Title: Mass Incarceration as a Contemporary Racial Project in North America and its Stratification Across Racialized and Gendered Lines
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One must examine the protracted legacies of colonialism, slavery, and racial segregation to understand how mass incarceration operates today as a contemporary racial project in North America within a broader context of racial formation that reinforces racial categories.\(^1\) Inherent in this understanding is the dual nature of racism as a structure in that it is enforced from social powers at the top and simultaneously experienced by the most vulnerable populations below. As racism has continuously taken on different forms and shifted according to historical and social contexts, it becomes crucial to analyze how institutional forces reinforce certain racial categories as primary sites of contestation by examining the experiences of those individuals who experience race across multiple axes and in its most nuanced format – namely black women. Therefore, a larger conversation on the modes by which racial categories are enforced on contested bodies and its connection to anti-blackness in the aftermath of slavery is crucial to understanding the historical and contemporary racialization of mass incarceration and its effects on both racialized and gendered bodies. Mass incarceration thus becomes a contemporary racial project as its racialization is intricately tied to anti-blackness as informed by legacies of colonialism, slavery, and racial segregation, and as such, black incarcerated women become particularly vulnerable at the hands of the nation state as their experiences navigating the criminal justice system are complicated across racialized and gendered lines.

In beginning to take up how mass incarceration functions as a contemporary racial project it is critical to first examine the relevant historical dimensions informing legacies of anti-blackness embedded within the criminal justice system as a consequence of slavery, colonialism, and racial segregation. In her piece entitled “Slavery, Civil Rights, and Abolitionist Perspectives Toward Prison”, Angela Davis takes up the historical dimensions informing the emergence of the contemporary American criminal justice system in analyzing the development of the prison industrial complex throughout American history, particularly focusing on the post-emancipation era. She brings attention to the fact that a historical anti-blackness remains so deeply embedded within the American criminal justice system that contemporary mainstream American consciousness imagines it not as an explicitly racist structure, but as a colour-blind just system, primarily due to the nature of institutionalized antiblackness operating today in more insidious, but profound ways. She describes the prison system as having emerged in conjunction with the American Revolution which deeply implicated ideologies of slavery and corporal punishment into a new system of incarceration. Ideologies regarding slavery continued to be institutionalized via the penitentiary as the experiences of slaves were akin to those serving hard labour as their legal sentence.\(^2\) She further explains how the process of racialization had been crucial in constructing ideas about race that inherently implicated blackness with criminality. She describes the implementation of the Black Codes as a revision of the Slave Codes that had existed prior to emancipation that served to restrict the rights of free blacks and mimic regulations enforced during slavery. The way the Black Codes operated to further regulate behaviour was to criminalize various activities that were quite minor in offense, for example: taking a work

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absence or insulting someone, and which would only be enforced on black individuals. As whites were not subjected to criminalization for such crimes, free blacks found themselves under increased scrutiny and hypermonitoring at the hands of the new Black Codes, which saw their increased vulnerability to the criminal justice system and a newfound influx of black convicts in the penitentiary. Therefore, this new system that sought to rapidly control the freedom of previously enslaved blacks in the aftermath of emancipation and continued to enforce social control was regarded as the “reincarnation of slavery”. The impact of the new Black Codes on prison demographics were profound, as in Alabama alone penitentiaries that were 99% white were quickly replaced by emancipated slaves that saw a major demographic shift in convict representation to feature primarily blacks. Furthermore, the punitive measures imposed in the new penitentiary system was inextricably racialized, as whipping became the primary form of punishment enforced on prisoners that was also used on slaves prior to emancipation. The introduction of forced hard labour on inmates that mimicked conditions enforced during slavery served an economic purpose as well, as the state could control black labour and exploit convicts as they were symbolically reincarnated as slaves. Today, the social impacts of a racially-coded criminal justice system continues to replicate conditions experienced by black families throughout the development of the penitentiary, as it has continuously lead to family breakdowns as black women become increasingly vulnerable to experiencing poverty due to the increased influx of black men in the prison system that leaves black women heading working class families alone. Furthermore, the system continues to mimic legal conditions prior to emancipation where the interests of slave-owners were prioritized by the law and the accused rarely had any significant impact on influencing sentencing outcomes, evident today as plea bargains contribute to 95% of convictions and “so stacked is the system against the accused that even innocent people plead guilty”. Therefore, the historical dimensions that surround the development of the prison industrial complex reveal a history of deeply rooted anti-blackness evident through the racialization of penalty in the aftermath of slavery, which continues to get reproduced today as a racial project due to the overrepresentation of blacks in the prison system as a result of mass incarceration and the historical legacies that saw to an influx of emancipated slaves within penitentiaries during early American history.

In their book entitled “Racial Formation in the United States” Omi and Winant describe the creation of racial projects as an essential part of racial formation that links representations of racial identities constructed through the process of racialization to the mobilizing of resource distribution across economic, political, and cultural dimensions. To that end, mass incarceration serves as a contemporary racial project in that it operates on the macro level to reinforce the unequal distribution of resources across racial lines, which effectively serves to institutionalize structures of racial inequality within the nation state by means of mobilizing the criminal justice system. Omi and Winant’s description of racial projects thus certainly implicates understandings of anti-blackness into how mass incarceration operates as a racial project that reinforces ideas of blackness constructed through past histories of North American colonialism, slavery, and racial

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3 Ibid., 28.
4 Ibid., 29.
5 Ibid., 31.
segregation, to the contemporary lived experiences of individuals that remain racially organized.\(^8\) To that end, in his piece entitled “The Possessive Investment in Whiteness”, Liptisz describes this unequal distribution by highlighting the possessive investment in whiteness through economic and policing systems that serves to both stratify the criminal justice system across racialized lines and establish mass incarceration as a racial project. Lipsitz explains how residential segregation that forces the overrepresentation of racial minorities to be concentrated within economically disadvantaged neighbourhoods informs the reshaping of how these communities subsequently navigate the criminal justice system.\(^9\) Poor economic conditions prevalent in residentially segregated areas have increased the prevalence of drug trade in minority communities as a result of discrimination in housing, education, and hiring practices, which ultimately contributes to the structural weakness of these neighbourhoods.\(^10\) As such, the harsh criminalization of racially segregated minority neighbourhoods lacking in structural support becomes an increasing reality, as it remains easier for law enforcement officers looking to crack down on drug offenders to target these communities, and racialized populations therefore inevitably become the most vulnerable targets to enforced hyperpolicing. This proves to be advantageous for law enforcement officers as they are able to make more arrests of racialized individuals from vulnerable communities who are unable to afford attorneys to argue their case and are therefore more likely to plead guilty.\(^11\) Therefore, it is evident that the unequal distribution of resources by means of residential segregation of minority neighbourhoods significantly impacts the ways in which racialized populations are affected by the law, highlighting an active investment in whiteness that is created at the expense of minorities via the criminal justice system, eventually leading to the mass incarceration of racialized populations as a contemporary racial project that advantages whiteness.

Although legacies of anti-blackness as informed by slavery, colonialism, and racial segregation are ones that are often referenced within an American historical context and imbedded within American national consciousness, grappling with these issues in a Canadian context is important in order to reveal the racist legacies that are similarly embedded in the development of the Canadian nation state but are often erased among popular contemporary imaginations of Canada as the ideal multicultural nation. In Canada, notions of blackness face a dual visibility: one in which black identity becomes invisible under mainstream national narratives of belonging, and one in which blackness is hypervisible as it continuously associated with criminality and therefore subjected to increased scrutiny and hyperpolicing. In order to contextualize the racialized stratification of Canada’s contemporary criminal justice system, in their piece entitled “Mass Incarceration is Modern Day Slavery”, Wilson et al. reference some telling statistics that describe how during the past decade, the representation of black convicts in the Canadian prison system has increased by 70%. Furthermore, as of 2016 incarceration rates in Canada have peaked while crime rates are at record lows. Furthermore, indigeneity cannot be excluded from this reality as Indigenous communities face a similarly disproportionate level of criminalization in Canada, as Indigenous people consist of only 4.3% of the population but


\(^{10}\) Ibid., 11.

\(^{11}\) Ibid., 12.
represent 22.8% of prison inmates. Similarly, although black Canadians consist of 3% of the population, they represent 10% of Canadian inmates. However, the realities of overpolicing and racialized incarceration have indeed reached the collective consciousness of racialized communities in Canada, as the active efforts of mobilized resistance are beginning to gain traction and public visibility. For example, coverage on the Coalition of Black Trade Unionists’ development of a workshop at the World Social Forum in Montreal inspired by the Black Lives Matter movement to address the interworkings of anti-blackness in Canada with a focus on the increased influx of black populations in the prison system through mass incarceration has indeed gained public visibility. In doing so, they take up key issues which include: the social impact of mass incarceration on racialized communities, its connection to anti-black racism as informed by the development of the nation state, and how to work towards solutions to address anti-black racism taken up by the criminal justice system. Therefore, it is evident that the racialized nature of mass incarceration is indeed a pertinent issue in Canada that significantly targets black and indigenous communities.

Although the present reality of racialized mass incarceration is evident according to current statistics and the mobilized response from racialized communities, more theoretical questions regarding the dual nature of blackness as simultaneously invisible and hyper visible as it applies to a Canadian context is also important to take up. In her piece entitled “Nothing’s Shocking: Black Canada”, McKittrick takes up this duality as she describes notions of blackness existing within mainstream collective consciousness as being inherently associated with criminality, while black identity is simultaneously excluded from national narratives of belonging. She argues that this dual nature of visibility serves to construct ideas of blackness based on racial stereotypes in which black individuals become hypervisible at the hands of the criminal justice system, and simultaneously renders black identity invisible in its exclusion from master narratives of belonging in the nation state. What then gets reproduced through this active process by which black identity becomes hypervisible are associations between blackness and certain class underpinnings of society that justify intensified policing, criminalization, racial profiling, and a refusal of citizenship. She describes how blackness becomes “a criminal and suspect category” which implicates the hypervisibility of blackness with the increasingly harsh policing practices that black communities endure. On the other hand, she describes how contemporary discourse surrounding identity within the nation state effectively serves to mark blackness as “belonging elsewhere and ahistorical”, which reinforces the invisibility of blackness by erasing it from national narratives of Canadian belonging. Therefore, the dual nature of blackness in Canada is both invisible in its exclusion from national master narratives of belonging and hypervisible at the hands of the criminal justice system. Ultimately, blackness is placed “ethnically outside the nation and criminally inside the nation”.

13 Ibid., 15.
15 Ibid., 101.
16 Ibid., 102.
However, although important for understanding the contemporary racialized reality of mass incarceration as a racial project, such understandings ultimately fail to address the gendered dynamics that implicate the experiences of black women across both racialized and gendered lines as holding mutual significance while navigating the criminal justice system. In her piece entitled “From Private Violence to Mass Incarceration”, Crenshaw describes how the experiences of black women are often occluded from mainstream discourse on contemporary racist policing, as the criminalization of black men serve as “teaching moments” for the heightened level of suspicion attributed to participating in any activities while being black.17 These narratives therefore obscure the lived experiences of black women and hinder opportunities for the same investments in research and public awareness to be placed on black women’s unique vulnerability to the criminal justice system as being particularly gender coded unlike that of men’s. Therefore, the assumptions that get reproduced within the public’s collective consciousness as a result of this lack of mainstream awareness and resource focus is that black women are not suffering to the same extent as black men.18 Ultimately, black women indeed experience an increased vulnerability at the hands of the criminal justice system that is both gender and racially stratified. Indeed, statistics from California reveal that although black women consist of 7.1 percent of the state’s population, in some detention centers they constitute over 70 percent of the female inmate population.19 Furthermore, stereotypes of black women that uniquely target both race and gender which are used to justify their increased scrutiny at the hands of the criminal justice system further serve to highlight black women’s increased vulnerability to racist policing, which is often overlooked in larger discussions on mass incarceration and its implications on black men. For example, Crenshaw explains how popularized stereotypes that construct ideas about black and low income women as inherently bad mothers serve to justify an increased emphasis on surveillance and invasive housing searches among policing practices.20 Furthermore, when implicated in child welfare cases, poor black women face an increased scrutiny in that they must often subscribe to mainstream imaginations of a ‘good mother’ defined by racialized and classed scripts in appealing to the judge in order to succeed in their cases.21 As the child welfare system works in tandem with the prison system, low income black women therefore effectively become “overpoliced and underprotected”, stressing the interdependent vulnerabilities they experience at the hands of the criminal justice system.22 Black women thus become a node at which “harm is both delivered and rationalized”, implicating the material realities of the gendered and racialized stratification of the criminal justice system.23

Furthermore, the material realities of black women experiencing mass incarceration as a function of its gendered and racialized stratification continues to become realized in their propensity for experiencing gender based violence due to their underprotection within the criminal justice system. At the crux of this material reality is the realization that the underprotection of black women who experience an increased vulnerability to gender based

18 Ibid., 34.
19 Ibid., 35.
20 Ibid., 42.
21 Ibid., 48.
22 Ibid., 42.
23 Ibid., 47.
violence and exploitation occurs in tandem with the harsh criminalization enforced by the same legal system that fails to protect them. The historical dimensions informing this present reality is rooted within the institution of slavery, as Kali Gross describes in her piece entitled “African American Women, Mass Incarceration, and the Politics of Protection” the vulnerability to gender-based violence that black women experience as an extension of the violent legacies to which they were subjected to at the hands of white male slave-owners in tandem with the legal system. Black women experiencing gender-based violence were routinely denied any meaningful protection under the law as the priorities of slave-owners remained institutionalized within the legal system, which effectively served to subject black women to legally sanctioned brutality and exploitation while simultaneously criminalizing black womanhood.24 Indeed, black incarcerated women’s increased propensity for experiencing gender based violence today is a result of institutionalized restrictions on black women’s protections stemming from the racist legacies of exploitation of black women’s bodies sanctioned by the legal system. Therefore, in taking up the relevant historical dimensions in an attempt to contextualize the contemporary experiences of black women experiencing mass incarceration, this notion of legally sanctioned underprotection becomes incredibly relevant. Gross continues by describing how these violent legacies extended into the contemporary era as the poor socioeconomic living conditions experienced by many black women today leaves them vulnerable to exploitation and sexual harassment by white employers as they become engaged in primarily domestic service work. As such, many black women become the targets of criminalization on the basis of domestic disputes, larceny, or even sex work, where exposure to scrutiny from both their white employers and by white jurors increases their susceptibility to incarceration and further exemplifies the characteristic underprotection of the legal system as being particularly racially and gender coded. Similarly, as Crenshaw takes up the material realities informed by the impact of stereotypical representations of black womanhood with regards to how the legal system is differentially applied to black women, Gross also takes up this issue by arguing that black women must “battle a general presumption of their guilt, owing to commonly held notions of their low character and lack of morality, as well as to the popularity of racialized caricatures depicting their purported fiendish, criminal ways”.25 Therefore, in understanding the material realities regarding this notion of underprotection, it is crucial to examine black women’s historical and present lived experience navigating the criminal justice system. Examining the stratification of mass incarceration as a racial project along racialized lines alone fails to reveal the duality of black women’s experiences that inherently implicates both interdependent gendered and racialized variables to the present manifestations of anti-blackness informing the criminal justice system.

In conclusion, mass incarceration as a contemporary racial project remains informed by legacies of anti-blackness in the wake of the historical dimensions surrounding colonialism, slavery, and racial segregation. In this essay, I take up questions regarding how the historical development of the prison system in the aftermath of emancipation from slavery reveals a deep legacy of anti-blackness embedded within the criminal justice system that operates today in its disproportionate concentration of black people in the prison system via mass incarceration. I also explore how the unequal distribution of resources across social, economic, and political dimensions that serve to invest in whiteness at the expense of racialized minorities effectively

25 Ibid., 28.
highlights how mass incarceration operates as a contemporary racial project within a larger context of racial formation that consolidates racial feelings and continues to reinforce racial categories. I also examine how legacies of anti-blackness within the criminal justice system can also be applied to a Canadian context where notions of blackness experience a dual nature of visibility and hypervisibility. Finally, in this essay I consolidate an exploration of mass incarceration as a racial project with a gendered focus by examining the material and historical realities of black women navigating the criminal justice system, in particular by analyzing how stereotypical narratives of black womanhood in conjunction with legal underprotection and over policing speak to black women’s experience as being significantly stratified across both racialized and gendered lines.
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