcerality may be mapped. Accordingly, focusing on Trishawn Carey is important, as she is the surviving non-State affiliated party of the March 1 incident. Carey's encounter with the State on that hot Sunday morning, indeed her life in Skid Row, compels us to reconceptualize the boundaries and injuries of carcerality because she is living—her *living* being explicitly testifies of the choreography of law and the ongoing and regenerating injuries of life in a public carceral sphere.

The lives of Trishawn Carey, Patricia Vinson, and Janet Jones map the ways in which law continuously presents Black women as objects—denying them access to rights or affirming State recognition. Their criminality was made possible by way of a civil lawsuit that when executed denied them the rights and protections of criminal law, allowing police officers access to their bodies with impunity. Immediate death has been misinterpreted as *the* end of State

violence. The centering of the deaths of Black men at the hands of white police, elides the continuing State violence Black women are exposed to and the context in which that violence is experienced. The public carceral sphere is the place where the withdrawal of life sustaining infrastructures and carcerality meet. Those who are best positioned to map the impact, causes, and extent of the public carceral sphere, indeed carcerality as a whole, are Black women.

Carey's altercation with LAPD on that fateful Sunday morning ended like many other residents of Skid Row: she was transferred (arrested) from the public carceral sphere of Skid Row to the jail of Los Angeles County. Carey would spend the total of a year in county jail with her needs going unrecognized by the State. Charly Keunang in the Commissioner's report was recognized as "mentally ill" and was killed. Carey, who struggled with the same, was living and jailed; her body seen as an instrument of assault. This experience of peculiar recognition viewed against Los Angeles' legal history and its resulting construction of public carceral spheres across the city compels this work to examine constitutional rights that are prevented by way of a public carceral sphere and its guards (the LAPD), as well as California's carceral network.

Chapter 2
Time Served:
Recognition, Rights, and the (Co)Operation of Carceral Spheres

As Judge Kim McLane Wardlaw rendered the 2006 opinion in *Jones v. Los Angeles* she stated a peculiar fact: "homeless individuals are unlikely to subject themselves to further jail time and a trial when they can plead guilty in return for a sentence of time served."[134] This observation by Judge Wardlaw mirrored the holding in *Jones v. Los Angeles*: the City of Los Angeles could not enforce 41.18(d) "at all time and places" against homeless individuals for involuntary "sitting, lying, and sleeping in public"—as the Eighth Amendment was interpreted by the court to prohibit the city from penalizing anyone for involuntary behavior that was a result of an "unavoidable consequence of being human and homeless."[135] The ruling, although limiting the use of 41.18(d), still permitted the City of Los Angeles to police the behavior of those in Skid Row (as well as other areas in the city where homeless persons might be located) allowing the city to impose strict times of mobility and immobility. Judge Wardlaw was undoubtedly aware of the multi-legislative approach to place specific regions of Los Angeles under hyper State surveillance (via Los Angeles Municipal Code 41.18(d), the Safer Cities Initiative, Special Order 11, and gang injunctions) causing the defined areas to be closely policed twenty-four hours a day when she stated "homeless individuals are unlikely to subject themselves to *further* jail time and a trial when they can plead guilty in return for a sentence of time served."[136] For Judge Wardlaw containment in Twin Towers Correctional Facility, Los Angeles County Detention, or any Los Angeles jail was merely a continuation of the condition of incarceration under which those in Skid Row and other areas of Los Angeles were already living and simultaneously serving time.

[134] *Jones v. City of Los Angeles*, 10.
[135] Ibid, 16.
[136] *Jones v. City of Los Angeles*, 10.

After giving consideration to the collective claim of the Skid Row residents due to LAMC 41.18(d), Judge Wardlaw offered the following: "law enforcement actions restrict Appellants' personal liberty, deprive them of property, and cause them to suffer shame and stigma."[137] Although the court ultimately placed the decision of what to do with Skid Row residents in the hands of Los Angeles officials, Judge Wardlaw's opinion illuminated two critical State behaviors that take place in a public carceral sphere, as well as a key aspect of California's many carceral sites: (1) occupants are both publicly shamed and stigmatized, (2) their rights are foreclosed and denied, and (3) carceral spheres are connected by way of a symbiotic relationship constituted through law, working in tandem to keep those who are shamed and stigmatized within specific locales perpetually incarcerated and without rights. Judge Wardlaw's position, that those subjected to 41.18(d) in Skid Row were serving time while being deprived of property and limited bodily mobilization, also finds resonance in Dylan Rodriguez's and Ruth Gilmore's argument that carceral spaces are driven by dispossession, immobilization, bodily disintegration, and domination—all experiences which 41.18(d) allowed to legally take place in Skid Row.[138]

Although Judge Wardlaw's finding identified conditions and injuries consistent with incarceration, the court's judgement failed to remedy the State imposed injustices it recognized—particularly that of stigma and shame. After asserting that high level officials, particularly judges, are products of an elite white background, legal scholar Charles Lawrence argues "stigmatizing actions harm the individual in two ways: they inflict psychological injuries by assaulting a person's self-respect and human dignity and they brand the individual with a sign that signals her inferior status to others and designates her as an outcast."[139] The signals that

[137] Ibid, 7.
[138] See "Introduction: 'It's Just One Woman': Trishawn's Story."
[139] Charles R. Lawrence III, "The Id, The Ego, and Equal Protection: Reckoning with Unconscious Racism," *Stanford Law Review* 39, no. 2 (1987), 351.

Lawrence reference triggers the societal experience of misrecognition which is particularly pervasive and painful for Black women. Indeed when Trishawn Carey was wheel-chaired into court, represented by way of an attorney who took her case pro bono, the judge inquired as to what she was doing with the monthly financial assistance she received from the government.[140] Although Carey's case had nothing to do with suspicion of a financial crime, intersecting modes of power—race, gender, class, and mental health discrimination—which are informed by a larger patriarchal White supremacist structure—demanded that she give an account. Before the judge and in purview of the law, Carey's body prevented the presumption of innocence, instead her body imposed guilt, governmental dependency, and criminality.[141] Stated differently, Carey was assessed, as Kimberle Crenshaw found in her work regarding Black women and anti-discrimination law, along a single-axis framework: white supremacy. Concerning discrimination and Black women Crenshaw asserts that "the dominance of the single-axis framework…not only marginalizes Black women, but simultaneously privileges the subjectivity of white men;" she further opines that within in a single-axis analysis "Black women are protected only to the extent that their experiences coincide with those of either of the two groups" (white and Black men).[142] As a result, Carey, in concert with many other Skid Row residents, was misrecognized through State-imposed shame and stigma: Carey was impossibly a victim; she was a lawless entity who had not only assaulted a police officer, but was suspected of misusing government funds. For Carey, living in the carceral space of Skid Row, being transferred to confined jailing, and being

[140] Skid Row Folk, "We Saw Waiting Nearly All Day For Trishawn," accessed March 25, 2016. http://www.skidrowfolk.com/post/124901072724/we-sat-waiting-nearly-all-day-for-trishawns.
[141] See "Mammies, Matriarchs, and Other Controlling Images," in Patricia Hill Collins, *Black Feminist Thought: Knowledge, consciousness, and the politics of empowerment* (New York: Routledge, 2000).
[142] Kimberle Crenshaw, "A Black Feminist Critique of Antidiscrimination Law and Politics," *The Politics of Law: A Progressive Critique*, ed. David Kairys (New York: Basic Books, 1998), 358.

made subject to invasive and out of scope questioning permitted the process of law itself to become punishment.

Judge Wardlaw's opinion also exposes another problem: the rights of those inhabiting Skid Row were restricted based on geographical location and the status of the persons living in the area. In a word, external traits were used to grant in part or wholly deny one's rights. Thus the experience of Carey and Skid Row residents, as well as others who reside within a public carceral sphere, present a challenge to liberalism and natural rights: what characteristic(s) deem a space or an individual to be right bearing? When closely scrutinized Carey's narrative reveals a hard truth for a millennial United States that is over three hundred years removed from Lockean philosophy: all rights are derived from social recognition and are not natural as has been theorized. If one takes the experience of women, blackness, and the concept of the public carceral sphere seriously, they are confronted with the impossibility of natural rights and are forced to rethink rights discourse and its societal implications. Philosopher Derrick Darby advances, "to establish something's status as a rightholder is to establish that we should think seriously about how we should or should not act toward it."[143] Darby's assertion implies that rights are firstly established by way of a recognizable trait which guarantees the conferral of rights; but what of those who lack the necessary recognizable trait? If Darby's statement is inverted (in terms of the Subject) we get the following: to establish something's status as a non-right holder is to establish that we should not think seriously about how we act toward it. For Black women, historically, the position as a non-right holder has been forced upon them as they live with the double jeopardy of race and gender; the conferring of rights upon others becomes, as Patricia Williams argues, "symbolic of all the denied aspects of their humanity," thereby

[143] Derrick Darby, *Race, Rights, and Recognition* (Cambridge: Cambridge University Press, 2009), 4.

rights come to "imply a respect that places one in the referential range of self and others, that elevates one's status from human body to social being."[144] Moreover, in his work, *Freedom With Violence*, Chandan Reddy advances "spheres of justice and knowledge both reproduce racial difference and invisibility," he further states, "in the case of racial disparity this has meant that the state addresses racism through the affirmation and protection of individual rights, while using a juridical rights-bearing subject as a means of silencing all alternative discourses and systemic accounts of antiracism by projecting them as racist."[145]Interestingly, in Los Angeles' establishing of LAMC 41.18(d), the Safer Cities Initiative, Special Order 11, and gang injunctions city officials (as well as California voters) intentionally determined how those within the crosshairs of these legal technologies should be recognized and treated: as criminals, gang members, terrorists, and non-right holders. Being treated as such, not only were the rights of persons located within an identified public carceral sphere of California, indeed Los Angeles, prevented, but, regarding the Skid Row populous, several thousand people were now perpetual transgressors of the State—as they were criminalized and incarcerated through legal measures. Simultaneously, California's white citizens and powerful elite (judges, police chiefs, etc) were positioned as juridical rights-bearing subjects who were then able to silence experiences of State racialized and gendered injuries via law. Los Angeles' peculiar establishing and preventing of rights suggests that we should take seriously the measures imposed upon subjects in order to disavow them of rights. Ultimately Los Angeles', certainly the State of California's, propensity to punish and prevent rights by way of external identifying markers worked to sync carceral

[144] See Frances Beale, "Double Jeopardy: To Be Black and Female," in *Words of Fire: Anthology of African-American Feminist Thought*, editor Beverly Guy-Sheftall (New York: The New Press, 1995), 146-155; Patricia J. Williams, *The Alchemy of Race and Rights* (Cambridge: Harvard University Press, 1991), 153.
[145] Chandan Reddy, *Freedom With Violence: Race, Sexuality and the US State* (Durham: Duke University Press, 2011), 144-145.

spheres in such a way that not only did locations of carcerality become linked, but they also guaranteed the rights of California's white citizens, and, perhaps most interestingly, worked to protect white feminine life in unique ways through California's anti-Black regime of violence.

The Deception of Prop 184

"Proposition 184 is overkill and residents of California will pay the price for life," warned Toni Reinis, the Executive Director of New Directions, in a October 1994 op-ed for the *Los Angeles Times*.[146] Reinis words proved to be prophetic. Proposition 184 was placed on the November 1994 ballot in California to be decided by voters. The proposition, like LAMC 41.18(d), mirrored the federal efforts of then president of the United States Bill Clinton to get tough on crime. Prop 184 was a three strikes initiative mandating enhanced sentences for repeat offenders, requiring a 10.4 year mandatory minimum sentence for a second felony conviction, and 25 years to life for the third.[147] It represented the toughest three strikes legislation in the country, revising the State's existing three strikes legislation, which was passed only months earlier. Under the existing law an individual who was convicted for a third offense would serve anywhere from 8.5 to 13.5 years of their life, depending on the crime committed, in a State prison. However, under the 1994 proposition the mandated time frames more than doubled to 37.4 years to life for the third conviction—even if the third strike was a non-violent/non-serious occurrence.[148]

The reasoning behind the 1994 proposition was to curb alleged accelerating rates of crime in the State of California, however, prop 184 was a red herring propelled in part by

[146] Tony Reinis, "Costly Impact of Prop. 184," *Los Angeles Times*, October 19, 1994. Accessed March 1, 2016, http://articles.latimes.com/1994-10-19/local/me-51968_1_prison-system-substance-abuse-los-angeles.
[147] Brian Brown and Greg Jolivette, "A Primer: Three Strikes—The Impact After More Than a Decade," (Sacramento: Legislative Analyst Office, 2005) Accessed March 20, 2016, http://www.lao.ca.gov/2005/3_strikes/3_strikes_102005.htm.
[148] Ibid.

"sensationalized media coverage, as well as increased political reaction to gang violence."[149] At the time prop 184 was placed on the ballot gang injunctions were already being used as a tool to discriminate, hyper-surveil, and delimit the rights of those who were either directly named, associated with those named, or lived in an explicitly defined area. Gang injunctions became further strengthened when the California legislature enacted the Street Terrorism Enforcement and Prevention Act (STEP) in 1988—a year after the deployment of gang injunctions. As gang injunctions worked to shape both residential and specific public locales into carceral spheres, STEP worked to delimit rights based upon recognition and secure a passage way from the public carceral sphere to county and State carceral facilities (those who were convicted of gang activity, inclusive of affiliation with an alleged gang member, were required via STEP to serve up to one year in county jail or anywhere from sixteen months to three years in State prison).[150] STEP was a necessary legal technology in the eyes of the State as it allowed carceral spheres to not only move the criminalized between spheres, but ensured that prisons would remain full for future profits and that white citizens "first civil right" would be secured. Prop 184, gang injunctions, and STEP not only reflected Bill Clinton's 1994 Violent Crime Control and Law Enforcement Act (which amended the Omnibus Act of 1968), but also found resonance in the Antiterrorism and Effective Death Penalty Act of 1996 which dramatically impacted prisoners' ability to file habeas corpus claims thereby limiting the capacity of those who are incarcerated to obtain relief from imprisonment—even if they were unlawfully incarcerated or exposed to cruel and inhumane conditions.[151]

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[149] Sara Lynn Van Hofwegen, "Unjust and Ineffective: A Critical Look at California's STEP Act," *Southern California Interdisciplinary Law Journal* no 18, vol 679 (2009), 679.
[150] Ibid, 682.
[151] See Violent Crime Control and Law Enforcement Act of 1994, H.R. 3355, 103rd Cong.; Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (1996).

STEP also allowed for a peculiar effect to take place regarding the recognition of rights. As police officers heavily patrolled public carceral spheres, as well as other undefined yet discriminated spaces, gangs and gang activity came to be understood by way of the lives Black, Chicano, and Latino males. This understanding was guided by STEP's careful definition of what a gang was: a group composed of (a) three or more individuals whose, (b) primary activity was committing crimes, and who also (c) shared a common name or identifying symbol, and (d) engaged in crimes collectively.[152] Although STEP's definition was broad, legislators were careful to exclude both hate and motorcycle groups from its definition—groups which primarily consisted of white males. Accordingly, the Department of Justice released 'accurate' reports like the National Youth Gang Survey, which found that 47% of gangs are Hispanic, 31% are African-American, and 13% white—despite competing data finding that "white youth now compose the largest group of adolescent gang members, and Caucasians are the prominent racial group for all gangs formed after 1991."[153] With groups such as the Aryan Brotherhood and the Ku Klux Klan being labeled as a hate group, not only were the homeless, Black and Brown youth, and family members identified as gang members and/or cooperative affiliates by way of their external traits, but those in white violent groups were able to receive the recognition of their right to be secure in their person and property by way of the geographical space they occupied as well as their raced-gendered identity, and were able to exercise the freedom to assemble without criminalization—as white life, the right of affiliation, and the freedom of speech was protected by not designating white groups as gangs. This careful distinction in STEP allowed Black and Brown life to be policied, destroyed, and contained in new and more violent ways at the precise moment when white groups, whose mission had been doing the very same work to destroy Black

[152] Ibid.
[153] Ibid, 682-683.

and Brown life, were designated as politically protected groups who had political rights. Differently stated, white men's rights were recognized due to their raced-gendered bodies, permitting both whiteness and maleness to become a type of property whereby rights could be claimed.[154] Black and Brown men, at the very minimum, should have been able to do the same via maleness, however, their maleness and race did not contain the ability to confer rights and thus could not grant them the same recognition—their bodies became wholly othered, ungendered, and consigned to an ambiguous inbetween, as they were incapable of being 'men.'[155] As a result, womaness, via the lives of Black and Brown women, become the means by which the full measure of State violence and delimitation of rights may be mapped.[156]

STEP and gang injunctions combined causing 'crime' to rise. Indeed Ruth Gilmore argues, "politicians of all races and ethnicities merged gang membership, drug use, and habitual criminal activity into a single social scourge, which was then used to explain everything from unruly youth to inner-city homicides to the need for more prisons to isolate wrongdoers."[157] Gilmore also found that "inner-city residents were, indeed, seeking relief from fearful disorders

[154] See Cheryl I. Harris, "Whiteness as Property," *Harvard Law Review* no. 8, vol. 106 (1993):1707-1791.
[155] 'Man' (as a social-legal identifier) in this instance is fully materialized in its ability to confer rights that are recognized by law and society. Black and Brown males inability to execute such a transaction, situates them as something other than "man"—an ambiguous undefined, unrecognized social-legal entity—as such Black and Brown men become articulated through the white imaginary as gang members, terrorists, etc whose sole purpose is to disrupt an otherwise orderly world and rob white men of their 'natural' rights.
[156] There is much history that accompanies this assertion. White women's rights were largely guaranteed by way of both White men and Whiteness. The non-recognition of Black and Brown males as men ultimately speaks to the Western White supremacist historical narrative of positioning Women of Color as 'other' and their bodies as producing a deviant and aberrant 'product,' thus Black and Brown males were not acknowledged as men, rather as anthropomorphic brutes and savages. However, Black and Brown women consistently experience(d) rape and various forms of gendered violence at the hands of White men, thereby acknowledging their gendered beingness to some degree; yet by law Black and Brown women were (it can be argued 'are', as in presently) not capable of being victims of rape. Therefore the full violation or preventing of legal protections is not best centered in the experiences of Black and Brown men, rather the women whose biological and reproductive work produced them. In her work *Laboring Women* Jennifer Morgan asserts "African women most emphatically embodied the ideological definitions of what racial slavery ultimately meant." When imprisonment is positioned as a continuation of the process of slavery, Morgan's position takes on particular significance, allowing one to conclude that the full measure of State violence cannot be understood except by the lives of Black women.
[157] Gilmore, 109.

in their communities," and that they "tended to accept the primary definitions of what crime was and was should be done about it—until direct experience of the law's unevenness raised questions."[158] In 1987, the year in which the gang injunction was crafted, 66,975 persons were imprisoned; by 2007 California's incarcerated population nearly tripled.[159] (Interestingly, these numbers do not include those in county jail or those detained within a public carceral sphere—allowing the State to hide in plain sight the full impact of gang injunctions and STEP). California then, in turn, used the new prison population, which was largely a result of human behavior made criminal, to impress upon the voters of California that violence was rising and something needed to be done. Accordingly, Proposition 184 was offered to the voters of California as a capable and sufficient remedy. The measure which proposed to strengthen California's three strikes law passed by the State legislator in March of 1994, was approved by 5,906,268 voters in November of the same year.

Surging Arrests, Booming Prison Populations, and Federal Takeover

Proposition 184 with STEP, gang injunctions, LAMC 41.18(d), the Safer Cities Initiative, and Special Order 11 worked to place Black and Brown lives in Los Angeles under siege, watching their every move resulting in the evisceration of constitutional rights—namely the First, Fourth, and Eighth Amendments—and accelerated arrests which resulted in contained imprisonment. As these constitutional rights were violated the population of those incarcerated in traditional facilities in California surged to 171,444 persons by 2007 (being primarily held in California's State prisons, conservation (fire) camps, community correctional centers, and mental health

[158] Ibid.
[159] Cynthia Smith and Cindy Wagstaff, "Historical Trends: 1987-2007," California Department of Corrections and Rehabilitation (Los Angeles: Offender Information Services Branch, 2008), 6. Accessed March 12, 2016, http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Annual/HIST2/HIST2d2007.pdf.

hospitals).[160] This figure represented an increase in new admissions from the previous year and signaled a larger problem: California's prisons were operating at 196.4% occupancy—nearly double the number they were designed for.[161]

From 1987 to 2007, the year following the full implementation of the Safer Cities Initiative, California's women's incarceration went from 4,152 to 11,416.[162] The increase in women being criminalized by aggressive State laws swelled women's facilities in California. In 2007 the California Institute for Women was at 245.2% occupancy (originally designed for 792); the California Rehabilitation Center for Women 140.6% occupancy (designed for 500); the Central California Women's Facility 192.6% occupancy (designed for 1,631); and Valley State Prison 192.7% occupancy (designed for 1,580).[163] In every instance women were being thrust into California's prisons. This boom in women's incarceration highlighted to a particular concern: a right to adequate healthcare by way of the Eighth Amendment. By the time the United States Supreme Court heard arguments for *Brown, Governor of California, et al. v. Plata et al* in 2011 the State of California had come under intense scrutiny for violating the Eighth Amendment right of those incarcerated.

In 1990 a California District Court found that "prisoners with serious mental illness do not receive minimal, adequate care."[164] The Court ruled that the State of California must develop procedures to address the concern and implement the procedures via a "special master." Eleven years after the ruling another lawsuit was filed concerning Prisoners and healthcare. In 2011,

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[160] Ibid.
[161] Ibid, 3-4.
[162] Ibid, 5.
[163] "Monthly Total Population Report Archive," California Departments of Corrections and Rehabilitation. Accessed March 12, 2016, http://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/Monthly/Monthly_Tpop1a_Archive.html.
[164] *Brown v. Plata*, 1.

twenty-one years after *Coleman v. Brown*, *Brown v. Plata* established that the State of California had not only failed to follow the order in *Coleman,* but that prison conditions had significantly deteriorated since the ruling and Prisoners with serious medical conditions were not attended to—revealing a system wide refusal of rights. What was clear, despite two court rulings in favor of those imprisoned, was that prison employees and other key California State officials had no interest in acknowledging the rights of Prisoners because they had no means by which they could establish or assert their rights. As such, the State of California had not complied with the rulings and Prisoners were found to be incarcerated in inhumane conditions: "as many as 54 prisoners may share a single toilet;" "suicidal inmates may be held for prolonged periods in telephone-booth sized cages without toilets;" "a psychiatric expert reported observing an inmate who had been held in such a cage for nearly 24 hours, standing in a pool of his own urine, unresponsive and nearly catatonic."[165]

These conditions were anything but isolated:

> A prisoner with severe abdominal pain died after a 5-week delay in referral to a specialist; a prisoner with "constant and extreme" chest pain died after an 8-hour delay in evaluation by a doctor; and a prisoner died of testicular cancer after a "failure of MDs to work up for cancer in a young man with 17 months of testicular pain…exam tables and counter tops, where prisoners with communicable diseases are treated, were not routinely disinfected."[166]

Testifying before the court regarding deaths in California's prions, Dr. Ronald Shansky, the former director of medical care for Illinois prisons, found that "extreme departures from the standard of care [was] widespread," Dr. Shansky further testified that the "proportion of possibly preventable or preventable deaths was extremely high." In conjunction with these deaths suicide in California's prison reached a fever pitch—nearly 80% of the national average.[167] These

[165] Ibid, 4-5.
[166] Ibid, 6-7;10.
[167] Ibid, 6.

suicides were also found to involve "some measure of inadequate assessment, treatment, or intervention, and were therefore most probably foreseeable and/or preventable."[168] Fifteen years after the State of California was ordered to acknowledge the rights of its Prisoners the State still had not complied, resulting in a Prisoner "needlessly [dying] every six to seven days due to constitutional deficiencies."[169] For Prisoners, incarceration in any carceral sphere of California meant slow death, and quenching the State's thirst for genocide. In a very literal sense, California's carceral spheres were not only sites of rights refusal, but were also concentration camps where the State exercised its right to kill through both process and direct execution. Not a single warden or governor was held responsible for the multiple deaths in California's prisons as they openly ignored and further violated federal court orders.

Many experts testified that the problems in California's prisons came down to a single cause: overcrowding. In reality, the problems in California's prisons cannot be boiled down to a single issue. The focus by experts on overcrowding obscures other issues including aggressive discriminative policing, oppressive laws, and gendered-racialized profiling. As a result, the Criminalized[170] maintain their State constructed identity as law breakers and California retained its right to punish and kill only this time with two particular exceptions—California was ordered to reduce its prison population and the State's prison healthcare system was placed under Federal oversight. However, the District Court did not outline the method by which California was to achieve the reduction. Instead, the District Court allowed California to remedy its own issue, so long as the solution complied with the Eighth Amendment.

[168] Ibid.
[169] Ibid, 9-10.
[170] See footnote 12.

Overcrowding, by way of expert testimony and judicial rule, came to represent the problems of healthcare neglect and Eighth Amendment rights violations. Accordingly, the logic became if overcrowding was remedied healthcare would be provided and the Eighth Amendment rights of those who were incarcerated would be acknowledged. In 2010, the Supreme Court of the United States affirmed the District Court's approach in its decision (all the while those incarcerated were still suffering at the hands of the State). However, as the State of California begin to apply the ruling, a loop hole in the decision allowed California to make at least one thing very clear: healthcare is a white person's right, in particular a white woman's.

Propositions, State Laws, and Securing White Women's First Civil Right

Under a Supreme Court ruling and mounting costs the State of California moved quickly to address its problem with its number of incarcerated persons. California was ordered to reduce its prison population from roughly 190% total occupancy to 137.5%.[171] This meant that California would need to decrease its prison population by nearly 40,000 people.[172] Working in conjunction with the court ruling was Senate Bill 678, which incentivized counties not to send persons to prison for probation violations and non-revocable parole.[173] With the Senate Bill seemingly assisting in providing a means to an end, the California State Assembly also passed a measure to aid in relieving California of its constitutional problem: Assembly Bill 109. The measure worked to shift "incarceration and supervision responsibility for many lower-level felons from the state prison system to county sheriffs' and probation departments."[174] SB 678 and AB 109 was

[171] Magnus Lofstrom and Brandon Martin, "Public Safety Realignment: Impacts So Far," (San Francisco: Public Policy Institute of California, 2015) Accessed February 20, 2016, http://www.ppic.org/main/publication_quick.asp?i=1164.
[172] Ibid.
[173] Ibid.
[174] Ibid.

matched by California voters in 2012 with the passing of Proposition 36. Prop 36 rolled backed life sentences on third strike prisoners whose third conviction was not a serious or violent crime.[175] The goal of Prop 36 was further strengthened by California's November 2014 general election. On the fall ballot was Proposition 47 for voters to decide. The 'colorblind gender neutral' Proposition reclassified non-serious/non-violent crimes as misdemeanors as opposed to felonies—as they were considered under the three strikes enhancement measures. Accordingly, shoplifting, grand theft, receiving stolen property, forgery, fraud, writing a bad check, and use of illegal drugs—crimes which largely represented Black women's incarceration—were decriminalized in part. Collectively, these measures worked to reduce the prison population of California. How California implemented this reduction and who it negatively impacted revealed whose rights California as a State was willing to protect and whose rights the State was willing to ignore.

By the time the US Supreme Court affirmed the ruling of the California Federal Court, healthcare costs in California's prisons under the oversight of a federal appointee were soaring. The average annual cost per inmate was 47,421.00 dollars and was billed to tax payers at 7,932.40 dollars each.[176] Along with this, State prisons began to "fill long time vacancies, increase salaries and [create] new positions at higher rates."[177] This increased the number of medical personnel in California's prisons from 5,100 in 2005 to 12,200 in 2011.[178] As California spent more on the Imprisoned and hired additional medical professionals to ensure the Eight

[175] Ibid.
[176] "The Price of Prisons: California, What Incarceration Costs Taxpayers" (New York: Very Institute of Justice, 2012). Accessed March 28, 2016, http://www.vera.org/files/price-of-prisons-california-fact-sheet.pdf.
[177] "Calfornia Prison Healthcare Costs Soar Under Federal Receiver," *Prison Legal News*, October 10, 2014. Accessed March 28, 2016, https://www.prisonlegalnews.org/news/2014/oct/10/california-prison-healthcare-costs-soar-under-federal-receiver/.
[178] Ibid.

Amendment right of Prisoners, a series of maneuvers took place to reconcile the State to court orders which had a deleterious effect on Black women.

In 2011 California Governor, Jerry Brown, signed Assembly Bill 117 along with the earlier mentioned Assembly Bill 109. Together the legislative bills enabled California to "close the revolving door of low-level inmates cycling in and out of state prisons."[179] The Assembly Bills came to be known as the 2011 Public Safety Realignment. Of the two, AB 109 retained low-level criminalized persons in county jails as opposed to State prisons, thus allowing county jails in California's carceral network to act as a repository for those who were a deemed to be a public nuisance, yet too inconveniencing and costly for prison. As a result, State prisons now relied on county jails, by way of its symbiotic relationship, to absorb its disparate population. This had a particular impact on women who were incarcerated, as their numbers dropped by approximately 3,100 from State prison roles.

AB 109 merged race, gender, behavior, and law allowing a peculiar discourse to surface in California: white women were now the face of mass incarceration. A report from The Sentencing Project titled "The Changing Racial Dynamics of Women's Incarceration" found that Black women's incarceration ratios were declining in comparison to their racialized opposites, white women, whose rates were rising.[180] However, an examination of the historical trends for California's prisons suggest otherwise: white women were not increasing in their numbers, instead white women stayed about the same, as Black women's numbers were declining.[181] By way of AB 109 and Prop 47 Prisoner's numbers, collectively, decreased by more than 25,000,

[179] "2011 Public Safety Realignment," (Sacramento: Department of Corrections and Rehabilitation, 2013) Accessed March 5, 2016, http://www.cdcr.ca.gov/realignment/docs/realignment-fact-sheet.pdf.
[180] Marc Muer, "The Changing Racial Dynamics of Women's Incarceration" (Washington, D.C.: The Sentencing Project, 2013) Accessed March 20, 2016, http://sentencingproject.org/doc/publications/rd_Changing%20Racial%20Dynamics%202013.pdf.
[181] Smith and Wagstaff, 2a.

yet simultaneously county jails swelled by nearly 9,000.[182] With this taking place the Public Policy Institute of California announced in a March 2016 report that "overall incarceration levels fell because the increase in the jail population did not fully offset the decrease in the prison population."[183] The announcement by the Public Policy Institute of California allowed for a threefold impact: (1) white women became the face of incarceration in California for women, as Black women were made invisible, (2) California's public carceral spheres, where many of the formerly State incarcerated were returned to, was wholly ignored and, (3) county jails were recognized as a part of California's carceral network.

As Prisoners were shifted from State prisons to county jails and public carceral spheres their rights went unacknowledged. For Black women this meant they were barred access to the healthcare in State prisons now guaranteed by way of court order. white women remained in State prisons—now conceived of as rehabilitation centers with matched funding by the State—with their rights acknowledged and were the beneficiaries of more medical personnel, increased State spending on healthcare, and improved living conditions. Black women, in contradistinction, were now in crowded county jails and public spaces with no access to healthcare and their rights still prevented. The refusing of Black women's rights was possible, in part, because county jails, within the larger discourse of carcerality, are not considered a part of incarceration—hence the numbers of county jails and the issues of its Inmates are not taken into consideration, and moreover legislation pertaining to prisons, in most instances, is not applicable to the county. Further, public carceral spheres primarily fall under the jurisdiction of local police; and, because it is in a public space, those within it are not considered to be incarcerated yet they

[182] Mia Byrd, et al, "How Has Proposition 47 Affected California's Jail Population?" (San Francisco: Public Policy Institute of California, 2016), 4. Accessed April 4, 2016, http://www.ppic.org/content/pubs/report/R_316MB3R.pdf.
[183] Ibid.

are continuously overpoliced, prevented the rights of citizenship, experience extreme dispossession and torture, and are limited in their mobilization.

This is not to suggest that Black women would be better off in prison. Rather my point is to highlight that the conditions of California's prisons improved when white women became the face of incarceration in the State of California. Furthermore, that Black women were channeled into jails where medical neglect was intensified, and where they were not included in counts which determined State resources toward the maintaining of their lives. In an April 2012 report titled "Evaluation of the Current and Future Los Angeles County Jail Population" prepared by the JFA Institute soon after California's realignment went into effect, the jails of Los Angeles were expected to balloon in population to 21,000, compared to its usual 14,500-15,000—after having "significantly declined from a peak in 1990 of 22,000 to slightly under 15,000 by September 2011."[184] The recommended alternatives to the projected population of Los Angeles' jails as it relates to women was that the city should consider "other bed capacity options such as constructing a new female facility at PCD."[185] This recommendation was no coincidence as the arrests of women as a result of AB 109 was expected to rise from 298 in 2011 to 1,200 by 2015.[186] The women impacted by AB 109, which were primarily Black women, were projected to serve an average of 284 days in Los Angeles' jails before returning to the spaces of the public carceral sphere. Indeed, on September 10, 2015 Los Angeles County Sheriff Jim McDonnell signed a 'Criminal Justice Facilities Construction Financing Proposal Form' requesting 56 million dollars from the State via Senate Bill 863 for a new standalone building for the purposes of the "construction of programming and treatment annex" at 11705 Alameda Street—the

[184] James Austin, et al. "Evaluation of the Current and Future Los Angeles County Jail Population" (Denver: The JFA Institute, 2012), 2-3. Accessed May 28, 2016, https://www.aclu.org/files/assets/austin_report_20120410.pdf.
[185] Ibid, 3.
[186] Ibid, 23.

location of the Century Regional Detention Facility.[187] At the time of Sheriff McDonnell's request Century Regional, a women's facility, had a capacity of 1,588, but jailed 1,908.[188] Moreover Los Angeles County jails as a whole were over capacity by nearly 2,400 persons; 53% of whom were not sentenced.[189] Further, Los Angeles County jails reported 14,728 arrest per month and had to release 1,399 per month due to lack of space.[190]

The conditions of public carcerality, namely homelessness, went ignored. When persons impacted by 41.18(d), STEP, gang injunctions, and the like were released early due to overcrowding or shorter sentences they "very often returned to the scene of their 'crime'," thereby placing them back within a public carceral space and in danger of returning to Los Angeles' county jails for being in violation of the city's exceptionally aggressive laws.[191] Therefore shorter sentences and early releases did not mitigate the experience of criminality among Black women and others within Los Angeles' jails and public carceral spheres, rather shorter sentences and early releases both contributed to and perpetuated criminality and incarceration, and was used a means to rationalize the expansion and new construction of jails.

Exactly how many Black women are in Los Angeles' jails as a result of AB 109 is a difficult figure to capture as reports and proposals—similar to that filed by Sheriff McDonnell—identifies jail inmates by means of their progress within the legal system (e.g. pretrial, unsentenced, partial sentence, open cases, fully sentenced, etc.). This practice of omitting the identity of those incarcerated in jails on public documents speaks to the capability of spaces of

[187] "Senate Bill 863, Adult Local Criminal Justice Facilities Construction Financing Program Proposal Form," (Sacramento: Board of State and Community Relations, 2015). Accessed May 28, 2015, http://www.bscc.ca.gov/downloads/los_angeles_county.pdf.
[188] Ibid.
[189] Ibid.
[190] Ibid.
[191] Blasi,27.

incarceration to wholly consume and redefine one's person. Interestingly, white women who remained in State facilities were readily identified, allowing white femininity to become a property whereby recognition was conferred. What is known of the jail population of Los Angeles is that many arrests were the result of narcotics and theft—offences common to Black women who are incarcerated.

The choreography of law in California worked to make specific sites of incarceration and those impacted by them visible to the State while making others quasi-marginal and invisible.[192] In turn those spaces which were made visible were also restructured by way of the Public Safety Realignment legislation to provide a modicum of redress for imprisoned white women while removing Black women. The Public Safety Realignment legislation also worked to finance the county jails of the carceral network in California so that counties were paid to punish Black women. The funding, guaranteed by way of Prop 30 in 2012, provided "$400 million…to [California] counties in the first partial fiscal year of Realignment;" the funding then grew "to more than $850 million" in 2012 and "more than 1 billion in 2013-2014."[193] Trailer Bills were also signed as part of the Public Safety Realignment legislation: AB 111 permitted access to additional funding to "increase local jail capacity for the purpose of implementing Realignment;" AB 94 mitigated the financial commitment of counties from 25% to 10%; SB 89 dedicated $12.00 from the Vehicle License Fee to counties, resulting in $354.3 million dollars being sent to counties in 2011-2012 alone.[194] In this way Black women's bodies were commodified, producing seemingly unrestricted wealth for county jails—indeed, punishing Black women was big

[192] By quasi-marginal and invisible, I mean, in example, county jail were no longer the State's concern, yet they were still acknowledged as the proper place for 'Criminals' underserving of the benefits of State prisons.
[193] 2011 Public Safety Realignment, 1.
[194] Ibid.

business again, only this time jail wardens took the place of colonial plantation Mistresses and Masters.[195]

Of the many trailers added to the Public Safety Realignment legislation Senate Bill 87 stands out. The bill "provided counties with a one-time appropriation of $25 million to cover costs associated with hiring, retention, training, data improvements, contracting costs, and capacity planning."[196] The same measure by which county carceral jails grew, the rights of the Criminalized diminished. The county carceral spheres of California had no responsibly to adhere to the ruling pertaining to the Eighth Amendment rights of its Contained. Of the carceral spheres within California's carceral network, it can be argued that those located within the county sphere are most vunerable—in the walls of many county jails are those who have not been convicted nor have been seen by a judge; leaving little wonder why county jails were seen as a fitting solution to solving California's problem with mass incarceration.

The symbiotic relationship among California's carceral spheres allowed the Criminalized to be circulated like chattel. Judicial decisions which pinpointed issues in one carceral sphere permitted another sphere to alleviate its convicted brother, while keeping those detained void of rights and social recognition. The relationship among California's carceral network operated in such a way that white women maintained their personhood while Black women were rendered devoid of right baring capacity and recognition due to an exterior that was stigmatized and behavior which was criminalized. The increased visibility of white femininity continued to be marshaled in a way that relegated Black women to less safe, hypercrowded, extrodinarily violent carceral spaces—jails and Skid Row—which were beyond the scope of consideration precisely

[195] Ibid, 1-2; see Thavolia Glymph, *Out of the House of Bondage: The Transformation of the Plantation Household* (Cambridge: Cambridge University Press, 2013).
[196] Ibid, 2.

because they were Black women's. The discourses of white femininity continued the longstanding historical work of actually expanding and enshrining structural violence (expanding the prison), while cloaking it in chivalry and reform, which disproportionately relegates Black women to premature death and extreme violation.

Indeed, the words of Toni Reinis ring true, California residents will pay the price for life for incarceration. What Reinis failed to realize in his *Los Angeles Times* op-ed was that California residents were willing pay the price, even if it meant they had to work forty or more hours a week to make it happen; because they understood that Black-gendered dispossession meant white rights.

Chapter 3
Gendered Duress:
Race, Administering Law, Trans(ferring) Possession, and the Sexual Politics of Ownership[197]

"If you are silent about your pain, they'll kill you and say you enjoyed it."
-Zora Neale Hurston

"Among the most volatile points of contact between state violence and one's body is the domain of gender."[198]
-Eric A. Stanley

Brown v. Plata did not take place in a vacuum; rather, the Supreme Court case concerning the State of California reflected several lawsuits filed from various jurisdictions over time due to inadequate or inaccessible healthcare in State and Federal prisons. *Brown* was emblematic of California's willingness to transgress previously established Supreme Court rulings as well as constitutional law regarding healthcare in State caceral facilities. In 1976 the US Supreme Court via *Estelle v. Gamble*, established healthcare as a right for those who are incarcerated.[199] Justice Harry Blackmun's opinion in *United States v. Bailey* further established the responsibility of the State to the Imprisoned:

> It is society's responsibility to protect the life and health of its prisoners. '[W]hen a sheriff or a marshall *[sic]* takes a man from the courthouse in a prison van and transports him to confinement for two or three or ten years, *this is our act. We* have tolled the bell for him. And whether we like it or not, we have made him our collective responsibility. We are free to do something about him; he is not.[200]

Justice Blackmun's opinion not only makes known that a Prisoner's right to healthcare is considered a constitutional right and must be provided for by the State, but also reveals a mandatory requisite of incarceration: dispossession. Although dispossession may occur in

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[197] The chapter heading is inspired by Sarah Haley's (2016) insightful, engaging, and pioneering text *No Mercy Here*—in particular chapter 3, which is titled "Race and the Sexual Politics of Prison Reform."
[198] Eric A. Stanley, "Fugitive Flesh: Gender Self-Determination, Queer Abolition, and Trans Resistance," *in Captive Genders: Trans Embodiment and the Prison Industrial Complex*, second edition (Edinburgh: AK Press, 2015), 10.
[199] *Estelle v. Gamble* 429 U.S. 97 (1976)
[200] *United States v. Bailey*, 444 U.S. 394 (1980)

multiple ways, carceral spheres primarily focus on (and as a result empowers itself by) dispossession of one's ownership of their body, "we are free to do something about him; he is not."[201] Also hidden within Justice Blackmun's dissent is the default gendering of prisoners as male in carceral spheres, again, "We are free to do something about *him*; *he* is not."[202] Justice Blackmun's use of 'him' as opposed to 'prisoners', as well as 'he' instead of 'they,' uncovers the promulgation of compulsory gendering, ungendering, and misgendering of Prisoners. Justice Blackmun's gendered opinion also finds resonance in Georgia's 1908 chain gang legislation, which established as its goal, in part, to "provide for the future employment of felony and misdemeanor male convicts upon the public roads."[203] Although the 1908 legislation was male-centered it also held captive Black women and produced knowledge about racial and gender categories that conformed to the dictates of white supremacy.[204]

From its earliest stages to present, key features of incarceration in the United States remain ungendering, misgendering and dispossession. Indeed Sarah Haley asserts, "the archive of convict-leasing reports [reveal] the brutal conditions for imprisoned women and [reflect] their construction in the broader popular imagination as criminals without claims to their own bodies."[205] Haley's illuminating text, *No Mercy Here*, helps to bridge the intermittences in time and space between *Estelle v. Gamble* and *Brown v. Plata*. Viewed collectively, what becomes clear is, as Hazel Carby advances, "the institutionalized rape of black women has never been as powerful a symbol of black oppression as the spectacle of lynching."[206] There is a need to

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[201] Ibid.
[202] *United States v. Bailey*
[203] Haley, "Like I was a Man," 61-62.
[204] Ibid, 61-62.
[205] Haley, *No Mercy Here*, 129.
[206] Hazel V. Carby*, Reconstructing Womanhood: The Emergence of the Afro-American Woman Novelist* (Oxford: Oxford University Press, 1987), 39; in utilizing Carby's assertion here, I mean both rape as in taking by force and rape as sexual assault; each instance constitutes a form violence toward and on Black women's bodies which was remained constant and prevalent over the course of US history.

understand Black women's predicament and treatment within a broader framework of public carcerality that incorporates particular historical incarnations of misgendering, gender violence, and criminalization which are rendered invisible unless experienced by white women—resulting gendered State-imposed injuries becoming universal.[207]

Interestingly, when Black women who have sustained injuries by way of the State due to incarceration are positioned as a symbol of Black oppression there remains hidden on the underside of the canon of case law concerning Black Women the experiences of particular Black women who are remain invisible. They are the other sisters. Their lives and experiences at the outer most margins reveals how deeply personal and harmful the injury of dispossession and misrecognition is, as well as law's capacity to facilitate this injury. As contemporary movements explore and publicize the experiences of Black women and incarceration, they must also be careful to include all dimensions of Black womanhood so as to not commit further injuries upon Black women who are perpetually marginalized.

For Black transwomen it is not enough to merely examine law as it is written, or to explore how Supreme Court rulings extend Eighth Amendment privileges. Black transwomen's lives, instead, direct our attention to how law is administered—giving careful attention to the ways in which holdings in cases that are seemingly just also intrinsically perform an injustice. Moreover, when Black transwomen are incarcerated State-imposed injustices multiply. In their article, "From Black Transgender Studies to Colin Dayan," Omise'eke Natasha Tinsley and Matt Richardson assert that not only are transgender inmates punished "for their identities and for being victims of abuse," but also "that the combination of anti-transgender bias and persistent structural and interpersonal acts of racism [is] especially devastating for Black transgender

[207] See Beth E. Richie, *Arrested Justice: Black Women, Violence, and America's Prison Nation* (New York: New York University Press, 2012).

people."[208] Quantifying this claim, Tinsley and Richardson found that 47% of Black transgender inmates experience harassment from correctional officers, 50% experience harassment by other inmates, and that Black transgender inmates also experience the highest rate of sexual assault by both prison staff and other inmates.[209] For transgender inmates, especially those who are Black, the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, signed by President Barack Obama in October of 2009 fail to protect them behind bars. Scholar Eric A. Stanley argues:

> Mainstream LGBT organizations, in collaboration with the state, have been working hard to make us believe that hate crimes enhancements are a necessary and useful way to make trans and queer people safer. Hate crimes enhancements are used to add time to a person's sentence if the offense is deemed to target a group of people. However the hate crimes enhancements ignore the roots of harm, do not act as deterrents, and reproduce the force of the prison industrial complex, which produces more, not less harm. Not surprisingly…[when] the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act [was signed] into law, extending existing hate crimes enhancements to include "gender and sexuality," there was no mention by the LGBT mainstream of the historical and contemporary way that the legal system itself works to deaden trans and queer lives.[210]

As a result of such legislative efforts, Black transwomen's experience with law and its choreography and application becomes one of gendered duress. Gendered duress is a choreography of law which imposes forced conditions of confinement, the persistent threat of a harm, and/or the constraining of rights and the hidden injury that Black women experience. I define gendered duress as choreography because it is a carefully crafted dance of disavowal and universalism in which violations are not acknowledged by law as illegal or injurious until it is mapped onto white bodies; it is lawful permitted biased resulting in the penalization of both a

[208] Omise'eke Natasha Tinsley and Matt Richardson, "From Black Transgender Studies to Colin Dayan: Notes on Methodology," *Small Axe* no. 45 (2014), 157. Accessed May 25, 2016, http://smallaxe.dukejournals.org/content/18/3_45/152.full.
[209] Ibid, 157-158.
[210] Stanley, 9.

racialized and gendered status as opposed to conduct. At the foundation of gendered duress is profound irreversible dispossession, negligence, and unyielding psychological trauma. Gendered duress is profoundly experienced in the broad public carceral sphere of street corners, tent cities, and the like, as well as in specific lockups such as jails and county prisons. When gendered duress among transwomen is closely interrogated a peculiar phenomenon surfaces: like their non-trans white sisters, white transwomen in California's State prisons are extended certain rights (e.g. gendered healthcare) while Black transwomen are refused the same and subjected to gendered duress. Gendered duress within the carceral network of California works to not only facilitate dispossession and the preventing of rights, but also to differentiate the irreparably criminal from those capable of rehabilitation.

As previously stated, as incarcerated white trans and non-trans women are extended certain rights, incarcerated Black transwomen are denied access to the same (a claim that will be expounded upon below). This phenomenon takes place in the administering of law; in the minds of those who determine and categorize 'woman.' Trans legal scholar Dean Spade argues, "what characteristics are used for such categorization and how those categories are defined and applied creates vectors of vulnerability and security."[211] In other words, as law extends healthcare to women, individuals who determine how that law is applied prevent the womaness of Black transwomen from being recognized, resulting in gendered duress. However, gendered duress is not explicitly experienced by Black transwomen, it is also shared by Black non-trans women and Black women who are not located within a carceral sphere. When non-trans women receive healthcare *how* that healthcare is constrained or experienced is a form of gendered duress that is not acknowledged by law. Similarly, when a Black child has been shot dead by a cop (e.g.

[211] Dean Spade, *Normal Life: Administrative Violence, Critical Trans Politics, and the Limits of Law* (Brooklyn: South End, 2011).

Trayvon Martin) or a Black child is forced to be socialized differently due to the persistent threat of death by the State via police, that child's mother too (e.g. Sabrina Fulton) experiences gendered duress—forcing her to experience the enduring injuries of carcerality in likeness to those who are formally incarcerated. Gendered duress is exposed and materialized in the public carceral formation of the 1990s, in which welfare reform and the Clinton crime bill were enacted. As such, Black women who have similar experiences with the State in likeness to Sabrina Fulton, Valerie Bell, and Leslie McSpadden reveals the importance of conceptualizing a public carceral sphere that includes the landscape of the street and the cell.

Deliberate Indifference…Only if

In 1986 a judge sentenced 18 year old Dee Deirdre Farmer to twenty years in federal prison for credit card fraud.[212] As Farmer stood before the court to learn of her punishment, she presented herself as a woman—as Famer had changed her name from Douglas Coleman Farmer, had taken hormones since her teenage years, had breast implants, wore makeup, and dressed in clothing traditionally ascribed to women in western societies.[213] Farmer's understanding that she had control and ownership of her body and its presentation, as well as the right to express who she understood herself to be was undeniable. Farmer's sentence represented more than just the dispossession of ownership over her body, the sentence stripped Farmer of her womanhood—ungendering her and placing her in a judicial-gendered undefined liminal space.[214] Upon arriving

[212] Alison Flowers, "Dee Farmer Won a Landmark Supreme Court Case on Inmate Rights. But that's not the half of it," *The Village Voice*, January 29, 2014. Accessed April 1, 2016 http://www.villagevoice.com/news/dee-farmer-won-a-landmark-supreme-court-case-on-inmate-rights-but-thats-not-the-half-of-it-6440783.
[213] Ibid.
[214] See Hortense Spillers, "Interstices: A Small Drama of Words," in *Black, White, and in Color: Essays on American Literature and Culture* (Chicago: University of Chicago Press, 2003). Here Spillers advances that Black women's enslavement "relegated them to the market place of flesh," resulting in Black women becoming "the principal point of passage between the human and the non-human world." Spillers continues: "her issue became the focus of a cunning difference—visually, psychologically, ontologically—as the route by which the dominant modes decided the distinction between humanity and 'other.' At this level of radical discontinuity in the 'great chain of

at the United States Federal Penitentiary in Lewisburg, Pennsylvania, it became clear to Farmer that the State had taken control of her body and ascribed its own understanding of who it understood Farmer to be: a black man.

At Lewisburg Farmer's trans status was documented by the medical staff. Despite this, a panel of three physicians denied Farmer access to estrogen. For the medical panel, Farmer's identity as a Black transwoman had nothing to do with self-determination, rather, Farmer's black body—like many who had come before her—was understood within the lens of White Western heteromasculinity, and further, was now the possession of white men by way of the State. Positioning whiteness, maleness, and gender-sex alignment as normative, the physician panel of three "believed that psychotherapy would be the proper treatment" for Farmer.[215] The physician's diagnosis carefully followed the American Medical Association Encyclopedia of Medicine's (1989 edition) and the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders' (1987 edition) position that trans persons suffer from "[a] rare psychiatric disorder in which a person feels persistently uncomfortable about his or her anatomical sex."[216] This 'diagnosis' from the Lewisburg medical panel fused Farmer's criminalized status with 'confirmed' mental illness. Farmer's encounter with the State illustrates the ability of judges and prison personnel, via law, to wholly redefine one's being, as well as the capacity of a carceral sphere to reinscribe a State-determined identity by way of refusal. While Farmer spent her time in isolation and without care, she filed suit—representing herself and

being,' black is vestibular to culture. In other words, the black person mirrored for the society around her what a human being was *not*. (155).

[215] *Farmer v. Hass* 927 F2d 607 (1991)

[216] *Farmer v. Brennan* 511 U.S. 825 (1994)

establishing her claim via the Eight Amendment. Farmer lost her case, but what she had established was a documented record of injury.[217]

In January of 1988 Farmer was relocated to Oxford Federal Correctional Institution (Oxford FCI) in Oxford, Wisconsin. As Farmer navigated the space of Oxford FCI, she was misrecognized through the use of the various iterations of male identity; further, she was refused institutional clothing that would affirm her womanhood. Simply put, Farmer's punishment, along with the twenty year sentence, was compulsory manhood. By 1989 Oxford FCI official grew tired of Farmer. The correctional facility alleged Farmer had been involved in willful sexual acts, among other activities, and that she was a nuisance to the facility.[218] At best, what boggled officials of Oxford FCI was that Farmer could be an independent agent capable of being a legitimate subject of desire among male inmates contained in the correctional facility. At worst, what was not possible to prison employees was that Farmer engaged in dissemblance to conceal sexual coercion.[219] Indeed, in his testimony before the National Prison Rape Commission, Christopher Daley, director of the Transgender Law Center, testified that transwomen are often subjected to coercive sex while incarcerated and that "such coercion comes from fellow prisoners and deputies, guards, and officers," and it "is too often seen by officials as consensual."[220]

However, a closer look at court documents suggests why Oxford FCI officials may have grown weary of Farmer. In the same month she arrived Farmer filed an Inmate Request to Staff

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[217] See *Farmer v. Carlson*, 685 F. Supp. 1335 (M.D. Pa. 1988)
[218] Ibid.
[219] See "Rape and the Inner Lives of Black women: Thoughts on the Culture of Dissemblance" in: Darlene Clark Hine, *Hinesight: Black Women and the Re-construction of American History* (Bloomington: Indiana University Press, 1994).
[220] Christopher Daley, Testimony at the National Prison Rape Elimination Commission (San Francisco: The Transgender Law Center, 2005). Accessed April 1, 2016, http://www.prearesourcecenter.org/sites/default/files/library/transgenderlawcenterpreatestimony05.pdf.

Member (IRSM) form, requesting proper healthcare services.[221] Being 'diagnosed' with transsexualism previously at Lewisburg, Farmer once again pursued her right to appropriate healthcare—namely estrogen. As a result of her request, Farmer was seen by Dr. Imp. The result of Dr. Imp's examination forced a realignment of Farmer's status to reflect the administrative environment of Oxford: Farmer was diagnosed as a transvestite, wholly preventing her access to any form of healthcare relating to her gender.[222] Accordingly, on January 20, Farmer requested to be seen by a psychologist, as she disagreed with "Dr. Imp's diagnosis, noting that her records already contained the diagnosis of transsexualism;" Farmer rightfully asserted "an entitlement to some form of treatment."[223]

On February 1 Farmer was seen by Dr. Reed. Dr. Reed's diagnosis and recommendation for treatment aligned with that of the physicians in Lewisburg that "the proper treatment for individuals like inmate Farmer remains in the providence [sic] of psychotherapy, not in hormonal or surgical manipulation."[224] Anticipating Dr. Reed's agreement with Lewisburg as to how she should be cared for, Farmer, during the course of the examination, presented Dr. Reed with a court order validating that she was to receive estrogen hormone treatments.[225] Dr. Reed refused to accept the order Farmer provided as valid, instead he submitted the court order to Richard Haas, the health administrator of Oxford FCI. Haas, agreeing with the suspicions of Dr. Reed, conducted an investigation and found the court order to be counterfeit.[226] As a result, Farmer was doubly disciplined: she was punished for the fraudulent court order and she was still refused treatment. What was clear to Oxford officials who had charge over Farmer was that she was

[221] *Farmer v. Haas*
[222] Ibid.
[223] Ibid.
[224] Ibid.
[225] Ibid.
[226] Ibid.

determined to have her right to healthcare and self-determination acknowledged even if it meant being considered an outlaw or an annoyance within Oxford FCI.[227]

Unwaveringly committed to her right of self-determination and healthcare to be acknowledged, Farmer again submitted a letter on February fourth to Haas, three days after she had been disciplined for the counterfeit court order. In the letter Farmer asserted, "If you deny me estrogen you must give me some form of treatment for transsexualism. And, I hereby request some form of treatment; whether it be estrogen or otherwise."[228] Farmer's efforts, more so than anything else, illustrate her relentless commitment to humanize and retain possession of her personhood in a sphere that rendered her property and based its right to refuse her constitutional rights in her status as a prisoner of the state. Farmer's efforts also expose the reality of medical coercion in prisons. Refusing to accept prisoner and property as tantamount, Farmer, on the same day she submitted the February fourth letter to Haas, also submitted another IRSM, this time to both Haas and Dr. Reed.[229] In the letter she restated her disagreement with Dr. Imp and stressed her right to healthcare established by *Estelle v. Gamble*. Farmer's letter and IRSM went ignored. On February twelfth she filed another ISRM addressed to Richard Haas, this time her message was direct: "I am hereby requesting that I be give [sic] some form of treatment, whether it be counseling, estrogen or etc."[230] No one in Oxford Federal Correctional Institution responded; refusing Farmer the estrogen she preferred and the psychotherapy prison officials recommended.

Farmer's acts of resistance were answered by way of persistent denials via silence from prison officials which came to a head after she filed a Request for Administrative Remedy in

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[227] See Monica J. Evans, "Stealing Away: Black Women, Outlaw Culture, and the Rhetoric of Rights," in *Critical Race Theory: the cutting edge*, eds Richard Delgado and Jean Stefancic (Philadelphia: Temple University Press, 2013), 647-658.
[228] Farmer v. Hass
[229] Ibid.
[230] Ibid.

June of 1988 and was denied by Edward Brennan in July.[231] Upon learning of her denial Farmer appealed her decision to L.E. DuBois, who served as Regional Administrator. DuBois' response was terse: "Our investigation reveals that your allegations were adequately addressed at the institutional level, therefore, we can offer no further relief. Therefore, your Regional Appeal i[s] denied."[232] For DuBois silence was sufficient, assumingly because at Oxford FCI prisoners are regarded as property and as such cannot be treated (even when it is prescribed) or have rights. Although Farmer, was denied through silence she was simultaneously causing an administrative uproar at Oxford. Their remedy was simple: "on March 9, 1989, petitioner was transferred for disciplinary reasons from the Federal Correctional Institute in Oxford, Wisconsin, to the United States Penitentiary in Terre Haute, Indiana."[233]

Terre Haute is a different carceral site from that of Oxford: it is an all-male maximum security penitentiary which houses "more troublesome prisoners than federal correctional institutes."[234] Farmer being among Terre Haute's general population was particularly dangerous and constituted punishment as a result of her resistance at Oxford. Her gendered process of criminalization—a woman forced into manhood—caused her to have a pronounced presence within the spaces of the maximum security prison, resulting in Farmer being highly vulnerable and a prime target for coercion and assault. Barely a month into her stay Farmer's vulnerability in the spaces of Terre Haute materialized: a prisoner approached her and demanded sex, when Farmer refused the prisoner "punched and kicked her," and "reveal[ed] a homemade knife stowed in his sneaker."[235] The prisoner then "tore off her clothes, held her down on the bed, and

[231]Ibid.
[232] Ibid.
[233] *Farmer v. Brennan*
[234] Ibid.
[235] Flowers

raped her, and threatened to murder her if she told."[236] Farmer's carceral experience as a trans Black woman became that of multiplied and seemingly legal injuries: dispossession of the self, ungendering and forced male gendering, refusal of adequate healthcare, rape, and intentional administrative abandonment.

Having established an official paper trail of injuries at both Lewisburg and Oxford, Farmer was aware of the capacity of record keeping to force change—even if for the bad. Drawing from her lived experience, and refusing to comply with the demand of her rapist to stay silent, Farmer, without legal representation, "filed a *Bivens* complaint alleging a violation of the Eight Amendment" seeking redress for being both beaten and raped, asserting that Terre Haute officials had acted with deliberate indifference toward her by placing her in general population.[237] Farmer lost her claim via summary judgement and, as a result, filed an appeal. Farmer's history of activism and resistance by way of legal redress, captured the attention of the American Civil Liberties Union (ACLU) and they began working with her.

By the time the ACLU decided to represent Farmer, she was well seasoned in judicial procedure and legal discourse—having filed multiple complaints and suits.[238] With the ACLU joining her fight, Farmer took her cause to the United States Supreme Court. The Supreme Court found that prison officials had in fact acted with deliberate indifference stating, "a prison official's deliberate indifference to a substantial risk of serious harm to an inmate violates the Eighth Amendment."[239] However, the Supreme Court's holding also narrowly tailored deliberate

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[236] Ibid.

[237] *Farmer v. Brennan*; also see *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971) and *Carlson v. Green*, 446 U. S. 14 (1980). A *Bivens* claim is a claim filed against federal officials who are sued in their capacity (as opposed to their person) for violation of an individual's constitutional rights. To file a *Bivens* claim the Plaintiff must allege that (1) they were deprived of a constitutional right (2) by a federal agent, who was (3) acting under the color of federal authority.

[238] For more on Farmer's suits and impact in trans incarceration through law please reference footnote 212.

[239] *Farmer v. Brennan*; deliberate indifference is reckless and/or conscious disregard of one's actions or omissions. This standard is applied when determining if an imprisoned individual's rights have been prevented.

indifference for future cases: "[we] hold that a prison official may be held liable under the Eighth Amendment for denying humane conditions of confinement only if he knows that inmates face a substantial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it."[240] The Supreme Court vacated the lower court's decision and remanded the case to the lower court for "further proceedings consistent with" the opinion of the Court.[241] When Farmer's case was retried the Supreme Court's narrow tailoring of deliberate indifference caused further injury: Farmer lost the case; although her injuries were documented by the court, nothing would be done about them. The clear defining of deliberate indifference by the Supreme Court determined who could reap the benefits of incurring such an injury and who would be subjected to continued duress. During the Supreme Court hearing Farmer argued that the test of deliberate indifference should be objective (clearly defined), however the Court found "subjective recklessness, as used in criminal law, is the appropriate test for deliberate indifference."[242] This decision placed the lives of incarcerated Black transwomen in the hands of prison officials and would have a particular impact in California's carceral network.

Sexual Violence in Turbulent Times: Black Women in California's Carceral Landscape

The Supreme Court's decision in 1994, as a result of Farmer appealing the 1991 decision in *Farmer v. Haas* reverberated in carceral spheres across the nation. A Black transwoman—primarily single handedly—forced the multidimensionality of Black womanhood before the US Supreme Court, demanding her right to protection and the recognition of her identity as a woman. Farmer breached the barriers of carcerality by way of law, however, how the Supreme Court ruling came to be administered in carceral spheres resulted in the repair of Farmer's breach

[240] Ibid, 847.
[241] Ibid, 851.
[242] Ibid. 826.

which led to further violence against Black transwomen: solitary confinement was interpreted as protection by prison officials, but was in fact emblematic of gendered duress. Though the Supreme Court's ruling ultimately worked against Farmer, her relentless advocacy embodied the personal as political and mirrored the gendered duress Black women experienced as a whole in 1991.

On March 1, 1991 the United States Court of Appeals for the Seventh Circuit, in the matter of *Farmer v. Haas*, ruled in favor of Haas—revoking Farmer's right to healthcare and protection; fifteen days later in Los Angeles, California fifteen year old Latahsa Harlins was shot and killed by Soon Ja Du as racial tensions peaked in Los Angeles. Du, a Korean woman, was found guilty of voluntary manslaughter; however, Judge Joyce Karlins, a Jewish woman, sentenced Du to five years probation, four hundred hours of community service and a 500.00 dollar fine. Less than a year later the city of Los Angeles was on fire, and Du's store along with it never to reopen again.[243] As the nation's racial consciousness was spilt regarding the murder of Harlins, Eighteen year old Desiree Washington, a Miss Black America contestant, was raped by famous boxer Mike Tyson in July of 1991; Tyson would not face trial until March 1992, and after being found guilty was given a reduced sentence.[244] As media outlets were covering the rape of Washington, the nation was brought to a political halt as Professor Anita Hill testified before the Senate Judiciary Committee regarding the sexual harassment she experienced at the hands of then Supreme Court nominee Clarence Thomas. Thomas, facing the Senate Judiciary Committee in response Hill's testimony, described Hill's account and the Committee's

[243] See Brenda Stevenson's stirring account of Latasha Harlins and the 1992 Los Angeles Uprising: Brenda Stevenson, *The Contested Murder of Latasha Harlins: Justice, Gender, and the Origins of the LA Riots* (New York: Oxford University Press, 2013).

[244] See E.R. Shipp, "Tyson Gets 6-year Prison Term For Rape Conviction in Indiana," *New York Times*, March 27, 1992. Accessed March 20, 2016 http://www.nytimes.com/1992/03/27/sports/tyson-gets-6-year-prison-term-for-rape-conviction-in-indiana.html?pagewanted=all.

willingness to hear it as a "national disgrace" and a "high tech lynching." As other women who had experienced the same of Thomas were prevented by then Senate Judiciary Committee Chair Joe Biden from corroborating Hill's experience, Thomas was narrowly confirmed by the Senate in a 52-48 vote in October of 1991.[245] As all of this was taking place Black women were also centered in Bill Clinton's 1991 presidential campaign as being the impetus of rising welfare costs and for being irresponsible and lazy while receiving governmental aid. For Clinton welfare was an opportunity which Black women did not respond to responsibly, "opportunity for all is not enough, for if we give opportunity without insisting on responsibility, much of the money can be wasted and the country's strength can still be sapped. So we favor responsibility for all. That is the idea behind national service. It's the idea behind welfare reform."[246] When Clinton's vision for welfare was actualized in 1996 via the Personal Responsibility and Work Opportunities Act, it was validated in the white-framed narrative of Detroit, Michigan resident Bertha Bridges—a Black woman. Bridges' name, via a House of Representative member, forever stands in the congressional record as the representation of those who are a waste of money and "sap" the economic strength of the United States.[247]

The notion of Black women as waste and sapping economic resources helped to give rise to the widespread legal syphoning of Black women's autonomy of their bodies to the State in the late twentieth and early twenty-first centuries. As Black women were incarcerated due to increasingly aggressive laws, administrative law was employed as a method to facilitate the process of the dispossession of her body. For Black trans and non-trans women located in

[245] See Anita Hill's harrowing text: Anita Hill, *Speaking Truth To Power* (New York: Anchor Books, 1997).
[246] Norman Soloman, "Clinton on Sex: Poor can't handle it," *Orlando Weekly*, April 2, 1998. Accessed March 20, 2016 http://www.orlandoweekly.com/orlando/clinton-on-sex-poor-cant-handle-it/Content?oid=2264360.
[247] See Ange-Marie Hancock, *The Politics of Disgust: The Public Identity of the Welfare Queen* (New York: New York University Press, 2004).

California State prisons this process is carried out along the lines of race and genitalia. California places transwomen who have not undergone re-assignment surgery in facilities which correspond with their sex.[248] Among the transwomen impacted by California's carceral-sex regulations are Michelle-Lael Norsworthy and Shiloh Quine. Both women are housed in State facilities impacted by the *Brown v. Plata* decision, the narrowing definition of deliberate indifference, the Federal infusion of funds for healthcare, and California's realignment. Yet, the experiences of Norsworthy and Quine are opposite that of Dee Farmer.

In "Whiteness as Property" legal scholar Cheryl Harris asserts "inequalities that are produced and reproduced are not givens or inevitabilities, but rather are conscious selections regarding the structuring of social relations."[249] Indeed, in 2015 via *Quine v. Beard* Judge Jon Tigar went to various lengths to secure the rights and the recognition of Quine as a woman, which came to benefit Norsworthy greatly. After Quine filed a complaint in the Northern District of California, the State and Quine engaged in negotiations as to what privileges Quine would have access to. After nearly eighteen months an agreement was reached that Quine "as promptly as possible…shall be referred for genital sex-reassignment surgery to a mutually agreed upon surgical practice."[250] The settlement also dictated that the "CDCR shall negotiate the contract with the surgical practice, who shall provide Plaintiff's genital sex-reassignment surgery."[251] The agreement reached not only allowed a means by which Quine could access womanhood, but her womanhood was recognized and priviledged *before* the re-assignment procedure by law and during her stay in a male facility. Quine and Norsworthy are both white.

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[248] James Queally, "San Francisco jails to house transgender inmates based on gender preference," *Los Angeles Times*, September 20, 2015. Accessed March 20, 2016, http://www.latimes.com/local/lanow/la-me-ln-transgender-san-francisco-jails-20150910-story.html.
[249] Harris, "Whiteness as Property," 1730.
[250] *Shiloh Heavenly Quine v. Beard, et al* C 14-02726 JST (2015)
[251] Ibid, 3.

At Mule Creek State Prison, Quine was assigned a personal psychiatrist in conjunction with the existing medical staff caring for her. Richard A. Carroll, an associate professor in the Department of Psychiatry and Behavioral Sciences at Northwestern University and the President of the Society for Sex Therapy and Research, was "retained" by the CDCR to "render an opinion as to whether sex-reassignment surgery was medically necessary."[252] Quine had access to these resources as she was located in a State prison which now had sharply mitigated Black inmates and plentiful funding due to Federal backing. Interestingly, previously retained in Los Angeles' Men's Central Jail, due to California's realignment, was Dave Williams whose real name is Yah Yah—a Black transwoman. Although the Men's Central Jail has a segregated unit for gay, bisexual, and trans identifying inmates, those who are trans are referred to by use of male pronouns and their birth name by jail officials. Moreover, Yah Yah did not receive the same gendered healthcare as Quine—the federal funding funneled into California's prisons for healthcare is not allocated to jails, jails are not required to adhere to the same policies as prisons, and California's realignment prevents Yah Yah's access to such care. Although protected from potential rapists, Yah Yah still experienced gendered duress because her access to proper healthcare is constrained and is unacknowledged by law as an injury or right, yet is granted to Quine.[253] For Quine, Judge Tigar made sure that the California Department of Corrections and Rehabilitation understood that they were responsible for the negotiation and payment of the contract concerning Quine's gender reassignment surgery; Quine would not have to suffer with pain of experiencing deliberate indifference. As Quine's rights were recognized the Tigar Court also made sure the settlement secured the proper resources:

[252] Ibid, 28-29.

[253] See Ani Ucar, "In the Gay Wing of L.A. Men's Central Jail, It's Not Shanks and Muggings But Hand-Sewn Gowns and Tears," *LA Weekly*, November 18, 2014. Accessed March 21, 2016 http://www.laweekly.com/news/in-the-gay-wing-of-la-mens-central-jail-its-not-shanks-and-muggings-but-hand-sewn-gowns-and-tears-5218552.

> Following completion of genital sex-reassignment surgery, it is anticipated that Plaintiff will require a period of post-surgery hospitalization and recovery. Following discharge, Plaintiff shall be placed as a female inmate in a CDCR facility that houses female inmates consistent with Plaintiff's custody and classification factors…Plaintiff shall be issued a correctional chrono allowing her access to property items available to CDCR inmates consistent with her custody and classification factors, including property items that are designated as available to female inmates only.[254]

All of this was deemed medically necessary for Quine, which the CDCR defines as "health care services that are determined by the attending physician to be reasonable and necessary to protect life, prevent significant illness or disability, or alleviate severe pain, and are supported by health outcome data as being effective medical care."[255] Further, Dr. Carroll found "Ms. Quine also has a history of anxiety disorder and depressive disorder. She has attempted suicide on multiple occasions and reports one instance of attempted self-castration. Ms. Quine's gender dysphoria is a separate diagnosis from her depressive disorder. Ms. Quine suffers significant anxiety and depression as a direct result of her gender dysphoria."[256] Plainly stated, the gendered pain and injury of Quine, a white transwoman, was legible to prison officials and medical personnel. The pain and injury of Dee Farmer, Yah Yah, and many other Black transwomen were not. Jail and prison official's inability to perceive Black pain confirmed the findings of a 2012 study which found that "people assume a *priori* that Blacks feel less pain than Whites."[257] Two months after Judge Tigar presided over the settlement granting Quine her re-assignment surgery by way of federal funding, he granted Michelle-Lael Norsworthy the same. In addition to her re-assignment, Norsworthy, was granted bail despite her murder conviction.[258]

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[254] *Quine v. Beard*, 4.
[255] Ibid, 29.
[256] Ibid.
[257] Sophie Trawalter, Kelly M. Hoffman, and Adam Waytz, "Racial Bias in Perception of Others' Pain." (San Francisco: PLoS ONE, 2014) Accessed March 29, 2016. http://dx.doi.org/10.1371/journal.pone.0048546.
[258] Beth Schwartzapfel, "What Care Do Prisons Owe Transgender Inmates?," (New York: The Marshall Project, 2015) Accessed April 4, 2016, https://www.themarshallproject.org/2015/04/21/what-care-do-prisons-owe-transgender-inmates#.o1kz1P7rf.

Norsworthy's right to proper healthcare and re-assignment surgery was not rescinded, rather, because it was documented by the Tigar Court, California's Medi-Cal must cover the procedure, as it is a documented necessary procedure.[259]

As Judge Tigar, a white male, carefully oversaw these cases, affirming them in the Constitution by way of the Eighth Amendment, the California Senate was taking its own approach as to what to do with women in California's carceral network. Senate Bill 219 was introduced on February 12, 2015 in the California Senate.[260] The legislation was introduced a few weeks after California reduced its overcrowded prisons to slightly below the court mandated limit of 137.5 percent of occupancy.[261] Although the State of California had achieved its goal primarily by way of utilizing all available spheres of its carceral network, a pressing question still remained: what do to with the bodies of Black women? Senate Bill 219, also known as the Alternative Custody Program, was sponsored by Carol Liu of District 25 and Loni Hancock of District 9.[262] Before the bill was to be voted on, an adjustment in 2012 was made—the program was only to include female inmates. SB 219's impact was manifold: it expanded the reach of the public carceral sphere[263], qualified womanhood, conflated sex and gender by law, and demanded State stewardship of bodies—making augmentation mandatory for gender recognition (which Black transwomen were prevented access to by way of California's realignment legislation). As the proposed bill allowing alternative community programs to assume ownership of low-level

[259] Ibid.
[260] SB 219 was originally introduced in 2010 amid California's prison crisis as SB 1266 by Carol Liu exclusively, however various adjustments were done to the bill resulting in its February 2015 version which was passed by the California Assembly.
[261] "California Meets Judge's Prison Crowding Goal One Year Early," *CBS Sacramento*, January 29, 2015. Accessed March 20, 2016, http://sacramento.cbslocal.com/2015/01/29/california-prison-population/.
[262] "Bill Text- SB-219 Prisons: alternative custody," California Legislative Information. Access March 20, 2016, http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB219.
[263] SB 219 allowed for community based programs—residential homes, drug/treatment programs, or transitional care—to house low level convicted Prisoners.

female inmates was negotiated on California's Senate floor, women in California's prisons were being forced-sterilized; 35 of those documented were Black women.[264] SB 219 was signed into law on October 15, 2015 with the final vote in the Senate being 25-14 in favor.[265] The bill permitted alternative custody programs rights to the ownership of non-violent, non-serious, non-sex crime convicts' bodies—positioning the State-criminalized bodies of Black women to become prized revenue generating objects in the newly expanded terrain of the public carceral sphere. *Brown v. Plata* was indeed a landmark case, however, the ways in which law came to be administered, as well as how healthcare came to be distributed among women, negatively impacted the lives of Black women living in California's carceral network exposing them to further injury by way of gendered duress.

[264] See Corey G. Johnson, "Female inmates sterilized in California prison without approval." (Berkeley: The Center for Investigative Reporting, 2013) http://cironline.org/reports/female-inmates-sterilized-california-prisons-without-approval-4917; and Hunter Schwarz, "Following reports of forced sterilization of female prison inmates, California passes ban," *The Washington Post*, September 26, 2014. https://www.washingtonpost.com/blogs/govbeat/wp/2014/09/26/following-reports-of-forced-sterilization-of-female-prison-inmates-california-passes-ban/.

[265] "SB 219: California Senate Bill," *Open States*. Accessed April 10, 2016, http://openstates.org/ca/bills/20152016/SB219/.

Conclusion
Beyond the Limits of Law

On March 21, 2012 Rekia Boyd laid dead in the middle of a Chicago street with a gunshot wound to her head.[266] Her assailant, Dante Servin, was a detective for the Chicago Police Department. The neighborhood that Boyd was gunned down in, Douglas Park, was under heightened State surveillance via Chicago's anti-gang ordinance. The Douglas Park neighborhood is not only heavily policed because of the ordinance, but the area is also constantly patrolled by way of a home ownership incentive program supported by the City of Chicago which incentivizes police officers to live in high crime areas and where "50% of the current residents have incomes below 60% of the area median income."[267] These legislative and incentivizing efforts place police officers in Black neighborhoods, not to assist the community, but rather to serve as guards in Chicago's public carceral spheres. In his home at 1526 Albany Avenue Dante Servin called 911 for backup stating "there was a huge party, drinking, fighting, smoking drugs. There are 200-300 people and I am afraid something bad is going to happen."[268] By 1:00 a.m. Boyd was dead. Despite the highly contested events surrounding the death of Boyd, Servin was found not guilty by Cook County Circuit Court Judge Dennis J. Porter on April 20, 2015 by a technicality.

Chicago's Douglas Park represents one of the many ways in which public carceral spheres take shape according to the laws of a particular region, and simultaneously encourages research beyond this project to interrogate how public carceral spheres manifest in various cities across the United States. Boyd's encounter in Douglas Park is also representative of how Black

[266] *People of Illinois v. Dante Servin* 14 CR 1710 (2015)
[267] Department of Housing-Police Officer Homeownership Incentive. Accessed March 3, 2016, http://www.bestung.com/work/DOH/police.shtml.
[268] Anita Alvarez, "Cook County State's Attorney's Office: Press Release," Cook County State's Attorney, November 25, 2013. Accessed March 3, 2016, http://www.statesattorney.org/press_ChicagoOffDutyCharged.html.

women continuously experience gendered duress both inside and outside of formal carceral spheres. As a result of the administration of law in Douglas Park: Boyd was dead by no fault of her own and her mother received no justice or acknowledgement of injury due to the State of Illinois' definition of recklessness.[269] Chicago's construction of public carceral spheres maps onto the experience of Los Angeles because, as with most public carceral spheres across the nation, they are facilitated by way of civil procedure, allowing those located in these areas to be prosecuted without requisite criminal procedure and rights. Erecting public carceral spheres by way of civil suits and ordinances allows dispossession, torture, limited mobilization, bodily disintegration, and the experience of unfreedom to be pervasive and facilitated through acts of 'public good' such as Los Angeles' Operation Healthy Streets.[270]

As those located in public carceral spheres are stripped of the possession of both themselves and the goods they own, the recognition of their rights are prevented and they become penalized by their status resulting in many being transferred to jail or prison, where they experience further injury. This experience is particularly painful and pervasive for Black women as they experience gendered duress within any given State carceral network. As persons inhabiting the public carceral sphere are transferred from county to State facilities, as Dee Farmer was, they also become further dehumanized beyond criminalization by way of neglect and are, in many cases, transferred to prisons in another State—exposing the interconnectedness of carceral spheres across the United States.

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[269] *See People of Illinois v. Dante Servin*

[270] See Ryan Vaillancourt, "Operation Health Streets, as Seen From the Streets: Major Cleaning Proves No Easy Answers to Skid Row Grime," *Los Angeles Downtown News*, July 6, 2012. Accessed May 29, 2016, http://www.ladowntownnews.com/news/operation-healthy-streets-as-seen-from-the-streets/article_d5a6d402-c78e-11e1-85ad-0019bb2963f4.html.

From the early American plantation to present day carceral spheres, laws have been used by white Americans to claim rights while simultaneously delimiting Black autonomy, agency, and rights by means of dispossession and misrecognition. This dispossession and misrecognition is based in status, not behavior. America's ambivalence toward the black body in its restricting and containment finds its origins in the wombs of Black women. Here, again, Dorothy Roberts' text *Killing the Black Body* offers important insights, arguing: "a persistent objective of American social policy has been to monitor and restrain [the] corrupting tendency of Black motherhood."[271] Moreover Jennifer Morgan argues in her text, *Laboring Women*, "racial slavery…functioned euphemistically as a social condition forged in African women's wombs."[272] If Roberts and Morgan are taken seriously in their assertions a vital truth emerges: an analysis of carcerality and its State-proposed solutions absent the consideration of the full experience of *all* Black women is insufficient, shortsighted, incomplete, and precludes a serious dialogue of prison abolition. Giving attention to the collective experiences of Black women directs our attention to the ways in which incarceration is constituted beyond traditional infrastructures of carcerality and the resulting injuries experienced beyond the recognition of law. The narratives of Trishawn Cardessa Carey, Janet Jones, Patricia Vinson, Dee Farmer, Yah Yah, Rekia Boyd, Sabrina Fulton, Valerie Bell, Leslie McSpadden, indeed the lives of Black women as a whole, demand a re-working of public policy and State laws. Black women's lives solicit us to conceptualize incarceration as persistent and pervasive State violence against the bodies of Black women, as it is the reproductive work of their bodies—their children—as well as Black women themselves, who have been made the standard of criminalization and comprise the majority of those incarcerated. Until we cease to center Black men as the principal understanding

[271] Roberts, 8.
[272] Morgan, 56.

of incarceration and its various iterations and injuries, Black women's experiences with carcerality will continue to be widely ignored as they are exposed to gendered duress via the choreography of law.

To be clear, prisons are bad. In the argument I have presented here I am not asserting that it is only the disparate provision of resources in State prisons that make them bad. I am however advancing that it was only after Black women's mass transfer to jails (effectively creating a gendered Black site within the carceral sphere for its worst features) that the production of a white feminine sympathetic subject formed the conditions of possibility for needed resources in prisons while simultaneously producing the worst carceral features to be maintained and inflicted upon Black women. Furthermore, several activists and advocacy groups interpreted California's Public Safety Realignment as a victory, due to many receiving reduced sentences and early releases. My objective in exploring California's capitulation to Federal orders regarding its carceral practices is not to position the process of realignment as unimportant, rather it is to emphasize the subjugation of individual subjects, classes of subjects, and the production of carceral spaces beyond the jail and/or prison. In the final analysis my larger aim is to interrogate the ways in which California's realignment, as it provided a type of relief, also reinforced racialized and gendered relations of power—specifically the production of a white feminine sympathetic subject, who would simultaneously be afforded certain benefits but would also implicitly serve as the icon of an expanding system under the guise of gentleness. In conclusion, my central argument is, the production of white femininity as the face of incarceration resulted in Black women's continuity of persistent and pervasive State gendered and racialized terrorization.

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