Childbirth in Chains: Reproduction and Punishment in the Commonwealth of Massachusetts

A thesis by

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Introduction

In the Statehouse

"It's like I told the women at my doula training last week," Marianne Bullock agreed, "I'll teach them all the massage techniques, but they're never going to get a chance to break out the essential oils. While our clients are in labor, our job is to argue with [Corrections Officers] in the hallway."

Marianne was referring to her work as the president and founder of the Prison Birth Project, an organization with a mission to improve access to reproductive justice for women incarcerated in Massachusetts. The other women at the table with me all nodded knowingly. I was sitting with delegates from the Massachusetts Anti-Shackling Coalition by the cafe in the Massachusetts Statehouse, a place that's surely witnessed countless such last minute strategizing meetings. It was my second day interning for Prisoners' Legal Services, and I was accompanying Attorney Lauren Petit on my own request. I had no practical job, but was there to learn.

The Anti-Shackling Coalition had formed in 2013 to push a bill addressing the care and treatment of incarcerated pregnant and postpartum women through the Massachusetts legislature to be signed into law by Governor Baker (Law 2014). The Coalition was made up of advocacy groups from across the state. Prisoners' Legal Services, the Prison Birth Project, the American Civil Liberties Union of Massachusetts, and NARAL Massachusetts were among the most involved organizations. While this bill had been introduced and failed to pass for 13 consecutive legislative sessions by the 2013-2014 session, the Anti-Shackling Coalition was successful that very legislative session, so that the bill became law in 2014 (Law 2014).

The Anti-Shackling Coalition's mission that day in mid-May 2016 was to brief legislators on the findings of their recent investigation into the implementation of the law. They described their findings in the recent (2016) report by Prisoners' Legal Services and the Prison Birth Project, "Breaking Promises: Violations of the Massachusetts Pregnancy Standards & Anti-Shackling Law" as *universal noncompliance* with the 2014 law. That is, no state or county correctional facility in Massachusetts that incarcerated women had policies and practices which met the standards set by the new law, and no story of childbirth they heard during their research had unfolded as dictated by the law (Prison Birth Project 2016). Here, the state was the lawbreaker rather than the women it marked as criminals. The purpose of the day's hearing was to advocate for a follow-up compliance bill.

In this thesis, I argue that, through the Anti-Shackling Law and subsequent noncompliance, the State removed shackles from the bodies of criminalized women in policy while leaving them in place in reality, to mask the violence of the carceral regime under a facade of care for women and their families. While the Anti-Shackling Law is a crucial and consequential tool in advocacy for incarcerated women, and the product of a decades-long hard-fought battle by prison-abolitionists and feminists, the State passed and co-opted the law in an attempt to suggest that incarceration could constitute care for women, children, and families. The Anti-Shackling Law was passed, though not written, through the very same paternalism towards low-income women and women of color which buttresses and accelerates incarceration of both women and men. The state excused and enabled the violence of forcibly undermining ties between the incarcerated mother and her newborn child, and divided these women from fathers who were painted as abusive or absent.

This was not only my second day with Prisoners' Legal Services, but it was also my first time in the Massachusetts Statehouse. The elaborate old building had great rooms filled with commissioned paintings, connected to hallways filled with gallon jugs of water and piles of blue rope. Rachel Roth, reproductive justice expert and director of the Anti-Shackling Coalition, told me that they regularly have people come in to clean the wrought iron railings of the staircase. They're so old that it has to be done by some special procedure. The glistening floors were populated by the clicking shoes of well-dressed people young and old whose business I couldn't guess at. I noticed a room in the back corner of the 5th floor called the "Mothers Room" which had an image of a woman breastfeeding a child on the door.

We arrived at the hearing room by taking an elevator to the second floor, walking down the hallway and then taking stairs back down to the first. I was told that this was necessary because parts of the building were old and parts were new. I helped set up for the briefing by dragging armchairs and couches across the carpeted floor of a room filled with natural light from large windows looking out onto the Boston Common. Slowly, aids, summer interns, press, and the odd representative filled the room and helped themselves to the refreshments provided. I obliviously took a seat up front while Representatives were forced to stand in the back. I took notes for myself.

Lauren started, describing the mandate of Prisoners' Legal Services to provide civil legal aid to incarcerated people, and introducing the original law. The 2014 Massachusetts Pregnancy Standards and Anti-Shackling Law set a variety of standards of care for incarcerated women who are pregnant, in labor, and postpartum. Women must receive prenatal care, adequate nutrition, maternity clothing, and be transported to the hospital and to court in vehicles with seat-belts.

They could not be placed in solitary confinement while pregnant or postpartum. The law also set strict limits on the practice of shackling. Women could not be shackled by ankle or waist chains at any time during pregnancy or postpartum. Wrist restraints (handcuffs) were permissible only in front of the body, and only when a woman represented a "flight risk" or a "danger of harm to herself or others." In such a case, the reason that a pregnant or postpartum woman was placed in restraints must be documented. During labor and delivery, women were not to be restrained in any way for any reason (Prison Birth Project 2016).

Marianne spoke next, and outlined the issues related to noncompliance. Noncompliance manifested itself in both policy and practice. Not a single county correctional facility nor the Department of Correction had written policies that fully complied with the law. Corrections Officers were found to have varying knowledge of the law, and women were being illegally shackled during pregnancy, labor, delivery, and postpartum. Women were being transported without seat-belts, or missing court appointments due to the ostensible unavailability of appropriate vehicles. Diets were found to be lacking in fruits, vegetables, fiber, and portion sizes, and women were given standard-issue clothing that was ill-fitting, resulting in the danger of tripping over pants legs that were too long, among other problems. The Department of Correction had furthermore still not written statewide standards of health care, nutrition, clothing, and other conditions of confinement as required by the law (Prison Birth Project 2016).

This project began with the questions that I felt in between the logistical issues raised in that room. As I walked back with Lauren that day, I tried and failed to articulate these questions. If the Anti-Shackling Law does not protect incarcerated women and their families, what does it do? I wanted to know. How and why does the Massachusetts legal system pass a law ostensibly

to protect women's health, families, and bodies, only for the state itself to not comply? These are not the questions a lawyer is accustomed to answering. They are a social scientist's questions.

My study attempts to examine these questions through the knowledge of advocates who work for change within a system which undermines them at every turn. Critical Race Theory argues that the legal system is, in fact, designed to undermine them. Prison is a tool of the hegemonic retrenchment of white supremacy which the United States was founded on and continues to rely upon and work tirelessly to reproduce (Bell 1980, Crenshaw 1988, Murakawa 2014).

Crucial to understanding this law's purpose, function, and meaning to the Commonwealth and to the women it effects, is the story of its production and implementation. Activists and reformers, prison abolitionists and feminists, fought for this law for 14 years. It's unanimous passage in 2014 was no small feat, and was celebrated as a success. Yet, its implementation was consistently undermined. Such obstacles as the unreasonable invocation of security concerns, lack of sympathy for incarcerated people, extreme deference to internal decision-making by Corrections officials, and lack of resources and political will to implement changes codified in law are typical of the work of defending incarcerated people. To the activists and advocates who did this work, the struggle and its dubious effects were unsurprising.

Women and the Carceral State

The terms of the political negotiation of shackling incarcerated pregnant women were set by the raced and gendered functions of incarceration. The demographics of people incarcerated in the United States set the practice of shackling within traditions of state hostility towards low-income women and women of Color's reproduction (Roberts 1997). Moreover, prison broadly is

predicated on such hostility as it mechanizes the disruption of kinship through the removal of people from their communities, including mothers and fathers from children. The difficulty of maintaining ties with incarcerated people is exacerbated by prohibitive telephone prices, restricted visiting hours, and isolated locations. Where an incarcerated parent fails to demonstrate the continuity of ties with children, their parental rights may be legally severed (Roth 2015). The practice of shackling and of alienating women from their bodies, reproductive labor, and children is particularly starkly related to slavery and reveals the continuity of the state function of enabling exploitation and exclusion through the disruption of kinship, and through suffering and pain inflicted on particularly Black bodies (Haley 2016, Morgan 2004, Roberts 1991). This context is essential for understanding the stakes of the Anti-Shackling Law, as well as the meanings and origins of noncompliance.

As the United States has accelerated incarceration over the last fifty years, it has relied upon racist, classist, and misogynistic systems, institutions, beliefs, and constructions of criminality to create prison as a mechanism of the hegemonic reproduction of property and power relations by funneling low-income Black and Brown people into prisons (Murakawa 2014, Sudbury 2005). The U.S. is the world's most avid incarcerator, and its massive prison system is marked by racial disparities which evidence its foundation in racist ideologies and its primary function of reproducing White supremacy (Murakawa 2014, Roberts 2012, Sudbury 2005). Since 1980, the number of people incarcerated in the United States quadrupled from 500,000 to 2.3 million (NAACP 2016). 60% of incarcerated people are people of Color (The Sentencing Project 2015). Of the 2.3 million prisoners in the U.S., nearly 1 million are Black (NAACP 2016). While Black people make up close to half the population of prisons, they

represent only 13% of the population of the United States (NAACP 2016). The overrepresentation of Black people and people of Color in prison occurs against the underrepresentation of White people, such that Black people are incarcerated at 6 times the rate of Whites, American Indians are incarcerated at three times the rate of Whites, and Latino/as are incarcerated at 2.3 times the rate of Whites. Together, Blacks and Latino/as make up 58% of the incarcerated population compared to only 25% of the population at large (The Sentencing Project 2015).

The racial disparities in incarceration broken down by gender speak to incarceration as a contemporary mechanism of "gendered racial terror," as Sarah Haley (2016) argues that it was in the first decades after emancipation. The Carceral State works differently along lines of race, class, gender, and sexuality, to differently construct relationships to property, power, and state-building (Davis 1983, Roberts 2012, Sudbury 2005). Women of Color are overrepresented in prison as compared to in society, but at rates smaller than men of Color. 1 in 111 White women will be incarcerated in their lifetime, while this figure is 1 in 18 for Black women and 1 in 45 for Latinas (The Sentencing Project 2015). In 2001, 1 in 6 Black men in the U.S. had been incarcerated. If current trends continue, that figure will be one in three for Black men born today (NAACP 2016).

The growth of women's incarceration since 1980 has outstripped that of men's. While the population of incarcerated men has increased 419%, the population of incarcerated women has increased 646% (The Sentencing Project 2015). There are now 205,000 women incarcerated in the United States, constituting 7% of the incarcerated population (The Sentencing Project 2015). Women are surveilled and criminalized differently than men, and their incarceration has different

stakes and is experienced differently (The Sentencing Project 2015, Sudbury 2005). In light of the advent of women of Color as the fastest growing incarcerated population in the United States, the political silence surrounding their over-punishment is produced through their invisibilization at the intersection of overlapping oppressions (Crenshaw 2012, Crenshaw 1991).

National racial disparities in incarceration rates are resonant in the Commonwealth of Massachusetts. In Massachusetts, Black men and women are incarcerated at a rate of 605 per 100,000, compared to 351 per 100,000 for Latinos and 81 per 100,000 for Whites. Black people make up 28.3% of Massachusetts' incarcerated population and only 6% of Massachusetts' overall population. Latino/as represent 26.0% of the Massachusetts prison population and 10.5% of the overall population (The Sentencing Project 2016). Massachusetts has the greatest disparity between White and Latino/a rates of incarceration, with Latino/as incarcerated at a rate 4.3 times that of Whites. Blacks in Massachusetts are incarcerated at a rate 7.5 times that of Whites. Notably, while Massachusetts' overall rate of incarceration is lower than the national averages, its racial disparities in incarceration are greater than the national average (The Sentencing Project 2016). Women constitute about 700 of the approximately 10,000 people in the custody of the Massachusetts Department of Correction on an average day (Massachusetts Department of Correction 2016). This figure does not include county and federal prisoners in and of Massachusetts.

The U.S. prison system carries forth the legacy of a state founded in White supremacy through slavery and colonialism (Haley 2016, Little Rock Reed 2005, Murakawa 2014, Ogden 2005, Shakur 1987, Sudbury 2005). This legacy excludes and exploits people of Color to benefit White property (Harris 1993). Through the prison industrial complex, the state and private

companies profit off the commodification of Black bodies (Ogden 2005) while taxpayers incur the exorbitant costs of the carceral regime (The Sentencing Project 2016). Many of the logics and practices which characterize the carceral regime have their origins in slavery and colonialism (Ogden 2005, Roberts 1991). The category of criminal forms the border of citizen, defining a disempowered and un-righted class of people in the interest of what was called "public safety" in the political discourse I observed in Massachusetts. "Public safety" cannot possibly mean a reduction in crime, as prisons and punishment have been shown to have the opposite effect. Rather, crime is politically produced so that prisons can carry out their function of entrenching power and deepening oppression. "Public safety" comes to functionally mean the preservation of property and power relations.

Prison and policing assert the state's monopoly on legitimate violence through criminal trials which make and enforce criminality to define people as failed subjects of the state and negotiate citizenship. Courts engage in meaning-making through juridical storytelling to create and disseminate ideologies which are enforced by rule of law in violent ways including but not limited to incarceration (Haley 2016). Prison carries out its function of reproducing a Black and Brown undercaste in collusion with other hallmarks of neoliberalism, including the dismantling of social welfare programs alongside the expansion of punitive systems of foster care and deportation (Bohrman and Murakawa 2005, Roberts 2012). Through incarceration among other mechanisms, the state disempowers people and forces them to resort to criminalized survival strategies. Thus the carceral state works in part by instituting circular logics to justify its own existence and expansion (Bohrman and Murakawa 2005, Roberts 2012).

Counter-Hegemonic Resistance Through the Law

The carceral state is produced, maintained, fortified and escalated by law. How, then, do advocates attempt to use the legal system to seek reform, relief, and redress on behalf of those it exists to exclude? Critical work on the judicial process of ascribing the category of criminal underscores its function of disseminating racist ideology, and the necessity of speaking to this function in seeking reform. Sarah Haley's (2016) *No Mercy Here* traces the way juridical story-telling created and affirmed ideologies of black female deviance and inferiority in the postbellum South. Haley describes different tactics taken up by advocates seeking to pardon black women who had been found guilty of infanticide. Her findings suggest that the more effective method was not to attest to their innocence of the crime, or attempt to prove their upstanding character even by appealing to testimony from white men, but rather to appeal to state ideology by claiming that they are too ugly and foolish to be held accountable for killing their own child. By appealing to racist ideologies, lawyers struck a deal with the court. The court was willing to pardon a black woman from whom no more labor could be extracted in order to affirm White supremacist ideology. Inso doing it cast the state as benevolent and paternal against the woman's deviance and dependence.

Derrick Bell's (1980) "Brown vs. Board of Education and the Interest-Convergence Dilemma" describes the artificial and intentional bringing together of White and Black interests by civil rights lawyers in order to chip away at the legal foundations of White supremacy. Haley's example of interest convergence between the Georgian courts and Black women convicted of infanticide illustrates the salience of the power imbalance within which these deals are struck. Murakawa's (2014) *The First Civil Right: How Liberals Built Prison America* demonstrates how calls for law and order were originally intended to put an end to lynching, and

mandatory minimum sentences represented liberal attempts to address racial disparities by eliminating "bias" in sentencing. As a discourse of law and order has since been co-opted by the right as a racist wolf whistle, and mandatory minimums have become major drivers of mass incarceration, Murakawa's argument illustrates the way superficial reformism has played out to re-entrench power. How can civil rights advocates operating in the tide of interest convergence reconcile their work with this grand scale process?

The struggle of passing the Anti-Shackling Law revealed counter-hegemonic tactics of activists seeking to empower incarcerated people in the Commonwealth of Massachusetts. Advocates were able to exploit flaws and gaps in State illogics to force limited material concessions from the state. To do this, however, they were forced to invest in oppressive logics and appeal to degrading ideologies which found state power such that "in the quest for racial justice, winning and losing have been part of the same experience" (Crenshaw 1988:1386). While people have organized to restrict the shackling of other particular groups, such as minors, elderly people, and disabled people, in Massachusetts and nationwide, pregnant women have been the group which has been able to gain the most political traction. The centrality of shackling to the political conversation surrounding incarcerated pregnant women's health is produced by the state's internal logical inconsistencies. The fundamentality of shackling to the state's construction of prisoners butted against its own paternalist chauvinism. The dangerousness of the criminal who must be shackled is incompatible with the vulnerability of the pregnant woman who must be protected. Advocates took advantage of this conflict to negotiate the passage and terms of the Anti-Shackling Law. Advocates leveraged the state's paternalistic posture towards pregnant women to renegotiate its abjection of these same women as criminals. In the case of

Massachusetts, the scandal of a severely mentally ill man's death by restraints created a political opportunity wherein it was to the greatest benefit of the Commonwealth to project a facade of care for incarcerated pregnant women in order to repair public confidence in the humanity of the prison system.

To make an argument which would be legitimated by the court, the advocates for prisoners' rights who worked on the Anti-Shackling Law had to appeal to ideologies of security, criminality, dependency, and pathology constantly. In defining through legislation the minimum standards of care for incarcerated pregnant women, one must acknowledge the Commonwealth of Massachusetts' right to incarcerate these women and through legal ritual accept its rational for doing so, therein denying the extreme violence of the inevitable separation of mother from child, amid the myriad violences and injustices of quotidian incarceration.

Noncompliance evidences the Anti-Shackling Law as propaganda which enabled the liberal propagation of the carceral regime. Yet, the law was a substantive victory for the dignity and safety of incarcerated women. It had its roots in truly radical, critical, reproductive justice, prison abolitionist work. Shackling is a material site of contestation over meaning-making, control, power, health, life, and all that reproduction and incarceration mean to communities of Color particularly. Shackling must be contested as a practice which is part of the fundamental function of the U.S. state in systematically targeting women of Color and low-income women's reproduction.

The passage of the Anti-Shackling Law and resultant universal noncompliance was a moment in the endless tension of resistance from within state mechanisms, which enables a critical examination of the wins and losses accrued through compromise which seeks change

within the system. That is, compromise which prioritizes the triage of the safety and bodily integrity of currently incarcerated people over the refusal to engage with a fundamentally violent prison and legal system.

Chapter Outline

Ultimately, this thesis is an anthropological study of the culture of incarceration as it manifested itself in political discourse emerging from the Massachusetts Statehouse. Chapter 1 interrogates the general practice of shackling. It is called "Restraint" as this is the somewhat euphemistic term often used in political discourse. Considering the context for the Anti-Shackling Law as the extremely common, even taken for granted practice of shackling incarcerated people when moving them within and outside of prisons and jails, I argue that shackling is fundamental to the socio-political construction of prisoners. The prisoner is made through the prison, as the properly restrained criminal. The fundamentality of restraint to the construction of prisoners produces noncompliance by throwing the full momentum of the Carceral State behind the practice of indiscriminate shackling.

Chapter 2 considers the widespread expression of shock voiced by state agents upon learning that Massachusetts prisons and jails were shackling pregnant women. This feature of the political discourse permeated the conversation, and had several functions. I argue that shock manufactured a kind of distance between the Statehouse and the prisons and jails it erects. This distance was spatial, ideological, and temporal. It protected the state and its agents from blame while exposing incarcerated women to physical violence and authoritative knowledge.

Chapter 3 argues that the State's insistence that the Anti-Shackling Law was uncontroversial was a performance of paternalism which is characteristic of political discourse

surrounding women's incarceration in the United States. This paternalism positions the state as the rightful caretaker of incarcerated women, therein denying the profound disempowerment constitutive of women's incarceration. The same paternalism is furthermore used to accelerate men's incarceration under the banner of protecting women from patriarchal violence. In this chapter, I examine the ways the state's political apparatus coerced performances of paternalism from advocates for incarcerated women.

My conclusion puts the lessons of the chapters in conversation with prison abolitionist reproductive justice projects. I do so to consider the Anti-Shackling Law within a fuller picture reproductive justice projects which resist incarceration.

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Restraint

It would be pure illusion to believe that laws are made to be respected, or that the police and courts are intended to make them respected. Only in disembodied theory could we pretend that we have once and for all subscribed to the laws of the society to which we belong. It is common knowledge that laws are made by certain people for other people to keep.

But we can go further. Lawbreaking is not an accident, a more or less unavoidable imperfection. Rather, it is a positive element of the functioning of society. Its role is part of a general strategy. Every legislative arrangement sets up privileged and profitable areas where the law can be violated, others where it can be ignored, and others where infractions are sanctioned.

-Michel Foucault, interviewed by Roger Pol-Droit, "on the Role of Prisons," 1975

Those were the rules

Korianne Gamble was incarcerated in Bristol County Sheriff's Office Women's Center in North Dartmouth, Massachusetts when she went into labor in February, 2015. The Anti-Shackling Law had passed and gone into immediate effect 9 months prior. Korianne was unlawfully handcuffed while in labor on the way to the hospital, transported without a seat-belt, and shackled to the hospital bed by leg irons after delivery. Jail records, however, are silent about the use of restraints throughout Korianne's ordeal. Attorney Lauren Petit of Prisoners' Legal Services explained to Victoria Law for *Rewire*, "Because correctional officers don't see it as out of the ordinary to [shackle], they do not record it," (Law 2016).

Restraint is so much a part of the fabric of prison that Lauren argues it was simply assumed by the Corrections Officers documenting Korianne's care. Another woman described her experience of being illegally shackled in labor,

> When the nurse left, the officer stood up and said that since I was not confirmed to be in 'active labor,' she would need to restrain me and that she was sorry, but those were the rules… It was really my worst nightmare, being told there was a law to prohibit this, but now here I was, experiencing it. [Prison Birth Project 2016:6]

This Corrections Officer's statement about 'active labor' contradicts the Anti-Shackling Law, which explicitly prohibits shackling of any kind during any stage of labor. The new mother quoted here had at least three rare and resource-intensive forces working to prevent her from being shackled. These were the Corrections Officer's stated regret, legislative action, and her own knowledge of her rights. Still, she was restrained during labor.

Her experience was not the exception. Prisoners' Legal Services' and The Prison Birth Project's (2016) *Breaking Promises: Violations of the Massachusetts Pregnancy Standards and Anti-Shackling Law* found that not a single state or county correctional facility which incarcerates or transports women was in compliance with the law in both policy and practice, and that not a single woman they spoke with had been treated in accordance with the standards set by the law. This particular Corrections Officer's belief, described in the quote above, that she had to shackle the woman under her supervision because, "those were the rules," may have come from instructions she was given, potentially non-compliant policies of the jail she worked for, or she may have misinterpreted or misremembered instructions or policies.

Regardless of the specifics of how she came to believe that, “those were the rules,” this belief is reflective of the general logics of prison. Foucault (1978) tells us that these logics are founded on the recent political invention of the criminal as a subject who is inherently dangerous. In this chapter, I argue that incarceration makes prisoners out of criminals through restraint. The term prisoner, then, describes a relationship between the criminal and the state, and is produced in part through physical restraint in the form of walls, bars, or chains - that is, through the prison itself. When a prisoner leaves the physically restrictive location of the prison, shackles bring the prison with her. She continues to be marked as dangerous, and accordingly restrained. This foundation of carcerality worked to make implementation of the Anti-Shackling Law ineffective, by making restraint a fundamental condition of incarceration. The ubiquity of shackling creates momentum which makes it easier to shackle a woman in labor than not to. The Anti-Shackling Law, then, was in direct conflict with a basic logic of prison, making its implementation as ineffective as it was - creating, as the Prison Birth Project and Prisoners’ Legal Services have called it, universal noncompliance with the law.

Restraint is the battleground on which one front of the political battle for incarcerated women’s reproductive rights is fought. It is a logical site for advocates to wage war over the right to make meaning of and exert power over criminalized families and incarcerated women’s bodies, given the significance of restraint to the state’s construction of criminality. Advocates can leverage the state’s paternalistic posture towards pregnant women to renegotiate the terms of their incarceration. In Massachusetts, a scandal caused by a mentally ill man’s death by restraints created a political moment wherein it was to the greatest benefit of the state to create a semblance of care for the safety of incarcerated pregnant women. This maneuver repaired public

confidence in the humanity of the prison system to enable the continuation of the quotidian violence of incarceration. The removal of shackles, however, can never negate the reproductive injustice that prison is predicated on, as a mechanism of community disempowerment and disruption.

Just as a Matter of Course

Shackling by handcuffs, ankle cuffs, and waist chains is standard procedure when taking incarcerated people outside prison walls; whether people are being transported to court appearances, doctors appointments, or even work assignments. The ubiquity of shackling is established in policy and procedure. Reproductive Justice Expert and Director of the Massachusetts Anti-Shackling Coalition, Rachel Roth, met me in a coffee shop in November, 2016 for an interview. Rachel's answers to my questions represented a critical and experienced perspective on the prison system and its relationship to reproductive justice. She's read and written widely on the topic, and is an engaged scholar-activist whose work has tangible implications for policy. Rachel has rare insight into the process of advocating for incarcerated women and described to me in detail the way that process played out in the case of the Massachusetts Anti-Shackling Law in particular. Still, I analyze her statements for their assumptions and functions within Carceral logics. I consider how she navigates speaking in the language of prison policy as a scholar-activist doing reproductive justice work. Rachel explained the indiscriminate practice of shackling,

> One of the things that this speaks to is that in general it's easier as an operational matter to just treat everyone the same than to individually assess people. So if you're used to, 'We're taking somebody to court,' or 'We're taking somebody to the hospital.' 'We're going to put them in 5 point restraints,' it's easier to do that

> than to say ‘What is this person’s situation?’ ‘What is their security classification?’ ‘Have they ever tried to escape?’ ‘Are they injured?’ not just ‘Are they pregnant?’ There are lots of people with illnesses and injuries who probably shouldn't be restrained, who are, just as a matter of course. So it’s asking them to do things differently than how they usually do.

It is not simply “easier” to shackle a woman in labor than not to. It requires employees, policies, liability, money, time, force, and on the grand scale of incarceration, the massive mechanization of apathy. This practice comes from somewhere, but it is somewhere so foundational to prison that it is taken for granted in Rachel’s analysis, as a person daily submerged in the logics of prison. Her description of ease floats at the surface, swept along by the tide of indiscrimination between prisoners. Of generality. In engaging with the political process, she deals with the immediate and important consequences of the deeper riptide. I am interested in this riptide, in how shackling *becomes* the “default” and interrogating the State’s purpose in treating restraint as a “general matter.”

The indiscriminate nature of shackling is not so much about ease as Rachel describes it, but rather it is indicative of the fundamentality of physical restraint to the political construction of the criminal. This construction has inherent dangerousness at its core. It is built by irrational politically produced fear, which invents pathological criminality and makes it a core feature of society. This criminality is the sole provenance of a raced and classed undercaste, as its true face is the fear of the seizure of property and power by the people.

Privileged and Exclusive Licensees

Michel Foucault’s (1978) “About the Concept of the ‘Dangerous Individual’ in 19th Century Legal Psychiatry” describes the relatively recent political invention of the criminal,

> [W]hile, for a long time, the criminal had been no more than the person to whom a crime could be attributed and who could therefore be punished, today, the crime tends to be no more than the event which signals the existence of a dangerous element - that is, more or less dangerous - in the social body. [2]

Shackling relies on this logic, as it answers to a fear of what the criminal might do. Given this construction of criminality, the safety of the criminal is necessarily opposed to something called "public safety" which I would argue is functionally the safety of property and power relations. This is why restraint in the form of seat-belts is as impossible to obtain as *relief* from restraint in the form of shackles.

Foucault argues that technologies of punishment have correspondingly shifted to address the criminal rather than the crime. He explains in an (1975) interview with Roger Pol-Droit, titled, "on the Role of Prisons,"

> The social role of internment is to be discovered in terms of a person who begins to emerge in the 19th century: the delinquent. This establishment of the criminal world is absolutely correlated with the existence of prisons. Within the masses, a small core of people became, so to speak, the privileged and exclusive licensees of criminal activity.

The invention of the prison occurred in tandem with the invention of the criminal as a tool of political control, such that each determined the shape of the other. The criminal requires "internment" in the prison because of her ostensible predisposition towards violence - because she is intrinsically dangerous. The prisoner, or in the state's parlance, the "inmate," is the properly restrained criminal.

Built into The Anti-Shackling Law was the assurance that it would be undermined. The Anti-Shackling Law took up the process of making the prisoner out of the criminal by speaking

directly to logics of security. That is, to logics of the inherent dangerousness of the criminal. This is most explicit in the inclusion of an exigent circumstances exception - a common feature of criminal justice legislation which makes the Department of Correction highly internally deferential. The law reads,

> An inmate in post-delivery recuperation shall not be placed in restraints, except under extraordinary circumstances. For the purposes of this section, 'extraordinary circumstances' shall mean a situation in which a correction officer determines that the specific inmate presents an immediate and serious threat to herself or others or in which the inmate presents an immediate and credible risk of escape that cannot be curtailed by other reasonable means. [Prison Birth Project 2016:7]

Here, in an exception that was added in the final changes before the bill was to be voted on, the intrinsic dangerousness of the incarcerated woman as a prisoner prevails. Foucault (1978) writes,

> [H]omicidal mania is the danger of insanity in its most harmful form; a maximum of consequences, a minimum of warning. The most effects and fewest signs. Homicidal mania thus necessitates the intervention of a medical eye which must take into account not only the obvious manifestations of madness but also the barely perceptible traces, appearing randomly where they are the least expected, and foretelling the worst explosions. [7]

The specter of homicidal mania in the public imagination and the legislative process had to be answered to in the text of the Anti-Shackling Law. The irrational and extreme fear of homicidal mania forces conversations about prison abolition to always focus on what to do in the case of the homicidal maniac. This hypothetical has nothing to do with the reality of what prisons are and who they house. This basis for the carceral State moreover from the start intertwines

criminalization and pathologization, incarceration and mental health. This lays the foundation for the intricate and historically specific processes which have resulted in the current crisis wherein most of the state's mental health treatment occurs in prisons (Harris 2016, Human Rights Watch 2003, Torrey 2010).

Prisoners' rights advocates and criminal justice reformers have worked to establish another exception to the general rule of shackling, in addition to pregnant women. The argument made on behalf of this group further reveals the function of shackles. Rachel explained to me that the primary argument made to restrict the shackling of minors is that if they arrive in court in an orange jumpsuit and full shackles, the courtroom prejudicially perceives them as criminals. Chains' capacity to mark one as dangerous and criminal, then, preempts and influences the court's process of formally ascribing this category. The foundation of the argument Rachel described, which is made and has leverage within legislative bodies, undermines the practical possibility of the principles of equality and due process. People who appear in court shackled are guilty until proven innocent. They are presumed to already be criminal, a status which stands apart from conviction.

Notably, race acts similarly, such that Blackness, too, results in the presumption of criminality. Racialization and criminalization are related co-constitutive historical processes in the United States, as Naomi Murakawa shows in her (2014) *The First Civil Right: How Liberals Built Prison America*. If racism is, as Foucault (1997) defines it, "the condition for the acceptability of putting to death," then it is a prerequisite for the production of prisons and criminals (278). Prison in the United States, and in Massachusetts specifically, is a method of social control which reproduces a Black and Brown underclass. Shackles were carried forward

through these historical processes which replaced slavery with mass incarceration. They helped produce the slave as a subject, as they now produce the prisoner. The state constructs and reproduces the prisoner, the properly restrained criminal, as the shackled Black body, through the entangled constructions of Blackness, criminality, and restraint. The political debate surrounding shackling minors in court is created by the way the innocence of the constructed category of child contradicts the pre-emptive conviction of appearing in court in full shackles. Incarcerated pregnant women, too, are subject to this paternalism. Significantly, the removal of shackles leaves race intact as a marker of criminality. This means that access to the protection granted to women and children by laws and policies prohibiting shackling remains an exclusive White right, as scholars have shown it to be in other contexts (Ferguson 2001, Haley 2016).

The logic of uniform security as undifferentiated restraint necessitates that shackling occur absent an individual determination of its applicability. The primacy of security (restraint, internment, imprisonment, incarceration) over medical necessity (the safety and interests of people and communities branded criminal) in Massachusetts was particularly shockingly illustrated by the Disability Law Center's (2016) findings that a man who committed suicide at Bridgewater State Hospital was shackled before his vitals were checked. Leo Marino then had to be unshackled in order to facilitate attempts at resuscitation.

Bridgewater State Hospital is a hospital in name only (Pingeon 2016). In function, it is a prison run by the Department of Correction which incarcerates mentally ill prisoners. The Department of Correction stood by the Corrections Officers' actions after his death and refused to change the protocol which prescribed these actions. The logic was that his restraint was necessary for security reasons, the implication being that this man could have been faking his

death in order to lure Corrections Officers into his cell so that he could attack them. The man in question had a consistent and recent history of suicide attempts and had never been assaultive towards anyone, including correctional staff. He was furthermore not convicted of any crime. His status as a prisoner, however, prescribed his criminality, and necessitated that he be undifferentiated in his treatment as dangerous and therefore in need of restraint. For this man, and by the argument of the Massachusetts Department of Corrections, for all incarcerated people, criminality's need for restraint had primacy even in death.

Finally, Completely, Immediately

The Anti-Shackling Law was passed in part in response to a moment of rupture in the state's quotidian practice of muffled violence in the form of restraint. The constant violence of carcerality was momentarily exposed in the form of a particular episode which became a scandal. That is, as a reform which discursively disrupted the importance of generality and restraint to the carceral state, the Anti-Shackling Law was passed in part to bandage over a mentally ill incarcerated man's death by restraints.

In 2009, a man named Joshua Messier was "suit-cased" at Bridgewater State Hospital during a schizophrenic attack. Michael Rezendes (2014) for *The Boston Globe* wrote,

> In a sequence caught on surveillance video, two of the guards had pushed down hard on Messier's back as he sat in handcuffs and leg irons on the bed, forcing his chest toward his knees. The tactic, sometimes called "suitcasing," is banned in Massachusetts prisons because it can cause suffocation, especially for those like Joshua Messier, who had grown overweight from taking antipsychotic medications.

In this case, this brutal method of restraint caused Joshua Messier to suffocate to death while half a dozen Corrections Officers stood idly by. For five years, no one was held accountable or so much as reprimanded for Messier's death, which was officially on the record as his own fault (Rezendes 2014).

In 2014, the fourteenth legislative session that some iteration of the Anti-Shackling Law was introduced, a front-page story (quoted above) about Messier's death ran in the Sunday edition of *The Boston Globe*. Shortly thereafter, the two Corrections Officers mentioned above were charged with involuntary manslaughter (Rezendes 2015). Rachel, as a witness to and player in the process of passing the Anti-Shackling Law, explained her insider perception of the way this story influenced the political process,

> We have this front page story, two days later the bill gets out of Committee for the first time ever. Two days after that, Governor Patrick was addressing an event at [The University of Massachusetts] … He's there to talk about criminal justice reform but of course this is the elephant in the room, right? He has to somehow address what's happened and at that meeting he said - so he addressed what happened and he said, so we're gonna stop restraining pregnant women, and I'm going to issue emergency regulations. And I want the legislature to pass the bill and send it to me. So if all of those things hadn't happened I mean I don't know … I think the publicity and people being so aghast at what had happened definitely helped propel this. And I hope [Joshua's] family - I hope his parents know that his story helped bring about change for some other group. Or at least some change - the promise of change - for some other group of vulnerable people. But so I do think that was part of it too. But it was during that time that a lot of people were getting involved [in the Anti-Shackling Coalition] and lending their name so it's hard to say what makes anything happen, but in terms of a political opportunity presenting itself, I think that was one.

Governor Patrick issued these emergency regulations at the same time that he announced a plan to cut recidivism in half over the next five years (Schoenberg 2014). Governor Patrick himself explicitly connected *The Globe* story about Joshua Messier's death with the passage of the Anti-Shackling Law. When he made his announcement at The University of Massachusetts, he said,

> While on the subject on the use of restraints, let me be clear that we will also end — finally, completely and immediately — the use of restraints on pregnant inmates in labor. Our current regulations prohibit this in state prisons and today the Department of Corrections will issue emergency regulations extending that prohibition to all facilities, including Houses of Correction. Regulation is good but here law would be better. The Legislature is considering a bill that would make this ban the law. I support that bill and I urge the Legislature to send it to my desk for signature this session. [Zimmerman 2014]

This reform, along with the Governor's plan to reduce recidivism, and the conviction of the two Corrections Officers, respond to Messier's death, but in an incomplete way. They do make positive changes for real people, but as indicated by universal noncompliance, the actual material benefits are dubious. They are the product of very sincere and difficult work on the part of reformers and advocates. Ultimately, however, the processes at play ensure the reformation and continuation of a social and political order founded upon carcerality and reliant upon the production of the prisoner.

In signing this bill into law, Governor Patrick made one particular exception to the general rule Rachel noted, wherein shackling trumps medical need. Advocates and reformers were able to seize upon the moment of political will created by Messier's death. Governor Patrick's call for individual assessment of risk flew in the face of the overarching logic of prison

which resists individuality. It made a move towards disrupting the undifferentiated dangerousness of the criminal which fuels the exploitative carceral system. Simultaneously, it was necessarily a hypocritical statement. When he signed the bill into law he said,

> Unless it can be said with certainty that the inmate poses a serious and immediate physical danger to herself or her fellow inmates, she should not be tied down limb-by-limb in the 21st century here in Massachusetts. I am proud to sign this legislation to formalize emergency regulations that ended the use of restrains on pregnant inmates in labor in all Department of Corrections facilities. [Zimmerman 2014]

In context, the Governor's reasoning carried the implication that other populations of prisoners should "be tied down limb-by-limb in the 21st century here in Massachusetts" without "certainty that the inmate poses a serious and immediate physical danger." The Anti-Shackling Law, then, was passed through advocates' ability to cut a deal with the state wherein the inhumanity of incarceration and the fundamentality of restraint thereto was belied by the removal of restraints from the bodies of women in policy but not in practice. Through this maneuver, the paternalistic state was able to preserve the quotidian violence of carcerality as represented by Bridgewater State Hospital.

While important reforms, the changes made in response to Joshua Messier's death would not have prevented his death, and came five years too late to bely the state's ambivalence thereto. The Anti-Shackling Law is an essential tool for advocates and pregnant women to fight for their rights and safety, but it also enabled the State's absorption of this instance of rupture in the banality of the horrific violence of the state's production of the prisoner. Through the passage of

the Anti-Shackling Law, the state enabled the continuation of restraint as it was used against Joshua Messier, as the foundation of carcerality, a return to the violence of business as usual.

Being Hungry

While shackling pregnant women is certainly a proven health risk, it is not the only threat to healthy pregnancies posed by incarceration, nor is it necessarily the primary health concern of incarcerated pregnant women. Part of what is distinctive about the Anti-Shackling Law in Massachusetts is its more holistic approach to healthy pregnancies for incarcerated women. Of the 22 states that have passed similar laws, only in Massachusetts, Florida, and California do these laws regulate pregnant women's care beyond the issue of shackling (Roth 2016). This is largely the result of the particular structure of advocacy groups that worked on the bill in Massachusetts, which cultivated intimate relationships with and involvement by incarcerated and formerly incarcerated women. The stipulation that pregnant and postpartum women must be transported in vehicles with seat-belts, for example, was included based on the Prison Birth Project workshopping the bill with incarcerated pregnant women and women who had experienced giving birth while incarcerated (Roth 2016). One woman in Massachusetts said of the shortcomings in implementation of the Anti-Shackling Law,

> The worst part of my entire experience was being hungry. I was so hungry the entire time I was locked up. The [supplemental] pregnancy meal that is provided is a piece of cheese on two pieces of white bread and a carton of milk. Even if I could stomach that every day, it didn't cut it. I needed fruit. Vegetables. [Prison Birth Project 2016]

While shackling is the most prominent issue in the political discourse and media, and the issue with traction across the nation, this may be more reflective of the processes and preoccupations of the state than of the greatest threats to and biggest concerns of incarcerated pregnant women.

Rachel Roth described details of Korianne's pregnancy which were not included in the report on noncompliance because they did not represent a breach of the Anti-Shackling Law,

> Rachel Roth: In addition to the fact that she was restrained when she wasn't supposed to be, you know they took 7 or 8 hours to take her to the hospital. You know she was in this, basically glass cage, with people watching her go to the bathroom and, you know, trying to convince them that she had to go to the hospital …
>
> Mary Lipscomb: Shannon spoke at the briefing…. she also said she was transported really late.
>
> RR: Yes, they both did. I think Shannon said it took three pushes - she had the baby just right away in the Emergency Room. And Kenzie also had her baby right away in the ER and Korianne had her baby I think she said 9 minutes after she got there. And that's at two different jails, so yeah that's a big problem. And I think that speaks to a broader issue, too, which is, you know, why don't officers - and if there's medical staff there, why don't - for instance where Korianne was in Bristol County, there were nurses overnight. Why don't they listen to women who say they're in labor, especially women who have had a baby before? They know what their body is telling them and they basically put women in this position where they might end up having the baby in the jail without the right medical supervision and that could be a very dangerous situation.
>
> ML: Have you heard about that happening?
>
> RR: All the time. Not here. I haven't heard much about it here. I mean, I have like a notebook of stories. All the time. It's terrible. In fact, um, anyway I'm saying 'all the time' it's not necessarily every day but it happens, you know, with

> regularity and it's usually this sort of - every now and then, I think, it's like the woman just has the baby so fast they can't get her there. But it's usually this type of story: The woman says I'm in labor. They don't believe her. Sometimes they'll even say, 'You're faking it.' And then lo and behold, she has a baby and every now and then, you know, the baby's born with the umbilical cord wrapped around its neck, and the baby dies in the jail. So, you know, it's good that we don't have a lot of those stories in Massachusetts. But, you know, we're inches away from having those stories.

While the Massachusetts Anti-Shackling Law is more holistic than most, then, it is by no means comprehensive. Even if a medically healthy pregnancy were possible within the prison system, the system is premised on revoking the choices and resources available to the mother, and dividing mother from child. The removal of restraints notwithstanding.

Restraint was fundamental to the political debate surrounding incarcerated pregnant women because it was fundamental to the state's construction of the prisoner as the properly restrained inherently dangerous criminal. The removal of restraint in policy signaled the state's paternalistic posture towards pregnant women as incompatible with its posture towards criminals. The passage of the Anti-Shackling Law was a process of reconciling the state's paternalistic narratives with the reality of women's incarceration. Shackling incarcerated pregnant women persisted in practice because of prison's foundational logic of the subordination of the safety and interests of incarcerated people in the name of "public safety."

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Shock

"It blows my mind that I have to sign a law for that," Massachusetts Governor Deval Patrick claimed in 2014 when he signed a bill to outlaw the practice of shackling women who are pregnant, postpartum, or in labor (Roth 2014).

"If this was really happening, then the governor would issue an executive order. Why don't you get an executive order?" Advocate Marianne Bullock of the Prison Birth Project told the press she was asked at a 2011 hearing on shackling before the Judiciary Committee (Law 2014).

"It just shocks me that this still happens in this day and age," the Public Safety Committee's Vice Chair declared in a 2012 hearing (Law 2014).

Shock at the barbarism and inhumanity of shackling women in labor was widely proclaimed in the wake of advocacy for the Anti-Shackling Law. While the expression was of surprise, the affect of shock had a particular dimension of horror and disgust which served a particular purpose within the discourse. This chapter will argue that the political discourse of shock surrounding shackling served to distance the Statehouse from the Prison to create and preserve the benevolence and power of the Statehouse. This distancing occurred on a number of planes, including ideological, physical, and temporal. Wrenching apart the Statehouse from the carceral institutions it mandated created hierarchy through the mirrored processes of making the pure through the dirty and the progressive through the regressive.

Blame

A primary characteristic of shock is its ability to shield one from blame. Supposedly, one cannot be responsible for something they had no knowledge of. Rachel Roth, a national leader in the effort to protect the reproductive rights of incarcerated women, explained to me in an interview,

> I think with this issue, many people are appalled. They really are appalled. They say, 'Oh my god, I had no idea!' and just the thought of pregnant women and especially women who are in labor … I've been in hearings where people have said this was the first time they've ever heard of it.

State agents' genuine surprise at the shackling of incarcerated pregnant women is illustrative of the diffuse nature of power in the Commonwealth of Massachusetts. Thus one can claim that responsibility rests in the Statehouse, or the Governor's Office, meaning not that it belongs to a particular person within those institutions, but rather that it is to be found in the bricks and mortar that build these spaces. Individuals may or may not take up and exacerbate, battle and quell the functions of these institutions, and there is certainly no possibility of doing one without the other.

While legislators may have no knowledge of carceral practices, the oppressive purposes and logics of these practices remain intelligible. The Anti-Shackling Law and prison more broadly were constructed to calculated ends, and the shock performed in the Statehouse had its role to serve. Foucault (1976) tells us that "Power relations are both intentional and non-subjective," (95). He describes it precisely,

> [T]here is no power that is exercised without a series of aims and objectives. But this does not mean that it results from the choice or decision of an individual subject … the rationality of power is characterized by tactics that are often quite explicit at the restricted level where they are inscribed … the logic is perfectly

> clear, the aims decipherable, and yet it is often the case that no one is there to have invented them, and few who can be said to have formulated them: an implicit characteristic of the great anonymous, almost unspoken strategies which coordinate the loquacious tactics whose "inventors" or decision-makers are often without hypocrisy. [95]

Thus an individual may be genuinely surprised or even shocked by a practice that they participate in mandating. The practice of shackling incarcerated pregnant and postpartum women is for all practical and analytical purposes without an author. Legislators, corrections officers, and prison administrators may or may not have taken up this articulation of power, but it persisted through their comings and goings, intentions and interventions. Its “series of aims and objectives” were many and were entangled in those of incarceration and state-building at large. Moreover, the expression of shock at this practice, while not necessarily calculated to these ends by those who gave it voice, was a multidimensional exercise of power with its own related “series of aims and objectives.” Incarceration, shackling, and shock, arise out of the nexus of power which the State is formed by and maintains.

Distance

One such aim of the discourse of shock is the distancing of the ideological and material Statehouse from the Prison. Shock momentarily takes up this function which is built into the structure of the State. Corrections facilities are physically and ideologically far removed from the Statehouse, and yet they are built by the legislature and scaffold it. The shock of legislators at shackling pregnant women is an exercise and reproduction of the distance between the Massachusetts Statehouse and the prisons and jails whose existence it mandates. To be shocked insulates policy-makers - who Foucault tells us may well be “without hypocrisy” - from blame,

and preserves the civility of the upper echelons of society in the face of the state's intimate attack on women's bodies and families. Through shackling, women are violated, and through incarceration the legislature claims jurisdiction over their bodies, exposing them before the state and the public. Through divorcing itself from the brutal and degraded space of the prison, the Statehouse is made into a benevolent patriarch free from the ghost of its oppressive functions. It was able to exist as an icon of removed civility. In its shock at the shackling of pregnant women, it was granted the dignity and respectability that comes with distance. Prisons are the brutal spaces of punishment from which civilized society politely averts its eyes.

This creation of distance between the Statehouse and the Prison is contrary to fact. The Statehouse mandates the construction and maintenance of Prisons, and relies upon them to derive its power and formulate itself and society through raced, classed, and gendered control. Prisons and jails are highly regimented spaces as well as massive machines whose upkeep requires constant production of policy. Entire local, state, and federal agencies are devoted solely to their maintenance. These machines function to regulate life inside the prison as completely as possible. Their existence is discursively, politically, and economically foundational to the United States in its current formation. In this sense, the Statehouse and the Prison could hardly have a more intimate relationship.

Authoritative but Limited Knowledge

The relationship between the Statehouse and the Prison becomes paradoxical through their structural intimacy and ideological diametrical opposition. This is formulated through the Statehouse's knowledge of the Prison, as *authoritative* but *limited*, and creates the opportunity to be shocked. Details of daily life inside Prison are highly regulated. They are known in the sense

wherein power is constituted through the legal and psychopathological gaze. Yet, specific facts about actual people and events behind bars are obscured through the restricted flow of information in and out of prison. The regulation of the flow of information is inextricable from the overall regulation which is constitutive of this intimate relationship. Through the same mechanisms of knowledge as power which constitute the intimate relationship between the Statehouse and the Prison, barriers are erected between the two.

The paradoxical relationship between the Statehouse and the Prison plays out in the negotiation of information flow. While massive amounts of documentation of the goings-on in prison is produced, this information is highly privileged and difficult to access. It also presents a thoroughly filtered picture of the events that transpire behind bars, which is derived from the perspective of the State. It creates a strictly authoritarian structure of knowledge about incarceration. Incarcerated people's stories of their own experiences are treated as highly suspect in the mainstream media, as in courtrooms.

The structure of knowledge regarding incarceration is indicated by the title as well as the content of a 2017 *New York Times* Article, "Pregnant Inmates Say a Federal Jail is No Place for Them, and Some Judges Agree." Joseph Goldstein wrote, "Although Ms. Gorge's account - much of which was described in a letter that her lawyer filed in federal court - could not be independently verified in its entirety, a Correctional Officer confirms in a disciplinary report against Ms. Jorge that jail staff had ignored a doctor's recommendation for bed rest." Trusting a Correctional Officer over an incarcerated pregnant woman is characteristic of the notion that incarcerated people are more prone to lying and manipulation for their own greedy benefit, while Correctional Officers are benevolent and honorable people with nothing to gain by lying. Further

illustrating another dimension of the barriers to nuanced knowledge of the Prison, Goldstein wrote, “many details about what happened to Joselin Rosario, a former prisoner at MDC, remain sealed by court order. But it is clear that a Federal Judge was deeply troubled by the jails treatment of Ms. Rosario, whose pregnancy ended in miscarriage.” Here the public is explicitly forbidden from knowing, and yet we are expected to take ostensible indications of a Judge’s troubled mind as proof. These processes which make the walls between the Inside and Outside more opaque occur alongside the spatial segregation of communities effected by incarceration, particularly from those who populate the legislature. This opacity is one feature of the hierarchical distance erected between the Statehouse and the Prison.

Equal and Opposite Reaction

The people that make up a prison are made vulnerable by the same processes which insulate the Statehouse from blame and association. Corrections officers and prison administrators cannot afford the shock expressed by legislators. Responsibility for this practice is thus shunted to those who do the dirty work of running prisons, constitutive as it is of the violence of incarcerating people. Incarcerated people, meanwhile, are intimately exposed in front of the State and the public through the political battle over their lives, bodies, and families. Incarceration is very much an attack on women’s bodily autonomy, including as it does strip-searches, shackling, poor healthcare, limited access to feminine hygiene products, and vulnerability to assault by correctional staff. In this sense, the equal and opposite reaction to the removedness of the State is absorbed by incarcerated people themselves.

The exposure of incarcerated people’s and specifically pregnant women’s bodies to all these forms of physical assault is the fitting counterpart to the measured distance of the

legislative body from the brutality it demands. This process is echoed in the structure of litigation which exposes intimate details of criminal defendant's lives to the judgement of the court which rests shrouded in ritual and respectability. This is true of the disempowered economically oppressed defendant in a more profound sense than for the defendant state, corporation, or institutional actor. The individual defendant who cannot afford a private lawyer has inhibited access to the strict ritualism of court proceedings. State, corporations, and institutional actors not only have legal insurance, they are also protected from culpability by such legal standards as "deliberate indifference to serious medical needs" and "malicious and sadistic excessive use of force serving no legitimate penological purpose," which are all but impossible to prove. In fact, such cases have been subject to the same dynamic of requiring a much greater vulnerability on the part of the prisoner. Incarcerated plaintiffs are moreover left in prison after filing a suit against the prison, State, corrections staff, or medical provider, leaving them exposed to potential retaliation for pursuing litigation.

In concert with the intrinsic exposure of incarcerated people which occurs in tandem with the insulation of the Statehouse, the Anti-Shackling Law places incarcerated women's bodies under the jurisdiction of the State, and under its scrutiny. It appropriates the pregnant body as a meaning-laden entity, capable of announcing the state's good intentions, and at the same time separable – in being so trope-like – from women themselves. Their pain and their families most personal moments are aired in front of the legislature and in the media headlines, to an audience of gasping liberals.

Temporal Distance

The creation of distance through shock between the Statehouse and the Prison has a temporal component. Just as the creation of physical and ideological space between the Massachusetts Statehouse and prisons protects the State and its agents from exposure and culpability while exposing and violating incarcerated people, so too does the construction of time in relation to both of these spaces erect barriers between them which fortify the carceral state. Representative Chris Walsh called shackling, "an *outdated* and misinformed practice," [emphasis added] (Commonwealth 2014), why the Public Safety Committee's Vice Chair lamented "that this still happens in this day and age," why the executive director of NARAL Massachusetts claimed, "Shackling women in labor is medieval. That this happens today in 2014 is pretty shocking," (Law 2014), and why Governor Patrick declared that, "Unless it can be said with certainty that the inmate poses a serious and immediate physical danger to herself or her fellow inmates, she should not be tied down limb-by-limb in the 21st century here in Massachusetts" (Commonwealth 2014).The particular manifestation of the performance of shock in relation to shackling was specific to the political formation of Massachusetts as a particularly *progressive* state. As such, Massachusetts works to keep up an image of enfranchisement despite stark racial and economic stratification, and the prison system's role in maintaining these hierarchies. Central to this image is an ideology of progressivism that describes U.S. history as a steady march through time towards equality.

The Massachusetts Statehouse subscribes to and reproduces a narrative of progressivism characteristic of Lee Edelmen's (2004) notion of reproductive futurism. Edelman describes reproductive futurism as a condition of entering into political debate. He tells us that both the right and the left necessarily formulate their arguments in terms of a fetishization of the future

which turns upon the image of the Child as the beneficiary of all political projects and interventions. The Massachusetts Statehouse speaks in the language of futurism as Edelman describes it. This political language understands, "history as a linear narrative (the poor man's teleology) in which meaning succeeds in revealing itself - as itself - through time." Through this linear narrative, the Commonwealth moves "towards a viable political future …. perpetuating the fantasy of meaning's eventual realization," (4). The Statehouse's fetishization of the future requires that it vanguard the movement into the future. It is on the cusp of this progressivist push. Because reproduction is the subject of the Anti-Shackling Law, it speaks compellingly to the future-orientation of the Statehouse. Mothers are productive in their reproductive capacity, doing the labor of ushering in the future.

Simultaneously, against the Statehouse and within a political order founded upon the value of future-orientation, prisons are situated firmly in the past. Prisons employ repressive mechanisms which involve forms of power that Foucault described as characteristic of pre-modernity. Incarcerated people furthermore have very little access to technology, and must hand-write or type letters and use pay phones. Prisons are allochronic spaces, or relics of the past in the present. Sabina Vaught's (2017) Compulsory explains, "Prison *is* temporally allochronic. It represents state primitivity in the shapes of coercion and compulsion. It is forcibly located in a different time from the Outside, from recognized society." Inside, one is outside of society's time, and life is regimented by the State's clock as one does their time. Prisons are the negation of futurity, the regressive counterpart to Massachusetts' progressivism.

These constructions of time produced through the political and state apparatus are decidedly racialized. The Whiteness of the Statehouse is positioned as futuristic, and constructed

against the Blackness of the Prison as primitive. This racialized construction of time is founded most basically in the civilizing mission of colonization and Social Darwinism which describes White people as the most highly evolved, and the racial Other as primitive, barbaric, regressive. Similarly, the practice of shackling itself is described as primitive, barbaric, regressive. The constant invocation of shock in relation to the progressive - that is, futuristic - Commonwealth of Massachusetts reified the temporal hierarchy Edelman describes as well as the allochronic nature of prison. In the context of prison's function of reproducing racial hierarchy, this progressivist shock also enforced the constructed association of Blacknesses and racial Otherness with the past.

Meanwhile, time stops. Shackling as an issue which brought together the disparate temporalities of the Statehouse and the Prison required time to come screeching to a halt. Legislators were purportedly shocked in 2011, 2012, 2013, and 2014 regarding the issue of shackling pregnant women. The political battle around this issue has been raging for more than 30 years in Massachusetts, beginning with a 1985 class action suit filed by women incarcerated in Massachusetts' only state women's prison, MCI-Framingham. After seven years of litigation, the suit, MacDonald v. Fair, established minimum standards of care for incarcerated pregnant women in 1992. While shackling pregnant and postpartum women remained legal after this case was settled, restraints during labor and delivery were restricted to one wrist cuff (Law 2014).

In the wake of this suit, and amidst national movement on the issue of shackling pregnant women, in 2001 Massachusetts State Representative Kay Kahn introduced a bill that would limit shackling pregnant women to handcuffs in front of the body. Representative Kahn's bill did not pass. She continued to introduce similar bills each legislative session until finally, in 2014, the

Anti-Shackling Law was passed (Law 2014). Then, in 2016, Prisoners' Legal Services and the Prison Birth Project poured resources into interviews and public records requests which revealed universal noncompliance (Prison Birth Project 2016).

Shock absorbed the rupture created by the introduction of the regressive issue of shackling into the progressive space of the Statehouse. Despite futurism in the form of the narrative of a steady march towards equality, the persistence in law of an ostensibly shocking relic of the past - shackling - could not be addressed for decades, until the scandal of Joshua Messier demanded it. Even so, in practice, shackling persisted. Rachel Roth told me how this warped the Governor's perception of time in relation to her own,

> But, so, it was interesting because you know a lot of people said - even the Governor who I saw at the bill signing and I saw at this other event, said this is all happening so fast. And I said, 'It's not fast, it's 14 years. And you've been Governor for 8 years,' right? Like he had ample opportunity to do something, but I think it's perception. It wasn't in the news, it wasn't on his radar, people weren't, I guess, approaching him about it. They were just working in the legislature. So I guess because once that happened, the Senate voted, and the House voted very quickly, and then by middle of May he was signing it.

The Governor was surprised by the speed of 'progress' as Anti-Shackling. Time, then, is warped throughout the institutions which make up the carceral state, and is bent through law and ideology to buttress carcerality. This is how the practice of shackling persists while it shocks. Prison's primitivity and the Statehouse's futurism created stagnation between the two.

Disappointed

While shock from the Statehouse was necessitated by its paradoxical relationship with the Prison, a relationship of intimate inter-reliance and forced distance, advocates for incarcerated people were not surprised for a moment.

> ML: Were you surprised by noncompliance?
>
> RR: NO.
>
> ML: So when all oversight was taken out of the law, you knew this would happen?
>
> RR: Well, we know from looking at other states that laws have been violated, and I think it speaks to a larger problem that we don't have oversight of prisons and jails in this country, and in this state, and there's no - for instance, the sheriffs, as I understand it and as it has been explained to me by people in the legislature and others, they are their own world. So the DOC actually has some authority to issue regulations that are supposed to apply to the sheriffs, but apparently they have no authority to enforce them. So I don't know what good that really does. The sheriffs, at least one of them I heard at a public forum, said, 'Well, if you don't like us, vote us out in 6 years.' But that's really it. You can vote somebody out. They don't have - there's no citizen review. I don't know, there's just no meaningful oversight. But I think people are becoming aware that that's a problem. Not just on this issue, but any issue. So I think that the law tells them to do something different than what they're used to doing so of course there might be some bumps in the road along the way. But then it's not even clear that - you know, we did the public records request and saw what the policies are, and the policies don't accurately reflect the law. So of course you can't expect the staff people to be following the law. And then there are other cases where the policies are fine, but people still seem to be doing things the old way. So we're not surprised but we're disappointed, I guess would be a way to put it.

Rachel was not only unsurprised by noncompliance in Massachusetts, but she considered it a pattern across the country, and pointed to myriad structural features of prisons and jails which ensured noncompliance with the law.

Advocates could not afford the naiveté of surprise at noncompliance. Shackling pregnant women was entirely consistent with the order of things Inside and with the status quo of incarceration as a violation of bodily autonomy, and an attack on kinship and community. For those with practical knowledge of incarceration, legislators' shock was a little perplexing, and a luxury difficult to afford. Outrage, or disappointment as Rachel said, was easier to come by.

While advocates of the Anti-Shackling Law knew better than to be shocked, they also found political utility in its performance. They took up this discourse to force the state to make change. "The committee members were shocked and upset by what they heard," ACLU lobbyist Gavi Wolfe said of a 2013 hearing (Law 2014). "Shackling women in labor is medieval. That this happens today in 2014 is pretty shocking. So we needed to make people aware of the problem," explained the Executive Director of NARAL Massachusetts to Victoria Law for *Truthout* (Law 2014). If this practice was so shockingly inconsistent with the operations of the state of Massachusetts, they made the implicit argument, now that it's been revealed it must be eradicated.

The affect of shock in the political discourse surrounding the shackling of incarcerated pregnant women was an exercise of power which reinforced the artificial distance between the Statehouse and the Prison. It obscured the inter-reliance and co-constitution of the two on the backs of incarcerated women to preserve the image of the Statehouse as progressive and paternal and absorb the rupture of prison regressivism in the progressive space of the Statehouse.

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Controversy and Paternalism

According to the popular discourse emerging from the Massachusetts Statehouse, the Anti-Shackling Law was an uncontroversial - indeed, unanimous - affirmation of the state's concern for the health and safety of incarcerated mothers and their children (Commonwealth 2014). The proclaimed un-controversy of the issue asserted paternalistic state benevolence, despite controversy evidenced by opposition to the law from the Corrections Officers' Union and the Sheriff's Association, as well as the long persistence of the practice of shackling pregnant women. This chapter will trace the state's process of constraining political discourse to coerce advocates for incarcerated women into acting as mouthpieces for state ideology, as these same advocates simultaneously and substantively strove towards their own counter-hegemonic ends. It will do so by examining statements from the Office of Representative Kay Khan. I will consider the Anti-Shackling Law as paternalistic in the context of the paternalism of women's incarceration generally, to think through the implications of the Anti-Shackling Law as a reform which obscured and enabled the violence of restraint, and was simultaneously an important victory for reproductive justice.

Anti-Shackling is not inherently paternalistic. It is anti-paternalistic as it restricts the state's intervention into the reproduction of criminalized women. However, the law was co-opted by paternalistic ideology through the argument that it indicated the Carceral State's protection of and concern for incarcerated women and their children. Paternalism is a key feature of the political discourse surrounding women's incarceration in the United States (Sudbury 2005). Policies governing MCI-Framingham, the only state women's prison in Massachusetts, are

founded on the popular wisdom that victimization at the hands of men is ultimately what lands most women in prison, and that the state must step in as their protector.

The state's construction of women who have been victimized as dependent further strips women of their agency by taking them into state custody for “treatment” and “rehabilitation.” This logic denies the profound disempowerment women experience as a result of their incarceration. In actuality, incarceration is one of myriad state machines of social reproduction which play a large part in making women vulnerable to patriarchal violence along lines of race and class, and imprisonment represents a culmination and continuation of this violence in their lives (Roberts 2012, Sudbury 2005). Incarceration itself constitutes an attack on women’s bodily autonomy and integrity, including as it does strip-searches, shackling, poor healthcare, limited access to feminine hygiene products, and vulnerability to assault by correctional staff.

In the case of the passage of the Anti-Shackling Law, the state assumed the role of protector while severely undercutting the ability of women to parent by removing their child from them secondary to their incarceration, and dividing these women from fathers who were painted as abusive or absent. Incarcerated women and their children were made dependents of the state, as the state appointed itself caretaker and guardian. As evidenced by noncompliance, the Anti-Shackling Law was as devoid of all teeth. This enabled the construction of incarcerated women as dependent and unthreatening, or at least Other to the normative criminal, while maintaining the violence of shackling and dividing women from children through incarceration, particularly as a mechanism of racial subordination. While paternalism propertizes white women, it has never applied to women of Color in the same way, particularly never exempting Black women from commodification, labor, and punishment (Haley 2016).

[Mis]Representative

Representative Kay Khan sponsored some version of the Anti-Shackling Law every legislative session since she was first elected in 2001, until the Anti-Shackling Law finally passed in 2014 (Law 2014). She is a democrat and the Chairperson of the Joint Committee on Families, Children, and Persons with Disabilities. Representative Khan has a long history of sponsoring criminal justice reform measures and has advocated for incarcerated women particularly. In addition to the Anti-Shackling Law, she has sponsored bills to divert women from prison, expand incarcerated women's access to sexual health care and education, expand access to community mental care, among many others. She worked closely with Prisoners' Legal Services and the Prison Birth Project in her efforts to pass the Anti-Shackling Law.

Representative Khan's legislative record demonstrates her critical orientation towards women's incarceration, and a politics of care and empowerment more than paternalism. The Anti-Shackling Law is actually a great example of abolitionist care and empowerment since in theory it removes chains and restricts state power. The ideological investment in the carceral regime represented by its passage, the inclusion of the exigent circumstances exception, and noncompliance are vestiges of the political process which altered its original shape.

An aid from Representative Khan's office agreed to answer some of my questions through email correspondence in 2016. Her responses to my questions were perplexing. Khan was a Representative who clearly cared about the wellbeing of incarcerated women, and who had to have a wealth of knowledge about the challenges they face and the difficulty of advocacy on their behalf. Her legislative aid was working for and with her on these issues. The responses to the questions I received, however, conveyed an uncritical and naive conception of incarceration

and legislation. The aid in this interview spoke in the voice of the Representative's Office. Her answers simultaneously came from her, and came from no one in particular. As indicated by Kay Khan's title, Representative, something fundamental to her position within the state sidestepped her own motivations, opinions, experience, and knowledge - which I do not pretend to know - to make her a mouthpiece for state ideology. This happened simultaneously to, and actually enabled her co-optation of her Office's power to the benefit of incarcerated women.

My interview with the Representative's aid, consisting as it did of an aid formulating written answers both on the record and on the Representative's behalf, was a kind of argument articulated through the specifications of the political process. As I will show, her answers overwhelmingly described an efficient and productive legislative process peopled only by beacons of rationality, competence, and good intentions, who amiably worked together in the best interest of incarcerated women and society at large.

For example, when I asked why Governor Patrick issued an executive order prohibiting shackling women in labor, I was told, "The Governor's executive action and endorsement of the legislation signaled his support to the Legislature and was perhaps intended to encourage the Legislature to send a finalized bill to him as quickly as possible." The answers I received from Rachel Roth, as a point of contrast, demonstrated a nuanced understanding of the structural challenges of producing and implementing legislation, and of the limited "justice" that it is possible to win through the state's legal mechanisms. Rachel explained that the Governor issued the executive order in the wake of a scandal involving the death of an incarcerated man by restraints. Rachel spoke from a place always cognizant of the deep injustices and inequalities constitutive of Massachusetts, the U.S., and incarceration. Resistance to state violence seemed

the unspoken common ground on which we met to discuss something called "criminal justice reform." The principle function of the statements Representative Khan's aid sent me, however, was to affirm faith in the legislative process. They protected Representative Khan's position and reputation, in part by defending the benevolence of the State. This tells us something about the mechanisms of hegemonic reproduction to which legislators and their support staff may be bound, even in potentially counter-hegemonic efforts.

In this particular conversation, Representative Khan's aid argued that the Anti-Shackling Law had been uncontroversial, and performed paternalism in conjunction with its un-controversy. To lay the foundation of lack of controversy, she wrote,

> As demonstrated by the unanimous votes in favor of the bill's passage in the House and Senate, shackling of pregnant incarcerated women is a largely bi-partisan issue. There was consensus among both parties that shackling of pregnant incarcerated women poses unacceptable risks to the health of the mother, as well as the child. The shackling of pregnant and birthing women is a violation of domestic constitutional law and international human rights. [email to author, January 5, 2017]

This answer baffled me for a few reasons. Surely Representative Khan and her aid knew what Rachel Roth confided in me, that it is not at all uncommon for bills to pass unanimously. Rachel told me of the legislature's unanimous passage of the law,

> At the time I thought that was really amazing, but it turns out it's not so amazing, and the bills have passed unanimously or close to that in some other places as well. You know, if the leadership says we're gonna do this, then sometimes that's a reflection as much of the dynamics of the legislature as - you know. But it's good to be able to say, this was unanimous, everyone stood up and said, this needs

> to be changed. That certainly makes it powerful. I've just noticed since then other things passing unanimously too.

Rachel describes the utility of invoking unanimity in order to push for compliance with the law. The other side of this discursive bargain was performed by Representative Khan's aid, who invoked unanimity to affirm the benevolence of the state, and specifically, its paternal relationship to incarcerated people, and women in particular. As I argued in Chapter 1, the aid's implication that unacceptable health risks alone create political will to protect incarcerated people from harm is counter to the function of prison, as well as counter to fact, as indicated by the well-documented abysmal health care in prison (Roth 2015). It is here indicative of either extreme irresponsible naiveté - which is likely common in the State House, though I don't think in Representative Khan's office given her political biography - or willful misrepresentation. My argument is not necessarily meant to condemn this misrepresentation, but to note it as a feature of this speech, which was deemed necessary by the Representative's aid and/or Office.

Because the terms were set by the state - because Representative Khan's Office must insist upon shackling's *illegality* as opposed to its immorality, brutality, violent socially reproductive effects, racist effects, etc. - Representative's Khan's Office was forced to subscribe to paternalistic state ideologies in order to assert the truthfulness of her argument. Only after reinforcing Massachusetts' paternal benevolence, was Representative's aid able to claim that shackling pregnant women was, "a violation of domestic constitutional law and international human rights." This claim was not straightforwardly true. It was a statement in defense of incarcerated women and their families which Representative Khan's office must adamantly

defend in order to pass the Anti-Shackling Law, but which must abide by the terms of legality which are set by the state.

The fact of the matter is, shackling pregnant women has been authoritatively deemed legal by Massachusetts and other state courts which operate under the jurisdiction of constitutional domestic law and bear some tenuous relationship to international human rights. That is, the legality of shackling pregnant and birthing women under constitutional and international law is an open question. It was affirmed in Massachusetts in the 1985 suit, and is maintained by 27 states which have not passed laws against it (Law 2014, Roth 2014). By framing the issue in terms of legality in her response to me - again, as this aid was evidently compelled to under the constraints of the conversation and her position within the political machine - this aid conceded to the structure of the law as authoritative knowledge based on judge's rulings, supposedly based on objective legal doctrine, and therein to the jurisdiction of the state over these women's bodies and social lives.

Uncontroversial

Within the constraints of the political machine and speaking on behalf of an Office, the narrative Representative Khan's aid delivered regarding the Anti-Shackling Law was that it was uncontroversial. The ostensible lack of controversy is a particular interpretation which discounts its long history, the scandal required to pass it, opposition from relatively powerful interest groups including the Corrections Officers Union and the Sheriffs' Association, and noncompliance. The narrative of un-controversy was at least in part a performance of the state's paternalistic orientation towards incarcerated women. Representative Khan's aid described this supposed lack of controversy as specific to this issue within the policy field of criminal justice,

> Criminal justice reform is an incredibly complicated policy field. Legislators' opinions pertaining to pre-trial bail, mandatory minimums, expungement, etc. can vary greatly and impact the process and underlying structure of our criminal justice system. This legislation targeted a very specific, small population and its fundamental proposal is quite straightforward and not particularly controversial. The safety provisions and health services called for in the bill are consistent regardless of the woman's sentence, charge, etc. and exceptions in the event of extraordinary circumstances are permitted. [email to author, January 5, 2017]

The above list of pre-trial bail, mandatory minimums, and expungement as three issues in the field of criminal justice struck me as bizarre in its specificity and randomness. These issues are important, but have a comparatively small impact on the "process and underlying structure" of criminal justice, and while she argues that they may be controversial in a way shackling was not, they're made up of the same bricks and mortar of racism and power stratification as shackling and the rest of the criminal justice system.

The aid argued that what made the Anti-Shackling Law uncontroversial is that, supposedly unlike the apparently broadly applicable preceding three, it "targeted a very specific, small population," and is "straightforward." Barely shrouded in this argument is the simple fact that incarcerated women are the subject of this law, and pregnant women at that. This legislation's ostensible exceptional lack of controversy was, then, an expression of the State's paternalistic posture towards incarcerated women in particular. This paternalism arises out of the law's function of appointing the state the protector of women, entitled to making decisions for them, ostensibly in their best interest.

Representative Khan's aid later more explicitly performed chauvinistic paternalism through the narrative of un-controversy. She wrote,

> [I]t is a largely bi-partisan issue. But it is also one that to a certain degree all legislators can relate to. Certainly female legislators can understand the cruelty of shackling women before, during, and after going into labor. But for the male legislators (which make up the vast majority of the legislature) many have seen their family members give birth or can easily talk to other relatives who have experienced giving birth to better understand the risks and harms of shackling a woman during pregnancy. [email to author, January 5, 2017]

The universality of the experience of being or knowing women who have given birth is a relatively weak argument as to why the Anti-Shackling Law had sparse public opposition, and passed unanimously. Representative Khan's aid here takes up the legislature's valuation of women through their relationships with and service to men, which is so often implicit in the glorification of motherhood. In marking the Anti-Shackling Law as uniquely bipartisan in comparison with other criminal justice reform legislation, she additionally called upon women's and particularly mothers' construction as outside of the category criminal, which has everything to do with criminalized Black masculinity. The criminalization of Black masculinity derives power from state paternalism.

Felons, not families

The criminalization of Black masculinity has been used as a political springboard to materially benefit some at the ideological expense of Others. Representative Khan's paternalism towards criminalized women draws upon the same false dichotomies President Barack Obama traced in a speech on immigration policy. He talked about deporting, "Felons, not families. Criminals, not children. Gang members, not a mom who's working hard to provide for her kids," (White House 2014). In President Obama's and Representative Khan's aid's quotes, they made "felons," "criminals," and "gang members" against hypothetical "families," "children,"

and “a mom.” Both found the social role of the mother, a woman performing reproductive labor, a useful image to draw upon to the end of setting women apart from the ostensibly unproductive and dangerous criminal.

Of course, in reality, “families,” “children,” and “a mom” are targeted in myriad ways by the violence of incarceration and criminalization (Roberts 2012, Murakawa 2012). They suffer from the gutting of their communities, and they themselves are incarcerated. Felons, criminals, and gang members have never been anything but families, children, and a mom.

In my (2016) interview with Rachel Roth, she noted the way women’s construction as outside of the normative criminal operated in negotiating the terrain of criminal justice reform in Massachusetts. She at first observed it without lodging a particular critique, but later suggested its fallacy. She said,

> It does appeal to [the legislature’s] sense that its just the wrong way to treat somebody even if they're not thinking about the safety issues in terms of the health risks of shackling. And you know, in some ways, I think the reason almost half the states have passed laws about this, and they haven’t passed, you know, solitary confinement reform, is that pregnant women are a much more sympathetic group than people who are getting into fights, or have mental illness and can’t control themselves - you know, the sorts of people who are being unfairly punished with solitary confinement. So you know it’s definitely easier to appeal to people’s sense of morality or what’s right with this particular issue.

Rachel was well aware that women, including pregnant women, get in fights, have mental illness, and are often placed in solitary confinement. Moreover, in Massachusetts, solitary confinement is a common punishment for the slightest of disciplinary infractions, and frequently employed for administrative reasons, further undermining the political imagination of this issue

as one of “felons,” “criminals,” and “gang members” as President Obama might put it. These issues were distinguished, however, by their reception by the legislature. Women were the subject of legislation pertaining to shackling during pregnancy. Criminals were the subject of legislation pertaining to solitary confinement. Because pregnant women were the subject of shackling, paternalism became the primary operative in negotiating the terms of their incarceration.

After Rachel noted the difference in how the issue of shackling pregnant women was received, I asked her if she found that this was the case in advocating for incarcerated women generally. She responded with a critique of paternalistic carcerality and questioned whether it was in the best interest of incarcerated women,

> It’s hard to say, because … It’s easy to paint an essentialist picture of women as victims and oppressed. And the profile of women who end up in jail, you know, by and large people have experienced a lot of violence, a lot of trauma, they really are dealing with very difficult situations. I think some men are also dealing with those situations, but they don’t get portrayed in the same way. It might be easier for someone to advocate and make an argument, but that doesn't necessarily translate into getting anything done. So we've had a lot of proposals to build new jails for women in Massachusetts, and the idea is that they'll provide special services, and again if you're looking at the profile of why are women arrested in the first place, it’s like shoplifting or sex work or drug use. It’s like are these reasons we should be incarcerating women? Should we be building a new jail to provide services when we could provide these services outside of jail? So it’s hard to say.

Notably, this response didn’t exactly answer my question, which was whether leveraging paternalism was generally helpful in passing legislation pertaining to incarcerated women - or as

Rachel might have put it, whether it is generally easier to appeal to the legislature's sense of what's right when incarcerated women are the subject. She interpreted my question to be something more along the lines of whether paternalism benefits incarcerated women overall. I find it significant that she answered a different question than the one I asked, as I think it indicates that this was something Rachel was preoccupied by.

Alongside the paternal argument that new jails ought to be built in order to meet the particular needs of incarcerating women, is the expansion of men's incarceration in the name of protecting women from patriarchal violence. This carceral feminism, as some have called it, draws upon and reproduces what Angela Davis (1981) termed the "Myth of the Black Rapist." Davis argues that the portrayal of Black men as sexually threatening to White women in particular has historically been employed by the White male state to entrench White supremacy. The Myth of the Black Rapist continues this legacy by accelerating the construction of prisons and criminals.

Of course, the fallacy and hypocrisy of this narrative is revealed by the widespread practice of criminalizing resistance to patriarchal violence. Sabina Vaught (2017) powerfully critiques the foundation of paternalism in women's incarceration. She writes,

> Because of their nearly uniform trauma … girls had to be protected … Protected that is, by the state. Girls were domesticated within the state - hidden in the inner sanctum, as in an abusive controlling house, disallowed from contact with others, *for their own good.* The state stepped in and became the controlling father, husband, boyfriend. It stood in, protectively duplicating the abuse it described, doubly imprisoning girls through a story about them that did not have to be true to be *made* true.

The state practices of building new women's prisons to accommodate women's needs, incarcerating men to protect women from violence, *and* incarcerating women who have resisted patriarchal violence are all part of the same paternal carceral ideology. The paternalism underlying the state's narrative of the Anti-Shackling Law as uncontroversial indicates the way this law was passed through the legislature to undergird carcerality.

Fuck Shackling

I visited the Massachusetts Statehouse around Valentine's Day 2017, to advocate for a followup bill to begin to address noncompliance with the Anti-Shackling Law. The Statehouse is a strange place, the hallways full of Reps, aids, and constituents, all working within various constraints towards many ends. Newly elected aids were all gathered in one room until they could be assigned committees and placed in offices. Many of these aids were only a year or two older than me, if that. One skinny young aid, Representative Fernandez, would hardly let me get a word or two out before agreeing with me. "Word. Fuck yeah. Fuck Shackling." He said. Another Rep smacked his gum as he towered over me and asked question after question. A young aid told me earnestly that this was exactly the kind of work she came to the statehouse to do. On the wall of someone's office, I can't quite remember whose, hung a poster - "Your heart is a muscle the size of your fist," it said, "Keep loving, keep fighting." I hear these words echo behind Representative Khan's Office's opaque statements.

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Conclusion

Shackling and Reproductive Justice

The practice of shackling incarcerated pregnant women is part of the fundamental function of the U.S. state in systematically targeting women of Color and low-income women's reproduction (Roberts 1991, Roberts 1997, Roberts 2012, Roth 2015). This context set the stakes of the Anti-Shackling Law and noncompliance. Reproductive rights have been substantively reimagined as reproductive justice to foreground the ways in which choice is circumscribed for un-resourced, disempowered, criminalized women. My conclusion will begin to consider ways a reproductive justice framework has been mobilized by and for incarcerated people, and the implications of reproductive justice for prison abolition. It will place these lessons in conversation with scholars who have done the work of understanding the Carceral State as a reproductive justice issue.

Shackling is materially contiguous with slavery, and as such is a particularly striking vantage point from which to consider the ways in which prison carries forth the United States' foundation in slavery. Prison's essential function of disrupting kinship to create an exploitable racial undercaste has its roots in slavery. Roberts' (2012) "Prison, Fostercare, and the Systemic Punishment of Black Mothers" foregrounds the way the spatial and social map of incarceration and foster care overlap and co-constitute to ravage communities, and is specifically interested in the implications of these institutions for Black women. Roberts details the evisceration of family and community ties perpetrated by the prison industrial complex, and the particular damage done by incarcerating mothers. She writes,

> Mass incarceration strains the extended networks of kin and friends that have traditionally sustained poor African American families in difficult times, thereby weakening communities' abilities to withstand economic and social hardship. This injury to social networks counterbalances the claim that removing criminal mothers benefits their children and extended family by relieving them of problems caused by the offenders' antisocial behavior … Locking up black mothers transfers racial disadvantage to the next generation. [1480-1481]

Roberts here refutes the state's illogical denial of the intertwined fates of mother and child. This argument takes up the pregnant woman's body and the parent-child relationship as fundamentally oppositional to the State's colorblind denial of group identity, and the male normative construction of the individual liberal citizen. Incarceration may be above all a reproductive justice issue.

Through the process of its passage and the story told about it, the state co-opted the Anti-Shackling Law to attempt to suggest that incarceration could possibly be pro family, pro child, pro mother. Rachel Roth's (2015) "'If They Hand You a Paper, You Sign It': A Call to End the Sterilization of Women In Prison" provides a model by which advocacy can refute this pitfall. She importantly suggests prison policy reform in the interest of reproductive justice, while foregrounding the need to empty prisons to the end of reproductive justice. She writes, "The best way to protect women and all people from the harms of imprisonment—including the permanent destruction of fertility—is to reduce the number of people in prison. As we work toward that goal, policymakers, health care providers, and advocates must take immediate steps to safeguard women who are incarcerated against the specific threat of sterilization abuse" (12). For the Massachusetts Anti-Shackling Law and Anti-Shackling movements in other states to refute the ideological investment in incarceration represented by the paternalistic state narrative around the

passage of this law, the imperative to abolish prisons and the impossibility of a pro-woman, pro-child system of incarceration must similarly be foregrounded.

In this paper, Roth takes the stance that women in prison should not be sterilized under any circumstances. As Roth acknowledges, this policy position may be considered paternalistic, as it undercuts the options available to incarcerated women. She rigorously takes into consideration the reality of coercion in prison, however, in tandem with the implications of histories of eugenics and notes, "We are deeply skeptical when prison officials claim that women's autonomy and reproductive decision-making is an imperative" (45) given the myriad ways that incarceration undermines reproductive autonomy, to conclude that informed consent is not possible in conditions of incarceration. The incompatibility of incarceration and reproductive autonomy is at the center of Roth's argument. Roth's recommendations are directed not only at policy makers, but also at physicians and medical organizations to take a firm stance against sterilization of women in prison, and in this way they are realistic and strategic in their engagement with the political process.

The Anti-Shackling Law, despite noncompliance, was a consequential victory for the dignity and safety of incarcerated women. Shackling must be contested as a method of articulating and asserting control over the criminalized pregnant woman's body. A reproductive justice framework imagines Anti-Shackling as a material site of contestation over meaning-making, control, power, health, life, and all that reproduction means for poor communities of Color particularly.

To reproduce in an oppressive context can represent an act of collective self-love for the targeted community which rejects and refutes racist, classist, eliminatory, exploitative and

exclusionary logics and projects. Assata Shakur (1987), former Black Panther and political prisoner, describes her decision to give birth while in prison,

> Who would take care of my baby? I thought about what Simba had said about our children being our hope for the future. I had never wanted a child. Since i was a teenager i had always said that the world was too horrible to bring another human being into. And a Black child. We see our children frustrated at best. Noses pressed against windows, looking in. And, at worst, we see them die from drugs or oppression, shot down by police, or wasted away in jail. My head was swimming. What had my mother and grandmother and great-grandmother thought when they brought their babies into this world? What had my ancestors thought when they brought their babies into this world, only to see them flogged and raped, bought and sold. I thought and thought. How many Black children are separated from their parents? How many grow up with their grandmothers and grandfathers? … "I am about life," i said to myself. "I'm gonna live as hard as i can and as full as i can until i die. And i'm not letting these parasites, these oppressors, these greedy racist swine make me kill my children in my mind, before they are even born. I'm going to live and i'm going to love Kamau, and, if a child comes from that union, i'm going to rejoice. Because our children are our futures and i believe in the future and in the strength and Tightness of our struggle. [92-93]

Assata gave birth in defiance of elimination ("I'm not letting these … greedy racist swine make me kill my children in my mind, before they are even born"), exclusion ("Noses pressed against windows, looking in"), and exploitation ("bought and sold" and "these parasites"). Her decision was founded in resistance to racist oppression, and love for and reliance upon the collective body of colonized society.

For incarcerated people, familial ties are often disrupted but not severed, and reproduction continues to generate new possibilities of love, life and resistance. Morgan (2004)

describes the communal process of childrearing for enslaved communities, “Regardless of their provenance … the children’s education and protection became the responsibility of the women and men with whom they lived and, ultimately, worked,” (116). As such, the meanings of reproduction were rendered communal, “However a woman perceived it, reproduction would change the terms of enslavement not only for herself and the father of her children, but for childless black women and men who would watch the arrival of children with a mixture of tenderness and trepidation,” (112). Similarly, women who give birth in prison underscore the continuity of their struggle with that of their community on the Outside.

The reformulation of familial ties in the face of incarceration is traced by the the (2007) documentary *First Picture*. Manal, a Palestinian political prisoner, raised her son in prison for the first two years of his life, in accordance with Israel’s policy on women who give birth in prison. *First Picture* follows the pain of the subsequent severance as well as the communal effort of the Palestinian family to raise Manal’s son, Nour. Manal’s cousin, Sima, who was in prison with Manal when Nour was born, describes meeting Nour, “When I met Nour, when I held him, and hugged him, I felt a tightness in my chest because I’d left my nursing infant” (00:10:08-00:10:18). When Nour was taken from Manal, her mother and siblings came to comfort her and take custody of him. Manal gave them many detailed instructions on caring for him. For Manal and her family, giving birth in prison underscored the importance of collectivity to resistance, and refuted the destruction of familial and community bonds imprisonment attempts to impose.

Assata and Manal’s experiences of pregnancy while incarcerated were marked by state hostility which is resonant in the experiences of women incarcerated in Massachusetts in 2016. Assata had to fight not to be shackled throughout pregnancy and childbirth. She describes

frequent harassment and violation through coerced physical "examinations." Sima describes Manal's experience,

> I guess prison is the most difficult place in the world. The Israelis treat any prisoner, man or woman, very badly whether or not the woman is pregnant. In their eyes, she is a terrorist … When Manal wanted to go to the doctor, or to the hospital, for her pregnancy, or visit her lawyers, or her children, she would be led out with her hands and feet in chains. Even when she gave birth, which is a very human act, she gave birth while chained in bed … she'd carry her baby with chains on her hands and feet. As she described it to me, one of the most difficult moments of her life was giving birth to Nour. [00:08:46-00:09:46]

Sima here emphasizes that the leveraging of pregnancy to harass and violate is consistent with the general way prisons have been documented to violently dominate and control all aspects of physical life (Aretxaga 1995, Nashif 2008, Shakur 1987). Resistance and contestation over the right to make meaning of life and domination are equally consistent (Aretxaga 1995, Jean-Klein 2000, Nashif 2008, Shakur 1987).

Such resistance has organized itself around the mother-child relationship, implicitly asserting the significance of reproductive justice to prison abolition. Ruth Wilson Gilmore's (2005) "Pierce the Future for Hope: Mothers and Prisoners in the Post Keynesian California Landscape," considers the resistant strategies of Mothers Reclaiming Our Children, a Los Angeles based organization of made up primarily of mothers whose children had been taken from them by the carceral regime. This organization was formed in the 1990's around advocacy for the founder and president's son. While they lost that particular battle, they began a network which provided support and resources to families and incarcerated people across Los Angeles. Gilmore writes,

> A small, poor, multiracial group of working-class people, mostly prisoners' mothers, mobilize in the interstices of the politically abandoned, heavily policed, declining welfare state. They come forward, in the first instance, because they will not let their children go. They stay forward, in the spaces created by intensified imprisonment of their loved ones, because they encounter many mothers and others in the same locations eager to join in the reclamation project. [27]

In organizing through community to provide support for their incarcerated loved ones and one another through pooled research, experience, knowledge of the system, etc., Mothers Reclaiming Our Children reimagined and fortified community in the face of incarceration's evisceration thereof.

Similarly, a Philadelphia-based shuttle service called Bridging the Gap LLC was started by the mother and sister of a man incarcerated in upstate Pennsylvania, to begin to address the difficultly and expense many families experience in visiting their loved ones incarcerated hundreds of miles from the city (Selville and Katz 2017). Bridging the Gap had its first annual Community Day in 2015 which hosted more than 450 people to the end of pooling resources, "to help cope with the incarceration of their loved ones" (Bridging the Gap LLC N.d.b.). It also organized a school supply drive which included prisoners writing letters of encouragement to young people attending school in their communities. The organizers said that this project, was "a clear example that inmates can continue to be involved in their children's education. It shows that inmates will not let their incarceration define them, and they will keep inspiring their children to be great" (Bridging the Gap LLC N.d.b) Bridging the Gap LLC, too, takes parenting as a starting point for reorganizing and bulwarking community in the face of its disruption by incarceration.

Through shackling and incarceration, the Commonwealth of Massachusetts targets the reproduction of criminalized communities in consonance with reproduction's resistant meanings. Through the unenforced Anti-Shackling Law, the state obscures the broader reproductive injustice of incarceration. The Anti-Shackling Law and particularly its lack of enforcement throws into stark relief a revealing perspective from which to view the sovereign power of the U.S. and the state of Massachusetts. This law does so, however, by speaking to and from power - inside the State House and from the headlines of the Boston Globe. The many women and families who have first-hand knowledge of incarceration and the targeting of their reproduction through many state functions which are continuous inside and outside prison, including schooling, fostercare, and police surveillance, will not be surprised by this description of a state which is hostile to their own and their community's survival, and which seeks to profit from the exploitation and commodification of their bodies through the prison-industrial complex and the attempted destruction of kinship bonds particularly between mother and child. Resistance must and will continue from all available angles within and without the State and the law, learning from past wins and losses how to dismantle and disable oppressive legal mechanisms.

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