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FROM PRIVATE VIOLENCE TO MASS INCARCERATION: THINKING INTERSECTIONALLY ABOUT WOMEN, RACE, AND SOCIAL CONTROL*

Kimberlé Williams Crenshaw

This Article, which originally appeared in *UCLA Law Review*'s 2012 Symposium issue, entitled "Overpoliced and Underprotected: Women, Race and Criminalization," is a contribution to the ongoing efforts to think critically about the intersectional features that contribute to the surveillance, punishment, and mass incarceration of women of color. In the context of mass incarceration, race-centered and gender-centered frames are largely silent about the hyper-presence of women of color in the system. The failure to be sensitive to the overlapping vulnerabilities of race and gender—as evidenced by select examples discussed *infra*—is a failure to fully investigate the unique structural and institutional intersections that contribute to the risk and consequence of punishment for women of color.

Focusing on the experiences of women and girls of color *qua* incarceration and policing reveals how the dynamics that constitute mass incarceration are not exclusively underwritten by criminal justice processes. Instead, they are produced by a wider template of disciplinary practices produced both by state institutions as well as by private social power. The vulnerability of women of color to these institutional forces is reinforced by certain discursive failures within antiracism and feminist politics. These deficits have reproduced dynamics that have historically surfaced in both feminist and antiracist discourses around violence and inequality. Below I offer a brief snapshot of the intersectional dynamics contributing to the surveillance and social control of women of color. I then sketch out some linkages between the intersectional failures within antiracism and feminism that contribute to the weakened capacity of social justice discourses to resist the ideological juggernaut that underwrites the expansion of social punishment and mass incarceration.

Despite the fact that women and girls are the fastest growing populations under criminal supervision, much of the contemporary discourse that elevates the racial dimensions of mass incarceration fails to interrogate its effects on women. The fact that Black men are more likely to be incarcerated than any other cohort has reinforced the inference that Black men are uniquely subject to racial discrimination and control in a way that women are not. However, within

THE INTERSECTIONAL DIMENSIONS OF MASS INCARCERATION IN THE CONTEXT OF WOMEN AND GIRLS

their respective gender groups, men and women of color face racialized risks of incarceration that are similar.[1] In other words, the increased risk of incarceration relative to race is virtually the same for Black men as it is for Black women. To the extent that the system of mass incarceration might be framed as a system of racial control, the fact that Black women are 6.9 times more likely than white women to be brought under the system and that Latinas are 2.5 times more likely than white women tells us that the social surveillance and control of women can also be framed as a racialized enterprise.[2]

Many factors have contributed to the explosive rate of women's incarceration, most prominently among them being the war on drugs.[3] For example, incarceration for drug-related offenses accounted for an eightfold rise in African American women and Latina supervision between 1986 and 1991.[4] The racial dimensions of the war on drugs—particularly the crack-powder cocaine distinctions and the draconian mandatory minimums—have been well documented.[5] Efforts to understand the particular ways that women are caught up in the war on drugs highlight the intersectional dimensions of a racialized social policy set against the backdrop of gendered relations between men and women.

HOUSING AND SURVEILLANCE

While attending to the gendered dimensions of the prevailing discourses on mass incarceration can bring much needed attention to some of the causes and consequences of the disproportionate incarceration of women of color, centering their broader vulnerability to surveillance and control expands the field of inquiry to the structural and ideological dimensions of social control. This broader template reveals the multiple ways that institutional and political dynamics intersect to create the vexed social environment that renders women of color vulnerable to social surveillance and that simultaneously marginalizes these risks within social justice discourses.

Priscilla Ocen brings these dimensions to the fore in her analysis of a case involving the surveillance and control of subsidy-reliant single Black mothers in Antioch, California.[6] Ocen recounts the troubling story of how Black female recipients of Section 8 housing vouchers were subjected to public and private policing in predominantly white communities when economically distressed homeowners began accepting the vouchers, thereby opening up middle-class neighborhoods that had previously been inaccessible to single Black mothers. In response, the police department put together a special unit to meet this perceived threat.[7] Black women were singled out for constant monitoring and intrusive house searches by this special unit, and neighbors were invited to participate in the surveillance through flyers that the unit distributed throughout the community. In an episode that tragically captures the theme of this symposium—overpoliced and underprotected— one of the plaintiffs recounted how a police visit to intervene in a domestic assault

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turned into a compliance investigation and search of her home.[8] No investigation into the domestic violence complaint was ever pursued. Evidence suggests that this pattern of manufacturing suspicion is widely experienced by Black women in other communities as well,[9] drawing a complicated picture not only of the interface between public and private power but also of the institutional interface between subsidy programs and policing.[10]

Ocen's analysis widens the lens through which the intersectional dimensions of social control are legible. As she illustrates, intersectional vulnerability to social control extends beyond the formal carceral regime.[11] Her analysis of the Antioch case reveals how the converging vulnerabilities that render some populations particularly amenable to control can be premised on the intersection of formal status (beneficiaries of social support services) and ascriptive identities (African American). Entrapped as such, the plaintiffs were available targets of both public (police) and private (neighborhood watch) mechanisms of surveillance and social control.

T he current crisis that we call mass incarceration or punishment comprises multiple intersections—not just of identity and power but of systemic dynamics that themselves do the work of subordination. Dorothy Roberts and Sunita Patel examine the nexus between child welfare and mass incarceration, and immigration and foster care respectively, revealing how the convergence of criminal and civil surveillance regimes creates and maintains the dominant racial, class, and gender hierarchy.

In Dorothy Roberts' sobering account of the parallel and overlapping systems of mass incarceration and child welfare, Roberts shows how these systems work in tandem to create and justify conditions that render women vulnerable and subsequently punish them for their vulnerability.[12] Roberts' cogent critique emphasizes the extent to which the ideological permission to punish is generated by widely available stereotypes of Black mothers. By heaping punishment on those who have been primed to deserve it, the discourse not only "obscures the need for social change"[13] but also undermines solidarity and the recognition of common cause. So long as these conditions prevail, "there is little incentive for privileged parents to advocate alongside black mothers for more public support for caregiving for everyone."[14]

Sunita Patel's discussion of the convergence between child welfare systems and immigration in the context of the Department of Homeland Security's Secure Communities program illustrates similar ways that immigrant women are subject to intersectional dynamics of social control.[15] Social expectations that are gendered, and that reflect circumstances of economic marginality, shape the challenges faced

by women defending themselves against the Department of Homeland Security's efforts to remove them. According to Patel, "[t]he mothers have to personify the judges' image of a good mother in order to win: self sacrificing, humble, law abiding and English speaking. Poor migrant women and their attorneys often struggle to create a particular narrative of the woman's life to compare with gender and rational ideas of motherhood."[16] Yet in doing so, they frequently face gendered double standards in that the sacrifices they sometimes make for their children—leaving them with relatives, working long hours to send money home, and saving money so that they can be reunited with their children—are perceived negatively in women when the same behaviors in men would be considered heroic. "Migrant men making the same decisions aren't blamed or punished for their choices as fathers."[17] The interface between immigration and child protective services is further vexed by the structural and economic backdrop in which immigrant women are situated. Because detained mothers are often in networks in which those whom the mother might designate as acceptable caretakers are unable to come forward because of their own status, or agencies will not accept them if they do, their ability to negotiate alternatives to foster care is limited.

These brief examples illustrate the ways that race, gender and class function along with other factors to render certain women particularly vulnerable to systems of surveillance and social control. But intersectional analysis draws attention not only to these converging patterns of social marginality, but also to the absence of collective support and social justice advocacy on their behalf. Taken together, these examples thus may serve to not only amplify an earlier set of debates about the relative marginality of women of color in a variety of feminist and antiracist discourses pertaining to violence and inequality.[18] It also primes an important consideration of how these earlier deficits have contributed to the growth of neo-liberal ideologies that underwrite the shift from social welfare to social punishment.[19]

Various observations made by symposium participants reveal how intersectional failures in responding to the underprotection of women of color are linked to the current regime of overpolicing. In the case of domestic violence, for example, the increasingly punitive approaches to a variety of social problems in the last decades of the twentieth century opened up opportunities for domestic violence advocacy to ride the tide associated with crime control and local accountability. As the "Get Tough" approach to drug dependency, poverty, juvenile delinquency, and single-family formation shifted the landscape away from legal reform to social control, domestic violence advocacy gained new traction as a criminal justice issue.[20] A key dimension of the Violence Against Women Act (VAWA),[21] for example, was its embrace of mandatory arrest policies along with federal support to encourage local police departments to process domestic assault complaints aggressively. The promise of expanding resources to support

mandatory arrest policies seemed to present a win-win situation for some domestic violence advocates who understood the problem primarily in terms of the state's underprotection of women who were subject to battery.[22] This understanding of domestic abuse as a criminal justice issue allowed some advocates to join forces with national and local governments to receive support for certain draconian reforms.[23] Mandatory arrest policies and other pro-policing remedies were seen as important victories by many advocates despite the serious reservations of many women of color and other advocates.[24]

Other domestic violence advocates were far less sanguine about the supposed opportunities that such collaborations with law enforcement would engender for the overall movement.[25] For those who understood domestic violence as part of a broader system of gender subordination rather than an exclusively criminal problem, the shifts to federally supported police involvement presented a serious threat to the grassroots origins of domestic violence advocacy.[26] Some were particularly critical of this shifting emphasis as many warned that any strategy predicated on criminalization would likely result in higher fatalities and an increase in arrests for women of color.[27] But several factors seemed to pave the way toward the increasing influence of law enforcement as a primary goal of domestic violence advocacy. The availability of resources associated with the get-tough turn in public policy, the ongoing debate among various camps about whether violence should be understood as a systemic embodiment of patriarchy or a matter of discriminatory protection within law enforcement,[28] the unresolved tensions about the importance of incorporating racial differences into gender-based advocacy, and the eclipse of the radical feminism that had grounded the shelter movement in the first place, all contributed to an environment in which the marriage between domestic violence advocacy and state-oriented approaches was readily consummated.[29] The concerns of women of color were fairly consistently overlooked in the process.

While the alliance between domestic violence advocates and law enforcement might be readily understood as the maturation of a grassroots insurgency into a powerful national lobby, others have regarded the alliance as evidence of the shifting of the antiviolence movement into a pro-state, professionalized cohort that has depoliticized the original movement.[30] The alliance did work to secure a national profile for domestic violence advocacy along with funds to support mandatory arrest policies.[31] Yet, as many women of color predicted, mandatory arrest policies appear to have done little to protect women of color against domestic violence.[32] Indeed, some studies seem to suggest that the policies have inadvertently increased the risks of serious injury or death for some victims of domestic violence, including a heightened risk of mortality for Black women in particular.[33] Beyond the heightened risk of death, research suggests that women of color are more likely to be arrested themselves for behavior that may be consistent with self-defense, but interpreted through the lens of stereotypes as overly aggressive.[34]

The blowback from these criminal justice solutions has also ensnared girls of color.[35] For example, both Francine Sherman and Jyoti Nanda discuss how the increasing system involvement of girls is tied less to increases in offending and more to shifting policies such as mandatory arrest in the context of intrafamily violence.[36] In cases of domestic assaults, girls who have been violent at home and who may have, in an earlier era, been processed outside the juvenile justice system are now apprehended and processed through the juvenile system. Black girls appear to be disproportionately apprehended under such policies, reflecting perhaps the stereotypes that they are more likely to engage in physical confrontation.[37]

Advocates who were sensitive to the dual systems of private violence and public surveillance were attuned to the need to think critically about alternative means of protection that did not overinvest in approaches that put women of color at greater risk.[38] Unfortunately these intersectional sensibilities were embraced neither by legislative advocates nor by their allies, and thus domestic violence intervention became another social issue swept into the criminal justice juggernaut. Hindsight may indeed provide a clearer view of the risks associated with an overly punitive approach to domestic violence,[39] but it is not entirely speculative to suggest that had there been greater receptivity to the reservations that women of color were raising about mandatory arrests, domestic violence advocacy may well have been better positioned to sustain a political agenda that was more firmly rooted in social justice rather than criminal enforcement.[40] Had more domestic violence advocates taken up the intersectional challenges faced by women who were subject to both private violence and public control, reliance on an apparatus that was long associated with racial management might have been more carefully scrutinized. Not only might women of color have been better situated, but the entire movement might have been better positioned to address the causes and consequences of domestic abuse rather than to succumb to the more troubling logics of criminal enforcement.[41]

ENDANGERMENT DISCOURSE AND THE TAMING OF RACIAL JUSTICE

This blowback is only one consequence of the intersectional failures from the 1990s that influences contemporary discourse about mass incarceration. A parallel and overlapping connection between the intersectional failures in the 1990s and the current discourses around mass incarceration can be found in a cluster of ideas contained within the "Black male endangerment" discourse.[42] Beginning in earnest with the Reagan Administration, two key dimensions of post-reformist social policy were packaged around images of criminality, crime, and pathology: the war on drugs and welfare dependency.[43] As President Clinton extended the war on drugs and campaigned to "end welfare as we know it" by shredding the economic safety net for millions of women and children,[44] images of Black crime, drug dealing, and welfare dependency saturated the political debate.[45] Although both initiatives bore Black faces and contributed to the discursive shift

away from social justice to social control, only the targeting of Black men was taken up as a crisis within antiracist politics.[46] While stereotypes of both Black men and women punctuated the growing embrace of penal approaches to drug addiction, poverty, and their many social consequences, Black politics converged around Black men as the focal point of responsibility and uplift. The shifting rhetorical stance from a more inclusive, community-centered ethos to a male-centric notion of responsibility and endangerment was captured most memorably by Minister Louis Farrakhan's Million Man March.[47]

While the exclusion of women is perhaps one of the most memorable ways that the March marked its almost exclusive focus on men, deeper still was the way the March authorized a central ideological pillar that underwrote the attack on welfare, single-headed households, and Black single mothers. The thesis that Black inequality was grounded in dysfunctional family relationships had been introduced decades earlier by a controversial report that cast doubt on the possibility that structural reforms would significantly improve the lives of poor Black people. Daniel Patrick Moynihan infamously described the Black family as pathologically out of sorts, illustrated by the dominance of the so-called Black matriarch[48] and the relative absence of traditional gender relations in the family. Among other concerns, Moynihan worried about the consequences of generations of Black boys being raised by single or dominant mothers and encouraged military training to remove them from this matriarchal influence.[49]

The Million Man March was in many ways an extension of and response to the Moynihan critique. Unlike the March on Washington in 1963, this March sought no structural interventions, no changes in economic policy, and no specific demands with respect to legal enforcement, opportunity creation, or family support. Accountability was squarely placed on Black men whose agency or lack thereof was the focal point of critique and uplift. Although a massive retrenchment in the social support that was vital to countless women and children was being debated at the time, little effort was made to support single mothers and their families other than a promise that a man in the house was on the way. The Million Man March was so in concert with the prevailing ideology that underwrote the ongoing efforts to restructure Aid to Dependent Families that the President and other opinion leaders supported the gathering despite the widespread criticism of Minister Farrakhan.[50]

Thus, as the earlier social justice demands of the 1960s became rearticulated as a call for male leadership in the family and in the community, the particular risks that Black women faced as a consequence of their intersectional encounter with racialized, gendered, and class-based hierarchies bore little traction within antiracist political discourses. As dynamics such as violence, economic marginality, and vulnerability to the war on drugs continued to unfold, Black women found themselves discursively

vulnerable by historical stereotype and politically vulnerable by an intracommunity investment in addressing Black male endangerment.[51] It is in this opportune space that legislative initiatives that extended and rationalized the web of punishment were anchored. These included, for example, welfare reform,[52] the Adoption and Safe Families Act (ASFA),[53] and draconian public housing policies,[54] all of which were largely conceded without the vocal community opposition such measures deserved.[55]

Indeed, not only have these conditions failed to muster significant attention within antiracist advocacy; very little within that discourse challenges the way that single Black motherhood remains ideologically salient as one of the key factors that contributes to the Black community's vulnerability to a host of social ills, including poverty, underachievement, violence, and incarceration.[56] By embracing the notion that a fundamental source of Black inequality was a family structure at odds with patriarchal norms, those Black community discourses that have been shaped around the endangered male narrative have come to regard the needs of single Black mothers with a sideways glance.[57] This ideology, along with the failure of antiracist discourse to significantly contest it, has contributed to making poor Black mothers the legitimate objects of punishment that Dorothy Roberts has consistently shown.[58]

The conditions under which Black women struggle for survival are not only marginal to Black politics. Their exclusion from prevailing discourses that address the endangerment of men supports the mistaken impression that Black women are socioeconomically secure, or alternatively, that their socioeconomic insecurity is secondary to the interests of Black men in the communities in which they live. These impressions remain, even though many of the conditions facing Black women are directly related to the particular risks of surveillance and incarceration they face. For example, women who have survived domestic violence face a higher risk of incarceration as one of its many consequences, however domestic violence is often excluded from discussions on Black-on-Black crime even though most gender crime is intraracial.[59] The same intraracial solidarity that underwrites beliefs that Black men are the primary victims of racism and violence also entraps many Black women into a forced silence about their own experiences.[60] Black women are also marginal in antiracist critiques of the war on drugs—even though the hyperprosecution of Black communities presents particular risks for Black women given their gendered relationships to men and their various enterprises.[61] Moreover, women's experiences are trivialized in discourses about economic insecurity even though they make less than Black men and typically, as heads of households, have to make their meager dollars stretch farther.[62]

Black male endangerment relegates all these issues to the background even though many women—like men—face personal and economic insecurity on a daily basis. Unlike most men, however, many Black women grapple with the challenge of raising

children alone on subsistence wages and struggle mightily to keep a roof over their heads.[63] They, along with their daughters, often navigate public spaces that are profoundly underresourced, which in turn heightens the risk of abuse and assault and lowers the likelihood of meaningful protection.[64] Those who become caught up in the drug trade face long prison terms often for marginal involvement in drug enterprises, and are more likely to lose their children than men because of the hard-nosed provisions of the ASFA.[65] Those who manage to avoid parental termination face enormous challenges in reunifying their family when they are released.[66] Despite the risks they share with Black men, as well as other risks that are unique to them, Black women remain subject to the twin dimensions of hypervisibility and substantive erasure: They are present in the stereotypical images of Black families at risk, and they are virtually absent as a focal point of the millions of dollars strategically distributed by foundations and local governments under the promise of rescuing Black boys and saving Black families.[67]

Lurking behind this sacrifice of Black mothers has been a troubling rationale that permits an alliance between those who endorse an endangerment narrative and those who are in fact agents of the very policies that contribute to the social surveillance and mass incarceration of Black men. The capaciousness of this frame to include those whose policies actually contribute to the purported crisis is apparent in the actions of Mayor Michael Bloomberg in New York City. To great fanfare and media attention, Mayor Bloomberg announced a multimillion-dollar joint strategy to address the crisis of Black and Latino boys.[68] This initiative, predicated on averting the school-to-prison pipeline, seeks to create opportunities for better achievement in school and to develop the appropriate attachments to work.[69] At the same time, however, Mayor Bloomberg oversees the most aggressive surveillance and arrest policies in the country,[70] and he has campaigned against the demands to enjoin the policies on behalf of the millions of Black and Latino men who have been stopped and frisked since 2002.[71] Bloomberg has also vowed to stand firm against another lawsuit seeking to open up the city's disproportionately white fire department.[72] Of course, attachment to work requires real work opportunities, a structural feature of the status quo that Mayor Bloomberg could directly impact by cooperating with efforts to open up industries that have been largely closed to Blacks and Latinos. Yet in standing firm against these lawsuits, Mayor Bloomberg undermines the very outcomes he promises under the rubric of "youth at risk" by reproducing the conditions that constitute the risk.[73]

The subtle erasure of the structural and institutional dimensions of social justice politics has been facilitated in part through the widespread adoption of the "at risk" frames.[74] In singling out Black boys as a uniquely vulnerable population, the frame inadvertently suggests that the structural dimensions of social life in which they and everyone else in their communities are situated are themselves

relatively uncontroversial and transparent. Under this frame, the journey from underachievement to jail is preventable not through active lobbying against the carceral state and its many tributaries, but through the embrace of behavioral modifications designed to bring "at risk" individuals into compliance.

The work that such crisis narratives do to normalize retrenchment and deflect attention from the neoliberal project of underprotection and overpolicing is facilitated by intersectional failures within antiracism itself. The exclusion of women and girls from discourses pertaining to the social welfare of the community narrows the field of vision upon which the wider patterns of punishment and social control might be seen and understood.[75] Longstanding rhetorics that framed men as uniquely damaged by racism have primed Black communities to endorse neoliberal accounts of social life that subtly shift the focus from historically constituted relations of power to the failures of family formation and gender conformity. As Dorothy Roberts argues:

> It's not just [that] the framework doesn't work but in fact the frame that we have is not a structural frame, and one of the reasons it's not a structural frame is that it is wrapped around the identity of the black male patriarch, and as long as we frame some of the consequences in a way they need help or in the ways [that] they have not been able to step up [to] their roles and responsibilities, we are engaged [in] individualistic discourse that fails to deal with the structural reasons for some of these problems.[76]

These failures to address the intersectional particulars of Black women's experience have contributed to the failure to challenge the essentialized relationship between female-headed households and social dysfunction. These intersectional failures have, in turn, primed antiracist discourses to relinquish their broader social justice demands in exchange for crisis-based diversions that are integral to the "pipeline to prison." Rather than foregrounding a demand for deconstructing the pipeline itself, the crisis frame tends to regard Black (and Brown) males as the targets of reform writ large. While this targeted frame appears to embrace the many challenges that they face, the exclusions of women and girls presents male problems as *sui generis*, effectively obscuring the structural dimensions of racial power that shape the circumstances of both boys and girls, and men and women. As such, crisis discourses represent a fundamental shift away from social justice perspectives and a move toward rationalizing the basic structures of social life.[77] Under the crisis logics, men and boys may have to overcome disadvantages, but the source of these disadvantages rests almost entirely within the families and communities in which they exist, not within the broader societal processes that have historically structured these relations and that continue to underwrite social surveillance and mass incarceration.[78]

The turn from structural to cultural understandings of inequality leaves the endangerment of women and girls unrecognized and underresearched. More broadly, these absences have fueled unsupported assumptions that racial inequality has either bypassed women and girls or that their inequalities are wholly dependent on and collateral to the racial inequalities facing men and boys.

Similar to the disappointing contestation within feminism over mandatory arrest, the surrender to the logic of neoliberalism represented by the crisis frame has been facilitated by longstanding failures in intersectional thinking that were apparent in intracommunal discourses about violence against women.[79] The male-centric approaches that traditionally informed the responses to domestic violence and sexual abuse have continued to shape these and other intraracial issues within Black community discourse.[80] Efforts to broaden the scope of antiracism to include how Black women's lives are impacted by issues such as violence and economic marginality have frequently been reined in by an antiracist politic that prioritized Black men's vulnerability as representative of the community as a whole.

The "crisis" discourses that have replaced structural and institutional understandings of racial inequality are not only compatible with ideological justifications for surveillance and punishment; they have also facilitated an important shift in the grammar of racial justice.[81] Indicative of the marginalization of women in contemporary policy discourses is the fact that to speak about Blackness in the context of racial power is virtually coextensive with speaking about Black men. "Endangered species" has come to replace racialized communities, while the term "racism" has been nudged out by the softer sounding indictment of "lack of achievement."[82] The problem of segregated and underresourced schools of the *Brown* era has been replaced by "the soft bigotry of low expectations."[83] Institutions that were once the target of widespread critique and reformist energy, such as unresponsive representatives, overvigilant police, and inaccessible employment markets, have been pushed aside as benchmarks of oppression, replaced by the family not only as the site of reform but as ground zero of racial disparity. Under the crisis rationale, Black men and boys are endangered not by a society that has resisted the full demands of racial equity over the course of centuries, but by mothers and families left undisciplined by would-be husbands and absent fathers. The pathologies attributed to Black family formation in the Moynihan controversy have resurfaced in the narratives of jail or death for African American men.[84] Central to the mainstream discourses on endangerment is the home—where women rule, boys flounder, and responsibility is crushed. Efforts to address economic inequality, housing segregation, and crumbling urban infrastructures that entrap both men and women have given way to unitary efforts to resuscitate the nuclear family.[85] This exclusive focus on the personal development of young men and boys, replete with its promise of building healthy communities, addresses the crisis of mass incarceration

and social insecurity with the hope that, with a man in every household, the native sons will straighten up and fly right.[86]

The crisis-based focus on the family brings antiracist advocacy into the neoliberal agenda in the same way that domestic violence advocates became role players in the wider criminalization agenda that helped deradicalize antiviolence mobilization. Intersectional failures to incorporate the specific interests of women into antiracism undermined the development of a feminist articulation of antiracism and set the stage for a resurgence of agendas rooted in a defense of patriarchy. A greater degree of intersectional literacy among advocates and stakeholders would certainly have grounded a more inclusive political vision that addresses the plight of women and girls and resists the ideological frames that underwrite punitive social policies. Social justice politics that focus on equitable life chances for racially marginalized men as well as women would better equip advocates to challenge punitive logics that justify inequality on the basis of characteristics such as gender or marital status. A broader politics worthy of the legacy of social justice movements that we inherit is one that remains vigilant in the face of efforts to peel apart similarly situated members of distressed communities on the basis of greater desert or moral worth.

Healthy lives and equitable outcomes are objectives that should not be subject to trickle-down politics; nor should the heavy weight of social surveillance and incarceration be engaged primarily through ideological submission to inequitable social relations. Struggles against social control and mass incarceration should be animated by both antiracist and feminist sensibilities that ensure that peace and economic security need not be limited to those who adopt heteronormative family formations. Premised on the fundamental recognition that historical disparities exacerbated by the retraction of resources cannot be managed by the state's nightstick, feminist and antiracist advocacy should highlight and contest the logics of neoliberalism that naturalize punishment and that reserve the good life for the right kind of people.

CONCLUSION

The various gendered dimensions of racial retrenchment have continued to exact tragic consequences for racially marginalized women and their families. The articles in *UCLA Law Review*'s Symposium issue "Overpoliced and Underprotected: Women, Race and Criminalization" repeat and expand the dynamics that underscore the dramatic growth of punishment in women's lives. From their encounters within systems ranging from housing to employment, from juvenile justice to foster care, and from criminal justice to immigration, gender and class correspond with a host of vulnerabilities that fuel this explosion and that authorize some of its most debilitating consequences. As these narratives reveal, despite the dominant frames through which mass incarceration is understood and contested, the social construction of deviant publics is not exclusively gendered as male. To the

contrary, the many permissions to incarcerate and punish large populations of men, women, and children are generated through broad constructions of deviance that gain traction through the representation of stigmatized women of color.[87]

In tracing the genealogy of a few ideological contestations within the corpus of antiracist and feminist discourse, it is evident that the dynamics that are at play in constructing the underprotection and overpolicing of women of color are far from static. Attending to the connections between earlier mobilizations against violence and the contemporary rhetoric around mass incarceration reveals that intersectional failures from an earlier era become the beachheads upon which retrenchment politics play out in the next. The retrenchment politics underwritten by neoliberal ideology are powerful, yet they are sometimes inadvertently facilitated by feminist and antiracist advocates who concede to apologetic explanations for existing inequalities or who underestimate the consequences of policies that subvert the thrust of the originating demands.

Thus, the relationship between underprotection and overpolicing is not solely a matter of state power but also the consequence of political elisions that have undermined the development of a more robust critique of social control and a more expansive vision of social justice. While these matters belie simple solutions, the efforts to attend to the paradoxes of overpolicing and underprotection are fruitfully grounded in and informed by the experiences of women of color.

The current milieu that, in George Lipsitz's words, renders large numbers of people "arrestable, incarcerable, displaceable, and deportable" rests not only on the retraction of resources and notions of broad social responsibility.[88] It also is made possible by the presence of certain legitimizing beliefs, many of which pertain to the presumed dysfunction of women in need of discipline. The structural and discursive abandonment of women of color—the normalization of their socioeconomic marginality alongside the renewed fantasies of gender normativity—are key elements sustaining the beliefs that "people with problems are problems."[89]

As Dorothy Roberts notes, until we recognize the centrality of the intersectional entrapment of racially marginalized women and girls with regard to contestations over mass incarceration and social welfare more broadly, the possibilities for building more coherent politics that link constituencies with shared interests will remain unrealized.

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1.   The data show that while women are at less of a risk than men for incarceration, the odds ratios indicate that the between-race comparisons (Black-White, Black-Latino, Latino-White) are relatively consistent regardless of gender. The relative risk of incarceration for Blacks relative to other groups is the same, controlling for gender.

Table 1. Odds of Incarceration

	Black	Latino	White
Male	1:3	1:6	1:17
Female	1:17	1:45	1:111

Table 2. Proportional Odds of Incarceration by Race

	Black-White	Black-Latino	Latino-White
Male	5.7:1	2:1	2.8:1
Female	6.5:1	2.6:1	2.5:1

The data in Table 1 indicate that one out of three Black men is likely to be incarcerated at least once in his lifetime, meaning that their chance of incarceration is 33 percent. Because one out of seventeen white males will be incarcerated at some point in their lives, their chance of incarceration is 5.88 percent. This means that a Black man is approximately 5.7 times more likely to be incarcerated in his lifetime than a white man, as shown *supra* Table 2. A Black woman, on the other hand, is approximately 6.5 times more likely to be incarcerated than a white woman. Thus the Black-White racial disparity is similar for men and women. The Black-Latino and Latino-White disparities are also similar between men and women, as illustrated *supra* Table 2. *See* Children's Def. Fund, Cradle to Prison Pipeline® Campaign (2009), *available at* http://www.childrensdefense.org/child-research-data-publications/data/cradle-prison-pipeline-summary-report.pdf; *see also* Thomas Bonczar, Bureau of Justice Statistics, NCJ 197976, Prevalence of Imprisonment in the U.S. Population, 1974-2001, at 1, 8 (2003) (providing similar estimates, showing one in nineteen Black women being incarcerated in their lifetimes, as against one in 118 white women). I thank Joseph Doherty and Scott Dewey for assistance in calculating these odds.

2.   *See* Jyoti Nanda, *Blind Discretion: Girls of Color & Delinquency in the Juvenile Justice System*, 59 UCLA L. Rev. 1502 (2012) (discussing the overrepresentation of Black women and girls under criminal supervision). I refer here to the traditional civil rights and women's rights discourses that shape the agendas of advocacy organizations, foundation portfolios, research institutions, and state and federal governments. Women of color-led organizations, activists, and critical scholars are among those who have challenged these frames, drawing attention to many of the counterproductive strategies that these dominant sensibilities have underwritten. *See, e.g.,* Incite! Women of Color Against Violence & Critical Resistance, Statement on Gender Violence and the Prison Industrial Complex (2001) [hereinafter "Incite!"].

3. *See* Stephanie R. Bush-Baskette, Misguided Justice: The War on Drugs and the Incarceration of Black Women 23 (2010).

4. *See* Martin A. Geer, *Human Rights and Wrongs in Our Own Backyard: Incorporating International Human Rights Protections Under Domestic Civil Rights Law—A Case Study of Women in United States Prisons*, 13 Harv. Hum. Rts. J. 71, 85 n.67 (2000); *see also* George Lipsitz, *"In an Avalanche Every Snowflake Pleads Not Guilty": The Collateral Consequences of Mass Incarceration and Impediments to Women's Fair Housing Rights*, 59 UCLA L. Rev. 1746, 1770, 1776 (2012) ("Drug convictions account for 23 percent of incarcerated white women but for 39 percent of incarcerated Black women and 44 percent of incarcerated Latinas.").

5. *See* David A. Sklansky, *Cocaine, Race, and Equal Protection*, 47 Stan. L. Rev. 1283 (1995); *see also* Marc Mauer, *The Impact of Mandatory Minimum Penalties in Federal Sentencing*, 94 Judicature 6 (2010).

6. The Black women discussed by Ocen were part of a certified class of plaintiffs in a suit against the city of Antioch that has since settled. *See* Order Granting Plaintiffs' Motion for Class Certification, Williams v. City of Antioch, No. C-08-02301, 2010 WL 3632197 (N.D. Cal. Sept. 2, 2010); Report and Recommendation Regarding Final Approval of Class Action Settlement, Williams v. City of Antioch, No. C-08-02301, 2012 WL 6865477 (N.D. Cal. Mar. 8, 2012); Order of Dismissal, Williams v. City of Antioch, No. C 08-02301 (Apr. 6, 2012).

7. Priscilla A. Ocen, *The New Racially Restrictive Covenant: Race, Welfare, and the Policing of Black Women in Subsidized Housing*, 59 UCLA L. Rev. 1540, 1544 (2012) (discussing the City of Antioch's Community Action Team [CAT]). A key feature of the CAT strategy was to gather information that might be used to terminate the women's participation in the Section 8 program. African Americans were both more likely to have cases referred to housing authorities and most likely to have their cases determined to be unfounded. *See* Expert Report of Barry Krisberg at 16, 19, Williams v. City of Antioch, No. C-08-2301 (N.D. Cal. Sept. 4, 2009), *available at* http://www.impactfund.org/downloads/Antioch.B.Krisberg.ExpertReport.pdf.

8. Ocen, *supra* note 9, at 1578. A similar disregard for potential victims of domestic violence in the context of policing suspected undocumented immigrants was reported by Sunita Patel, who observed, "[Y]ou can see, when people come into your home to investigate a violence complaint, or if they are doing a traffic stop, they then become more interested in the woman's status than they are in actually the perpetrator of the violence." Sunita Patel, Presentation at UCLA Law Review Volume 59 Symposium, Overpoliced and Underprotected: Women, Race, and Criminalization—Crime, Punishment, and the Management of Racial Marginality 104 (Jan. 27, 2012) (transcript on file with author).

9. *See* Ann M. Simmons, *Palmdale Settles Suit Alleging Section 8 Housing Discrimination*, L.A. Times, 10. Feb. 3, 2012, http://articles.latimes.com/2012/feb/03/local/la-me-harassment-settle-20120203 (describing a similar scenario occurring in Palmdale and Lancaster, California); Landon Cassman, *Future of Danville's Public Housing Remains Uncertain*, Will AM 580 (June 11, 2012), http://will.illinois.edu/news/story/future-of-danvilles-public-housing-remains-uncertain (discussing the complaint filed by four women against the city of Danville, Illinois, alleging racial discrimination in the acceptance and use of Section 8 vouchers); *see also* Victoria Schlesinger, *Section 8 Tenants Unwelcome*, Cal. Law., July 2012, http://www.callawyer.com/clstory.cfm?eid=923321 (discussing recent moves by the City of Lancaster to "crack down" on public housing tenants in the city and a suit filed

by the Public Counsel Law Center of Los Angeles and the NAACP alleging race discrimination).

10. *See* Ocen, *supra* note 9, at 1581–82 ("The examination of the harassment of subsidy-reliant Black women also reveals the myriad ways Black women are increasingly vulnerable to sanction by the criminal justice system as a result of societal marginalization. Thus, the interaction between the welfare and criminal justice systems forcefully contributes to preserving racial stratification through exclusion.").

11. *Id.*

12. Dorothy Roberts, *Prison, Foster Care, and the Systemic Punishment of Black Mothers*, 59 UCLA L. Rev. 1474 (2012).

13. *Id.* at 1476.

14. *Id.* at 1490.

15. Patel, *supra* note 10.

16. *Id.* at 100.

17. *Id.* at 98.

18. Beth Richie, Presentation at UCLA Law Review Volume 59 Symposium, Overpoliced and Underprotected: Women, Race, and Criminalization—Crime, Punishment, and the Management of Racial Marginality (Jan. 27, 2012) (transcript on file with author).

19. *Id.*

20. As Karen Rosenberg explains, "the Reagan administration, while drastically cutting funding for social service programs, expanded funding for criminal legal institutions. This formed part of the larger ideological project to cast social problems as criminal concerns. Thus the Reagan administration launched campaigns and concomitant policies declaring 'war' on a host of social ills, from homelessness to drugs to domestic violence. In this policy environment, casting battering as a law and order issue had the best chance of winning government support." Karen E. Rosenberg, From Moderate Chastisement to Mandatory Arrest: Responses to Violence Against Women in Canada and the United States 65 (2011).

21. Pub. L. No. 103-322, 108 Stat. 1796 (1994).

22. Radha Iyengar & Lindsay Sabik, *A Dangerous Shortage of Domestic Violence Services*, 28 Health Aff. w1052 (2009).

23. *See* G. Kristian Miccio, *A House Divided: Mandatory Arrest, Domestic Violence, and the Conservatization of the Battered Women's Movement*, 42 Hous. L. Rev. 237, 294 (2005). As some critics note, the relationship between VAWA and the ongoing industrialization of social punishments was not incidental. Richie points out that "VAWA was part of a larger, more controversial Violent Crime Control and Law Enforcement Act of 1994, one of the most comprehensive, far-reaching crime bills in the history of the United States." Beth E. Richie, Arrested Justice: Black Women, Violence, and America's Prison Nation 86 (2012).

24. *See generally* Leigh Goodmark, A Troubled Marriage: Domestic Violence and the Legal System 108 (2012) (discussing the mixed reception of mandatory arrest regimes by advocates); Evan Stark, *Mandatory Arrest of Batterers: A Reply to Its Critics*, 36 Am. Behav. Scientist 651 (1993).

25. As Richie explained, "One group remained committed to a broader analysis of the systemic causes of violence against women, arguing as strongly as ever for the need for radical social change work based on an understanding of the role that systems advocacy and coalition politics could play in that. For this group, the problem of persistent gender inequality, as a structural problem, remained at the center of the analytical paradigm that activists remained committed to. Another group coalesced

around a different formation. Compelled to respond to conservative state tendencies regarding families, gender, and sexuality, they pursued a safer, less antagonistic strategy that they expected would be more acceptable to the new conservative national, legislative, and local leadership. This group distanced itself from the former activist-oriented." Richie, *supra* note 25, at 75; *see also* Natalie J. Sokoloff & Ida Dupont, *Domestic Violence at the Intersections of Race, Class, and Gender: Challenges and Contributions to Understanding Violence Against Marginalized Women in Diverse Communities*, 11 Violence Against Women 38 (2005).

26. *See, e.g.*, Donald G. Dutton, *The Failure of Criminal Justice Intervention Policy*, in Rethinking Domestic Violence 249 (2006).

27. *See, e.g.*, Incite!, *supra* note 4; Goodmark, *supra* note 26, at 109.

28. As G. Kristian Miccio described the tension,

> In analyzing the Protagonist position . . . one sees how it presumes that the state qua state is hospitable to women. This contrasts starkly with the early advocates who understood that the state was the cause of women's subordination and that male intimate violence and the system of laws that condoned such violence were emblematic of such subordination. Abolition of male intimate violence would require more than a criminal justice response; it would require a reordering of power relations in both public and private life. Arrest alone or in tandem with mandatory prosecution was not the antidote.

Miccio, supra note 25, at 294 (footnote omitted).

29. Pub. L. No. 103-322, 108 Stat. 1796 (1994). The section of the Violence Against Women Act entitled Grants to Encourage Arrest Policies, *id*. § 40231, 108 Stat. at 1932 (codified as amended at 42 U.S.C. § 3796hh (2006)), received an initial funding of $28 million in 1996, of which funding for mandatory arrest initiatives was a large part. The funding geared toward mandatory arrests has since been suspended. Nat'l Coal. Against Domestic Violence, Comparison of VAWA 1994, VAWA 2000 and VAWA 2005 Reauthorization Bill (2006), *available at* http://www.ncadv.org/files/VAWA_94_00_05.pdf; *see also* Garrine P. Laney, Cong. Research Serv., RL30871, Violence Against Women Act: History and Federal Funding, at 8 (2003).

30. *See, e.g.*, Elizabeth Ben-Ishai, *The Autonomy-Fostering State: "Coordinated Fragmentation" and Domestic Violence Services*, 17 J. Pol. Phil. 307 (2009).

31. *See* sources cited *supra* note 31.

32. Miccio, *supra* note 25.

33. *See* Stop Abusive & Violent Env'ts, Arrest Policies for Domestic Violence 4 (2010), *available at* http://www.saveservices.org/downloads/Justice-Denied-DV-Arrest-Policies (citing to a Milwaukee study that concluded that "mandatory arrest prevents 2,504 acts of violence against primarily white women at the price of 5,409 acts of violence against primarily Black women," and to a Harvard study that concluded "[i]ntimate partner homicides increased by about 60% in states with mandatory arrest laws" (citing Lawrence W. Sherman et al., *The Variable Effects of Arrest on Criminal Careers: The Milwaukee Domestic Violence Experiment*, 83 J. Crim. L. & Criminology 137; Radha Iyengar, *Does the Certainty of Arrest Reduce Domestic Violence? Evidence From Mandatory and Recommended Arrest Laws* (Nat'l Bureau of Econ. Research Working Paper No. 13186, 2007), *available at* http://www.nber.org/papers/w13186) (internal quotation marks omitted)); Meda Chesney-Lind, *Criminalizing Victimization: The Unintended Consequences of Pro-*

arrest Policies for Girls and Women, 2 Criminology & Pub. Pol'y 81, 82 (2002). The critique of the way the antiviolence movement embraced criminalization as the principle intervention against domestic violence should not be interpreted as a call for do-nothing strategies or romanticized notions of community accountability. *See, e.g.*, Incite!, *supra* note 4 (critiquing the antiprison movement for failing to take violence against women seriously and calling for interventions that do not overrely on criminalization and also provide safety and accountability).

34. Michael P. Johnson & Kathleen J. Ferraro, *Research on Domestic Violence in the 1990s: Making Distinctions*, 62 J. Marriage & Family 948, 953-54 (2000) (citing relevant literature, broken down here by race: Native American: Ronet Bachman, Death and Violence on the Reservation: Homicide, Family Violence, and Suicide in American Indian Populations (1992); David G. Fairchild et al., *Prevalence of Adult Domestic Violence Among Women Seeking Routine Care in a Native American Health Care Facility*, 88 Am. J. Pub. Health 1515 (1998); Diane McEachern et al., *Domestic Violence Among the Navajo: A Legacy of Colonization*, in Pressing Issues of Inequality and American Indian Communities 31 (Elizabeth Segal & Keith Kilty eds., 1998); Ilena M. Norton & Spero M. Manson, *A Silent Minority: Battered American Indian Women*, 10 J. Family Violence 307 (1995); Lillian Tom-Orme, *Native American Women's Health Concerns*, in Health Issues for Women of Color: A Cultural Diversity Perspective 27 (Diane L. Adams ed., 1995); Asian and Pacific Islander: Young I. Song, Battered Women in Korean Immigrant Families: The Silent Scream (1996); Margaret Abraham, *Ethnicity, Gender, and Marital Violence: South Asian Women's Organizations in the United States*, 9 Gender & Soc'y 450 (1995); Christine K. Ho, *An Analysis of Domestic Violence in Asian American Communities: A Multicultural Approach to Counseling*, 9 Women & Therapy 129 (1990); Alice G. Yick & Pauline Agbayani-Siewert, *Perceptions of Domestic Violence in a Chinese-American Community*, 12 J. Interpersonal Violence 832 (1997); Latina: Julia L. Perilla et al., *Cultural and Domestic Violence: The Ecology of Abused Latinas*, 9 Violence & Victims 325 (1994); African American: Beth E. Richie, Compelled to Crime: The Gender Entrapment of Battered Black Women (1996); Ruth E. Dennis et al., *Addressing Domestic Violence in the African American Community*, 6 J. Health Care Poor & Underserved 284 (1995); Clifton E. Marsh et al., *Sexual Assault and Domestic Violence in the African American Community*, 17 W.J. Black Stud. 149 (1993).

35. Sara Goodkind et al., *Are Girls Really Becoming More Delinquent? Testing the Gender Convergence Hypothesis by Race and Ethnicity, 1976-2005*, 31 Child. & Youth Services Rev. 885 (2009).

36. Francine T. Sherman, *Justice for Girls: Are We Making Progress*, 59 UCLA L. Rev. 1586, 1603 (2012); Nanda, *supra* note 4.

37. Chesney-Lind, *supra* note 35, at 82 (attributing the prevalence of Black women and girls arrested under mandatory arrest policies around the United States in part to the greater likelihood of Black women and girls to report domestic violence to authorities).

38. The conflict among domestic violence advocates presented yet another moment where Black feminists were locked into a two-fronted struggle. As Richie noted,

> [I]t occurs to me that it may be paradoxical that in fact most of my work and most of the work of other women of color, some of who are here today . . . to end violence against women has become work about overpolicing:

overpolicing of women who experience violence when in some parts of the antiviolence movement, the answer has been to call the police. So in some ways I stand in the mix still of that paradox, working primarily in low income African American communities and other communities of color for thirty years to try to say to primarily men who claim spaces of leadership . . . for racial justice to demand that attention be paid to gender inequality, while at the same time, spinning around and making sure that [the] white-domina[ted] antiviolence movement pays particular concerns to women of color.

Richie, *supra* note 20, at 11.

39. Funding for mandatory arrest has been suspended. Critics of the alliance point out that few if any federal dollars were ever directed to support shelter and other services for battered women. "[A] leading activist in New York City remarked that over a ten-year period approximately $258 million has been allocated through the federal VAWA for criminal justice programs in New York City—yet not one dollar has been allocated for shelters, long-term housing, or job training. And because VAWA is the largest federal funding source and financial conduit for programmatic support, the narrow scope of its mission severely impacts distribution of resources to programs and women survivors." Miccio, *supra* note 25, at 290 (footnote omitted).

40. Kavitha Sreeharsha notes another tension between mainstream feminism and grassroots activism playing out in the context of trafficking that is also partly related to the collaborations between law enforcement and feminist advocacy. Kavitha Sreeharsha, Presentation at UCLA Law Review Volume 59 Symposium, Overpoliced and Underprotected: Women, Race, and Criminalization—Crime, Punishment, and the Management of Racial Marginality 166 (Jan. 28, 2012) (transcript on file with author). In the context of human trafficking, the primary focus—both in terms of media attention and resourcing—has been on sex trafficking, although far more immigrant women have been caught up in labor trafficking. *Id*. Noting that virtually all labor-trafficked women are undocumented, the consequence of "applying the criminal justice framework to labor-trafficked worker women leads to heightened immigration arrest, detention, and removal." *Id*. The discourse's marginalization of immigrant women "is not something we can continue to ignore." *Id*.

41. This is not to suggest that there is always a clear strategy to resist such consequences. The risk that an insurgent movement might be co-opted always accompanies efforts to engage state power in addressing specific demands. The scope of a movement's primary arguments will not necessarily determine how the state responds. *See* Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 Harv. L. Rev. 1331, 1352-54 (1988) (arguing that in the context of antiracist struggles, civil rights advocacy was necessary to engage the state and that other rhetorics were unlikely to have generated any useful interventions). That said, in the context of domestic violence, demands around how state coercion should be deployed to force matters into the criminal justice system were far more contested within the movement itself.

42. *See, e.g.*, Luke Charles Harris, *My Two Mothers, America, and the Million Man March*, *in* Black Men on Race, Gender, and Sexuality: A Critical Reader 54, 57 (Devon W. Carbado ed., 1999).

43. *See* Julia S. Jordan-Zachery, Black Women, Cultural Images, and Social Policy 56-62 (2008) (discussing their origins in the Reagan era).

44. *See* Andrew B. Whitford & Jeff Yates, Presidential Rhetoric and the Public Agenda: Constructing the War on Drugs 66-69 (2009) (discussing President Clinton's policy emphasis on drug enforcement over treatment, such as by issuing three executive orders to extend the power of the Office of National Drug Control Policy and to create the President's Drug Policy Council); Sheila R. Zedlewski, *Welfare Reform: What Have We Learned in Fifteen Years?* 8-9 (Urban Institute Brief 24, 2012) (discussing the impact of Temporary Assistance for Needy Families (TANF), instituted as part of President Clinton's Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105, on the economic safety net of poor parents and children); *see also* Legal Momentum, Welfare Reform at Age 15: A Vanishing Safety Net for Women and Children 1 (2011) ("The shredding of the safety net has had an especially harsh impact on single mother families, as at any given time between one-quarter and one-third of single mothers are jobless and potentially in need of assistance.").

45. *See, e.g.*, David A. Sklansky, *supra*, note 7 (noting public associations of the "ghetto" drug trade targeted by the war on drugs primarily with Black men); Ange-Marie Hancock, The Politics of Disgust: The Public Identity of the Welfare Queen (2004) (arguing that much of the foundation of the welfare reform debate of the 1996 turned on stereotypes and maligned misperceptions of poor Black mothers).

46. Nikol G. Alexander-Floyd, Gender, Race, and Nationalism in Contemporary Black Politics 68 (2007).

47. *See* Harris, *supra* note 44, at 58-65.

48. Daniel Patrick Moynihan, U.S. Dep't Labor, The Negro Family: The Case for National Action 17-28 (1965), *available at* http://www.dol.gov/oasam/programs/history/webid-meynihan.htm ("Because the father is either not present, is unemployed, or makes such a low wage, the Negro woman goes to work. Fifty-six percent of Negro women, age 25 to 64, are in the work force, against 42 percent of white women. This dependence on the mother's income undermines the position of the father and deprives the children of the kind of attention, particularly in school matters, which is now a standard feature of middle-class upbringing."); *id*. at 34 (quoting Thomas Pettigrew as noting, "[t]he Negro wife in this situation can easily become disgusted with her financially dependent husband, and her rejection of him further alienates the male from family life. Embittered by their experiences with men, many Negro mothers often act to perpetuate the mother-centered pattern by taking a greater interest in their daughters than their sons.").

49. *Id*. at 42 ("There is another special quality about military service for Negro men: It is an utterly masculine world. Given the strains of the disorganized and matrifocal family life in which so many Negro youth come of age, the Armed Forces are a dramatic and desperately needed change: a world away from women, a world run by strong men of unquestioned authority, where discipline, if harsh, is nonetheless orderly and predictable, and where rewards, if limited, are granted on the basis of performance.").

50. The *New York Amsterdam News* quoted President Clinton as saying of the Million Man March ("the March"):

> "They were basically standing up for the dignity of family and asking
> African American men and fathers to be more responsible," Clinton
> said. "It was totally non-violent and got a big participation and it also
> showed frankly, a face to a part of America that is not as sympathetic

to the problems that African Americans in the cities and the poor rural areas have . . . that hey, there's all these people and they are advocating a responsible agenda and not just asking for something, and they're saying, 'This is our responsibility; this is what we're suppose to do.' I personally thought it was quite positive."

Jamal E. Watson, *A Clinton Conversation, Part I: Former President Talks About Cosby's Controversial Comments and Millions More March*, N.Y. Amsterdam News, May 5, 2005, at 1, 29; *see also* Paul Richter, *Million Man March: Clinton Calls for End to Racism: Speech: Racial Gulf Exposed by Simpson Trial Demands Individual Remedy, He Says*, L.A. Times, Oct. 17, 1995, http://articles.latimes.com/1995-10-17/news/mn-579531simpson-trial.

Supporters of the March included Ralph Johns, reported to be the first white person to join a local NAACP chapter and the first white vice president of the NAACP. Lilly Dizon, *Million Man March: Supporters in O.C. Stage Local Rally*, L.A. Times, Oct. 17, 1995, http://articles.latimes.com/1995-10-17/news/mn-579841million-man-march.

Additionally, politicians such as Baltimore Mayor Kurt L. Schmoke, Philadelphia Mayor Edward G. Rendell, rap musicians Public Enemy and Brand Nubian, and the National Council of Negro Women supported the March. Michael A. Fletcher & Hamil A. Harris, *'Million Man March' Gains Supporters*, Oscala Star-Banner, Sept. 11, 1995, at 3A.

51. *See* Harris, *supra* note 44.

52. President Clinton vowed to "end welfare as far as we know it" throughout his campaign for the presidency and attempted to eventually fulfill this goal by signing the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105, on August 22, 1996. *See* Peter Edelman, *The Worst Thing Bill Clinton Has Done*, Atlantic, Mar. 1997, http://www.theatlantic.com/past/docs/issues/97mar/edelman/edelman.htm.

53. *See* Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, § 103(a)(3), 111 Stat. 2115, 2118 (expediting parental termination when parents have lost contact with their children in fifteen of the preceding twenty-two months); *see also* Tina Reynolds, Presentation at UCLA Law Review Volume 59 Symposium, Overpoliced and Underprotected: Women, Race, and Criminalization—Race, Gender, and Conditions of Confinement (Jan. 28, 2012) (transcript on file with author).

54. *See* Housing Opportunity Program Extension Act of 1996, Pub. L. No. 104-120, 110 Stat. 834 (codifying the procedure for evicting residents from public housing who otherwise qualified if one of them was charged with a drug offense—commonly known as the "One Strike" law); *see also* Stacy L. Mallicoat, *The Incarceration of Women*, in Women and Crime: A Text/Reader 461, 471 (Stacy L. Mallicoat ed., 2012) (describing how the Welfare Reform Bill of 1996 has resulted in significant challenges to family reunification, visitation, and lifestyle improvement to individuals convicted of a drug offense). On August 12, 2009, the American Civil Liberties Union's Women's Rights Project filed suit against the Housing Authority of the City of Annapolis (HACA) challenging an HACA policy that bans approximately five hundred individuals from being on or near public housing property, effectively preventing these individuals from visiting family. Complaint, Sharps v. Hous. Auth. of the City of Annapolis (Md. Cir. Ct. Aug. 12, 2009.), *available at* http://www.aclu.org/womens-rights/sharps-v-housing-authority-city-annapolis-complaint. Under

the policy, individuals that were labeled a "danger" to the community were placed on the "do not enter" list for a variety of reasons, including mere involvement in minor offenses five or more years ago and, in many instances, premised upon alleged criminal conduct for which they were never charged with a crime. For more information on the case, see Sharps v. Housing Authority of the City of Annapolis, ACLU.org (Nov. 17, 2010), http://www.aclu.org/womens-rights/sharps-v-housing-authority-city-annapolis.

55. Traditional civil rights organizations have failed to prioritize the special challenges faced by imprisoned mothers despite the growing numbers of Black children who wind up in long-term foster care. For example, the NAACP devoted an entire convention to the crisis facing Black men and boys, yet the president's comments on mass incarceration failed to mention Black women or the devastating effects of ASFA on their families. Advocates in New York have successfully lobbied the legislature to ameliorate some of the more draconian dimensions of the law. *See* Deseriee A. Kennedy, *"The Good Mother": Mothering, Feminism, and Incarceration*, 18 Wm. & Mary J. Women & L. 161, 195-96 (2012). The coalition that brought the plight of incarcerated mothers to light did not include traditional civil rights groups. *See* Abigail Kramer, *A Fight to Extend Parents' Rights*, City Limits, Feb 25, 2010, http://www.citylimits.org/news/articles/3895/a-fight-to-extend (noting supporters of the bill included, *inter alia*, the Children's Defense Fund, Big Brothers and Big Sisters of NYC, and the Federation of Protestant Welfare Agencies; notably, the NAACP, Urban League, and other African American lobbying groups did not come out in support of the bill).

56. *See* Julia S. Jordan-Zachery, *Let Men Be Men: A Gendered Analysis of Black Ideological Response to Familial Policies*, in The Expanding Boundaries of Black Politics 177, 183 (Georgia Anna Persons ed., 2007) ("Fatherhood and marriage initiatives are designed to eliminate the Black Matriarch and 'liberate' the emasculated black man by reinstating him in his rightful place. If policy can ensure the reinstatement of these men as leaders of the family, supporters argue everything will be all right in these communities."); *see also* Dorothy Roberts, Killing the Black Body: Race, Reproduction, and the Meaning of Liberty 8 (1998) (noting that neoliberals point to failed family formation as the primary cause of poverty in the United States and ultimately demonize Black motherhood: "[I]t is believed that Black mothers transfer a deviant lifestyle to their children that dooms each succeeding generation to a life of poverty, delinquency, and despair. A persistent objective of American social policy has been to monitor and restrain this corrupting tendency of Black motherhood.").

57. Watson, *supra* note 52.

58. *See* Roberts, *supra* note 14, at 1476, 1483-84, 1488-91.

59. "Seventy percent of women who are detained in any correctional facility in this country have experienced violence." Richie, *supra* note 20, at 13.

60. *See* Richie, *supra* note 36, at 62.

61. *See* Kemba Smith with Monique W. Morris, Poster Child: The Kemba Smith Story (2011). More broadly, despite the male-centric discourses about the consequences of the war on drugs, women have suffered a greater increase in the resulting incarceration rates than men.

62. Brenda Smith, *Uncomfortable Places, Close Spaces: Female Correctional Workers' Sexual Interactions with Men and Boys in Custody*, 59 UCLA L. Rev. 1690 (2012);

see also AM. ASS'N OF UNIV. WOMEN, THE SIMPLE TRUTH ABOUT THE GENDER PAY GAP 6-7 (2012) (additionally noting that Black women earn 91 percent of what a Black male earns and 70 percent of what a white male earns).

63. *See* Lipsitz, *supra* note 6, at 1752.

64. Jody Miller argues that "though violence against women is systematic throughout the United States, . . . it is particularly acute for adolescent girls in neighborhoods characterized by intense disadvantage. Young women do their best to navigate these dangerous terrains, but they encounter vastly inadequate social and institutional supports. Moreover, these are structural and ecological problems." JODY MILLER, GETTING PLAYED: AFRICAN AMERICAN GIRLS, URBAN INEQUALITY, AND GENDERED VIOLENCE 3 (2008).

65. *See* Reynolds, *supra* note 55, at 108 (recounting how ASFA's policies, combined with the difficulty of female prisoners to receive visits from their children because of the long distances between the few female prisons and the community in which her family resided, resulted in the termination of her rights over one of her children). As Emily Nicholson notes, "[o]ver sixty percent of parents in state prisons and over eighty percent of parents in federal prisons are located in facilities greater than one hundred miles from their homes." Emily K. Nicholson, Comment, *Racing Against the ASFA Clock: How Incarcerated Parents Lose More Than Freedom*, 45 DUQ. L. REV. 83, 89 (2006) (citing CHRISTOPHER J. MUMOLA, BUREAU OF JUSTICE STATISTICS, NCJ 182335, INCARCERATED PARENTS AND THEIR CHILDREN 1 (2000), *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/iptc.pdf). "Mothers are particularly likely to be placed at a substantial distance from their families due to the limited number of female correctional facilities across the nation." *Id*. (citing Philip M. Genty, *Damage to Family Relationships as a Collateral Consequence of Parental Incarceration*, 30 FORDHAM URB. L.J. 1671, 1673 (2003)). Women are additionally disadvantaged by this gender-neutral law "[b]ecause incarcerated mothers are more likely to have children in foster care than incarcerated fathers[. W]omen have become more vulnerable to ASFA's 15/22 provision and thus more susceptible to losing their parental rights." *Id*. at 92. Between 70 and 90 percent of incarcerated mothers are the custodial parents of their children whereas the reverse is true for men. *Id*. (citing Mariely Downey, *Losing More than Time: Incarcerated Mothers and the Adoption and Safe Families Act of 1997*, 9 BUFF. WOMEN'S L.J. 41, 45 (2001)).

66. Barriers to family reunification include laws that impose lifetime bans prohibiting those convicted of drug offenses from accessing government aid and housing support; barriers to entering professions that require licensing include, for example, nursing, hairdressing, and childcare. The intersectional dimension of race, gender, class, and status as a formerly incarcerated woman likely presents barriers that vary by race. For example, one study found that women with a criminal record are significantly more likely to receive a negative response from a potential employer than those without a criminal record. Black women were the only group more likely to receive a negative response from an employer whether or not she had a criminal record. *See* MONIQUE W. MORRIS ET AL., THELTON E. HENDERSON CTR. FOR SOC. JUSTICE, A HIGHER HURDLE: BARRIERS TO EMPLOYMENT FOR FORMERLY INCARCERATED WOMEN (2008).

67. Organizations focused on promoting the development of young black males include the Open Society Foundation's Campaign for Black Male Achievement and the Knight Foundation's Black Male Engagement Campaign. *See also* Kimberly N. Alleyne, *Foundations Help to Reshape Plight and Images of Black Males*, LA.

WKLY., Jun. 4, 2012, http://www.louisianaweekly.com/foundations-help-to-reshape-plight-and-images-of-black-males. The federal government also supports such male-centered intervention through its fatherhood initiative designed to "help[] fathers improve their economic status by providing activities, such as Work First services, job search, job training, subsidized employment, job retention, and job enhancement; and encouraging education, including career-advancing education." *Promoting Responsible Fatherhood Home Page*, U.S. DEP'T HEALTH & HUM. SERVICES, http://fatherhood.hhs.gov (last visited Aug. 3, 2012). A search of the Department of Health and Human Services (DHHS) website found no comparable motherhood initiatives to address the economic marginality of poor women. Although children of color are disproportionately dependent on their mothers' income, which is, in turn, lower than their male counterparts across racial groups, the economic plight of poor women of color is all but ignored in these interventions. The alleged gender discrimination in the DHHS fatherhood initiatives drew a complaint from Legal Momentum, arguing that thirteen programs discriminated against women in a matter prohibited by the Fifth Amendment and by Title 9. *See* Legal Momentum & Nat'l Org. for Women, Class Complaint of Sex Discrimination in Responsible Fatherhood Program in Violation of Title IX, Submitted to United States Department of Health and Human Services (Mar. 28, 2007), *available a*t http://www.legalmomentum.org/assets/pdfs/regvicomplaint.pdf.

68. *See* Adriane Quinlan, *Among Those It Would Help, Doubts That a Plan Can Tame Inequality in New York*, N.Y. TIMES, Aug. 4, 2011, http://www.nytimes.com/2011/08/05/nyregion/black-and-latino-men-in-new-york-question-bloomberg-program.html. Interestingly, the frame has been expanded to include now "Black and Brown boys," although the rationale remains firmly fixed within the discourse of Black male crisis. Adding Latino boys to the frame highlights the fact that these initiatives are more ideologically than materially based. The crisis frame has become so wildly rehearsed that in 2007, presidential candidates John Edwards and Hillary Clinton signaled their commitment to eliminating poverty by focusing their comments on boys of color. In fact, on virtually all fronts, research suggests that young Latino men were economically better situated than their female counterparts, and Black young men were better situated than Black young women on seven out of ten comparative factors. LEGAL MOMENTUM, YOUNG MEN ARE STILL ECONOMICALLY BETTER OFF THAN YOUNG WOMEN 4, 6 (2008), *available at* http://www.legalmomentum.org/assets/pdfs/youngwomenbetterthanmen.pdf ("[A]lthough fewer are high school dropouts and more have college degrees, young women still earn less than young men. The earnings increase associated with their superior educational attainment is more than offset by the earnings decrease associated with their gender . . . . [A]t each level of educational attainment young Hispanic men earn more than young Hispanic women, and young Black men earn more than young Black women.").

69. *See* DAVID BANKS & ANA OLIVEIRA, YOUNG MEN'S INITIATIVE: REPORT TO THE MAYOR FROM THE CHAIRS 10 (2011), *available at* http://www.nyc.gov/html/om/pdf/2011/young_mens_initiative_report.pdf (noting that economic recovery in New York City will be incomplete without bringing jobs to Black and Latino boys and giving them a place in the workforce of tomorrow); Quinlan, *supra* note 70; Press Release, City of New York, Mayor Bloomberg Launches Nation's Most Comprehensive Effort to Tackle Disparities Between Young Black and Latino Males and Their Peers (Aug. 4, 2011) http://www.nyc.gov/html/om/html/2011b/pr282-11.html; *see also* Press

Release, Open Soc'y Founds., *Soros Pledges $30 Million to Transform the Lives of the Most Vulnerable Black and Latino Boys* (Aug. 4, 2011), http://www.soros.org/press-releases/soros-pledges-30-million-transform-lives-nyc-s-most-vulnerable-black-and-latino-boys (emphasizing import of targeting school-to-prison pipeline as impediment to success for Black and Latino boys).

70. *See, e.g.*, Floyd v. City of New York, 283 F.R.D. 153, 159, 178 (S.D.N.Y. May 16, 2012) (holding that safeguarding the right to physical liberty is "quintessentially the role of the judicial branch," and that imposing an injunction on Mayor Bloomberg's stop-and-frisk policy would not be outside of the courts' power); Editorial, *Surveillance, Security and Civil Liberties*, N.Y. Times, Mar. 3, 2012, http://www.nytimes.com/2012/03/04/opinion/sunday/surveillance-security-and-civil-liberties.html; Al Baker, *Judge Grants Class-Action Status to Stop-and-Frisk Suit*, N.Y. Times Blogs-City Room (May 16, 2012, 11:23 AM), http://cityroom.blogs.nytimes.com/2012/05/16/judge-allows-class-action-status-in-stop-and-frisk-lawsuit; *see also Stop and Frisk Data*, NYCLU.org, http://www.nyclu.org/issues/racial-justice/stop-and-frisk-data (last visited Mar. 20, 2013) (indicating that in 2011, NYPD stopped people 685,724 times, 88 percent of whom were not arrested or ticketed, and 87 percent of whom were Black or Latino).

71. Kate Taylor, *Stop-and-Frisk Policy 'Saves Lives,' Mayor Tells Black Congregation*, N.Y. Times, June 10, 2012, http://www.nytimes.com/2012/06/11/nyregion/at-black-church-in-brooklyn-bloomberg-defends-stop-and-frisk-policy.html (discussing Mayor Bloomberg's campaign to win support for the policy from Black churches).

72. *See* United States v. City of New York, No. 07-CV-2067, 2011 WL 4639832 (E.D.N.Y. Oct. 5, 2011) (major reforms were ordered to be taken by the city in order to address the discriminatory practices the Fire Department of New York had employing). Mayor Bloomberg responded to the order by stating that "the judge was not elected to run the city, and you can rest assured that we'll be in court for a long time." Alan Feuer, *Monitor Must Oversee N.Y. Fire Dept. Hiring, Judge Rules*, N.Y. Times, Oct. 5, 2011, http://www.nytimes.com/2011/10/06/nyregion/monitor-must-oversee-ny-fire-dept-hiring-judge-rules.html (internal quotation marks omitted). The case has since been heard by the U.S. Second Circuit Court of Appeals on appeal by the city. *See id.*; David R. Jones, *Is the U.S. Justice Department Supporting Discrimination by the New York Fire Department?*, Huffington Post (July 9, 2012, 4:31 PM), http://www.huffingtonpost.com/david-jones/is-the-us-justice-departm_b_1647089.html.

73. The connection between race and neoliberalism is explored in David Wilson, Cities and Race: America's New Black Ghetto (2007). As David Roberts and Minelle Mahtani describe, Wilson "introduces readers to a cast of characters, such as 'Welfare Queens', 'welfare-hustling men', and 'black youth gangbangers' that Ronald Reagan used to capitalize upon the fears of the country and direct them at the ghetto. In each of these terms, race, specifically blackness, coupled with anti-market behaviors become [sic] intertwined in the construction of the antithesis of the ideal neoliberal citizen in the black ghetto resident. In his analysis, race is mobilized to show that racialized subjectivities are essential in justifying certain impacts of neoliberalization that are experienced disproportionately within racialized communities." David J. Roberts & Minelle Mahtani, *Neoliberalizing Race, Racing Neoliberalism: Placing "Race" in Neoliberal Discourses*, 42 Antipode 248, 249 (2010).

74. As Janine Brodie acknowledges, neoliberalism works through numerous ideological frames, including the frame of at-risk populations:

> Other strategies of subordination include: narrowing or downsizing and targeting social programs to specific groups that are identified as being at risk; functionalizing or redesigning social programs so that they primarily address the needs of neoliberal labour markets rather than personal wellbeing; and fiscalizing or transforming social policies that required program planning and service providers into tax credits and deductions, which purportedly allows citizens 'choice' in meeting their social needs.

Janine Brodie, *Reforming Social Justice in Neoliberal Times*, 1 Stud. Soc. Just. 93, 101 (2007) (citing John Clarke, *Subordinating the Social? Neo-liberalism and the Remaking of Welfare Capitalism*, 21 Cultural Stud. 974 (2007)).

75. *See* Lipsitz, *supra* note 6, at 1751 ("Women of color play a central role in this process because punitive policies directed against impoverished people of color almost always rely on fantasies of gender normativity that locate virtue in heterosexual companionate marriage and intact male-headed nuclear families and see other forms of desire, sexuality, affiliation, and affection as causes of criminality. These fantasies function as explanations and excuses for the intersectional vulnerabilities that are actually created by multiple forms of raced and gendered exploitation inscribed inside the routine practices of contemporary capitalism.").

76. Dorothy Roberts, Presentation at UCLA Law Review Volume 59 Symposium, Overpoliced and Underprotected: Women, Race, and Criminalization—Establishing the Framework 40 (Jan. 27, 2012) (transcript on file with author).

77. Keita Takayama, A Nation at Risk *Crosses the Pacific: Transnational Borrowing of the U.S. Crisis Discourse in the Debate on Education Reform in Japan*, 51 Comp. Educ. Rev. 423, 427-28 (2007) (discussing the initial emergence of the crisis discourse in the United States and asserting that "[e]very crisis story line has common characteristics that legitimize a particular way of making sense of a given social condition").

78. *Id.*

79. *See* Roberts, *supra* note 14, at 1488-89. As recognized by feminist and antiracist political scientists, neoliberal doctrine has had profound effects on women and persons of color. For example, as noted by David Goldberg, neoliberalism's elevation of the privatization of "property, revenue generation, utilities, services, and social support systems, . . . shifting the traditional caretaking functions of the modern state . . . [, has] bifurcated experiences of social goods"—in many crucial instances along the lines of gender, race, or both. David Theo Goldberg, The Threat of Race: Reflections on Racial Neoliberalism 332 (2009); *see also* Anna Marie Smith, Welfare Reform and Sexual Regulation 33 n.64 (2007).

80. This is particularly notable in the context of violence and sexualized racism. *See, e.g.*, Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 Stan. L. Rev. 1241, 1256 (1991) (describing how Black women's experience of domestic violence and sexual assault is frequently suppressed out of concerns that such acknowledgment constitutes dirty laundry that will reinforce racist stereotypes of African American men). Particularly resonant here, for example, are traditional critiques of sexual violence and racism that focus almost exclusively on the disproportionate conviction of Black defendants in interracial cases. Falling far outside this focus has been Black women's experience, namely, the fact that Black women are least likely to see their assailants prosecuted and convicted. Some have gone so far as to argue that violence against Black women

is justified as a disciplinary measure to keep them in check. *Id*. at 1254 (discussing controversial author Shahrazad Ali arguing that Black women have been damaged by racism's undermining of traditional male authority, and thus physical punishment is an acceptable option for men seeking to reestablish control).

81. As Dorothy Roberts notes, the critique of the dominant frame is not to deny that there is indeed a crisis with respect to mass incarceration. Instead, "the idea is, to the extent that we do understand mass incarceration being a crisis in our community (and I think we all do), it is important that we understand it has gender dimensions, and those gender dimensions are not only not being addressed, but the failure to address them actually exacerbates those gender dimensions. So, basically, just a straightforward plea to just say [that] this is what our interest is and it should be and we need to be far more inclusive and critical [of s]ome of the frames that make it more difficult to do the work." Roberts, *supra* note 78, at 40-41.

82. *See* Jaekyung Lee, *Racial and Ethnic Achievement Gap Trends: Reversing the Progress Toward Equity?*, 31 Educ. Researcher 3 (2002) (discussing the reasons that may have contributed to the widening of the achievement gap since the 1980s, but not referencing once the potential impact of declining resources and increasingly segregated education); Robert Rothman, *Closing the Achievement Gap: How Schools Are Making It Happen*, 5 J. Annenberg Challenge, Winter 2001/02, at 1, 6 (discussing the achievement gap and the "soft bigotry of low expectations" language used by President Bush in regards to education).

83. *See supra* note 84 and accompanying text.

84. Moynihan, *supra* note 50; *see, e.g.*, Marc Mauer, *The Crisis of the Young African American Male and the Criminal Justice System*, in Impacts of Incarceration on the African American Family 199 (Othello Harris & R. Robin Miller eds., 2003) (discussing the reemergence of Moynihan-esque narratives). For a searing critique of the reemergence of the Moynihan-esque thesis in public policy, see Nikol G. Alexander-Floyd, *The Black Cultural Pathology Paradigm and George Bush's Faith-Based and Fatherhood Initiatives*, in Alexander-Floyd, *supra* note 48, at 75.

85. *See, e.g.*, Frank F. Furstenberg, *If Moynihan Had Only Known: Race, Class, and Family Change in the Late Twentieth Century*, 621 Annals Am. Acad. Pol. & Soc. Sci. 94 (2009) (discussing pseudo-revivalist attempts at pushing for the return to the nuclear family akin to those proffered by Moynihan).

86. *See* Steven L. Nock, *Marriage and Fatherhood in the Lives of African American Men*, in Black Fathers in Contemporary American Society: Strengths, Weaknesses, and Strategies for Change 30 (Obie Clayton, Ronald B. Mincy & David Blankenhorn eds., 2006).

87. *See generally* Ron Haskins, *Moynihan Was Right: Now What*, 621 Annals Am. Acad. Pol. & Soc. Sci. 281 (2009).

88. Lipsitz, *supra* note 6, at 1806.

89. *Id.* at 1761.