

THE UNIVERSITY OF CHICAGO

**Abolishing Innocence: On Violence,  
Criminalized Survival, & Inherent Human Dignity**

By

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### Dedication

I would like to first and foremost acknowledge Marissa Alexander and Tondalao Hall, the women whose experiences with the carceral state spurred this project. To the many criminalized survivors whose lives were and are forever changed by this violent system, may your stories continue to ignite the revolution. To my mama, Kimberly, and my sister, Alex, the radical Black<sup>1</sup> feminists who raised me, I thank you for all you have taught me though I surely was not always the most willing of students, I hope to continue to work towards your freedom. To my nieces, Eliot and Owen, never lose your youthful spirits, may you grow old and well and follow in the footsteps of your mama and Emmy. To my father, Anthony, brother, Adrian, and nephew, Gray continue to reshape what it means to be a “real man,” staying always true to yourselves. To my community. To all those we have lost to premature death made vulnerable by the state. To the abolitionist organizers working to build something beautiful out of the ashes of this cruel world.

The struggle continues.

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<sup>1</sup> Law Professor Kimberle Crenshaw: “Blacks, like Asians, Latinos, and other 'minorities,' constitute a specific cultural group and, as such, require denotation as a proper noun.” Kimberle W. Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1332 n.2 (1988). The capitalization of Black is a counter-subjugation of blackness as juxtaposed with whiteness in its purpose to dominate “the negro.” See Du Bois: *THE WORLD AND AFRICA* 20 (1965). Professor Cheryl Harris: “Thus, the use of the upper case and lower case in reference to racial identity has a particular political history.” See too the Black Power movement, a shift from the respectability politics of the Civil Rights Movement to a proud Black identity, one unabashedly different than whiteness, one dignified not by domination but by a culture of resilience and beauty, of empowerment and a radical politic of taking no more.

**Abstract**

This project analyzes the societal conceptualization of innocence as it impacts criminalized survivors of gendered violence. As seen in the “objective” legal framework of innocence and guilt, the racialized and gendered nature of such a dichotomy is shown in the stark racial disparities within the demographics of incarceration. This analysis seeks to shine a light on central contradictions baked into the criminal legal system’s core tenets of providing justice and safety to all by illuminating the startling trend of incarcerating and punishing survivors. As shown in the problem of criminalizing survival, we see not only how the criminal legal system has not provided safety for people who have been victimized by gendered violence, but also how it has punished them for surviving, a form of state violence. This text draws attention to the ways that certain survivors, especially women and genderqueer people of color, are disproportionately affected by this trend and by no accident. By illuminating the ways that these marginalized survivors have experienced various forms of state and interpersonal violence throughout their lives this thesis analyzes how this state violence is normalized by way of institutionalization and thus ignored or not seen as violence as a result. Lastly, the analysis herein addresses larger societal conceptions of worth and humanity rooted in ideas of innocence versus criminality as framed by the criminal legal system. This project examines the ways that innocence is a malleable term disguised as an objective legal framing of right and wrong – when in fact it often highlights those closest to power and those furthest from it.

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### On Activist Writing

I write this piece as our world crumbles. I seek not to be existentialist for the sake of existentialism. I aim not to be hyperbolic. I cannot shake the feeling that this practice of conducting the extensive work that has unfolded in this thesis is bordering on insanity. Global hegemonic powers are tinkering with nuclear war as vulnerable everyday people in Ukraine and Russia suffer at the hands of military conquest. Yet and still my country bombs Middle Eastern countries we wish to not name as most do not bat an eye at these military endeavors. The racist hypocrisy of Ukrainian refugees welcomed with open arms to U.S. borders juxtaposed with Brown and Black immigrants met with deportation and detention. Israel continues its U.S.-backed violent occupation of Palestine. Our climate pushes ever-closer to catastrophe and our global powers scoff at taking necessary action. We are faced with an ongoing global pandemic that has taken millions of lives across the world, each life precious, each life a mother, child, father, friend, lover – each life a life. While the United States government cannot find the funding for continuing robust public health measures, an action that will be most drastically felt by the marginalized. In place of governing for the benefit of its residents, we near close to a federal ban on abortion, a decision made by nine people, several of whom have been accused of sexual assault themselves. *Nine people* will decide whether millions have access to the full slate of healthcare options when faced with the life-altering decision of pregnancy. States like my home, Oklahoma, and many others in the South, have raced to the finish line of stripping people of this right. The organized abandonment – willful neglect by the powerful state of vulnerable populations – witnessed in all of these examples cannot be overstated. Not to mention the countless injustices carried out daily in this project’s domain, the prison industrial complex, which currently cages millions, surveils tens of millions more through carceral technologies, and

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threatens the lives of countless others through policing. We find ourselves in the most urgent of moments faced with multiple pandemics birthed from COVID-19 and racial capitalist heteropatriarchy.

And yet I write. I voraciously approach the practice of formulating important questions with implications for so many, researching to find answers to those questions, and contemplating every word choice as I write page after page after page. This piece is not objective, I am not adding to the literature of sociologists wishing to create ontological Truths. I am a prison industrial complex abolitionist and organizer writing this piece to produce subversive knowledge of carceral logics that the academy and the University I write this thesis for are deeply in bed with. I recognize and continue to grapple with the contradictions therein. I am a Black cisgender man who continues every day to navigate the terrain of a world not created for my survival as Audre Lorde taught me, and practicing the necessary work of engaging through a Black feminist politic that centers the need for cross-community solidarity, coalition building, and constant learning and unlearning. My purpose, the only thing that allows me to continue to write, is that I fall in line with many great Black intellectual radicals who created new worlds on the page. I yearn for this work, this practice of nuanced debate, research, and writing to aid in however small a way to the liberation of my people. This project is even more rigorous as a result, the responsibility I feel to create something that does this very thing is immense, yet worthy. I write so that our strategies for tangibly shifting the outcomes of the aforementioned global issues may be ever-more strong. I write with the will granted to me by the power and foresight of my ancestors. I write in the ilk of Sankofa, reaching back as I look to a more just future. I write to create a home for me and other folk like me who have never known home but wish to find it through words.



**Figure 1: Prison walls transforming into birds who now fly freely**

## **Methodology**

This project revolves around the following two research questions: what does the criminalization of survivors of gendered violence have to tell us about the material implications of societal and systemic conceptions of innocence and guilt? Whose violence is violent? To answer these questions this thesis engages in two different forms of qualitative analysis: interpretive and textual. First, a textual analysis of relevant literature in the fields of carceral studies, critical race theory, and Black feminist thought. The textual analysis carried out in this review is working from an abolitionist lens – seeking to draw out the radical potential of interdisciplinary texts in the generational work of research’s role in the vision that is abolition. This textual analysis seeks to flesh out and connect the arguments that unearth the violence of the carceral state from a root-cause analysis as opposed to standard criminological studies that often reinforce the inevitability or permanence of carceral institutions, for example. This project seeks to gauge how authors who engage in theoretical scholarship and the practice of such theory analyze such large structures as the law and its implications on innocence.

Secondly, an interpretive analysis of two case studies of criminalized survivors, Tondalao Hall who was incarcerated in Oklahoma from 2004 to 2019, and Marissa Alexander in Florida from 2012 to 2017. Within each case study, I analyze direct transcripts from court proceedings, as well as carry out narrative storytelling from the voices of the criminalized. These case studies were chosen to show the distinct ways that survivors have been subject to criminalization while centering on the lack of innocence granted to them both. Each case is egregious in unique ways and occurred in different states with different political actors. There are an unfortunately large number of cases of criminalized survivors to choose from, each of whose stories deserve to be told and advocated for as so many of them remain behind bars. Alexander’s and Hall’s cases



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were chosen because of the groundswell of support and organizing that was launched across the country, showing the power of the people, and because their cases have come to a close, allowing the interpretive analysis to unpack the whole of their stories from start to finish.

## Against a Literature Review

### Introduction

“Innocent” is a loaded term, in the legal system, it is used to differentiate the convicted from those proven to not have engaged in illegal activity. Legally, the subject of this thesis is relatively clear. Do something wrong, be arrested, face a fair trial where you are determined to be guilty and a reasonable punishment will be wielded appropriately to the crime at hand. Thus separating law-abiding citizens and deviants who engage in wrongful behavior. Yet innocence is much more complicated than this, innocence in its societal construction is deeply intertwined with categories including race, class, gender, sexuality, and ability (Murakawa, 2019; Haney-Lopez, 2006). Innocent actors are portrayed as having engaged without fault or moral failing. The stories of survivors of gender-based violence who have been criminalized and incarcerated complicate such a simplistic dichotomization of innocent and guilty. The incarceration of people in women’s facilities<sup>2</sup> has starkly risen in the United States since the 1970s (Davis, 2003). The population in women’s facilities since 1980 rose by 700%, from 26,378 to 222,455 in 2019 (The Sentencing Project, 2020). Some reports show up to two-thirds of people in women’s facilities have experienced gender-based violence at some point in their lives. This is the solution that criminalizing gender-based violence has left us: more incarceration of survivors themselves. To be clear, two-thirds of people in women’s facilities are not all incarcerated directly related to responses to their survival, but the fact that so many have experienced gender-based violence shows a systemic failure in addressing gender-based violence and the connection between patriarchal violence and the prison. This phenomenon of criminalizing survivors is multifaceted and connected to the decades-long trend of

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<sup>2</sup> Among the harms of the criminal legal system is its violent enforcement of the gender binary. Many genderqueer, non-binary, and transgender men are caged in women’s facilities despite not identifying as women. The use of this language is meant to encompass the varying genders that the state does not recognize.

tough-on-crime policies at the height of the War on Drugs that saw the shrinking of welfare supports and massive growth of carceral institutions in the United States (Alexander, 2010).

Many incarcerated people in women's facilities are there for "offenses" directly related to their survival. For the women whose stories will be told in this project, some were criminalized for defending themselves against their abuser, others were criminalized under the utterly misogynistic law of 'Failure to Protect' and both have endured a lifetime of abuse and violence. What is seen in these stories is that none of these women were deemed worthy of being victims of gender-based violence – of being innocent – and thus were relegated to a perpetual state of violent deviance, leading to their criminalization and eventual incarceration.

The analysis to follow seeks to unpack the violence of the state and the ways its institutionalization through the courts, policing, and incarceration is invisibilized as well as the inherent limits of innocence in its legal and societal manifestations. I ultimately argue that there remains a fundamental contradiction of state logic within the criminal legal system in its framing around innocence and guilt borne out of societal narrative dichotomies of worthy and unworthy, criminal and noncriminal, violent and nonviolent, pure and dirty, good and bad, that in actuality are rooted on lines of power and privilege. I conclude that we must reject the politics of innocence in favor of a radical reimagination of human dignity and worth. One rooted in the (r)evolution from capitalism to a communal form of living. One that understands the complexity within each of us and seeks to better grapple with violence through principled community accountability.

### **Citational Practice**

Who is worthy of being reviewed in academia? The intellectual and activist contributions of Black women have long been overlooked in both academia and movement spaces. The

misogyny undergirding this practice leads not only to a necessary analysis being missed, but also a willful erasure of Black feminists whose theoretical frameworks are some of the most liberatory (Cite Black Women). The push on social media platforms asking the critical question: “have you cited a Black woman today” and organizations created in recent years like Cite Black Women push us to “reconfigure the politics of knowledge production by engaging in a radical praxis of citation that acknowledges and honors Black women’s transnational intellectual production” (Cite Black Women). Additionally, Black women, queer and trans people whose labor leads to much transformational scholarship are not recognized by the academy. Specific to this project the organizing and writing of incarcerated peoples is wholly missing from so many works within carceral studies. Citational practice here is more than giving credit where it is due, it is a political act of identifying profound contributors to the field inside and more importantly outside of the walls of academia. In writing this literature review I seek to work against the grain of what is traditionally accepted as groundbreaking scholarship in the field of sociology of race and gender. By grounding this work in abolitionist texts I work to reorient this ever-pivotal writing out of academia and back into the streets, where this struggle began and where it will be won.

### **Constructed Criminalization**

The United States incarcerates the most people per capita in the world (Sawyer & Wagner, 2022). Currently, over 1.9 million people are locked behind bars in American prisons and jails. Yet the problem of incarceration is a very small piece of a much larger issue unearthed in the carceral state. Over 10 million people are arrested every year, subject to coerced interactions with law enforcement agents (Ritchie & Richie, 2017). Over 4 million people are currently under state supervision through probation or parole. Approximately 20 million others

are living with the collateral consequences that come with having been convicted of a felony that scholars refer to as the “afterlife of mass incarceration” chronicling the ways that one conviction follows a person for the rest of their lives (Miller & Stuart, 2017). Taken all in all, over 8% of all United States adults are caught in the web of the American prison industrial complex (Miller & Stuart, 2017; Murakawa, 2019). This is due to a federal, state, and local governmental reliance on criminalization to purportedly “solve” issues like drug use, homelessness, and violence. As Black radical feminists, Andrea Ritchie and Beth E. Richie outlined in their “Crisis of Criminalization” report determining who has committed a crime is not as black and white as the legal system leads us to believe:

Criminalization is the social and political process by which society determines which actions or behaviors – and by who – will be punished by the state. At the most basic level, it involves passage and enforcement of criminal laws. While framed as neutral, decisions about what kinds of conduct to punish, how, and how much are very much a choice, guided by existing structures of economic and social inequality based on race, gender, sexuality, disability, and poverty, among others.

Criminalization is not an objective process because the legal system is not an objective arbiter of justice. There is no doubt that the reason 60% of people incarcerated in the United States are people of color is not a result of the racist myth that exponentially more violence is inflicted by people of color, but because the laws written are unquestionably tied up in webs of oppression (Ritchie & Richie). An example of this web in practice is the criminalization of survival. As Ritchie and Richie posit, criminalization is more than laws and policies passed, but also societal narratives around which people are thought to be criminals.

The American public conceptualizes crime as an objective term backed by the law of the land – also understood as a neutral arbiter of justice – that separates bad behavior from socially acceptable behavior. When in reality crime as we know it today is deeply intertwined with the

history of chattel slavery, emancipation, and fights for labor rights. After the Civil War, the South's entire economy struggled with a lack of free labor to work the land. Quickly, the U.S. government pushed for laws that criminalized the formerly enslaved, for minor "crimes" like loitering or vagrancy setting the recently freed back to the very plantations they were supposedly emancipated from. History is not something that happens to us. History is made through choices by the powerful. The 13th amendment loophole that those convicted of a crime could be punished in such a way allowed for masses of formerly enslaved people to be rendered as slaves by another name: criminals (DuVernay, 2016). Thus began the first wave of connecting criminality with Blackness. As it became less and less socially acceptable to outright refer to Black people as inferior, the pathology of Blackness turned into the conflation of criminality with Blackness (Murakawa, 2014 & 2019). In the white gaze, the legitimization of the legal system is necessitated by the justification of the capitalist economy. In order for the racial capitalist hierarchy to be upheld a subordinate class must be maintained and crime has become the conduit to carry out this effort. As Murakawa (2019) lays out "references to at-risk youth, thugs, gangs, broken homes, welfare, and ex-felons, even when not explicitly marked, represent narratives that weave Blackness with criminogenic upbringing, poverty, and family dysfunction" (Perry 2011). This history of crime is connected to the history of policing, the people who are tasked with enforcing the law and rounding up criminals, a history which, in the context of the United States, cannot be divorced from the institution of slavery (Brucato, 2020).

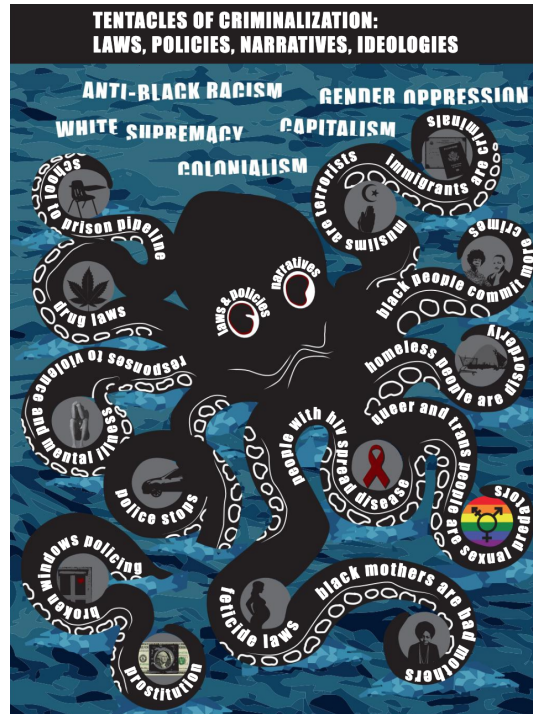


Figure 2 from “The Crisis of Criminalization”

As figure 2 shows systems of oppression like anti-Black racism, gender oppression, and colonialism influence and drives the practices and narratives that feed the beast of criminalization. These narratives date back to the institution of slavery and serve to dehumanize Black people by belittling them as nothing more than criminals. These narratives are reinforced by any number of pieces of fear-mongering propaganda like the daily news cycle that highlights mug shots of the scary Black person living in a city near you. These racist narratives are also tied to a capitalist belief in individualism, of pulling oneself up by one’s bootstraps. Because this narrative persists, police's violent interactions with homeless people, for example, are legitimized in the public eye as deserving of such treatment. Narratives that play directly into the criminalization of survival include the idea that Black mothers are bad mothers and welfare queens, falling in a historical lineage with conceptions of the mammy and the angry Black woman (Law, 2020). The public portrayal of Black women as anything but innocent ties directly

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to Black women's disproportionate rates of violent police encounters and criminalization both legally and societally (Ritchie, 2017). This reinforcing cycle of historicized narratives, media (news, films, television programming), and policies and practices of criminal legal system actors create a carceral logic that perpetuates our society organized around the multiple manifestations of the prison (Richie, 2012).

Societal narratives are deeply important to contemplate as it relates to the question of innocence and criminalized survival because these narratives are reinforced by centuries of actions by the powerful and the everyday person and are continued by the powerful and everyday person today. The aforementioned narratives of the welfare queen, who is a criminal, of the thug, make their way into policies and laws that are then enforced by police who have bought fully into them. An infamous example of the ways that narratives play out is seen in the tough-on-crime and war on drugs era of the 1970s within the Richard Nixon administration. John Ehrlichman, Assistant to the President for Domestic Affairs under Nixon has been quoted saying the quiet part out loud.

You want to know what this [war on drugs] was really all about? The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people. You understand what I'm saying? We knew we couldn't make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did.

Societal conceptions of innocence or criminality did not happen naturally but were created for particular political and economic aims. The furtherance of the carceral arm of the state was the revolving policy of the Reagan, Bush, and Clinton administrations. What these authors who critically theorize on criminalization show are that what seems to be immovable rules or even



ethically justified efforts are constantly adjusted to fit with unjust pretenses. These authors are furthering the project of abolition by questioning the foundations of longstanding institutions that have had deadly consequences for the marginalized. In so doing, they force the public to contemplate the legitimacy of such institutions that are not producing safety and are ruthlessly waging violence upon communities. This violence is shown in the criminalization of survival.

### **Criminalizing Survival**

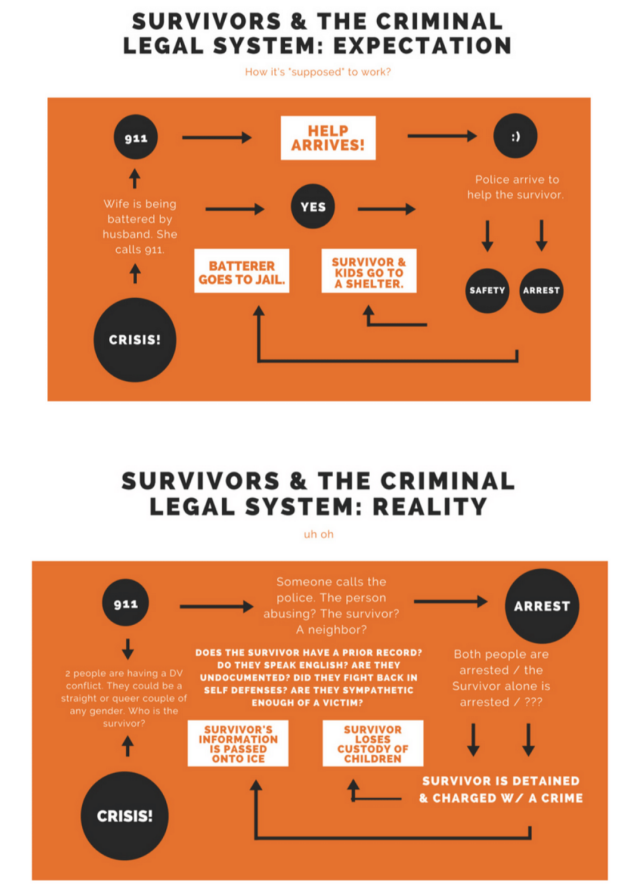
The harm of criminalization as an intervention against gender-based violence is best shown in the criminalization of survival. Here defined as people who in surviving gender-based violence – domestic, intimate partner, sexual, stalking, etcetera – were criminalized by a racist and patriarchal criminal legal system. The backdrop of criminalized survival is the reality that the criminal legal system does not protect, prevent, or provide justice for victims of gendered violence (Kaba, 2021; Law, 2021; Richie 2012, p. 123; Gottschalk 2006, Gruber 2018, Ritchie 2017). Antagonistic to this abolitionist view of addressing gender-based violence is “carceral feminism [which] critically names efforts to criminalize away the routine violence of rape, domestic violence, and heteropatriarchy” (Burnstein 2007, Davis 2016, Thuma 2019). Carceral feminism further entrenches the idea that survivors and communities need carceral responses to interpersonal violence, despite evidence and countless stories that these responses only cause more harm and violence. This harm is shown in the abysmal conviction rate of perpetrators of gender violence. To preface, of all the victims of sexual assault, 70% do not report it to the police (Kaba & Nagao, 2021). A report from *Interrupting Criminalization* laid out countless reasons why so many survivors do not report to the police including fear of retaliation, fear of arrest or incarceration, the threat of losing income or housing, drug use, being a sex worker, identifying as

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LGBTQ+, fearing someone may be hurt and many others. It is important to point out that so many of these reasons are directly related to the threat that the criminal legal system poses to victims from the very start, including criminalization. Of the fraction (less than 30%) of victims who report to the police, only 5% lead to an arrest, 3% lead to a conviction, and just 2.4% result in the incarceration of the perpetrator (Kaba & Nagao, 2021).

Involving the police also has violent consequences for survivors which leads many not to report in the first place. In many police departments, a mandatory arrest policy is in place for domestic violence calls, often leading to the arrest of the survivor and the perpetrator both.

Figures 3 and 4 help to break this down.



Figures 3 & 4: Survivors & The Criminal Legal System Expectation vs. Reality

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As these figures show there are many potential reasons why the police intervening in a crisis does not provide aid to the survivor. Reasons that include police officers, like every actor in our society, swim in the waters of oppression that taught them certain things about what victims of violence look or sound like. This brings us to the idea of the perfect victim. The perfect victim is a concept that identifies those worthy of being deemed a victim of gendered violence. Again, this concept has historical roots and societal implications in the construction of gender and race. The perfect victim is conceived of as a prone white cisgender girl or woman with access to capital. So often Black or indigenous survivors and survivors who engage in sex work do not fit into this mold of the “perfect victim.” There has been a recent push within gender-based violence agencies to reject the idea of the perfect victim as it is an impossible description to live up to. One should not need to be perfect to be worthy of resources and care. Within the concept of the perfect victim, we see parallels with ideas of innocence. Even this conception of who can be dignified as a victim is complicated by the recent tragic story of Gabby Petito whose identity matches societal conceptions of a perfect victim, yet her emotions led the police officers to believe the story of her partner, the man who eventually murdered her. Survivors who do not fit cleanly in the box of victimhood often face criminalization. For transgender survivors, androgynous survivors, gender nonconforming survivors, and Black and Brown woman survivors whose performance of their gender does not align with societal expectations of femininity they are more likely to be seen as the wrongdoer or the criminal than they are the victim.

Historically paralleled to this finds enslaved women were viewed as un-rapeable because they were sub-human, the property of their enslavers (Kaba, 2014). As Mariame Kaba outlined in the advocacy anthology to free Marissa Alexander, *No Selves to Defend* looks at this very

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issue of Black women having no autonomy over their own bodies resulting in their inability to defend themselves because their bodies belong to someone else, whether the enslaver, their husband, or a police officer (Kaba, 2014). Self-defense is one of the most often used reasons for criminalizing survivors of gendered violence. Survivors, especially those of color, are not granted the defense of self-defense because they had the audacity to fight to save their life, something the criminal legal system has never done (Kaba, 2014; *Survived and Punished*).

they won't ask where we were

*By Rachel White Domain*

for the so many women who are incarcerated for fighting back  
to protect their lives and

their children's lives  
we have to ask  
where we were  
when whatever happened,  
happened  
that they had to make that choice

we have to ask that question because that's not the question they are asking  
in a court of law  
they'll ask where was she  
they'll ask if she was a good girl (otherwise)  
how long she took it for  
they'll ask whether it was bad enough  
get out a ruler and measure the inches she was to the edge of the cliff  
they'll look over at the rocks and dust kicked over the edge in the struggle  
and consider  
how far down it is  
she probably would have survived, they might say  
she could have taken it a little longer

and maybe they'll keep her in a cage  
which is where they keep fierce life-loving freedom-fighting women  
in worlds where they don't think  
we should all get  
to be safe and free

*\*This (fictional) poem was inspired by my friend who is currently incarcerated in Chicago. I wrote it on the morning of her first day of trial.*

### Figure 5: “They Won’t Ask Where We Were” Poem

Further, survivors are criminalized because the people the legal system lifts up as providing safety are so often perpetrators of gendered violence themselves. Police sexual misconduct is the second most cited complaint against police behind excessive force (CATO Institute; Ritchie, 2021). Police sexual violence is “a pervasive and systemic practice, a structural tool of law enforcement, and a corollary of criminalization” (Ritchie, 2021). Gendered violence is always about power differential, and the police wield power over those they police. One could

argue that all police interactions are sites of sexual violence because all police encounters are involuntarily or nonconsensually partaken in by those who are being stopped. As Andrea Ritchie outlines in her report on police sexual violence, *Shrouded in Silence*, the logic that allows for police sexual violence to persist most often on Black women and queer and trans people, are the same racialized and gendered logics of the punitive carceral state (Ritchie, 2021). This violence by state actors is not regarded as violence because the state has a monopoly on legitimate violence. Additionally, the reality of incarceration of women is deeply racist and sexist, disproportionately impacting women of color – 67% of incarcerated women are women of color. 47% of all Black transgender women have been incarcerated at some point in their lives (Survived and Punished). Prisons institutionalize gendered violence, with up to 94% of some women’s prison populations having experienced domestic violence (Survived and Punished). The very same system tasked with providing safety for survivors of gendered violence perpetuates, institutionalizes, and reinforces gendered oppression and violence.

### **Prison Industrial Complex Abolition**

Critical Resistance, an organization founded by abolition feminist foremothers Angela Y. Davis and Ruth Wilson Gilmore, is regarded as the quintessential entity for abolitionist thought and praxis. Their definitions of the prison industrial complex and its abolition are as follows

The prison industrial complex (PIC) is a term we use to describe the overlapping interests of government and industry that use surveillance, policing, and imprisonment as solutions to economic, social, and political problems.

Through its reach and impact, the PIC helps and maintains the authority of people who get their power through racial, economic, and other privileges. There are many ways this power is collected and maintained through the PIC, including *creating mass media images* that keep alive stereotypes of people of color, poor people, queer people, immigrants, youth, and other oppressed communities as criminal, delinquent, or deviant. This power is also maintained by *earning huge profits* for private companies that deal

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with prisons and police forces; helping *earn political gains* for “tough on crime” politicians; increasing the influence of prison guard and police unions, and *eliminating social and political dissent* by oppressed communities that make demands for self-determination and reorganization of power in the US.

The importance of mapping the prison industrial complex (PIC) is in scoping the problem at hand. As I have attempted to articulate thus far in this project, the issues we face are multifaceted and cross-institutional, psychological, and systemic lines. The issue of policing is not simply police brutality, the issue of prisons is not simply high incarceration rates, and the issue of criminalized survival is not simply misguided laws. A concept akin to the PIC is the carceral state, defined as “the networks of laws, institutions, and administrators that enable and enforce punishment, including but not limited to criminal law and procedure, police, criminal courts, criminal records databases, legal financial obligations, probation and parole, brick-and-mortar incarceration, and e-carceration with electronic shackles” serves as an analytical framing of the problem (Beckett 2018, Gottschalk 2012, Hernandez et al. 2015, Lerman & Weaver 2014, Schoenfeld 2018). To adequately address these overlapping interests and behemoth set of power structures, is the abolition of the PIC/carceral state:

PIC abolition is a political vision with the goal of eliminating imprisonment, policing, and surveillance and creating lasting alternatives to punishment and imprisonment.

From where we are now, sometimes we can’t really imagine what abolition is going to look like. Abolition isn’t just about getting rid of buildings full of cages. It’s also about undoing the society we live in because the PIC both feeds on and maintains oppression and inequalities through punishment, violence, and controls millions of people. Because the PIC is not an isolated system, abolition is a broad strategy. An abolitionist vision means that we must build models today that can represent how we want to live in the future. It means developing practical strategies for taking small steps that move us toward making our dreams real and that lead us all to believe that things really could be different. It means *living this vision in our daily lives*.

Abolition is both a *practical organizing tool* and a *long-term goal*.

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Ruth Wilson Gilmore tells us that abolition “is about presence” which is to say abolition is about dismantling the buildings, institutions, and systems of the PIC *and* it is about building up the structures and communal bonds that make it so the PIC is no longer viewed as necessary. PIC abolition is a radical reimagining of our society as we know it. There are many pockets of this work to dig into, and at its core takes that institutions of carcerality (of or connected to incarceration and its logic) cannot be reformed to work better, but must be abolished. This project is particularly interested in the legal system’s dichotomization of innocence and guilt, of violence and nonviolence as a social determinant for who is worthy of life.

Gilmore’s theorization of “abolition geographies” as the oppositional force of carceral geographies, the extraction of bodies and time from one place into confined spaces provides a spatial analysis necessary for understanding carceral functions and the potential for their abolishment (Gilmore, 2017, p. 227). Gilmore states

We used to think that in the United States, contemporary mass un-freedom, racially organized, must be a recapitulation of slavery’s money-making scheme. But if these massive carceral institutions, weighted like cities, are not factories and service centers, then where’s the profit, the surplus money at the end of the day? Today’s prisons are extractive. What does that mean? It means prisons enable money to move because of the enforced inactivity of people locked in them. It means people extracted from communities, and people returned to communities but not entitled to be of them, enable the circulation of money on rapid cycles. What’s extracted from the extracted is the resource of life—time.

If we think about this dynamic through the politics of scale, understanding bodies as places, then criminalization transforms individuals into tiny territories primed for extractive activity to unfold—extracting and extracting again time from the territories of selves.

Abolition geographies, then is place-making, the making of home found in freedom. The work of abolitionist thought “concerns itself with the greatest and least detail of these arrangements of

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people and resources and land over time. It shows how relationships of un-freedom consolidate and stretch, but not for the purpose of documenting misery. Rather, the point is not only to identify central contradictions—inherent vices—in regimes of dispossession but also, urgently, to show how radical consciousness in action resolves into liberated life-ways, however provisional, present and past” (Gilmore, 2018, p. 227). This project seeks to continue in this very legacy.

### **The Racialization of Legal Innocence**

Ruth Wilson Gilmore defines racism as “the state-sanctioned and/or extralegal production and exploitation of group-differentiated vulnerability to premature death” (Gilmore, 2007, p. 247). The PIC reproduces this vulnerability in all of its functions which are, in effect, *always* racialized, gendered, and queered (Murakawa, 2019, p. 474). This is to say the very function of the carceral state serves to reinforce social stratification and subjugation. The law in America’s legal system is entangled and nearly synonymous with whiteness (Harris, 1993; Haney-Lopez, 2006). If the law’s stated purpose is to deal out right from wrong, innocent from guilty, then whiteness maintains innocence at all times (Murakawa, 2019, p. 473). This “racial innocence” is produced through “willful ignorance, blame displacement, and liberal reforms” (Murakawa, 2019, p. 473). 1963 saw a racial reckoning akin to that of George Floyd’s 2020; in the former year, James Baldwin wrote “it is not permissible that the authors of devastation should also be innocent. It is the innocence which constitutes the crime” (Baldwin, 1963, p. 334). The horrors upon which the United States is founded – settler colonialism practiced through indigenous genocide and chattel slavery – are no match for the innocence of whiteness. Whiteness is conceived of as pure, holy, all-knowing, and just. The devastation of Black bodies in the carceral state, and the destruction of indigenous culture, land, and people have no perpetrator, they are natural occurrences in the process of nation-building, a process where whiteness assumes no



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guilt for these happenings. The innocence of whiteness is predicated on the unknowing of racism, wherein powerful actors ignore the means (slavery, imprisonment, violent policing) in favor of the ends (capital) (Murakawa, 2019, p. 475). Legal framing of racism is limited by anti-discrimination law which lays the burden of proof on willful intent, an intent that the epistemology of legality (whiteness) refuses.

Youth has no less a tranquilizing effect on racialized innocence as shown in the periods from slavery to the Civil Rights Movement showing that public conceptions of innocence interlocked with childhood were connected to whiteness so too (Bernstein, 2012). Black children throughout these periods were viewed as something other than children, something other than innocent, rendered as closer to adults soon to be subservient criminals. The innocence of childhood in whiteness is “to be innocent of something, to achieve obliviousness. This obliviousness was not merely an absence of knowledge, but an active state of repelling knowledge” (Bernstein, 2012, p. 6). Here too, we find the credence of innocence through an epistemology of unknowing. The creation of whiteness as the negation of Blackness was a colonial tool to justify the Atlantic Slave Trade and slavery across the Americas (Du Bois, 1965; Robinson, 1983). The making of “the negro” was needed to legitimate the legality of what most now understand as a morally corrupt institution as slavery to build up the United States’ capitalist economy (Robinson, 1983). The epistemology of legality (whiteness) is the practice of knowing and unknowing when convenient for certain ends, ends that most certainly create better outputs for the ruling class, for the wealthy. This cycle of the law reproducing whiteness is as much a historical one as it is a present reality. And if the law is bound up with whiteness what might this mean for the racialized masses? The criminalization of survivors shows how innocence – by way of the law – is not a signifier attainable by the marginalized.

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To further investigate the symbiosis of the law with whiteness the seminal critical race theory text from Professor Cheryl Harris brilliantly outlines how whiteness and property became conflated through legal mechanisms, turning property rights into rights of whiteness and vice versa (Harris, 1993, p. 1714). Harris traces whiteness historically from “color to race to status to property as a progression ... rooted in white supremacy and economic hegemony over Black and Native American peoples” (Harris, 1993, p. 1714).

In particular, whiteness and property share a common premise - a conceptual nucleus - of a right to exclude. This conceptual nucleus has proven to be a powerful center around which whiteness as property has taken shape. Following the period of slavery and conquest, white identity became the basis of racialized privilege that was ratified and legitimated in law as a type of status property. After legalized segregation was overturned, whiteness as property evolved into a more modern form through the law's ratification of the settled expectations of relative white privilege as a legitimate and natural baseline.

Here Harris traces the transformation of legal understandings of property and whiteness from de jure to de facto race-based discrimination, locating whiteness as simultaneously a racial category and an amorphous legally protected status. In so doing, Harris, and other (Haney-López, 2006) critical race theorists have unearthed the inseparable nature of whiteness and the law. In taking this premise one may better understand why such racism exists within the criminal legal system: its original intent was to protect property, to protect and uphold whiteness. The formation of anti-discrimination laws to try to combat such racialized and racist underpinnings are counterintuitive as they only serve the racial innocence Murakawa unpacks, the need to legitimate the law as objective and not racist, while still producing deeply racist endings, like the stark disparities that stated above.

To unfold the entire legal conception of innocence one must also understand the intersecting systems of domination at play in the cases of women, queer and transgender people

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of color (Crenshaw, 1991). Professor Kimberlé Crenshaw defines intersectionality as “an analytic sensibility, a way of thinking about identity and its relationship to power (Crenshaw, 1991). Crenshaw’s theoretical framework was and is a necessary intervention in legal scholarship that focused either on race-based discrimination or gender-based discrimination. Crenshaw’s intersectionality is a Black feminist undertaking that ensures our analysis takes into account the ways that racism and sexism are at play in tandem when looking at cases dealing with Black women, for example. Crenshaw’s work looked at the ways that power works to create a vortex of oppression that does not work in a silo for people who are marginalized on multiple axes of oppression. Figure 6 shows the links between power and identity through intersectionality. The identities closest to the center (power) have access to privilege in those domains, and those furthest from the center in each category are marginalized. Intersectionality examines the ways that different people can experience marginalization on multiple fronts. This theory is vital in examining the case studies within this project, both of whom are Black women and experience oppression through both racism and sexism, which is not to mention their class, sexuality, or education levels, among other identifying categories. Importantly, Crenshaw was not the first Black feminist to theorize about such an intervention. Black feminists for centuries have been calling out the “double jeopardy” and “simultaneous” systems of racism, sexism, classism, and others; or the contention that “all the women are white, all the Blacks are men, but some of us are brave” (Beal, 1969; Combahee River Collective, 1977; Smith, Hull, Bell-Scott, 1982).

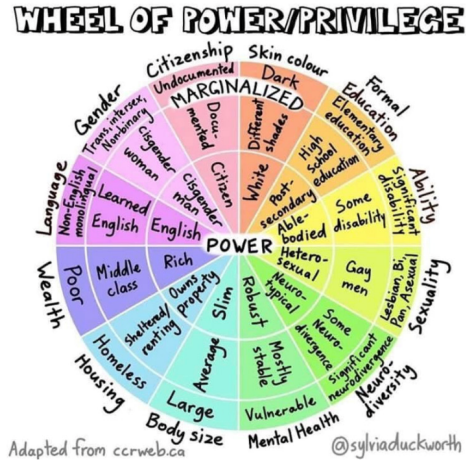


Figure 6: Wheel of Power/Privilege

### State Violence as (Legitimate/Invisible) Violence

Violence exists in a matrix, exacerbated by systems of power that produce results harmful to those marginalized across axes of oppression/privilege. Similar to the ways the destruction of the carceral state is rendered innocent through the property-making of whiteness, violence is institutionalized and thus legitimated when carried out by the state (Ward, 2015). Different terms are used to describe different processes of state violence including slow death, structural violence, and organized abandonment. I argue that each is an example – in varying degrees – of state violence, but it is useful to demarcate between them before continuing. Organized abandonment, as articulated by Ruth Wilson Gilmore is the willful neglect by the state (governmental agencies) of vulnerable populations, this abandonment is the practice of disinvesting in life-giving services and institutions like healthcare, education, and housing, and investing in death-dealing institutions of policing, incarceration, and surveillance technologies (Gilmore, 2015). Organized abandonment can otherwise be thought of as neoliberal austerity as many scholars articulate it (Vitale, 2017). In some ways the framing of austerity is limiting as its

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use, definitionally, is in the stripping of resources from services, while the period that gave birth to a sharp spike in incarceration rates saw massive investment into carceral institutions, what some may call services. Organized abandonment better accounts for this phenomena in thinking through the process of taking and giving – taking from the aforementioned life-giving systems/services and giving to death-dealing institutions. Separately, these death-dealing carceral institutions are examples of organized violence of the state. Critical theorists of policing unpack the ways that policing functions not to prevent or stop ‘crime’ but to maintain order (Vitale, 2017; Fassin, 2013; Stuart, 2016; Anti-Security Collective, 2020). Specifically, a hierarchical order that upholds racial capitalist heteropatriarchy (Anti-security Collective, 2020). Slow death “refers to the physical wearing out of a population and the deterioration of people in that population that is very nearly a defining condition of their experience and historical existence” (Berlant, 2007, p. 754). Structural violence then is understood as the materially negative social determinants of health wherein certain groups of people are excluded from their needs being met. This violence is connected to Berlant’s slow death in that structural violence occurs as a result of the capitalist state’s needs being met through extracted surplus labor for the benefit of elites (Anti-security Collective, 2020). This extraction is found in the phenomena of organized abandonment.

A theoretical pillar of understanding the power behind this violence is found in poststructuralist thought (Foucault, 1995; Mbembe, 2008). Necropolitics as articulated by Nchille Mbembe is “the ultimate expression of sovereignty resides, to a large degree, in the power and the capacity to dictate who may live and who must die. Hence, to kill or to allow to live constitute the limits of sovereignty, its fundamental attributes. To exercise sovereignty is to exercise control over mortality and to define life as the deployment and manifestation of power”

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(Mbembe, 2003, p. 12). Foucault's theorization on sovereign power and disciplinary power, the ability for states to rule over their people through differing functions; in sovereign as listed above, and disciplinary through institutionalization. I find that the United States maintains biopower: "that domain of life over which power has taken control" through institutionalized violence of incarceration, policing, and surveillance yet their ultimate functions still maintain a sovereign power, a power to decide who lives and who dies, what Mbembe describes as necropolitics (Mbembe, 2003). Of course, not all sentences carried out are death sentences, yet the sheer institutionalization, for any period of time, connected with the conditions of communities experiencing policing having been abandoned creates a slow death for the incarcerated.

Again, here we turn to Black feminist scholar Beth E. Richie who examines America as a "prison nation" (Richie, 2012). "The notion of a prison nation reflects the ideological and public policy shifts that have led to the increased criminalization of disenfranchised communities of color, more aggressive law enforcement strategies for norm-violating behavior, and an undermining of civil and human rights of marginalized groups" (Richie, 2012, p. 3). This concept of the prison nation is an important one in understanding the reasoning for the criminalization of survival because survivors' actions and identities often fall under this category of norm-violating. Richie highlights the mainstream anti-violence movement shift in tandem with carceral tools with the passage of the Violence Against Women Act (VAWA) which saw an unprecedented influx of funding to policing and courts to criminalize gendered violence, a play that Black women and other women of color were long against because of the violent role policing has often played in Black women's lives and communities (Richie, 2012). Policing is an important institution to examine because its agents play some of the most apparent roles of the

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state in people's lives. Critical theorists locate policing as having a monopoly on 'legitimate' violence (Vitale, 2017). The institution of policing plays an ordering role in society, that order is maintained through legitimate violence most heavily felt by poor communities of color (Stuart, 2016; Fassin, 2013). The violence here is legitimate in that it is carried out by state actors, actors who are given long ropes to conduct gross displays of violence. This violence is legitimate because of power structures, wherein the subjects faced with the baton or the bullet by the badge have none. Legality is no matter here, as the power of policing moves above and through the law. As the Anti-Security Collective in the introduction to a special issue of *Social Justice* on police power in 2020 stated:

if we treat the police power as an activity rather than an institution and as a function rather than an entity, we can begin to understand police power as fluid, amorphous, alegal, and multifaceted, moving through institutions, forms of agency, rules, and, of course, as Wall and Linnemann show, those fundamentally discretionary exercises of power by police officers on the street. This fluid activity has to be understood as a facet of capital as a social relation and the permanent war to produce wage labor.

Scholars in the last decade have more closely outlined the impacts of the carceral state on the lives of Black women and girls (Richie, Ritchie, others). Andrea Ritchie's work *Invisible No More: Police Violence Against Black Women and Women of Color* traces countless stories and experiences of Black and indigenous women and girls' experiences with police violence. These texts rightfully center on women and girls in the state violence of incarceration and policing. Serving as an intervention on the erasure of gender and sexuality in the critical analysis of the PIC.

**Case Studies: The Gray of It**

What follows are the stories of two survivors who in the aftermath of their experiences with gendered violence were met with criminalization and incarceration. Their stories are not all glitz and glamor, I wish to share the gray of each. They are not perfect, as none of us are, but each is deserving of much more than our legal system gave them.



**Marissa Alexander - Stand Your Ground: Whites Only**



**Figure 7: Free Marissa Poster by Molly Crabapple**

Marissa Alexander was trying to save her life, instead, she faced the wrath of Florida's criminal legal system. On July 31st of 2010 her estranged husband, Rico Gray, became enraged inside the house they once shared and charged after Marissa. Marissa proceeded to retrieve a weapon in an attempt to scare off Gray, this action only further enraged him. He charged after her, yelling "I'll kill you," Marissa then followed to fire one shot into the ceiling to finally ward off Gray's threat. Marissa was charged with aggravated assault and faced a mandatory minimum sentence of 20 years in prison. Just nine days before the incident with Gray Marissa gave birth to a baby girl named Rihanna.

Marissa's case highlights the lack of autonomy granted to Black women over their own bodies. Marissa and Rico had been together for over a year and Rico had been abusing Marissa for most of their relationship. Marissa, on this relationship, writes: "Rico and I had a lot of chemistry. When our relationship was good, it was excellent. When it was bad, it was really bad.

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In the beginning, there was behavior I used to interpret as affection, like, *He wants to know where I'm going and be with me all the time because he loves me*. Suddenly, he turned into the kind of person who would clock me when I would just be going to the grocery store. Later that year, Rico beat me so badly I ended up getting a restraining order against him. But then we started seeing each other again” (Amber, 2020). The abuse Marissa endured was not isolated to the night she defended herself, she had long been making excuses for Rico as is usual for women in physically and emotionally abusive relationships. Throughout these instances of physical abuse the criminal legal system proved to not protect Marissa from the violence she was living through – a criminal charge was dropped after the incident that landed Marissa in the hospital after she decided to not follow through with the charges. “I’m strong and determined and I had never experienced a relationship like this. So every time something bad happened, I would rationalize it and give Rico the benefit of the doubt. Or we would break up and he’d come back looking like a puppy dog, all lovey-dovey” (Amber, 2020). In January of 2010, Marissa learned she was pregnant and she and Rico decided to get married and be a family. The abuse did not stop during Marissa’s pregnancy and a month before the delivery date Marissa decided to leave Rico, a decision she made secretly to avoid any more abuse. Their daughter, Rihanna was born prematurely, weighing four pounds and twelve ounces. Marissa spent the next week in and out of the hospital caring for her daughter. The events after would change Marissa’s life.

A week after Rihanna was born, it was time for her first bath. Rico was supposed to meet me at the hospital, but he couldn’t make it. So I gave her a bath and took some pictures on my phone. I texted the photos to my ex-husband, who was in Orlando at Disney World with our twins. I wanted him to show the kids their new sister.

After that, I went to my old house to get more of my things. My sister was going to meet me there. I was surprised when Rico showed up with his two sons. But I thought, *I’ll just be cordial*. I showed him the pictures of Rihanna on my phone. I remember saying, “Look, she’s smiling.” Then, after I left to go to the bathroom, he started going through

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my text messages. He saw that I had sent my ex-husband pictures of the baby and he lost his mind. I had never seen him that angry.

He started cursing at me through the bathroom door. Eventually, I was able to run to the garage and get into my truck to leave, but the garage door wasn't working, so I grabbed my gun and went back in the house. I was raised with guns. My daddy is a military man. He took all his girls to the range and taught us self-defense.

At first I thought Rico had left. When I saw him, it was like we startled each other. He said, "Bitch, I'll kill you." So I fired a warning shot into the wall above him. His children were not beside him; I assume he had sent them out of the house and had come back to deal with me.

Records from Marissa's court case would copiously dig through the details of this incident from Marissa's standpoint and Rico's. Advocates of gender-based violence prevention preach the importance of believing survivors. This simple act of saying "I believe you" when a survivor comes forward and tells you of the violence they experienced makes all the difference. We have seen in recent years through the #MeToo Movement the ways that deeply privileged women with great resources are put on public trial, questioned of their intentions, blamed for surviving, blamed for coming forward, and blamed for ruining their *perpetrators'* lives. This phenomenon is a part of rape culture, the normalization and excusal of gendered violence within our patriarchal society. A major reason why so many survivors do not come forward to tell their stories, and why they do not try to get "justice" through the criminal legal system is because they know the system does not rest on believing the word of victims, it relies on the law. The law that we have seen fail Black people time and time again. The law that is in numerous ways bound up with whiteness. This refusal to believe Marissa's story is highlighted in the prosecution's own words: "now at issue is self-defense in this case... Remember at issue, really at issue, in this case, is whether Mr. Gray ran towards her, charged her, and said, 'Bitch I'm going to kill you.' You have to decide if that actually happened. ... "What this case is about, ladies and gentlemen, is

whether this defendant under the law was justified in her actions of discharging that gun” (*Marissa ALEXANDER, Appellant, v. STATE of Florida, Appellee.*, 2013). In that courtroom, it was Marissa’s word versus a legal system set up to protect whiteness. The jury’s ruling showed that they did not believe Marissa acted in self-defense, that she did not lawfully protect herself – they did not believe Marissa. In an opinion of the Florida Court of appeals, they stated as much: “It was the prerogative of the jury to determine which version of events to believe and, by its verdict, it appears that the jury rejected Appellant’s version of events” (*Marissa ALEXANDER, Appellant, v. STATE of Florida, Appellee.*, 2013).

Marissa would spend the next two years behind bars for defending herself against her estranged abusive husband. Marissa was caged for surviving the violence of Rico Gray and would experience the violence of the state as she sat incarcerated in Lowell Correctional Facility in Marion County Florida. Marissa would soon be fought for by community organizers and advocates as the story of Trayvon Martin’s killer, George Zimmerman took the nation by storm. Zimmerman infamously was not convicted on the defense of Florida’s Stand Your Ground law. This law states that any Floridian acting in clear self-defense should not be tried for the actions taken in their defense. Zimmerman killed a young Black boy and got off. Marissa fired a single shot into the air to defend herself against a man who had been abusing her for years. Marissa acted in true self-defense. Zimmerman acted in white supremacist vitriol. Florida’s criminal legal system would stand trial in the public arena for what many across the country viewed as a heinous example of the criminal *injustice* system yet again protecting whiteness and criminalizing a Black woman. The violence of the state was apparent throughout Marissa’s time on trial and while she was incarcerated.

On December 30, 2010, a few days before I was to appear in court, I needed Rico to sign some papers so I could put Rihanna on my health insurance. I went to his house and we

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had another incident. I ended up at the hospital with injuries on my arms from blocking his punches. He told the police that I'd injured his eye. I was arrested, my bond was revoked, and I was put back in jail.

During my incarceration, I was in frequent contact with my twins, through letters, phone calls and visits. I tried to be as truthful as possible about what was going on, but I knew they were hurting; it was like a bright light inside them had dimmed.

In the beginning, I saw Rihanna when my mama brought her to visit. Then one day the two of us were on the phone when suddenly I could hear Rico's voice. He had filed for temporary custody and showed up at my mama's house with a police officer. From jail I could hear my baby crying over the phone. I felt like I was dying inside.

Rico drives trucks for a living, so I didn't even know who was going to be keeping Rihanna while he was on the road. I had no control: I had no money, no power, and I was physically bound. The only way I was able to cope was to tell myself that for that period of time I had two children, not three. I had to rely on the power greater than all to keep Rihanna safe. I had to give my child to God.

As Marissa's story gained attention she successfully won an appeal in Florida's first district Court of Appeals on the finding that the burden of reasonable doubt was placed on Marissa, the defendant, to prove that she acted in self-defense beyond a reasonable doubt, which is the burden of proof placed at the prosecutor's hands, to prove that Marissa did *not* act in self-defense. In direct retaliation for this winning appeal, the Florida state prosecutor decided to retry Marissa's case and this time threatened Marissa with 60 years behind bars. With the opportunity to right this clear wrong, to believe Marissa and make clear that Florida's court system works in believing victims and protects them, or at the very least to avoid the public relations catastrophe that is the comparison of George Zimmerman's case to Marissa's, the State attorney Angela Corey decided to do the opposite, and further criminalize Marissa. Faced with even more time behind bars, away from her family Marissa pled guilty to time served and an

additional 65 days in prison. On top of this, Marissa would spend two additional years under state supervision, under house arrest.

Though there should be no expectation of such after the horrors the state put Marissa through, Marissa has turned her pain into advocacy, creating the Marissa Alexander Project to advocate for other survivors who have been criminalized. A recently published report from Survived and Punished, a national advocacy organization that fights for the release of all survivors of gendered violence and thus for the abolition of the carceral state, *Defending Self-Defense: A Call To Action* produced in collaboration with the UCLA Center for the Study of Women and Project Nia highlighted Marissa's story and advocacy since her release.

Defending self-defense. Reading that sounds strange, or at least like an oxymoron. In theory, why would self-defense need defending? From my own experience, I know why it is necessary to explore every single possible path that locks survivors of abuse or assault into endless cycles of repeated harm. It doesn't just begin and end with violent attacks from abusers. Still, the second we choose to survive, in every interaction we have, from arrest to incarceration, we encounter judgment, discarded looks, negative stereotypes, and invalidation.

I recall my experience on the day I chose life. Shortly after being detained, I encountered the responding police officer who was dismissive of my side of the story. The arresting officer retrieved on his laptop the "no-violent contact" protection order I had in place at the time of the arrest. The next attempt at devaluing me as a victim was made by the correction officer assigned to deliver legal papers requiring a signature to those detained. We sat on the metal bench in the county jail holding area, reviewing a retaliatory order of protection from my abuser who had attacked me hours earlier. I signed, handed him the papers, and he offered his unsolicited opinion, "You know black women tend to be more aggressive anyway." This mindset and observation are too common and lazy to dwell on analyzing his belief systems.

Defending self-defense is essential because survivors need protection when they believe their lives are threatened. They need protection more than the average person (and definitely more than those who are over-protected by the law) because survivor defendants know what their abusers are capable of and they are surviving not only for themselves but also, often, for their children.

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Marissa was never afforded the luxury of innocence, in the eyes of the law she was a Black woman with the audacity to survive this white supremacist capitalist society, she dared to live as a Black woman. An offense worthy of severe punishment.

*By the end of the day, 4 women will die at the hands of an intimate partner.*

*Many women report some form of sexual or violent abuse prior to incarceration.*

*If the violence is unabated, we risk losing our lives.*

*If we defend ourselves, we risk losing our freedom.*

*-Marissa Alexander*

**Tondalao Hall - Failure to Protect Innocence**



**Figure 8: Tondalao Hall**

Tondalao Hall was nineteen years old when her 20-month-old child suffered from injuries including 12 fractured ribs and a fractured femur inflicted by the father of her children. Tondalao Hall spent 15 years in Mabel Bassett Correctional Facility in Oklahoma for failing to protect her children from the abuse of their father, a man who was also abusing Tondalao. Tondalao took her 20-month-old and two-month-old children to the hospital with significant injuries to their ribs and was arrested in the hospital. Her offense was not carrying out the abuse that led to such horrific injuries to young children, but that she did not report the abuse of Robert Braxton, the children's father. Braxton spent a total of two years in jail before pleading guilty and being released with time served. Hall spent 15 years of a 30-year sentence in an Oklahoma cage and was only granted commutation by Oklahoma's Pardon and Parole Board after years of public outcry, advocacy, and organizing on Tondalao's behalf. Oklahoma's criminal legal system not



only failed to protect Tondalao and her children from the abuse, but they wielded years of state violence on Tondalao and her family by convicting her based on the actions of her abuser.

The Failure to Protect law states that “any parent or guardian who knows their child is being abused and fails to protect them can be charged with a felony” (Butzen, 2018). The logic here in theory is to protect children from child abuse and to hold culpable both the abuser and the “passive parent” who stands idly by knowingly aiding in the abuse by not stepping in (Butzen, 2018, p. 379). Assuming the best of intentions with this statute, which is not unique to Oklahoma – five other states, Missouri, Nebraska, Nevada, South Carolina, and West Virginia have similar laws under state statute – find that the legal system should punish the parents or guardians for abusing children, to protect those children. But in practice in dozens of cases in Oklahoma (Rebecca Hogue was most recently incarcerated under the same law for failing to protect her son from being killed by Hogue’s abuser) finds this law is “overwhelmingly used to punish battered women for not removing their child from an abusive household” (Butzen, 2018, p. 379). This law and the story of Tondalao Hall lays out the terrifying consequences of carceral interventions to gendered violence and other forms of community violence.

The transcript of the court proceedings in Tondalao Hall’s case, Hall listed as a co-defendant of Robert Braxton, shows the worst of the U.S. legal system, this from Prosecutor Marsee:

You know, one of the things she [Tondalao Hall] was afraid of, and why she didn’t take her children, her child to the hospital was because she didn’t want them to be taken away by DHS. And I guess in her mind it was better for these kids to be abused than it was for them to be taken away by DHS. And I think that to allow her children to stay in that situation when she knew, or should have known at the very least, what was going on, she is just as guilty of doing the crimes herself.

So she should spend a significant part of the rest of her life in prison for what she did to these children. She’s their mother. She’s responsible for them. She is the one person in

this world who should be standing up for them and taking up for them and making sure that they are loved and they are cared for, and she did not do that. They were in harm's way because of what she did, and they were in pain because of what she didn't do, and she should pay for that.

These assertions by the prosecution fall on so many historical tropes of Black women and their role as mothers. Historical stereotypes that belittle Black women as poor mothers of their children run vast, whether the welfare queen or the mammy, Black women have long been cast as anything but the picturesque motherly figure; a figure so too tied up with whiteness and femininity. Further, the prosecution fails to take into account the abuse Tondalao was facing herself, and what many women experiencing domestic violence are faced with. There are significant barriers to leaving abusive relationships, including financial concerns and concerns that the violence will follow them above all else. None of these concerns were considered in trying Tondalao. Tondalao was held to a higher standard to protect her child than the actual abuser was, and she was punished for being a victim. Additionally in this segment of the proceedings, the prosecution calls out an important layer in all of this, that Hall would rather stay in the home where the abuse is happening than have her kids be taken by DHS. It is important to note here that the court was never clear on whether Hall was aware of the abuse, but the problem here is not her awareness, but whether she had any power to stop it and that she should not be held complicit for the violence she and her child were subject to. The Department of Human Services, referred to by abolitionists as Family Policing, tears families apart and often relegates children to worse outcomes in an intervention by the state purportedly to protect them.

Abolitionist scholar Dorothy E. Roberts writes on the ways that the child welfare system does not protect children from abuse but was designed to “destroy Black families” (Roberts, 2022), showing that Hall's decision or indecision to bring in the state was not the intervention the prosecution claims. Whether it be the criminal legal system or child protective services, state

interventions on harm and violence – of children, women, immigrants, of Black and brown folks – do not produce safety, only more harm. Lastly, the callous nature of the prosecutor is on full display. She shows no empathy for Hall’s situation as mother and victim, only interested in throwing a significant punishment for Hall’s actions. Portraying Hall in such a way was successful, as she was sentenced to 30 years in prison, 15 years for each child abused by Braxton.

Tondalao Hall was not granted the benefits of innocence, nor of victimhood. Hall did not “fit the traditional image of the innocent victim—that is, black women, women of color, poor women, sex workers, lesbians, and trans women—are likely to be criminalized rather than protected through such policies” (Murakawa; 2019 p. 485; Richie 2012, p. 123; Gottschalk 2006, Gruber 2018, Ritchie 2017). She was seen in the eyes of the law as a Black woman, a Black mother who should have done more, even though she did all she could. The law had no care for Tondalao Hall, a teenager when she was arrested. Only criminalization and imprisonment. The Failure to Protect statute is deeply misogynistic and racist and has no understanding of the cycle of violence. Failure to Protect and Tondalao’s case is a prime example of the terror awaiting a reliance on criminalization, incarceration, and state surveillance to address gendered violence and other forms of violence, as carceral feminism would have it. Tondalao says of losing fifteen years with her children: “I did a lot of crying myself to sleep. I did my best to write them all the time. I was sad most of the time. I just felt like I lost a part of me” (Slipke, 2020).

Tondalao was freed after 15 years in a concrete cage, thanks in part to the unrelenting advocacy of Project Blackbird whose statement after her release shows what community care looks like when the state incarcerates our loved ones:

Today, Tondalao was released from Mabel Bassett Correctional Facility with a new hope to be the mother she was not allowed to be. Her two children have been raised by a

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cousin and advocate Cynthia Wells, who is excited to reunite her with the family. “Motherhood in our communities has historically been expansive. It is a blessing to have caregivers within our biological families and beyond who support our children when justice fails us,” said Candace Liger, founder of Project Blackbird, an organization founded 5 years ago to advocate for Tondalao’s release. (Liger, 2019)

There are countless other women incarcerated under this same draconian law and thousands of others who have survived gendered violence and faced criminalization and incarceration in Oklahoma prisons. The fight for their freedom continues, and the fight to provide safety and care, and protection from gendered violence continues, a fight that must occur outside of the bounds of carcerality. Today Tondalao, like Marissa, continues to advocate on behalf of criminalized survivors, their trauma pushing them to end this practice. The institutionalized violence of the state, the racialization of innocence, and the law as bound with whiteness contextualize Tondalao’s story in a much longer story of violence and oppression on Black communities in the U.S. couched in varying ways from overt to subtle, though always deemed legitimate by way of the law.

### **Revolutionary Resistance**

So what, then are we, the colonized, the oppressed, the marginal subject, the woman, the survivor, the racialized, the disabled, the queer and trans folk to do faced with organized abandonment by the state disregarded and discarded by structural violence? One might assume given the title of this project that the author of such a work is anti-violence, but I am not. Violence is necessary in some regards. The violence I call out and address in this work is the violence of the powerful on the weak, the violence of state-run institutions upon a people, and the violence of men on women. But to truly get free, to reach the promised land of liberation we must dismantle racial capitalism and heteropatriarchy. To not be abstract on the matter, dismantling through uprising. We are not to reach that destination by holding hands and singing with our oppressor. We are in an all-out fight for the very sake of our humanity, our enemy is the ruling class, those powerful few with an outsized influence on every lever of our society, benefiting from the direct destruction of the masses' humanity. The battle for that humanity is worth fighting for, but it must begin with revolutionary consciousness. In uncovering the grotesque injustices of criminalized survivors we find a much larger problem on which the institutions of policing and prisons are founded: the structures they are built out of and reinforce through every injustice and caging of a human being. By uncovering the ways that innocence is a failed defining characteristic of right and wrong I seek to point my reader towards abolition. If the problem is not a few individual cases of innocent people who are incarcerated, but that incarceration is regarded as the solution to problems birthed out of poverty and patriarchy for instance, then our interventions, our organizing must be abolitionist in nature.

All violence is not made equally. The violence of the people, those revolutionary individuals standing up against the repression of their government, in defense of their humanity

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is not equal to the violence of the state caging its own people or of the U.S. military bombing women, children, and men in the Middle East, or the violence of border patrol agents whipping Haitian refugees to enforce an arbitrary border. The violence of the contemporary uprising, just as the violence of the slave revolt, is just.

Angela Y. Davis on the matter:

When you talk about a revolution most people think of violence without realizing that the real content of any kind of revolutionary thrust lies in the principles in the goals that you're striving for, not in the way you reach them.

On the other hand, because of the way this society's organized, because of the violence that exists on the surface everywhere you have to expect that there are going to be such explosions, you have to expect things like that as reactions. If you are a Black person, have lived in the Black community all your life, and walk out on the street every day and see white policemen surrounding you... When I was living in Los Angeles, for instance long before the situation in LA ever occurred I was constantly stopped. The police didn't know who I was but I was a Black woman and I had a natural and they, I suppose, thought that I might be a "militant." And when you live under a situation like that constantly and then you ask me whether I approve of violence? I mean that just doesn't make any sense at all. Whether I approve of guns?

I grew up in Birmingham, Alabama some very very good friends of mine were killed by bombs, bombs that were planted by racists. I remember from the time I was very small I remember the sounds of bombs exploding across the street; our house shaking. I remember my father having to have guns at his disposal at all times because of the fact that at any moment we might expect to be attacked. The man who was at that time in complete control of the city government, his name was Bull Connor, would often get on the radio and make statements like "niggers have moved into a white neighborhood we better expect some bloodshed tonight" and sure enough there would be bloodshed.

After the four young girls who lived very close, I was very good friends with the sister of one of them, my sister was friends with all of them, and my mother taught one of them in her class. In fact when the bombing occurred one of the mothers of the young girls called my mother and said can you take me down to the church to pick up Carol? ... And they went down and what did they find? They found limbs and heads strewn all over the place. And then after that, in my neighborhood, all of the men organized themselves into an armed patrol. They had to take their guns and patrol our community every night because they did not want that to happen again.

I mean that's why when someone asks me about violence, I just find it incredible. Because what it means is that the person asking the question has absolutely no idea what Black people have gone through, what Black people have experienced in this country, since the time the first Black person was kidnapped from the shores of Africa.

Georgia Jackson, on the matter in 1971 asked if her recently slaughtered son, George Jackson, was violent:

Only if people were violent to him. I can be violent also, and I imagine so can you. You see that's the whole story of America, they take their violence and turn it back around on somebody else. I don't have to talk about America's violence you can look all over the world and see American soldiers everywhere fighting in other people's countries and killing them. So if I were running the country in America I wouldn't open my mouth about violence. As many people as they've murdered in Vietnam in the past ten years and they're gonna talk about violence? As many Black people that get killed every day in this country and nobody knows or cares? Wanna tell me about violence? How they wiped out a whole nation of Indians and they're gonna say something to me about violence? I don't want to hear it.

Lastly, Frantz Fanon, in "Wretched of the Earth" on the matter:

The people in arms, the people whose struggle enacts this new reality, the people who live it, march on, freed from colonialism and forewarned against any attempt at mystification or glorification of the nation. Violence alone, perpetrated by the people, violence organized and guided by the leadership, provides the key for the masses to decipher social reality. Without this struggle, without this praxis, there is nothing but a carnival parade and a lot of hot air. All that is left is a slight readaptation, a few reforms at the top, a flag, and down at the bottom a shapeless, writhing mass, still mired in the Dark Ages. (1961, p. 96).

Revolution is found in the presence of the present. PIC abolition is a reorientation of society, of how we address violence and harm, of how we are in relationship with one another, and of how wealth, services, and resources are distributed. Let us be present as we come to a close.

**Against a Conclusion | Presence: On Inherent Human Dignity & Worth**

*“Where Life is Precious, Life is Precious” -Ruth Wilson Gilmore*

Innocence is a fragile concept that in its purest form few among us are worthy of.

Innocence is a divider, a conceptualization of worth that allows those of us on the outside to rationalize the horrors occurring to those on the inside because they are “guilty” of something. As this project has shown, this innocent and guilty dichotomy is muddied to the point of irrelevance as it relates to criminalized survival. My point here is not to say that Tondalao Hall or Marissa Alexander or any number of criminalized survivors are perfect or innocent. Too often advocates fall into the same line of thinking we seek to deconstruct. We critique the idea that there are perfect victims and then go on to anglicize the victims we advocate for. We critique the legal system and then use a claim that this system rests on. As long as there are innocents there will be the guilty – most often the racialized among us. We must abolish innocence. This is a rhetorical, ideological, and political call.

In the absence of innocence should be inherent human dignity. This is to say that every person in our world is worthy of life and that in abundance. Every person is worthy of access to their basic necessities of housing, quality education, nourishing food, clean water, and a livable income. Every person is worthy of redemption because every person messes up. We all have caused harm, and many of us have been violent in varying ways at some point in our lives. And by reframing the issue of the prison industrial complex from the mainstream idea that a scarce portion of the population are ‘criminals’ and most of us are ‘good’ people to one of all of us are imperfect beings trying to make do with what we got, we can find empathy for the millions



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currently locked up, under state surveillance, or dealing with the afterlife of having been criminalized and incarcerated.

There are entire futures we have yet to build and in the abolishment of all that is corrupt and oppressive in this world can be a world where the conditions exist for all humans to thrive. Where scarcity no longer exists. Where borders no longer prevent people from finding home. Where prison walls are reconstructed and the people who once filled them flow across this Earth as free humans once again, as figure 1 illustrates. Where all forms of violence are addressed through community accountability processes that encourage rigorous self-reflection, atonement, repair, and changed behavior. Where we work diligently to be in right relationship with our neighbors. Where Marissa Alexander and Tondalao Hall are protected and cared for with the fruits of life. The possibilities are boundless, and come through collective visioning, through collective study, through collective struggle, through organizing. That world is worth fighting for. And abolitionists are working to create that world out of the ashes of the present.

Figure 9: “The Prison Cell” poem by Mahmoud Darwish

## “THE PRISON CELL” BY MAHMOUD DARWISH

It is possible...  
It is possible at least sometimes...  
It is possible especially now  
To ride a horse  
Inside a prison cell  
And run away...

It is possible for prison walls  
To disappear,  
For the cell to become a distant land  
Without frontiers:

What did you do with the walls?  
I gave them back to the rocks.  
And what did you do with the ceiling?  
I turned it into a saddle.  
And your chain?  
I turned it into a pencil.

The prison guard got angry.  
He put an end to my dialogue.  
He said he didn't care for poetry,  
And bolted the door of my cell.

He came back to see me  
In the morning,  
He shouted at me:

Where did all this water come from?  
I brought it from the Nile.  
And the trees?  
From the orchards of Damascus.  
And the music?  
From my heartbeat.

The prison guard got mad;  
He put an end to my dialogue.  
He said he didn't like my poetry,  
And bolted the door of my cell.

But he returned in the evening:

Where did this moon come from?  
From the nights of Baghdad.  
And the wine?  
From the vineyards of Algiers.  
And this freedom?  
From the chain you tied me with last night.

The prison guard grew so sad...  
He begged me to give him back  
His freedom.

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