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Why Are We Still in Chains? Black Women in the Convict Lease System

By: La Toya Tanisha Francis, *Bowdoin College*

Between 1980 and 2014, the number of women imprisoned in the United States increased to a rate that is fifty percent higher than that of men. Regardless of this steep increase, the experiences of female prisoners, past and present, have largely been ignored.¹ Mass incarceration is a dominant conversation in scholarly and public discourse, yet criminological studies often ignore the relationship between gender and race. A stark difference between the incarceration rates of African American women and white women remains. Following the abolition of slavery in 1865, the state prison system in United States underwent a major transformation and the convict lease system was established. The legacies of the overrepresentation, intense labor, and ill-treatment of black women in the penal system are still evident in the system today. After the abolition of slavery, the number of incarcerated black women increased because the U.S. prison system developed to replicate and reinforce the gendered oppressions and social control specific to black women that had previously existed for slaves. This paper will consider the oppression of black women in the American South convict lease system through the lens of labor exploitation.

The marginalization of black women in criminological discourse shows that mainstream perspectives disregard the effect of gender on

the relationship between race and crime. Criminologist Gregg Barak argues that culturally white and male bias in criminology results in the suppression of important historical and social contexts and female experiences, consequently leading to an inaccurate conceptualization of crime.² Monolithic pedagogical constructions serve to reinforce race, gender, and class conflicts in the United States. As a result, many Africana Studies scholars emphasize the importance of “placin[g] black women at the center of our [historical] narratives,” even though mainstream discourses often marginalize the experience of black women.³ Dominant, racialized societal ideals about womanhood, along with structural racism present in American institutions, bleeds into the modern U.S. criminal justice system. A combination of unequal access to justice for black victims and disparities in arrests and sentencing for black female offenders suggests the treatment of black women in the criminal justice system is inextricably intertwined with both gender and race. Hence, it is important to examine gender in conjunction with race when studying the history of prisons in the United States.

This paper examines how interlocking oppressions of race and gender meant that black women who interacted with the criminal justice system were more likely than white woman to be leased convicts. Comparing black

¹“Incarcerated Women and Girls,” The Sentencing Project, <http://www.sentencingproject.org/wp-content/uploads/2016/02/Incarcerated-Women-and-Girls.pdf> (Accessed 2017).

²Gregg Barak, “Cultural Literacy and a Multicultural Inquiry into the Study of Crime and Justice,” *Journal of Criminal Justice Education* 2, no. 2 (1991), <http://dx.doi.org/10.1080/10511259100082381>.

³Judith Weisenfeld, Weisenfeld, Judith, “Invisible Women: On Women and Gender in the Study of African American Religious History,” *Journal of Africana Religions* Volume 1, no. 1 (2013).

women to white women does not imply the existence of a racial binary limited to white and black categories. Furthermore, demographic changes caused by immigration and intermarriage changed the conception of race over time. Nonetheless, in order to understand the racial history of the United States, it is important to compare the experiences of black women to those of white women because the popular imagination constructs racial issues around the black/white binary.

A brief overview of the historical legacy of slavery contextualizes the complicated nature of black women's experiences with state penal institutions. The political economist Jo Flateau claims Atlantic slavery can be thought of as a metaphor for the modern criminal justice system. Flateau asserts, "metaphorically, the criminal justice pipeline is like a slave ship, transporting human cargo along interstate triangular trade routes from Black and Brown communities."⁴ Police precincts, detention centers, and courtrooms can be thought of as the middle passage, before these individuals are placed in bondage at downstate jails or upstate prisons. Flateau contends that released convicts return to their communities as "unrehabilitated escapees" who, like runaway slaves, will eventually be returned to their captivity by the State. This assertion highlights the institutionalized nature of the criminal justice. Flateau concludes that the prison pipeline is "a vicious recidivist cycle" similar to slavery.⁵ Flateau's allusion to slavery is apt considering the history of atrocities committed against black people in the U.S. Therefore, understanding the historical context of black women since

the institution of slavery in the U.S. aids our understanding of the present-day criminal justice system.

Adam Hirsch asserts, "the penitentiary arose in the age of slavery," which illustrates that the presence of black people in the U.S. had an important role within the development of the prison system.⁶ Slaves were usually punished by their owners outside of the state justice system due to the inherent heteronomous nature of chattel slavery. In the lower South, before the abolition of slavery, virtually none of those imprisoned were slaves.⁷ However, even after emancipation occurred, white Americans possessed a monopoly of social and political power over the black caste, a racially subjugated group. In order to control the black population, the state incarcerated an increasing number of black women following abolition. Hence, the rise of the penitentiary system occurred alongside changing attitudes towards crime and punishment, connected to changing social, economic and political conditions in society.⁸ Once the Emancipation Proclamation came into effect, according to the U.S. Department of Justice, the number of prisoners rose from 60.7 per 100,000 in 1860 to 85.3 per 100,000 in 1870.⁹ The exponential increase in the number of prisoners suggests that the 13th Amendment allowed southern states to resolve their economic concerns regarding the abolition of slavery by establishing the convict lease system.

Often referred to as "slavery by another name," the convict lease system replenished the workforce for former plantation owners.¹⁰ Consequently, "the most resonant symbol of the

⁴J. Flateau, *The Prison Industrial Complex: Race, Crime & Justice in New York* (Medgar Evers College Press, 1996).

⁵Ibid.

⁶Adam Jay Hirsch, *The Rise of the Penitentiary: Prisons and Punishment in Early America*, (New Haven: Yale University Press, 1992), 71.

⁷Edward L. Ayers, *Vengeance and Justice: Crime and Punishment in the 19th Century American South* (New York: Oxford University Press, 1984).

⁸Hirsch, *The Rise of the Penitentiary*, xiv.

⁹Margaret Werner Cahalan, "Historical Corrections Statistics in the United States, 1850 – 1984", U.S. Department of Justice

¹⁰Sam Pollard, *Slavery by Another Name*, Documentary, (2015, San Francisco, California, USA.: Kanopy Streaming, 2015). <http://www.pbs.org/tpt/slavery-by-another-name/watch> (1986), 28. <https://www.bjs.gov/content/pub/pdf/hcsus5084.pdf>

slave plantation – the clanking of chains – echoed just as loudly from within prison walls.”¹¹ The formation of the convict lease system replicated the gendered oppression, racism, labor exploitation, and social control that had previously existed for enslaved black women. By 1880, a third of the black population in the South had been imprisoned - though how many of these prisoners were women is unclear.¹² In the South, the social arrangements of race, gender, and class created in the aftermath of the Civil War influenced the dispatch of punishment and justice. Under the widespread convict lease system in Southern states, convicts were leased out for labor to private parties who were responsible for housing, feeding, and clothing them. Many historians blame the convict lease systems’ popularity on the southern state governments’ fiscal insolvency during Reconstruction.¹³ Convict leasing provided a source of labor to industrialists or plantation owners in the South who had remained involved in the international market economy after the Civil War but could no longer use slaves for cheap labor. Hence, after 1865, black labor exploitation continued by funneling disproportionate numbers of black people into the prison system. Despite a smaller financial investment, the private parties participating in the system, the “leasers,” found their profits from convict labor were comparable to slave labor. Unfortunately, this meant leasers had no incentive to treat convict laborers better than slaves. Yet again, the law failed to protect the liberties of black women, and in many cases actively sought to subjugate them. Thus, the first instance of black women performing prison

labor can be attributed to the establishment of the convict lease system, not the privatization of modern day prisons.

Black Codes and Jim Crow laws further subjected black women to state violence and criminalization, as societal devaluation of black womanhood meant black women were not included in the protected class of white women. Southern society conceptualized black femininity in direct opposition to the white-washed ideals of True Womanhood. During the era of slavery, “the black woman was treated with no greater compassion and with no less severity than her man.” As such, negative constructions of black womanhood meant there were no gender distinctions within black labor.¹⁴ State authorities used the stereotypes of black womanhood created during slavery to rationalize forcing black female prisoners to labor on both sides of the gender divide. As a result, slavery’s economic logic was replicated by the Jim Crow carceral regime.¹⁵

Georgia and Alabama, though both in the South, had different attitudes towards black women’s labor. In 1908, Georgia implemented a domestic sphere within the carceral system that forced black women to work as domestic servants while serving parole. However, the extremely diverse laboring expectations of Georgia’s convict women contrasts the exclusively domestic vocational roles of Alabama’s female inmates.¹⁶ Despite the separation in labor expectations, the penal system in both Alabama and Georgia aligned with the racial and gendered beliefs of the time. Georgia treated black women from a racial perspective that assumed their blackness made them less

¹¹Hirsch, *The Rise of the Penitentiary*, 72

¹²Margaret Werner Cahalan, “Historical Corrections Statistics in the United States, 1850 – 1984”, U.S. Department of Justice (1986), 28. <https://www.bjs.gov/content/pub/pdf/hcsus5084.pdf>

¹³ Christopher R. Adamson, “Punishment after Slavery: Southern State Penal Systems, 1865-1890,” *Social Problems* 30, no. 5 (1983), 556, <http://dx.doi.org/10.2307/800272>.

¹⁴Angela Y. Davis, Angela Davis, “Reflections on the Black Woman’s Role in the Community of Slaves” (1998), 117.

¹⁵ Sarah Haley, *No Mercy Here: Gender, Punishment, and the Making of Jim Crow Modernity* (University of North Carolina Press, 2016), 55.

¹⁶ Talitha L. LeFlouria, *Chained in Silence: Black Women and Convict Labor in the New South*, (Chapel Hill: The University of North Carolina Press, 2015), 6.

than women, whereas Alabama's gendered perspectives influenced the state's treatment of female inmates. Ultimately, the Southern "carceral regime [was] a key infrastructure that produced and reinforced racialized constructions of gender and gendered divisions of labor."¹⁷

Black women faced a variety of oppressions due to the intersection of their gender and race within the Southern convict lease system. Gendered racial terror in the south was the genesis of women's interactions with the criminal justice system. The end of the Reconstruction era in 1877 to the beginning of the Great Depression in 1926 is also known as the "Lynching era". An estimated 2,462 African Americans were killed and 79% of lynching crimes occurred in the southern states.¹⁸ It is clear that "Southern chivalry [drew] no line of sex" as African American women were also victims of lynching. 3% of victims were female and though this statistic is comparatively small, it highlights that the justice system did not protect black women from violence.¹⁹ Mary Turner exemplifies the experiences of black women with the law in the 19th century. Turner vowed to "swear out warrants to bring her husband's murderers to justice," yet white supremacists killed her with no legal reprisals. Ida B. Wells, a prominent anti-lynching crusader during the 1890s, was forced into exile after writing *Southern Horrors*, a piece which claimed the "Afro-American race is more sinned against than sinning."²⁰ One example which Wells writes about is seventeen-year-old Lillie Bailey, a white girl in the Memphis Women Refuge who gave birth to a baby fathered by a black man. Wells writes that in the Memphis

Leger she was referred to as the "mother of a little coon" and that the "truth [of the baby's father] might reveal a fearful depravity."²¹ Bailey's ultimate expulsion from the Women's Refuge center and her treatment by the press illustrates how general racism influenced the social control of all women living in the American South.

Sexual and medical violence is another example of racial and gendered oppressions that black women experienced at convict labor camps. However, issues specific to women in the prison system are often ignored because criminologists have predominantly used masculinist perspectives in criminology to analyze convict labor camps. Unlike slavery, imprisonment was not inheritable; therefore, the shift from slavery to imprisonment meant that the image of black motherhood was negatively reconstituted. Black female reproduction was no longer desirable because "the New South fiscal model saw pregnancy and childbirth as threats to economic progress and productivity."²² An article published in the *St. Louis Globe-Democrat*, in August 1887 described the children of black mothers as the "worst features of the convict labor system."²³

Additionally, the coerced sterilization of black women was associated with the eugenics movement and its white supremacist ideology. Eugenics is a pseudoscience, which seeks to improve the genetic characteristics of the human population through controlled breeding. Many sterilization advocates argued reproductive surgeries were a necessary public health intervention that would protect society from the propagation of deleterious genes and mitigate the economic costs of managing

¹⁷ Haley, *No Mercy Here*, 53. "

¹⁸ "Lynchings, by State and Race, 1882-1968," Charles Chestnutt Digital Archive, accessed 2017. http://www.chesnuttarchive.org/classroom/lynchings_table_state.html.

¹⁹ William F. Pinar, *The Gender of Racial Politics and Violence in America: Lynching, Prison Rape, & the Crisis of Masculinity*, (New York: P. Lang, 2001), 91.

²⁰ Ida B. Wells-Barnett, *Southern Horrors: Lynch Law in All Its Phases* ([S.L.]: New York Age Print, 1892).

²¹ *Ibid.*

²² LeFlouria, "Chained in Silence: Black Women and Convict Labor in the New South," (Chapel Hill: The University of North Carolina Press, 2015), 4.

²³ Haley, *No Mercy Here*, 112.

“degenerate stock”.²⁴ Therefore, the sterilization of black people within the prison system illustrates the long history of the state’s association between the social control of black people and the economy. Due to the limited control incarcerated black women had over their bodies, state-sponsored reproductive oppressions became prevalent. Sterilization laws were justified by racist evolutionary theories that claimed traits such as criminality, feeble-mindedness, and sexual deviance, were completely hereditary.²⁵ Given that these characteristics were overwhelmingly associated with African Americans, it is unsurprising that black women were disproportionately subjected to sterilization procedures, often without their knowledge or consent.

Many African American public figures, such as W.E.B Du Bois and Malcolm X, contested the eugenics movement by attributing rising incarceration rates on social inequality. Du Bois put the onus on black individuals as he attributed crime to a rebellion of social disorder.²⁶ Though Du Bois combats racial essentialism, his individualized interpretation of black crime creates disunity within the black community as it separates the non-criminal blacks from the criminal blacks. In contrast, black community leaders at the Ninth Annual Atlanta Conference argued crime was a symptom of social disorder and racial disparities in crime were a reflection of structural issues.²⁷ Ultimately, non-essentialist arguments regarding the cause of the disproportionate incarceration of African Americans gained limited traction and had a minimal impact on the predominately white institution of the criminal justice system. The

eugenics movement in the U.S. remained very influential prior to the use of its doctrines by Nazis during World War II. However, in prisons post World War II, medical neglect was still present, especially for African American women.

Carceral constructions of black female deviance meant that black women were unfairly treated compared to white women in the convict lease system. The ideals of True Womanhood, also referred to as the Cult of Domesticity, embodied piety, submission, domesticity, and sexual purity. Black women were excluded from the ideals of True Womanhood and its benefits because “black womanhood and white womanhood were represented with diametrically opposed sexualities.”²⁸ Hence, black women’s experiences of punishment or prison in the South were as subjects outside of the protected category of women. In stark contrast to the rising number of black female prisoners, the imprisonment of white woman was rare, and they were almost never sent to convict lease camps.²⁹ This phenomenon can be attributed to the necessity of controlling black women through law in response to the abolition of slavery. It is equally important to consider the intersection of socio-economic class alongside gender. For example, though fines for municipal offenses like disorderly conduct were comparable across racial and gender lines, white women were more likely to be able to pay their fines than black women. Nonetheless, there were sentencing disparities probably influenced by mainstream society’s designation of “a pathological uniformity onto black women as a group, such that every black woman

²⁴Ibid.

²⁵Stephen Trombley and Bruce Eadie, *The Lynchburg Story: Eugenic Sterilization in America*, Documentary, (1995; New York: Filmmakers Library); “State of Eugenics,” recorded 2017, PBS, Documentary; A. Stern, *Eugenic Nation: Faults and Frontiers of Better Breeding in Modern America* (University of California Press, 2005).

²⁶ African American Classics in Criminology & Criminal Justice (Thousand Oaks, California: Sage, 2002).

²⁷ African American Classics in Criminology & Criminal Justice.

²⁸ Evelyn Brooks Higginbotham, *Righteous Discontent: The Women’s Movement in the Black Baptist Church, 1880-1920* (Cambridge, Mass.: Harvard University Press, 1993), 190.

²⁹ Haley, *No Mercy Here*, 4.

³⁰ Ibid., 31.

regardless of her income, occupation, or education became the embodiment of deviance.”³¹

Two Georgia women accused of murder demonstrate the difference between their representations of black and white female deviance. Eliza Cobb, a twenty-two-year-old black woman, was accused of infanticide, convicted, and sent to a convict lease camp. Though the evidence against her was “wholly circumstantial,” she could not “combat the burden of guilt that guided all-white juries in infanticide cases.”³² In juxtaposition, in 1923 when Martha Gault, a young white woman, was charged with assault with intent to murder, the judge considered Gault worthy of redemption despite her guilt. Whereas Cobb’s blackness meant her criminality was considered innate, Gault’s whiteness meant her deviance was seen to be due to bad male influences.³³ The comparison of Cobb and Gault demonstrates that the criminal justice system strictly adhered to the racial and gendered conventions from the ideology of True Womanhood. In fact, the racial construction of womanhood meant courts only considered the existence of female criminality when more African American women entered the prison system after emancipation. Legislators in Alabama, when confronted with female criminality, “had entertained the hope that there was not a female in Alabama, so destitute of virtue and honor as to commit an act sufficiently heinous as to justify the courts...committing one to the penitentiary”³⁴ The law reflected these views and authorities did not use split gender correctional facilities until the 1870s.³⁵ Hence, although the separation between black and white womanhood existed prior to abolition, the convict lease system reinforced the division between black and white women and enshrined the unjust treatment black women experienced

during slavery into criminal proceedings.

Ultimately, the convict lease system was one of the many developments in the criminal justice system which used economic disparities and forced labor as a mode of social control against black women. The convict lease system was the direct result of slavery and its abolition. Following the economic instability of the Civil War, the prison system was an institution that was still legal, which allowed the state to continue to subjugate black southern women and maintain white supremacy. The convict lease system allowed the state to combat the economic and political threat that a newly freed black population posed to the Southern states. The evolution of the penal system over time led to the creation of what is now known as the prison industrial complex. Whereas the penitentiary is an institution, the prison industrial complex refers to a system where the interests of government and industry use surveillance, policing, and imprisonment in order to solve economic, social, and political problems. Within the prison industrial complex, inmates are no longer simply used as labor, instead “they themselves are the raw materials facilitating the profitability and expansion of the Prison Industrial Complex.”³⁶ Similar to convict leasing, both state and private corporations collaborate in order to profit from the prison system. Prisons serve as a source of employment for nearby communities, and private corporations profit from the construction and management of prisons. Hence, although the unjust labor exploitation of black women was more apparent in the convict lease system, twentieth and twenty-first century prisons continue to replicate the racial and gendered oppression present during slavery and exploit women economically.

³¹ Higginbotham, *Righteous Discontent*, 190.

³² Haley, *No Mercy Here*, 18

³³ *Ibid.*, 22

³⁴ Ayers, *Vengeance and Justice*, 63.

³⁵ Cyndi Banks, *Women in Prison: A Reference Handbook* (ABC-CLIO, 2003), 1.

³⁶ A. E. Raza, “Legacies of the Racialization of Incarceration: From Convict-Lease to the Prison Industrial

An examination of black female incarceration and the historical development of prisons in the U.S. suggests that the number of incarcerated black women increased as a result of the establishment of the convict lease system. This system systematically replicated and reinforced the racism, sexism, and social control that was previously enforced against enslaved black women. Despite the extensive reforms and changes to the penal system since convict leasing, the social control and subjugation of African American women has remained consistent in the criminal justice system overtime. In her extensive scholarship about African Americans and criminality, the scholar Angela Davis argues criminalization has historically been and continues to be a fundamental tool that maintains anti-black social, political, and economic control. Black women's labor exploitation continued through the transformations in the prison system. Consequently, a large segment of the construction and development of postbellum industries in the South can be attributed to them. At the height of the Atlantic slave trade, the South was able to keep the majority of the impoverished under control, hence "the South, it would seem, simply had little objective or subjective need to build penitentiaries."³⁷ However, emancipation meant Southern society's traditional capitalist norms began to disintegrate. It is notable that the convict lease and later successive systems of imprisonment such as the chain gang and the prison industrial complex originated from extensive economic and social changes. Post-Emancipation legislation and the separation between white and black womanhood all worked in tandem to cause the overrepresentation of black women in southern prisons and allow the state to exploit their labor for profit. The economic dimension of incarceration demonstrates that the penitentiary replicated several other elements of slavery

alongside the removal of individual liberty.

Examining central issues in African American legal and political history is important as it gives a more nuanced analysis of the contemporary problem of mass incarceration of black women. As Mariame Kaba said, "the past bleeds into the present." Today, the racial disparity of the prison population is the most conspicuous continuity in the history of the convict lease system in southern states. Though an analysis of the convict lease system is only a small segment of prison history, it is significant as it contextualizes the present-day epidemic of mass imprisonment. The Southern penal system was central to the production of Jim Crow modernity in the U.S. prison system as a whole. Racist laws and legislation, judicial leniency towards whites, and a desire to profit at the expense of the black population in the U.S. were all factors which led to the racialized population imbalance in prisons.

To conclude, as the interacting elements of economics, class, sexuality, politics, gender and race have caused mass incarceration to become integral to cultural life in the U.S., there is no simple solution. However, by considering the history of the U.S. prison system, the general public will be inspired to question their assumptions about prisons. Angela Davis observed that "there is reluctance to face the realities hidden within them...Thus, the prison is present in our lives and, at the same time, it is absent from our lives."³⁸ Prisons need to be brought to the forefront of the public consciousness in order for extensive reforms within each stage of the criminal justice system to occur. Restructuring is necessary within every aspect of the penal institution. Linking black women in the convict lease system to prisoners today illustrates negative aspects of society, such as institutional racism and sexism, that continue to be embedded in the prison system.

Complex," *Journal of the Institute of Justice and International Studies*, no. 11 (2011): 167.

³⁷ Ayers, *Vengeance and Justice*, 34.

³⁸ Angela Y. Davis, *Are Prisons Obsolete?*, Open Media Book (New York: Seven Stories Press, 2003), 15.

Consequently, the prison abolitionist movement argues prisons should be completely abolished. A less radical solution to remove the inequalities present in prisons without abandoning prisons is to first destroy, then completely reconstruct, the entire penal institution. The Roman philosopher George Santayana stated those who cannot remember their past are condemned to repeat it.³⁹ Thus, though there are no simple solutions that will solve the plight of African American female prisoners, at the very least a historical analysis of both exploitation and resistance within the convict lease system will serve as a tangible starting point to inform present day criminal reform and legislative changes to specifically aid black women

³⁹ George Santayana, *The Life of Reason: The Phases of Human Progress* (Amherst, N.Y.: Prometheus Books, 1905).

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