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Witnessing the 'Wrongful Imprisonment' of Kalief Browder: Aesthetic Viewership and the Biopolitics of Black Innocence

Abstract

This paper explores the bio- and necropolitical dimensions of the carceral state by looking at a figure of exception: the 'wrongfully imprisoned'. An immediate survey of the discourse of 'wrongful imprisonment' yields a relatively clear picture of a foundational penal axiom: that some people are *rightfully* imprisoned. But beyond this, the figure of the wrongfully imprisoned does more than articulate the abjection of people who have been criminalized; the aesthetic viewership of this figure also activates the biopolitical functions of carceral judgment by handing them over to its audience, the witnesses of injustice. In effect, this is a project about witnessing and of empathy. I focus primarily on the *telling* of the story of Kalief Browder, a Black teenager from the Bronx who, in 2010, was arrested on the accusation of stealing a backpack. He was subsequently imprisoned on Rikers Island for over three years where a significant portion of his time was spent in solitary confinement. Just two years after his eventual release, Kalief committed suicide by hanging. By focusing on both the practice of telling Kalief's story as well as the experience of witnessing it, this project begins to unearth the biopolitical logic of *exoneration*, or the ways that selectively granting non-white and non-normative subjects the right to live freely negates an ontological truth of Black sovereign aliveness. It is this practice of exoneration, and of the proliferation of the discourse of innocence/guilt, manifested in the figure of the *wrongfully* imprisoned, that obscures the function of the law and of the carceral state as distinctly biopolitical on functionalist and ideological terms. It is in the exoneration of Kalief Browder that he is extracted or redeemed from a saturated aesthetic field of Black death. I argue that this redemption is exceptional, individual, and legible only in the context of this necropolitical field, and is primarily mediated through empathic aesthetic viewership. This paper explores bio- and necropolitical temporalities, as well as affective registers of carceral and racial aesthetics, while interrogating the political implications inherent within empathic witnessing.

Introduction

The sub-heading for an October 2014 *New Yorker* article reads:

> *A boy was accused of taking a backpack. The courts* ***took the next three years of his life****.*

The article recounts the story of Kalief Browder, a Black teenage boy who was arrested and confined on Rikers Island for over 1,000 days without being convicted of a crime (Gonnerman, 2014). The opening paragraphs of the article insist upon Browder's innocence. In 2015, a follow-up article was published after Browder committed suicide (Gonnerman, 2015). This second article concludes with Browder's lawyer lamenting that his case is "worse than Michael Brown's", since there were "conflicting stories" about the circumstances surrounding Brown's death and whether he antagonized

the officer who shot him. The implication, of course, is that Browder was truly and verifiably innocent, and as such definitely didn't deserve to have three years of his life 'taken' from him, as is suggested in the 2014 article's subheading. His eventual suicide is depicted as a mere shadow of the death that he had already experienced in Rikers; a death that (unlike Brown's) is noted to have been agonizingly prolonged and actualized through a systematic and institutionally formalized process of dehumanization, violence, torture and isolation. Taking the sensational story of Kalief Browder as an analytical starting point, this paper takes on the aesthetics of the 'wrongfully imprisoned', arguing that this categorical figure normalizes a field of Black death which is fundamental to the carceral state as a bio- and necropolitical apparatus. That is, the figure of the 'wrongfully imprisoned' operates as a normative archetype upon which the gift of life is righteously granted in stark relief against a carceral network of multiply marginalized, criminalized persons who are *always and already* socially dead.[1] Ultimately, such a reading of the figure of the 'wrongfully imprisoned' aims to illuminate the core racist functions of carceral logic, and elucidate how the criminalization and retroactive exoneration of the 'wrongfully imprisoned' subject is reliant upon a negation of Black sovereignty and 'aliveness'. This negation is achieved primarily through empathic aesthetic viewership.

In the following pages, I argue that naming Kalief Browder as *wrongfully imprisoned* retroactively extracts him as an individual subject *from* his criminalization, denoting a state of exception against which the relationship between Blackness and criminality is reified. Furthermore, the tragic 'loss of life' incurred through his 'wrongful*'* incarceration operates in a similar plane of exception – in *this* instance, this individual was innocent, and so in *this* instance, *a life worth living was lost*. Ultimately, the state of exception through which this figure becomes legible, or indeed

[1] The reference to Orlando Patterson's coinage of the term "social death" is deliberate here; an understanding of the necropolitical dynamics of incarceration is central to this paper's analysis. However, and more importantly, the pivot away from the necropolitical should highlight its nature as constructed. Blackness *as is*, and *as such*, resides in totality, even as the necropolitical field of carcerality coopts racial aesthetics through the figure of the 'wrongfully imprisoned'. Patterson's own resistance to Afropessimism might suggest this is an apt usage of the term.

comes into being, denotes a particularly insidious necropolitical terrain by which the criminalization of race marks the contours of who does and does not deserve to live, but also who *must* live, who *can* die, and how. Notably, the carceral state functions primarily through the mechanism of imprisonment as punishment (rather than execution), in which the punishment is not achieved through biological death as such. Life itself is weaponized against the imprisoned, marking them as not just unworthy of experiencing a life worth living, but *forced* to sustain in conditions that resemble 'death-in-life'.[2]

In Section I, I examine the figure of Kalief Browder, and elucidate how he is held up as a sympathetic figure, as well as a credible witness. This section establishes the type of person Kalief is depicted as in mainstream media, most heavily focusing on a six-part mini docuseries that covers Kalief's experience with the carceral state, his eventual suicide, and the events following his death. This analysis takes Kalief's story as a case study for a growing body of media representations and mainstream coverage of stories of 'wrongfully convicted' and 'wrongfully imprisoned' individuals. In Section II, I offer a conception and a critique of empathy which highlights its aesthetic and phenomenal qualities of self-reflexive morality, in which the empathic viewer grapples with that which is unknowable (the other) and in doing so fortifies their own morally subjective capaciousness. This is most pronounced in encounters with the sublime, of which I belief Kalief's story and the field of carceral aesthetics are both resounding examples. In Section III, I wrestle with the question of what Kalief Browder's story asks of its audience. What kind of critique does it pose of the carceral state? What affective or political response does his story engender within its audience, and to what end(s)? In answering these questions, I explore how the practice of *witnessing* Kalief's story operates as an act of exoneration – a practice which can, at least in this context, best be described as selectively

[2] In the essay "Necropolitics", Achille Mbembe refers to slave life as a form of death-in-life, in which the subject is "kept alive but in a *state of injury*, in a phantom-like world of horrors and intense cruelty and profanity" (23). Mbembe's description of the slave in the context of the plantation as a site of necropolitics is particularly striking. He notes that the slave condition is the result of a "triple loss: loss of a 'home,' loss of rights over his or her body, and a loss of political status" (21). Uncoincidentally, this triple loss is also evident in the primary functions of incarceration in the U.S., marking the carceral as a site that is particularly ripe for an exploration of its necropolitical dimensions.

granting non-white and non-normative subjects the legal and moral status of innocence. Furthermore, I argue that this practice is animated by and mediated through the deployment of liberal empathy, which allows the viewer to denounce and dissociate from the carceral state, while paradoxically carrying out and participating in the biopolitical imperative of the criminal legal system: judgment itself. In this reading, the (white) liberal deployment of empathy dictates the selective application of worthiness/nonworthiness to non-white, non-normative, queer, and multiply marginalized individuals and communities.

In Section IV, I explore the import of Black innocence in the context of a field of social death. This field of social death not only characterizes life within carceral facilities, but constitutes the field of Blackness as subjectivity in an antiblack world. As such, this analysis interrogates how narratives of Black innocence actually negate an ontology of Black sovereign aliveness. This generates an understanding of why Black innocence is so central to the determination of which Black deaths and which instances of Black suffering are made both exceptional and unacceptable. I conclude by offering a brief exploration of alternative paradigms that challenge the ontological presumptions of white liberal empathy by insisting upon the primacy and totality of Black humanity and aliveness.

I: The 'Wrongfully Imprisoned'

The sympathetic depiction of the figure of the 'wrongfully imprisoned' is prolific in its representational capacities. All at once, this figure generates (1) an aesthetic landscape of 'life in prison' that is saturated by suffering, pain and torture, (2) a portrayal of the 'wrongfully imprisoned' subject as truly innocent and thus undeserving of punishment, (3) an implicit conception of all other 'rightfully' imprisoned subjects as deserving of the suffering that is constituted by 'life in prison', and (4) a conceptualization of the criminal legal system as having 'failed' in a *particular instance*. These functions are evident in media coverage of Kalief Browder's experience with the carceral state. His story garnered the attention of major media outlets, generating responses from celebrities like

Jay-Z and Rosie O'Donnell (both of whom felt compelled to reach out personally to Kalief and try to help him). It prompted an announcement by New York City Mayor Bill de Blasio that the city would take steps to shut down Rikers Island,[3] and motivated Barack Obama's decision to ban solitary confinement for all juveniles in 2016.[4]

Kalief Browder's story *is* an exceptional one on multiple levels. Firstly, his experience is particularly harrowing, and thus is invoked as a profound example of the suffering that results from wrongful imprisonment. Secondly, Kalief's story is unique in that it singularly depicts the collective and cumulative failures of the criminal justice system. Third, Kalief is marked out as a uniquely principled and morally fortitudinous individual in his response to the injustices that he witnesses. And yet, his story still manages to capture something that is pervasive and devastatingly commonplace: the association of Blackness with criminality. Kalief's exceptional qualities and the sheer unbelievability of his story are paradoxically coupled with the recognition that there are, in reality, millions of 'Kaliefs' suffering through the same unexceptional processes of racial profiling, discrimination, exploitation and punishment that have come to characterize carceral policies and practices in the U.S. In the telling of Kalief's story, the attributes that mark Kalief as exceptional compel the audience to empathize with him and invest in his innocence. Graphic descriptions of his confinement and torture, his repeated suicide attempts both during and after his incarceration, and the almost unbelievable chain of unfortunate events which seal his tragic fate, all serve to heighten an empathic response in the audience; the sheer degree of injustice that Kalief feels is made uniquely bitter by his underlying innocence and simultaneously marks him out as a figure who survived *the un-survivable*.

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[3] https://www.vox.com/policy-and-politics/2017/3/31/15142188/rikers-island-new-york-city-closing-down
[4] https://www.washingtonpost.com/opinions/barack-obama-why-we-must-rethink-solitary-confinement/2016/01/25/29a361f2-c384-11e5-8965-0607e0e265ce_story.html

Media portrayals of Kalief and accounts of his story share a set of clearly laid out components: they insist on Kalief's genuine innocence, they emphasize Kalief's exceptional moral fortitude, and they detail the degree and nature of Kalief's suffering, emphasizing it as a kind of sublime torment that is both unimaginable and simultaneously relatable, in a visceral way, for the audience. These processes situate Kalief as the exceptional witness to the profound injustice of the carceral state, and mark him as particularly deserving of empathy. I conclude this section by exploring the ways that Kalief's depiction after his incarceration, as well as the death-effects his incarceration has on his family, generate a conception of the carceral state as a necropolitical site of killing via state power.

Proving Kalief's Innocence / The Aesthetics of Innocence

> "*I didn't – **I didn't do the crime**, and then I'm being mistreated while I'm in here, and then **you want me to just plead guilty to something I didn't do**?"*
> *– Kalief Browder*

> *"Chaos inside New York's Rikers Island prison. Gang members assault detainee Kalief Browder, a 17-year-old, **who never should have been there**"*
> *– Brian Todd, CNN Correspondent*

> *"After an **unjust arrest** at the age of 16, Browder endured beatings, starvation and torture **without ever being convicted of a crime**."*
> *– Essence Article, 2017*

Headlines, subheadings, and the introductory statements of many of the tellings of Kalief's story begin with his innocence. After the publication of Gonnerman's 2014 article about Kalief in the *New Yorker* (quoted in my introduction), Kalief's story became national news. In every source, whether it be in print or in a six-part Netflix docuseries called "Time: The Kalief Browder Story", the audience is repeatedly assured that Kalief *is innocent*, and thus was *wrongfully imprisoned*. Why, though, is this so important for us? Would his treatment and experience at Riker's be any more palatable if he was guilty? More to the point, what makes Kalief's innocence significant? To explore this, I begin by laying out the ways that Kalief's innocence is proven, or at times taken as a given.

This analysis will set the foundation for a deeper examination of the political implications of crafting this particular aesthetic and discourse of innocence.

By the time Kalief's story was picked up by the national news circuit, he had already been released and the charges against him dismissed. His legal innocence was thus already established, albeit through a technicality which did not require his case to be scrutinized by a jury. Yet most accounts of his story, in particular Jenner Furst's Netflix docuseries, do a lot of work to assure the audience that his innocence *would* have held up in trial (absent a severe miscarriage of justice). The sheer will through which Kalief endured his imprisonment, as a result of his refusal to take a plea deal and admit guilt, is evidence enough of Kalief's innocence. His emotional turmoil and eventual suicide accent this point. Yet journalists, interviewers, activists, and commentators nonetheless go to great lengths to spell out his innocence for the viewer. In a paradigmatic example, activist and journalist Marc Lamont Hill begins a 2014 interview with Kalief by clarifying that the charges against him were ultimately dropped (Hill, 2021). Hill asks Kalief "what happened [the night you were arrested]?". In his response, Kalief notes that he was accused of stealing a man's backpack, and when he was searched, he didn't have anything on him. At this point, Hill interjects: "You say nothing, you mean no weapon, and none of his property?" Kalief confirms. About 2 minutes into the interview, Hill asks Kalief to further confirm that he had never been arrested prior to this incident, and had no record going into this first arrest. Later, after discussing Kalief's decision not to take a plea deal after having already spent 33 months in Rikers, the following interaction takes place between Hill and Kalief:

> [Marc Lamont Hill]: "You're a better man than me. You made a decision that you were gonna fight this."
> [Kalief Browder]: "That's correct."
> [MLH]: "How'd you come to that conclusion?"
> [KB]: "Because I know deep down inside in my heart, *I didn't do it*, I didn't feel the least comfortable saying that I did it. I wasn't gonna admit to a case that I didn't do."

Hill's interview with Kalief not only explicitly reiterates Kalief's innocence, but also follows a recognizable format, one that is reproduced in the six-part structure of the docuseries. The episodes

are laid out in chronological order, with the first episode providing a general overview of Kalief's story from the jump. Viewers are aware throughout the series that Kalief eventually hangs himself. Crucially, the audience is essentially treated as jurors throughout; the episodes gradually reveal the details of the accusations against Kalief, his account of what happened on the night he was arrested (as well as the night of the alleged robbery), transcripts and video footage of his interrogations with police, and depositions with prosecutors after his release.

The format of the series as a defense of Kalief is accented further with frequent testimonies by friends, family, and public figures; all of them stand as witnesses to Kalief's innocence and his undeservingness of punishment. In Episode IV, Shawn "Jay-Z" Carter, a producer of the docuseries, emphatically and concisely states: "This man did not deserve to be in prison three years and in solitary confinement." ("Time", Part IV, @-39:10). This sentiment is echoed by nearly every speaker in the series, including Kalief's mother Venida, his many siblings, childhood friends, teachers and counselors, Kalief's Attorney Paul Prestia, various celebrities/public figures, psychologists and criminologists who reviewed Kalief's case, journalists and activists, and even correctional authorities and government officials. The blame for Kalief's imprisonment, then, is continuously directed towards 'the system', and the officials whose individual decisions collectively condemned Kalief to years of oppressive torture. When asked about how this could have possibly happened, Jennifer Gonnerman (author of the two *New Yorker* articles) states: "Almost everything that could go wrong in the criminal justice system had happened to him" ("Time", Part V, @-21:39). Gonnerman's statement underlines the point: that the criminal justice system *failed* Kalief—not because of *its* cruelty, but because of *his* innocence.

<u>Kalief as a Noble Subject</u>

*"**I was the type of person**, I stood up for what was right, even when I was in jail"*

– Kalief Browder[5]

*"**I'm strong. A lot of people aren't strong**. They would take the plea deal and take it knowing that they didn't do it."*
– Kalief Browder[6]

*"Kalief had this **spirit** of someone who stood up for themselves in the face of whatever the odds were."*
– Shawn "Jay-Z" Carter[7]

It's important to establish the mechanisms by which Kalief is humanized: most clearly, this is achieved through explicit statements and direct appeals to his humanity. On the surface, this exposes an agenda of these narratives: to prove to a disbelieving audience that Kalief, really and truly was, human. Troublingly, this narrative is often collapsed with the fact that he did not deserve to be incarcerated, or to be tortured in solitary confinement. The appeal to Kalief's humanity is simultaneously an appeal to the idea that he did not deserve to die, which again implies that those who do deserve incarceration are apparently not human, or perhaps less human in some fundamental sense. Crucially, the language used to humanize Kalief is almost always rooted in his morally exceptional nature. His refusal to falsely admit guilt, his penchant for speaking out against wrongs, and even his devout *hope* in the very system which remanded him to a *living* death (made even more pronounced by the fact that he could not kill himself until he was released) – all of this is wrapped up in an ideal of Kalief's moral and individual sovereignty. A sovereignty which is perhaps articulated or most fully realized in his taking of his own life shortly after he was finally released from custody. These features of Kalief, that he was the "*type of person"* to stand up against injustice, highlights something that may already be evident to us: that the carceral state does not simply criminalize individuals and communities, it does not simply induct bodies into a field of social, civic, political, and pathological abjection; on the contrary, it *incorporates* and *normalizes* certain privileged

[5] From "Time", Part II @-17:00.
[6] From interview with Marc Lamont Hill, 2014.
[7] From "Time", Part II @-17:00.

communities as deserving or undeserving of punishment. Beyond this, the telling or witnessing of stories like Kalief's have the power to usher into focus a practice of exoneration – a praxis of sovereignty by which the 'we', those who serve as witnesses, can grant Kalief—and other upstanding young Black men and boys—the humanity that they *never had*. The figure of the wrongfully imprisoned is a quintessential one in uncovering the process of normalization and naturalization of the death that is already imposed upon criminalized bodies, behaviors and communities, before and during their active criminalization, and even through and beyond their exoneration.

Kalief's story generates a kind of moral awe in a similar way that civil disobedients appeal to a sense of human dignity in the face of injustice. Kalief's principled stance by not taking a plea deal is highly regarded. As Van Jones, a political commentator and activist notes, "This kid, who America had shat on, all this time is the last patriot standing, insisting that our court system be fair, and that innocents matter. It doesn't mean that he's a perfect person, but *the stand that he took was perfect*" ("Time", Part III, @-12:41). Further elaborating his point, Jones adds: "There's a resilience that's a form of moral genius" ("Time", Part III, @-19:08). Throughout the series, friends and family of Kalief describe him as "tough", "ready to fight for his rights" and a "good fighter". Kalief was a person who had a "no filter personality", and would "stand up for himself" and "stand up for what's right". Venida Browder, Kalief's mother, likewise sums up his indignant nature: "Kalief will talk, he was a talker. If he felt things weren't right, he would speak up on it." ("Time", Part II, @-16:48). Kalief is a speaker of truth. His exceptionally moral stance coupled with his integrity and deeply held commitments to justice and truth depict Kalief as an ideal witness. His likeable qualities, including both his penchant for speaking up as well as his "kind" and generally "humble" nature, cut a strikingly sympathetic portrait.

Beyond his moral nature, Kalief's aspirations and intellectual promise—introduced to the viewer in Episode V which follows Kalief's life after his release from Rikers—makes his suicide exceptionally heart-wrenching. One counsellor claims: "Kalief had it in him. He wanted to go places.

These were some of the books he had read... Organized Crime and American Power; 48 Laws of Power; House of Bush House of Saud […] He was very curious, very bright." (Frida Marte, "Time", Part V, @-29:43). Kalief is portrayed as not only being sensitive to his own suffering, but cognizant of the systemic roots of his experience. Venida Browder describes him as thinking "conceptually" after his release. This acknowledgment of Kalief's moral and intellectual promise pulls into focus the profound loss that has resulted from Kalief's death.

Imagining the Unimaginable: Kalief's Sublime Suffering

> *"[Solitary confinement is] like **dying with your eyes open**"*
>
> *– Unknown speaker, Time: The Kalief Browder Story*

> *"The fact that a person is innocent makes it much worse, because there is no sense of propriety. There's no sense that what's happening to me is something that I deserve. It's just being in a Kafka-esque world, a world where you're suddenly being taken over by these malevolent forces.* ***That's a terrifying thing to experience.****"*
>
> *– Dr. Stuart Grassian, Clinical Psychologist*[8]

The graphic visualizations throughout the docuseries become particularly important for introducing the viewer to the world inside prisons and jails. A particularly disturbing episode in the series is Episode 2, named 'The Bing' after the slang term for solitary confinement. Former Commissioner of the New York City Department of Corrections, Bernard Kerik, who himself had spent 60 days in solitary when he was incarcerated, notes: "Kalief Browder was put in solitary confinement for an enormous amount of time. I'm gonna tell you as somebody that's witnessed it personally. Solitary confinement is a mind-altering experience. All you want is to get out of that cell" ("Time", Part II, @-38:17). By 'enormous amount of time', Kerik is referring to the 300+ days that Kalief spent in solitary confinement in total, sometimes for months and months on end. Much of the second episode is dedicated to orienting the viewer to the mind-numbing, soul crushing experience

[8] From "Time", Part III @-6:58.

of solitary confinement, as well as the exceptionally torturous conditions that Kalief suffered in particular. Unlike many other teens who are sent to Rikers, Kalief refused to become affiliated with a gang, making him a target of severe beatings and continued abuses by other 'inmates', who are, notably, described by corrections officers as 'animalescents'. Footage of Kalief being jumped by a group of teenagers in the day room are underlaid by a rhythmic drum beat and ominous music. The viewer's heart pounds in anticipation of the beatings. Meanwhile, Kalief's refusal to be disrespected made him enemies amongst the guards as well. Repeated abuse by guards, including unsolicited and unpredictable attacks, verbal abuse, and stories of severe neglect, outline the severity of Kalief's suffering. Many of the news articles note that Kalief was "starved", "beaten", and denied mental health care and access to showers by guards.

Kalief's suffering culminates several times in five different suicide attempts that he made while in solitary confinement. Each time, Kalief is denied access to mental health support, and he is placed back in solitary. In one attempt in March 2012, CCTV footage shows the moment where guards opened his cell door to find him hanging from a makeshift noose. Guards wait and let him hang for a few beats of time, during which time Kalief later reported they hurled verbal abuses at him. They then proceed to enter his cell, where they beat him as they cut him down. Kalief runs into the hallway where the grainy footage captures the guards wrestling him down and beating him continuously before ushering him down the hall in handcuffs. No attempts were made to inform Kalief's mother or any member of his family of the suicide attempt. At the time, Kalief was only 17. These scenes are overwhelming; their graphic nature accentuates a remark made by Van Jones at the beginning of the episode: "What he went through would break a grown man with a military background, who had been trained for this." ("Time", Part II, @-41:56).

On top of this, Kalief's suffering is at all times magnified by the repeated assertions of his innocence. Echoing the sentiment listed above that "[t]he fact that a person is innocent makes it much worse", Peter Moskos (former police officer and sociologist), claims: "I mean, that's the irony of the

system. The worst abuses do happen to the innocent because they don't play by the rules. If you are not willing to show remorse and admit guilt, the system will screw you, and who isn't willing to show remorse? Well, someone who didn't do it in the first place. How can you show remorse for a crime you didn't commit?" ("Time", Part III, @-7:41). Here, we see how Kalief's innocence is folded into and augments the suffering that he experiences.

Kalief as Imperceptible Witness

The depiction of Kalief as innocent, truth-telling, noble, and a survivor of the greatest injustices ultimately renders him as the highest-order witness, one whose witnessing is bound up with his direct experience of oppression. He is consumed so wholly by the injustice that he bore witness to that he is rendered invisible and obscured, a phenomenon that can also be found in Giorgio Agamben's theorization of the Holocaust survivor, who he describes "in the literal sense as invisible" (12). Agamben writes: "The aporia of Auschwitz is, indeed, the very aporia of historical knowledge: a non-coincidence between facts and truth, between verification and comprehension" (12). Survivors of Auschwitz are considered by Agamben to be 'obscure', "understood in the literal sense as invisible, that which cannot be perceived" (12). It seems that it is very much in the nature of the relationship between perception and knowledge that continues to fascinate and draw our attention, that in the act of looking we also are rendered, quite literally, unable to see. In the recognition of the *fact* of Kalief's innocence, it is the 'truth' in Agamben's words, or perhaps what I might call an ontological certainty, that is undone. At end, what is produced is a *figure* of the innocent, of the wrongfully convicted, which is only legible upon the necropolitical backdrop of Black social death.

In her illuminating rumination on the depiction of violence in images of war, Susan Sontag notes: "The quickest, driest way to convey the inner commotion caused by these photographs is by noting that one can't always make out the subject, so thorough is the ruin of flesh and stone they depict" (Sontag, 4). Sontag's point is utilized strategically throughout Furst's docuseries. Flashing

images, shadowy depictions of Rikers, medical units and psych wards, the grainy CCTV footage of the beatings that Kalief endured: all of these presentations evoke a visceral world of death, one that is both hidden and obscured and immediately affectively perceived through a veil of phenomenal imperceptibility. It is necessary but impossible to fully look at Kalief, to even perceive his experience. He is, like the prison itself, shadowed and obscured in the very transmission of visual and descriptive representations.

This cryptic representation of Kalief and his surroundings are compounded by the discourse that characterizes the topic of suicide, which emphasizes the enigmatic and unfathomable nature of the act. As in Kalief's case, those left behind after a suicide often grapple with the idea that the person was somehow unknown to those around them, and that their struggle or torment could not be fully seen or comprehended. The failure to see it all coming, the failure to sense the level and nature of inner anguish and torment that could drive somebody to such an act, all constitutes an invisibility of the subject. To endure the unendurable (as Kalief did) is to never be able to share it to the degree to which it was experienced. This highlights the lacuna between what is comprehended and what is experienced by the one who witnesses, with phenomenological immediacy, the full force of injustice.

Kalief's inability to express his anguish is visited frequently throughout the docuseries. Kalief struggles whenever he is asked about what it feels like to think of his time at Rikers. In one instance, he says: "I feel like…I don't know. I know what I feel like, but it's hard to explain" ("Time", Part V, @-40:23). The tumult of his inner torment is incomprehensible in its purest form, but its existence is apparent to those around him. One interviewee notes of his first impression of Kalief: "He was just a sweet kid, you know, thoughtful […] *There was so much going on inside of him*." (Jesse Spiegel, Part V, @-25:34). The grief of those who knew Kalief is colored by a frustration that nobody could ever share the nature of Kalief's pain. His suffering is noted as being unique, not only in severity but in kind. One of Kalief's counselors, Mark Bodrick, makes this point abundantly clear. Speaking through tears and a quivering lip, Bodrick recalls a time when Kalief showed him the video footage of his

time at Rikers (which was ascertained and released by Gonnerman shortly after his release). Bodrick recounts: "He explained every moment of that tape as if he was replaying that event over in his head. I never saw no one shake as much as he was shaking as he was watching that video. The pain that he experienced is *unique*. There's no one that could identify with someone who experienced *such* an injustice that the world is affected by it" ("Time", Part V, @-8:43). It seems the only way to connect with Kalief is to behold, through aesthetic and empathic witnessing, his profound and sublime suffering.

II. On Empathic Viewership

Given the direct attempts to evoke empathy that characterize the tellings of Kalief's story, as well as the fact that empathy has emerged as one of the most frequently and urgently called upon values circulating in the contemporary American discourse on antiracism, an examination of the phenomenological structure of empathy is warranted. In some circles, empathy is sacrosanct; it is frequently depicted as the necessary—and at times sufficient—epistemological framework to orient antiracist projects, policy, and theory.[9] Often employed as an unassailable 'good', empathy has been utilized as a praxis and a vehicle for white allyship and antiracism, as well as virtually all other forms of activism and social issue movements, including gun control and climate change. As a normative ideal, empathy offers a stunningly apt epistemological framework for progressive politics in a neoliberal political order, given its focus on the individual subject as the vehicle for and target of the deployment of care. In a sense, empathy as an affective relation fulfills the liberal ideology of

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[9] Two titles of recent articles illustrate this point relatively well. (1) a 2019 Washington Post article entitled "Why empathy is the key to dismantling white racism" and (2) an article published in the days following the murder of George Floyd entitled "White Friends, Now Is The Time For Empathy". Citations: Lanzoni, Susan. "Why Empathy Is the Key to Dismantling White Racism." The Washington Post, 22 Feb. 2019, www.washingtonpost.com/outlook/2019/02/22/why-empathy-is-key-dismantling-white-racism/; Ngaruiya, Christine. "White Friends, Now Is The Time For Empathy." Wbur, 3 June 2020, www.wbur.org/cognoscenti/2020/06/03/george-floyd-racism-in-america-christine-ngaruiya.

individualized equality by being employed as the intersubjective recognition of all 'other' persons' humanity through the rational subject's own affective experience.

Meanwhile, the limits of empathy are often attributed to a fundamental inability to really do empathy right. Kenneth B. Clark, an American race scholar and psychologist of the 20th century, who considered empathy to be the towering and singular challenge to racism and the oppressive deployment of power, argued that racial prejudice and inequality was perpetuated by a "lack of compassion, an absence of empathy—a lack of that positive identification which is essential for the broader perspective of man" (Clark, 1974, xi). For Clark, if empathy was not going to finish the job of unraveling and dismantling prejudice, it was because of its absence, because of the inability and/or unwillingness of (white) people in power to properly empathize with their countrymen of color.

Clark is far from alone in his thinking on empathy. Note philosopher George Yancy's provocative *New York Times* article entitled "Dear White America", in which he implores a white audience to come to terms with their own racism, and to reorient their inner dialogue with a non-defensive, nonjudgmental engagement with their own biases and complicity with the multivalent manifestations of racism. As if taking a page from Clark's body of work, Yancy concludes with an exercise for his white audience: "If you have young children, before you fall off to sleep tonight, I want you to hold your child. Touch your child's face. Smell your child's hair. Count the fingers on your child's hand. See the miracle that is your child. And then, with as much vision as you can muster, I want you to imagine that your child is black" (Yancy, 2015). Yancy appeals directly to his white audience's capacity to empathize, depicting this as the primary rubric to attain an improved orientation to their own positionality. Similar accounts abound across disciplines. Susan Lanzoni—historian of psychology, psychiatry and neuroscience, and author of *Empathy: A History* (2018)—argues in a recent *Washington Post* article that "the lack of empathy on the part of white Americans has long impeded the fight for racial equality" (Lanzoni, 2019). The parallels between these

widepsread appeals to white empathy and the myriad media representations and public responses to Kalief's story are palpable.[10]

My primary argument in this section is that empathy is realized in a pronounced and concentrated form in encounters with the aesthetically sublime, of which Black death and suffering is a salient archive. Further, in understanding empathy through sublime aesthetics, empathy is rendered less as a radical form of intersubjective recognition and appreciation, and more of a practice of moral self-aggrandizement. My argument culminates in two important and somewhat compounding claims: the first claim is that empathy is not incompatible with white supremacy (at the least, it by no means challenges it). The implicit assertion here is that making white people more empathetic will not necessarily dismantle racism or the existing racial hierarchy. This claim could also be reasonably interpreted in a weak sense, so as to suggest that empathy is *insufficient* to combat racism and systemic inequality on its own. The second claim, which is in some sense a stronger iteration of the former, is that empathy in its contemporary form is actually a constitutive component of a system of white supremacy as it has emerged and endured in contemporary racial politics in America. It would thus be a mistake to suggest that empathy is something that we've only recently given name to that has simply been lacking, allowing racism to take hold. On the contrary, I suggest that it is precisely through the practice of empathy that the status of humanity has been doled out, conceded, and selectively deployed upon individuals on an interpersonal basis. This point will be central to my argument in the following section.

The Aesthetically Sublime

[10] Empathy may well be a vital ingredient in a radical politics of antiracism, and social justice broadly conceived. However, given the strength and frequency of calls for white empathy at a cultural moment in which the archive of graphic violence against Black and Brown people has garnered significant attention and continues to grow at a rapid pace, it seems that investigating the political utility and substance of white empathy towards Black and Brown subjects is a critical project in itself.

I begin my examination of empathy through an analysis of the concept of the sublime as it emerges in modern Western philosophy. As I intend to make clear in the ensuing pages, I consider the sublime to be an apt framework for considering empathy as it arises through the contemplation of Black suffering and death, which are vivid and central to carceral and racial aesthetics in the U.S. Amongst the prominent philosophical works of the 19th century, the sublime is characterized as having elements of both pain and pleasure, and this peculiar constitution produces a rapid oscillation between attraction and repulsion that defies simplistic explanations of the human will or desire. In discussing the sublime, Edmund Burke constructs a distinction between positive pain and pleasure and the residual effects of their cessation; this pain/pleasure dynamic is complicated by the fact that the cessation of pain produces an intense type of pleasure that Burke calls delight. It is delight that Burke traces through his examination of the observation of pain in others, which will be particularly useful as we explore the relation between the sublime and empathic viewership.

Similarly, in his musings on sublime aesthetic appreciation, Immanuel Kant elaborates more heavily on the less explicitly physiological source of displeasure within the sublime. He argues: "[i]n presenting the sublime in nature the mind feels *agitated*. This agitation (above all at its inception) can be compared with a vibration, i.e., with a rapid alternation of repulsion from, and attraction to, one and the same object" (115, Part I, §27). Kant offers two types of the sublime, through which this agitation can manifest: the dynamically sublime and the mathematically sublime. In both types, the sublime is that which is absolutely great, and is represented by boundlessness. The sublime is 'supersensible', and thus gives rise to the recognition of the mind's capacity to transcend the powers of sensory apprehension or cognitive comprehension. The sublime resides in the limits of these capacities, and in the interplay between the imagination and the capacity to reason. Recall, here, the repeated assertions noted in Section I that Kalief's suffering was "unimaginable", as well as the attending descriptions and imagery provided of an experience of incarceration that feels temporally daunting (1,000 days of incarcation, 300+ days in solitary confinement), impossible to perceive

(manifested in the shadowy yet viscerally graphic visuals of Kalief's imprisonment), and fundamentally inexpressible by Kalief himself.

To continue, Kant and Burke emphasize the value of the sublime as a moral category, with Kant explicitly noting that the sublime, in contrast with the beautiful, evokes a sense of judgment more consistent with moral feeling (125, Part I, §29). This is evident by the structure of the sublime as a subjective, inward facing, relational feature of aesthetic experience. In *Critique of Judgment*, Kant identifies the sublime as "respect for our own vocation", further suggesting that "by a certain subreption (in which respect for the object is substituted for respect for the idea of humanity within our[selves, as] subject[s]) this respect is accorded an object of nature that, as it were, makes intuitable for us the superiority of the rational vocation of our cognitive powers over the greatest power of sensibility" (114, Part I, §27). Here, Kant argues that the obtainment of respect for the object of contemplation is supplanted with respect for one's own vocation, or one's own humanity. The parallels of the sublime and empathy in this way are immediately striking; the empathic subject is one of significant moral value, and empathy itself is depicted and deployed as a collective and individual moral good – hence the desire to call upon empathy as a means of combatting social injustice and suffering. But upon examination under this light, it seems that empathy actively reifies difference and differentiation within a paradigm of asymmetrical power and moral worth, where the empathic subject achieves moral superiority over the object (or subject) of contemplation by accessing the capacious and 'supersensible' self that is realized through the very act of empathizing with the 'other' and the unknowable. Even more disconcerting is the implication that empathy feeds a pleasurable

consumption of suffering, particularly of that which is 'other'. Images of Black death and suffering, then, can be understood as artifacts of white empathy.[11]

From the Sublime to Sympathy

Drawing upon his theorization of the sublime, Burke offers a vital analysis of the importance of sympathy in bringing us into the worlds and concerns of others, and the aesthetics of pain is no small feature of this function. Sympathy, he argues, is a passion which motivates pro-social behavior, such that it is by sympathy that we enter into the concerns of others; that we are moved as they are moved, and are never suffered to be indifferent spectators of almost anything which men can do or suffer" (43, §XIV). Burke incorporates pleasure into his model of sympathy, suggesting that sympathy alone can either "partake of the nature of those which regard self-preservation, and turning upon pain may be a source of the sublime; or it may turn upon ideas of pleasure; and then whatever has been said of the social affections, whether they regard society in general, or only some particular modes of it, may be applicable here" (43, §XIV). As in his theorization of the sublime, Burke explores the distinct *pleasure* that is experienced in the witnessing of others' misfortunes, pain and suffering. He argues that the sympathetic subject revels in a sense of delight in the contemplation of others' pain, and suggests that this is not simply the case in stories of fiction or myth. The morbid fascination and pleasure derived from observing *real* and *present* pain far exceeds that of the pleasure gained from watching a reenactment or a fabrication of pain. He argues:

> …there is no spectacle we so eagerly pursue, as that of some uncommon and grievous calamity; so that whether the misfortune is before our eyes, or whether they are turned back to it in history, it always touches with delight. This is not an unmixed delight, but blended with no small uneasiness. The delight we have in such things hinders us from shunning scenes

[11] This also serves as a powerful framework to think through instances in which the Black lynched body was often dismembered and individual parts distributed as souvenirs; one instance of which is alluded to in James Baldwin's short story "Going to Meet the Man" (1948).

> of misery; and *the pain we feel prompts us to relieve ourselves in relieving those who suffer*… (45, §XIV, italics added)

It is worth examining Burke's point very closely. *The pain we feel prompts us to relieve ourselves in relieving those who suffer*. It is through our own pain that sympathetic identification, driven by sublime attraction, prompts pro-social behavior. Consoling others, then, feeds not only the pleasure/pain matrix that is animated in sublime experience, but the aforementioned moral feeling of reflexive self-contemplation. Burke is adamant that the desire to console is not essentially altruistic in nature, nor is the fascination with pain borne from an inherent evil in the fiber of our consciousness. He argues instead that "[w]e delight in seeing things, which so far from doing, our heartiest wishes would be to see redressed....I believe no man is so strangely wicked as to desire to see destroyed by a conflagration or an earthquake, though he should be removed himself to the greatest distance from the danger. But suppose such a fatal accident to have happened, what numbers from all parts would crowd to behold the ruins" (46, §XV). There is, instead of strictly selfish or altruistic compulsions that are competing, a coherent sublime attachment to the aesthetics of pain, suffering, and calamity, that may actually be derived from the desire to connect through the realization of the self as a conscious moral subject.

Empathy, in some sense, is not a judgment of the other as such, nor is it a judgment of the form of the object of empathy. Like Kant's account of the sublime, empathy incites a kind of sublime generation of the self in contemplative relation to the other, where the operation is not based on the sensible comprehension of the object (the other), but in the recognition of the *supersensible* capacity of the imagination to transcend rational sense and phenomenal apprehension, and thus recognize the limits of the human spirit. In theorizing the sublime as the subjective capacity to empathize, and empathic identification as a subreption of pain in favor of a pleasurable recognition of the supersensible self, the emotional or affective import of the sublime becomes paramount to an understanding of empathic viewership.

This analysis inevitably calls into question the severe limitations of empathy, namely if it can be considered empathetic at all, since the 'other' can only ever be known or felt through the moralized self. The significance of this limitation in terms of racialized subjectivity is presented by Saidiya Hartman as a kind of presupposition in her book *Scenes of Subjection*. In her stirring exploration of Black identity in captivity, including the varied and often subversive forms of identity, resistance and agency of the captive subject, Hartman is speaking beyond, or perhaps in preclusion of white empathy. This appears to be deliberate on Hartman's part, as she opens the first chapter with an examination of the writings of John Rankin, a 19th century minister and slavery abolitionist. Hartman argues that Rankin utilizes empathy as a means of establishing a common humanity between the freed and the enslaved: "By providing *the minutest detail of macabre acts of violence*, embellished by his own fantasy of slavery's bloodstained gate, Rankin hoped to rouse the sensibility of those indifferent to slavery by exhibiting the suffering of the enslaved and facilitating an identification between those free and those enslaved" (18, italics added). Rankin's own work is explicit in this effort. In *Letters on American Slavery* he writes:

> My flighty imagination added much to the tumult of passion by persuading me, for the moment, that I myself was a slave, and with my wife and children placed under the reign of terror. I began in reality to feel for myself, my wife, and my children—the thoughts of being whipped at the pleasure of a morose and capricious master, aroused the strongest feelings of resentment; but when I fancied the cruel lash was approaching my wife and children, and my imagination depicted in lively colors, their tears, their shrieks, and bloody stripes, every indignant principle of my bloody nature was excited to the highest degree. (Rankin, 56)

The features of sublime empathic attachment are evident in this passage; Rankin appeals to the imaginative aspects of empathy, the exaggerated and intensified passions stirred by the imposition made against self-preservation through the experience of pain, the corresponding and sadistic *pleasure* of the oppressor (as well as, perhaps, himself), and the excitement and exhilaration of this imaginative practice.

In Rankin's letters, it is clear that this practice of empathy is vitalizing for him, it is in some sense, empowering. According to Rankin, not only do these imaginings conjure for him a clear sense

of the injustice of slavery, and thus a clearer moral path to follow, but they also affirm his *distance* from slavery and the suffering of captive subjects. He writes:

> But my mind has not returned from its reverie, and I find that these dreadful sufferings are not so near home as I had imagined – the enslaved Africans have to endure them, and not I and my family, and therefore my boisterous feelings are sinking into a calm, and I begin to relent my harshness...We are naturally too callous to the sufferings of others, and consequently prone to look upon them with cold indifference, until, in imagination, we identify ourselves with the sufferers, and make their sufferings our own. And the moment we do this, our whole nature teems with sympathy, our feelings become impetuous, and the wings of passion bear us away to the abodes of suffering humanity, there to administer relief. (Rankin, 56-57)

Hartman is incisive in her critique of Rankin's practice. She suggests that what "comes to the fore is the difficulty and slipperiness of empathy" (18), adding that "in making the slave's suffering his own, Rankin begins to feel for himself rather than for those whom this exercise in imagination presumably is designed to reach. Moreover, by exploiting the vulnerability of the captive body as a vessel for the uses, thoughts, and feelings of others, *the humanity extended to the slave inadvertently confirms the expectations and desires definitive of the relations of chattel slavery*" (19, italics added). Later, Hartman makes this point more explicit: "empathy is double-edged, for in making the other's suffering one's own, this suffering is occluded by the other's obliteration" (19). This process, which Hartman refers to as the "violence of identification" (20), is central to a sublime reading of empathy as a genre of aesthetic viewership and the practice of bearing witness to injustice. Note the similarities, for example, between Rankin's practice of imagining his wife and children bearing the lashing of a cruel master and George Yancy's challenge for white readers in his *NYT* article: "*now imagine that your child is black*".

III: The Biopolitical Function of Witnessing

This project required a close viewing of the docuseries, as well as a broad review of the news stories and interviews that brought Kalief's story into the public eye. Undeniably, his story was moving. I was stirred by the episodes in the docuseries, moved to anger and frustration at the inaction of court officials, prosecutors, and the various political and carceral agencies that catalyzed,

prolonged and exacerbated Kalief's suffering. Needless to say, I *do* feel compelled to empathize with Kalief, his mother, his sisters and brothers, and the nameless (or infinitely named)[12] others who share in his experiences of injustice. I draw from my own relationship to incarceration and the carceral state, an institution which led to my own brother's death. I am deeply invested in Kalief, in his legacy, and in the affective registers that Kalief's story speaks to and through (not just for their value or utility in any sense, but simply for their essence). All of this is to say that I am neither immune to, nor ignorant of, the import of sympathetic portrayals of Kalief and the ways that his story certainly does illuminate many 'failings' of the carceral state, if it is taken on its own terms (as a legitimate apparatus of rehabilitation, impartiality and justice). However, an uncritical acceptance of this belies the political effects of empathic witnessing and reproducing a story of Black innocence in this framework.

In the first section, I turned to the work of Giorgio Agamben to suggest that the renderings of Kalief as deeply worthy or deserving of sympathy compel the audience to empathize with him, but also obscure his subjectivity. But there is more to mine from this practice of witnessing than its production of Kalief as a sympathetic figure; in a Foucauldian sense, witnessing interpolates the viewer as legible subject as well. Central to the motivations behind projects like "Time: The Kalief Browder Story" is a desire to catalyze change and action. The injustice of it all mercilessly weighs upon the audience, and it is presumably the goal of filmmakers and journalists to yield exactly this response. In the first chapter of *Regarding the Pain of Others*, Sontag argues that the "photographs of the victims of war are themselves a species of rhetoric. They reiterate. They simplify. They *agitate*. They create the illusion of consensus." (Sontag, 6, italics added). Tellings of Kalief's story, in particular those accompanied by graphic and/or dramatized visualizations of his experience, perform

[12] The constantly proliferating list of names of Black and Brown victims of police violence constitutes an aesthetic field of necropolitical death in itself. One running list can be found here: https://www.reneeater.com/on-monuments-blog/tag/list+of+unarmed+black+people+killed+by+police, though of course no single list is comprehensive. This is compounded by the fact that no list could possibly account for the indirect deaths caused by the carceral state (like Kalief's, in a way, or even his mother's death), nor the "Sixty million and more" lives lost to the Middle Passage in Toni Morrison's dedication to *Beloved*.

this very function. They engender consensus – Kalief was innocent. The audience, made into juror, is invited to grant Kalief this innocence, and thus bestow upon him an affirmation of his own humanity, an exoneration of the accusations levelled against him, and a condemnation of the failings that killed him *unjustly*. Yet this act of judgment and exoneration reproduces and performs the central functions of the very system 'we' (the witnesses) seek to condemn. This much seems to be a focal point for Sontag's examination of photos of war. Sontag acknowledges that "[f]or a long time some people believed that if the horror could be made vivid enough, most people would finally take in the outrageousness, the insanity of war" (14). Sontag characterizes Virginia Woolf's 1839 work *Three Guineas* as an attempt to use moral shock to motivate a condemnation of war. She writes: "Not to be pained by these pictures, not to recoil from them, not to strive to abolish what causes this havoc, this carnage—these, for Woolf, would be the reactions of a moral monster. And, she is saying, we are not monsters, we members of the educated class. Our failure is one of imagination, of empathy: we have failed to hold this reality in mind" (8). But, as Sontag notes, "To read in the pictures…only what confirms a general abhorrence of war is to…dismiss politics" (9).

Sontag's criticism of Woolf could be directed equally towards Jenner Furst's docuseries, which exposes its political motivations explicitly in the final episode. The final ten minutes of the series revisits many of the interviewees, who emphasize the need to *do something* with the grief and anger and horror experienced in the witnessing of Kalief's story. In an effort to elucidate just how ubiquitous the belief is in the power of empathy amongst the interviewees, I offer below a short list of the most direct calls to action provided in the final minutes of the series:

> — "Kalief's story was not terribly unusual, but I was moved because **it's impossible not to be moved** if you really listen and you really open your heart to stories like this." (Michelle Alexander, @-18:05)
>
> — "If the tragedy of Kalief Browder is not a powerful enough impetus for reform, I don't know what is." (Ritchie Torres, @-33:55)
>
> — "All these things we're seeing on video now, those things have been going on for decades. People are seeing these things and it's graphic and it's horrifying, but **you**

> **have got to make people squirm before they'll actually do something about it**." (Jeff Robinson, @-2:28)
>
> — "The fact that this story has reached so many hopefully will mean that Kalief's life was not in vain, and will make people shake off their deliberate indifference, and care more about those who we've treated as disposable. But if we don't change, their deaths are on us." (Michelle Alexander, @-1:42)
>
> — "There are many people that say that the picture of Emmett Till in 1955 is what sparked the Civil Rights Movement. **Take a good look at Kalief Browder**." (Jeff Robinson, @-2:58)

The optimism of these speakers and the filmmakers themselves are certainly not baseless. As mentioned, a number of high-profile figures were motivated to reach out to Kalief upon reading about his plight Gonnerman's initial article. Among them was Rosie O'Donnell, who describes how she was compelled to get involved: "I read the article in *The New Yorker* and it blew my mind. What's the worst thing you could ever think that could happen to a child? *That* is it. And I looked at the picture of his face, and I was like, 'Well I gotta help this kid.'" ("Time", Part V, @-20:27). O'Donnell subsequently reached out and arranged for Kalief to appear on her show. Speaking of her first time meeting Kalief in-person, O'Donnell says: "I just grabbed him, and I held his face in my hands, and I said, '*You survived the unsurvivable*, and you are here to talk about it, and there are people like me who you don't know who will do everything they can to help you.'" ("Time", Part V, @-19:44). Notable here is O'Donnell's insistence that Kalief survived "the unsurvivable", an invocation of the sublime as well as an acknowledgment that one can only assume would not be similarly granted to someone who was "guilty". In her empathic identification with Kalief, as well as her prediction that others will feel similarly, O'Donnell articulates the affective corollary to the biopolitical function of witnessing.

Hearing Kalief's story and becoming witness to injustice interpolates the viewer as judge and jury. Kalief is marked as innocent through the same process that condemns the criminal justice system as 'broken', and renders 'guilty' offenders deserving of the punishment actualized in penal practice. The point I am intending to make here bears clarification. It is imperative that the very practice of

judgment be understood as a biopolitical and exclusionary act in its very application. It is not the verdict, but the judging, that constitutes the deployment of power in service of imposing ways of living upon subjects of the state; Foucault's framework of biopower is animated through a praxis of judgment rather than simply through a dichotomy of guilt or innocence. In *The Punitive Society*, Foucault insists that the act of judgment is in itself an act of abjection in which those deemed criminal are not created in isolation, but that their calling to existence in abstraction cathects power with a biopolitical valence. Of judgment, he writes:

> In these epistemic effects, [again] we have the possibility of analysis, by society itself, of the production of its enemies: how is it that a society arrives at a degree of crime, of decomposition, such that it produces so many people who are its enemies? We see how the possibility of a sociology of criminality as social pathology finds and fixes its place here. *This kind of connector, which constitutes the criminal as social enemy, is in reality an instrument by which the class in power transfers to society, in the form of the jury, or to social consciousness, through the intermediary of all these epistemic relays, the function of rejecting the criminal*. (*The Punitive Society,* 35-36)

In sum, in the act of witnessing and consuming Kalief's story, 'we' risk taking on the biopolitical logic of the criminal legal system, at once granting Kalief his innocence, reifying the criminalization of the 'guilty', and legitimizing the role of the state and the (white) liberal subject as the true adjudicators of which lives are really worth living.

IV: Black Social Death and Transactional Innocence

The political import of the practice of witnessing 'wrongful imprisonment' must not be understood solely through a lens of the biopolitical functions of the criminal justice system. Mbembe importantly complicates Foucault's framework of biopolitics by proposing that the maximizing functions of death yield an unequal relationship between life and death within matrices of power. Likewise, the biopolitical imperative to judge and distinguish between the 'innocent' and the 'guilty', and thus construct a typology of the value of human lives, can only be fully appreciated in the context of the status of Blackness as always already dead in the neocolonial antiblack American state. In the

simplest sense, the transference of innocence that takes place when Furst's audience exonerates Kalief also constitutes a transference of sovereignty upon him *as a subject who has been exonerated.* Quoting Sebastiano Satta, Agamben writes: "the sentence of acquittal is the confession of a judicial error, that 'everyone is inwardly innocent,' but that *the only truly innocent person 'is not the one who is acquitted, but rather the one who goes through life without judgment'*" (Agamben, 19). The hierarchy of subjectivity and sovereignty is made quite clearly in this point, and effectively reveals the practice of witnessing Kalief's story as one which reifies Kalief's dehumanization.

In essence, exoneration constitutes a way of seeing, not just Kalief but his Blackness, his subjectivity and struggle defined by an age of mass incarceration, by a system corrupted by racism, by the practices of racial profiling and dispossession of Black and Brown people on the largest scale. Kalief's struggle is one of a Black subject caught in a set of systems organized around antiblackness; the telling of his story, in the most graphic and unyielding way, becomes the proposed solution, but does little to interrogate or dismantle the field of Black social death against which Kalief's innocence is visible. To elaborate, I turn to Lisa Marie Cacho's powerful book, *Social Death: Racialized Rightlessness and the Criminalization of the Unprotected* (2012). Her work offers a compelling framework to grapple with the racist foundations of rights-based conceptions of subjectivity and personhood, and illuminates how this discourse perpetuates the subjugation, decimation, and visual erasure of Blackness, especially in the context of the carceral state. Cacho opens her book with an illuminating instance of the criminalization of Blackness. In media coverage of Hurricane Katrina, two stories were printed and subsequently juxtaposed to one another by several bloggers. One photo was of a white couple leaving a grocery store with bread in hand. The headline indicated that the couple "found" bread and soda at a local grocery store. Another story showed an image of a young Black man, also holding bread and wading through chest-deep water outside of a grocery store. The headline suggested he had "looted" the store. Bloggers were quick to criticize the misidentification

of that man as a criminal, citing this as evidence of the racial discrimination of the journalists who wrote the stories. Cacho pushes this critique further; she argues:

> Disavowing criminality was possible in part because bloggers took the looter out of the photograph; the looter was erased and re-presented as a survivor who has been misrecognized as a criminal. His particular black body was delinked from criminality and given back personhood, but criminality was not delinked from black bodies in general. The criminal was and only could be renounced only because the figure of the looter was no longer a part of *this* picture. The juxtaposition of black looting and white finding lends itself to outrage, disavowal, and repudiation, but none of these responses help us to reveal how Hurricane Katrina victims of color are transformed into criminals or how communities are criminal*ized*. (3)

Similarly, in the case of Kalief Browder, the various tellers of Kalief's story are taking the criminal out of Kalief as an individual. As stated, this reifies the criminalization of Blackness that led to his incarceration to begin with. However, what is perhaps more consequential is that the viewer is invited to reproach the system for *wrongfully* identifying him as criminal. The viewer is, in fact, inducted into a circle of moral superiority, confirmed by one's very feeling of outrage for Kalief mediated through empathic attachment to him as a deserving, sympathetic subject. But this does nothing to critique the category of the 'criminal'. Nor does it critique the practice of judgment, which on its own suggests that the Black subject is neither innocent nor human until granted this status through the process of exoneration – or in the context of Cacho's description, a process of extraction.

In this way, the structures of the criminal justice system that are used to legitimate the transference of innocence or guilt ultimately render Black sovereign life illegible. Within this framework, the only way for the Black subject to gain innocence is by way of explicit exoneration or exception (as is the case for those who are deemed to be 'wrongfully convicted'). Ultimately, the transactional model of justice (in which the accused must often bargain for his/her/their freedom) resembles the process of emancipation as detailed by Orlando Patterson in which the enslaved were 'granted' freedom, and whose transformation from property to sovereign subject is unintelligible from legal, social and civil standards. This reading, however, does not preclude a profound recognition of

the radical agency, sovereignty and insurgent selfhood that constitutes the subject, but rather suggests that the carceral state operationalizes racism in a necropolitical formula of who is more or less valuable.

In a similarly pervasive sense, examining Kalief as an exceptionalized figure whose resurrection serves as an emphasis of the reality of Black social death illuminates a process akin to Jasbir Puar's notion of "homonationalism" (2007). In this model, Puar argues that certain marginalized or abject subjects are incorporated and normalized into a field of acceptability. According to Puar, the incorporation of this figure facilitates the continued and sometimes enhanced oppression of others who do not fit into the same parameters of normalization. In the present case, the focus on Kalief's death operates as a negative referent for the ways that the deaths of other subjects who are not as morally permissible and exemplary as Kalief, those on the margins perhaps, are imagined as less meaningful. This extends beyond a question of other "guilty" Black boys and men. That the deaths of trans women of color are frequently brushed aside but Kalief's death is considered the quintessential travesty of justice; that, for many, it constitutes the greatest failure of the state of New York; that it emblematizes the things that are wrong about the carceral state, simply reifies a hierarchy which places Kalief's death as above and more real than the deaths of others. Like his attorney notes, Kalief's story is *worse* than Michael Brown's, in that it is considered to be a lesson in the ways that the state fails the people that we don't want it to fail. In imagining the unimaginable, in positing Kalief's experience as an exceptional one, and in linking this to the experiences of other innocent Black boys and men, the deaths of those *on the margins* of morality, race, gender and sexuality, are said to reveal nothing about the necropolitics of the everyday. Some of this tension is present in the final spoken line of "Time". In this last moment, Kalief says: "If I would've just pled guilty, then my story would've never been heard. Nobody would've took the time to listen to me, I'd have been just another criminal." ("Time", Part VI, @-1:17).

V: Beyond Carceral Fatalism: A Brief Note on Embracing a Feminist Ethic of Black Aliveness

With a project of this type, there lies the risk of emphasizing the destructive and deadly effects of racism and criminalization at the cost of minimizing the vibrant potentiality inherent in and acknowledgment of insurgent and radical Black aliveness, a concept that this project takes to be an ontological certainty. Certainly, the violence enacted by the carceral state is so egregious and insidious precisely because it denies this certainty, or in some cases exploits it to construct the exceptional figure of the wrongfully convicted. As such, here I make a brief attempt to elucidate the urgent need to reconceptualize personhood outside of the normative boundaries of legal, economic, social and civil channels by which the (neo)liberal democratic subject is compelled to legitimize their worth and being. In other words, I urge and attempt to begin a process of turning to insurgent models of Black being and subjectivity which do not rely on the processes of witnessing, judgment, exoneration, or affirmation. I have in mind a model that precedes witnessing and empathy, and thus carries with it modes of representation that are adjacent or alongside conventional ways of viewing. These models are oblong and radiant.

Here, I point to a small selection of texts which explore the aesthetic field of radical Black being and Black aliveness to highlight the potentiality to construct alternative narratives in which being or aliveness is neither earned nor granted, but is itself a given. It is through these narratives that we can find a profound repositioning of the telos of personhood from a liberal method of recognition to one that does not seek to *prove* Black humanity (as if there is anything to prove to begin with). It is my hope that exploring the rich and transcendent work of Black feminist scholars, writers, activists and artists opens a space of insurgence, providing a counterpoint to the seemingly totalizing nature of antiblackness and the ontological fallacies that are propagated by racism. By no means should this read as an idealistic vision of what *could* be, or how we *could* think of Blackness in an anti-racist world. Rather, this section should serve to remind the reader of what undeniably *is the case*. It seeks to motivate a reorientation on behalf of scholars (namely social scientists and carceral studies

scholars) to understand that these aesthetic interventions are deeply pragmatic and constitute an insurgent space of knowledge and personhood. From this, solutions that depend on the utilization of empathy to undo the harms of the criminal justice system, or to espouse a liberal vision of anti-racist commitments, are revealed to be more futile iterations of a white, heteronormative, neoliberal, patriarchal system in which Black humanity must be *found*, *recognized*, *bargained for*, *earned*, or *granted* by white people and white institutions.

At the risk of listing too few contributions in this rich field of literature, a handful of seminal texts that have inspired the direction of these concluding remarks are as follows: Kevin Quashie's *The Sovereignty of Quiet* (2012), *Black Aliveness, or A Poetics of Being* (2021); Saidiya Hartman's *Scenes of Subjection* (1997), *Wayward Lives, Beautiful Experiments* (2019); Hortense Spillers's "Mama's Baby, Papa's Maybe" (1987, *Diacritics*); Sylvia Wynter's *On Being Human as Praxis* (2014); Gloria Anzaldua's *Borderlands/La Frontera* (1987); Gwendolyn Brook's *Maud Martha* (1953); and Toni Morrison's *Beloved* (1987) and *Sula* (1973). These works embody an ethic of abundance, they offer the reader theories, methodologies, and literary manifestations of Black and queer subjectivity *in* abundance and outside of, or perhaps antecedent to, *regard*. In contrast to the tellings of Kalief's story, these texts speak from and about the vicissitudes of Black being, and the epistemological and affective *worlds* that radiate from Black aliveness.

To add another text to this list, I find it helpful to turn to the work of Sharon Holland, whose fascinating rumination on death and Black subjectivity in *Raising the Dead* offers a strikingly relevant point. She writes: "Embracing the subjectivity of death allows marginalized peoples to speak about the unspoken—to name the places *within* and *without* their cultural milieu" (Holland, 4-5). In the sources examined in this paper, Kalief *cannot* speak. The media, the docuseries, and those left behind speak for him. His suicide is redefined as murder, and from this site of slippage comes both a gain and a loss; gained of course is a chilling insight into the necropolitical dimension of biopolitical imperative to 'make live' within the death-world of the prison. Lost, however, is the inner world of

Kalief, rendered unknowable, imperceptible, unrelatable—even to Kalief himself. It is this torment that consumes and kills him; recasting his suicide as a murder quite literally takes Kalief *out* of the equation. I suggest that this loss is precisely what Toni Morrison resists when she asserts that *Beloved* is not a story about slavery, but "about infanticide that refuses to remain in the past and imbues the present with a haunting so profound that memory is jolted from its mooring in forgetfulness" (Holland, 1). In negotiating this loss, and in interrogating the utility of depictions of Black suffering, what comes up is both a desire to do justice to the ways that death is weaponized systemically against the Black subject, but also retain a space for the dead to speak for themselves, and, in Holland's words, to "name the places *within* and *without* their cultural milieu" (5).

Conclusion

On the practice of theodicy, Agamben writes: "Behind the powerlessness of God peeps the powerlessness of men, who continue to cry 'May that never happen again!' when it is clear that 'that' is, by now, everywhere." (20) Here we see a logic of exceptionalism playing out with respect to atrocity, and with respect to judgment through a divine framework. We can think of the telling of the story of Kalief as a theodicy in its own sense, a cataclysm of all of the awful things that could be manifested, and do manifest, from the carceral state. In this story, the carceral is made 'other', and an illusion is generated which suggests that the judgments imparted by the judicial and regulatory bodies that comprise the criminal legal system, are concerned solely with innocence and guilt. Contrary to this myth, I contend that at base they are instead concerned *with regulation*, with the exacting of judgment from which punishment unfolds. In essence, this practice obscures the biopolitical functions that animate the carceral state and thereby the cadence and quality of 'ordinary life' as well. In bearing witness to Kalief's higher order *witnessing*, in contemplating the deepest anguish which drove him, ultimately, to suicide, the empathic observer is compelled to do a number of things. Firstly, to *look,* to *witness* (in some sense) the unwitnessable, and imagine the unimaginable. This, of course, is

generative of an oblique and veiled image of the carceral state, of 'life on the inside'. It belies the fundamental role that carceral logic plays in shaping the administrative functions of life within and outside of carceral facilities (which are, of course, the biopolitical functions integral to the penal system). It also signals that Kalief is somehow, worth looking at.

Notably, Jenner Furst, director of the Netflix mini docuseries, said of Kalief in an interview with Teen Vogue:

"There was humanity there that we can't just look over,"

This leads to the second action the audience is asked to perform: to exonerate Kalief. To grant him his humanity, and to extract him from the criminalization that stripped him of that essential humanity. Vital to this action is the way by which it is drawn forth. Endemic to every source which documents Kalief's story is the loudest and clearest voice claiming Kalief's *factual innocence*, something that ultimately obscures Kalief's personhood and negates the noumenon of Black being and aliveness.

While this project endeavors to explore some small fraction of the bio- and necropolitical features of the carceral state, like many critical projects it also proposes a number of questions and concepts that warrant further analysis. As Haritaworn, Kuntsman and Posocco highlight in the introduction to *Queer Necropolitics*, there is a scarcity and tentativeness of scholarship that applies a lens of bio- or necropolitics to the carceral state. This paper suggests one potential application of such a framework, but in considering the many dimensions and applications of Mbembe's notions of death-worlds, social death, and death-in-life, there is certainly much more to be gained from further empirical, theoretical and imaginative analyses of the carceral state as a site of both bio- and necropolitics in their complementary and contrasting functions. For example, if one takes seriously an analysis of people in prisons as the walking dead, a number of theoretically and politically rich questions emerge, namely: what are the negotiations mediated through the politics of visibility and invisibility of carceral spaces? What are the stakes of the hiddenness of death, of the lurid mythologies that circulate around prison narratives and bodies who have, at some point, been in custody? How

does this transform or dictate the deployment of empathy towards the *guilty* subject? In such a case, the 'prisoner' may represent both the walking dead and the pathetic dependent, whose sovereignty is denied and claimed by incarceration, whose position exemplifies that individual's own failures of character, and who is deemed deserving of *both* punishment and pity. Imagining the prison as a site of indefinite purgatory seems to capture both the suspended nature of life within prison walls, and also the duality of empathy deployed toward the incarcerated subject – that they are culpable, but so much more pitiful because of their inability to properly self-govern, and that they are suffering doubly because of it. Such considerations complicate discrete concepts of sovereignty, rearticulate the relational lines between life and death, and highlight the role of affective and aesthetic experiences in mediating and incorporating bio- and necropolitical assemblages in our daily lives.

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