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# "The Least of These": Towards an Integrated Queer of Color Critique of the Prison Industrial Complex

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**WOOSTER**

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**“The Least of These”:  
Towards an Integrated Queer-of-Color Critique of the Prison Industrial  
Complex**

**By: Jahqwahn Jamier Watson**

**An Independent Study Thesis  
Presented in Partial Fulfillment of the Requirements of The College of Wooster  
and the Department of Africana Studies**

**Supervised by Dr. Michael Kwame Forbes  
Department of Africana Studies  
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## **Abstract**

The prison is a site of social death and death-making. The technology of social death originates in the American institution of chattel slavery and has reemerged in the prison industrial complex. The text *Prison and Social Death* approaches social death in prisons through the lens of reproductive justice, but the author does so in a way that neglects the influence of race in one's prison experience. Using the lens of necropolitics, I seek to understand how the markers of race, gender, and sexuality compound to produce experiences unique to the black woman/queer/and trans folk in the prison. Necropolitics contend that markers of identity, such as race, gender, sexuality, ability, etc., are negotiated by a governmental authority that possesses the power and technology to subject particular populations to various forms of death. The prison is one such technology of the postcolony through which it is able to exile certain subjects to "death worlds": spaces where these folks simultaneously face social death and the threat of premature death.

## Acknowledgements

I would like to thank the One beyond ages for the Grace to be here. I want to thank my mother for the reminders of her unyielding, undying, unconditional love. Thank you to my family for your unending support. & to my (eleven, as of now) younger siblings who motivated me to finish. I want to thank my bruhs, The Men of Harambee, for being my Rock throughout these four years. Especially the seniors. Jonathan, Chad, and Isaac – this has been an amazing year. I love y’all to the moon and back. I want to thank my best friends, Emerald and Chad, for holding a G down in the thick of it. I love y’all. I have to shout out my Cleveland folk—Rachel, Shar’da, Christina, and Imani—we represented our city right these past four years. I gotta shout out Sam for holding me down these two weeks in Purgatory! And Akosua – I gotta link up with you in Ghana sometime nua. Love ya fam! I want to thank those of you I am holding in my heart at this very moment—the rising seniors, juniors, and sophomores who will one day find themselves in these same shoes, who will look back and remember how “engaged” I was in these last two weeks, and I hope you will find peace in knowing that if I could do it – so will you. Also a HUGE thank you to Kristie Lewis, Heather Beasley, and Bryan Wortmann – the folk who saw potential and nurtured me from the blocks of Cleveland to the Ivory chasm of academia. & to my advisor Dr. Michael Kwame Forbes for his unwavering support and belief in my ability to succeed. I appreciate you fam.

& last but not least, blessings to the countless black queer, women, trans and gender nonconforming folk who have died, are dying, and will die at the hands of a corrupt anti-black nation. I vow to learn your names and carry them in my spirit.

Ashe & Godspeed to prison abolition, the undoing of white supremacy, & our collective freedom.

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## Introduction

In October 2015, Black & Pink, the nation's leading prison abolition organization centering LGBTQ prisoners, released "Coming Out of Concrete Closets: A Report on Black & Pink's National LGBTQ Prisoner Survey." Black & Pink's report represents the largest collection of information from LGBTQ prisoners, featuring responses from 1,118 prisoners across the United States.<sup>1</sup> The 133-question survey, itself designed by and in collaboration with prisoners, is divided into eight sections: demographics (including racial identity); pretrial detention, courts, bail, sentencing and parole; sexuality, gender identity, and sexual activity; solitary confinement; discrimination and violence; healthcare; relationships and community; and programs. The report considers the race, gender/sexuality, and mental illness diagnoses of responding prisoners and examines how these identity markers may lend themselves to differences, disparities, and/or inequities in the data produced.<sup>2</sup> Of the nearly 1,200 survey respondents, white people were the largest single represented racial group at 43%, followed by Black people at 26%, Mixed-race people at 13%, Latin@/Hispanic people at 11%,<sup>3</sup> Native American people at 6%, and all other races combined at 2%.<sup>4</sup> As with race, the survey provided multiple options to choose from for gender/sex identification: cis men, bi/queer individuals represented the majority of respondents at 44%; cis men, gay individuals at 21%; trans women at 15%; nonbinary gender individuals at 7%; Two-Spirit individuals at 5%; and cis women, both bi/queer and lesbian tied at 4%.

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<sup>1</sup> Jason Lydon et al., "Coming Out of Concrete Closets: A Report on Black & Pink's National LGBTQ Prisoner Survey," (Boston, MA: Black & Pink, 2015), 3, accessed March 7, 2017, <http://www.blackandpink.org/survey/>.

<sup>2</sup> Lydon et al., "Concrete Closets," 12.

<sup>3</sup> Latin@, pronounced latin/at, is used as a gender-neutral translation of the terms latina/latino

<sup>4</sup> Ibid, 18.



The results of Black & Pink’s report reveal an inclination for LGBTQ prisoners to experience harsher treatment than their cisgender and heterosexual counterparts. Cisgender LGB respondents reported that other prisoners (85%) and prison staff (65%) knew about their sexuality, causing them to lose employment opportunities or be targeted for sexual labor which, if denied, could result in their assault.<sup>5</sup> According to one prisoner’s report, “My only problem as of late they discriminate and deny me job assignments simply cause I’m gay ... I was hired in the kitchen, then suddenly fired when they recognized I was gay. It is an unwritten policy and practice to discriminate and deny gay inmates job assignments” (quote as appears in original quote).<sup>6</sup> In another comment, one respondent revealed how LGBTQ prisoners sometimes exchange sex for protection: “[I] have had cellmates who have forced me to perform oral sex on them in exchange for not beating me or turning me over to their friends or enemies.”<sup>7</sup> Seventy-eight percent of transgender, Two-Spirit, and nonbinary gender respondents experienced emotional pain from hiding their gender identity, and eighty-five percent reported that other prisoners knew about their gender identity.<sup>8</sup> In conjunction with the emotional trauma of hiding their gender identity and sexuality, trans, Two-Spirit, and nonbinary gender respondents suffer as targets of transmysoginistic violence and humiliation—violence which does not affect cisgender LGB respondents. According to one trans respondent, prisoners who knew about her gender identity were “cruel and vicious, humiliating me regarding my hormones, bras, breast development, etc.”<sup>9</sup> Transgender, Two-Spirit, and nonbinary

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<sup>5</sup> Ibid, 29.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid, 43.

<sup>8</sup> Ibid, 30.

<sup>9</sup> Ibid.

gender respondents also face obstacles accessing life- and gender-affirming treatments and services—thirty-one percent reported being denied a diagnosis of Gender Identity Disorder or Gender Dysphoria (GID/GD), a necessary prerequisite to accessing hormonal treatments and services.<sup>10</sup> Additionally, those who have received a diagnosis of GID/GD may be discouraged from receiving treatments. According to a trans respondent receiving Lupron<sup>11</sup> injections at the Massachusetts Correctional Institution at Norfolk, “for a few months in 2006 there was a practice at MCT-Norfolk [*sic*] of pat-searching prisoners leaving the Health Services Unit if they received an injection. After male guards grabbed my breasts, I stopped taking the Lupron injections to avoid this.”<sup>12</sup> The aforementioned anecdote reveals the complex and layered ways that sexuality, gender, and health render LGBTQ prisoners vulnerable within the prison.

According to the data collected by the report, LGBTQ respondents are over 6 times more likely to be sexually assaulted (0.52 assault odds) than the general prison population (0.08 assault odds).<sup>13</sup> Prisoners are more than three times more likely to sexually assault LGBTQ prisoners than prison staff (although one hundred percent of prisoners have experienced institutionalized sexual violence by prison staff in the form of strip searches).<sup>14</sup> Seventy-six percent of respondents reported that prison staff had intentionally placed them in situations where they would be at high risk of being sexually assaulted by another prisoner.<sup>15</sup> Interestingly, thirty-four percent of respondents reported receiving disciplinary action for engaging in consensual sex, and of those, sixty-five

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<sup>10</sup> Ibid, 30.

<sup>11</sup> Lupron is a medicine sometimes used in cross hormone therapy to assist individuals undergoing cross-gender transition.

<sup>12</sup> Ibid, 40.

<sup>13</sup> Ibid, 44.

<sup>14</sup> Ibid, 42.

<sup>15</sup> Ibid.

percent were placed in solitary confinement as their punishment.<sup>16</sup> The contradictory behavior of the prison guards—coordinating the sexual assault of LGBTQ prisoners whilst also demonizing and punishing acts of consensual sex between them—suggests that incarceration is an organized, state-sanctioned disavowal of the LGBTQ prisoner’s right to be a sexual and gendered being.

In September 2003, the Prison Rape Elimination Act was signed into federal law by President Bush to “provide for the analysis of the incidence and effects of prison rape in Federal, State, and local institutions and to provide information, resources, recommendations and funding to protect individuals from prison rape.”<sup>17</sup> According to a final rule released by the Department of Justice in 2012 to “adopt national standards to prevent, detect, and respond to prison rape”:

The standards require that inmates be screened for risk of being sexually abused or sexually abusive and that screening information be used to inform housing, bed, work, education, and program assignments. The goal is to keep inmates at high risk of victimization away from those at high risk of committing abuse. However, *facilities may not simply place victims in segregated housing against their will unless a determination has been made that there is no available alternative means of separation* (emphasis mine).<sup>18</sup>

However, LGBTQ respondents have reported the misuse of solitary confinement as a “routine practice”—fifty percent have reported being moved to solitary confinement against their will in the interest of their safety.<sup>19</sup> According to “Roadmap for Change,” a 2014 report addressing the criminalization of LGBTQ people and people living with

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<sup>16</sup> Ibid, 33.

<sup>17</sup> “Prison Rape Elimination Act,” National PREA Resource Center, accessed March 9, 2017, <https://www.prearesourcecenter.org/about/prison-rape-elimination-act-prea>.

<sup>18</sup> “PREA Final Standards,” National Institute of Corrections, accessed March, 9, 2017, [http://www.ojp.usdoj.gov/programs/pdfs/prea\\_final\\_rule.pdf](http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf).

<sup>19</sup> Lydon, “Concrete Closets,” 35.

AIDS, “For many LGBT and gender non-conforming people, protective custody (a euphemism for solitary confinement) remains the *default placement* for periods of days, months, years, and in some cases, decades” (parenthetical statement and italics mine).<sup>20</sup> The practice of confining LGBTQ prisoners against their will places the onus of the assault on the victim rather than the assailant. Additionally, the disproportionate use of forced solitary confinement under the guise of safety marks the LGBTQ prisoner as a social pollutant and deviant in need of segregation from the general population. However, in some cases, LGBTQ prisoners may request to be housed in solitary confinement as a means to escape the threat of assault. In the case of one respondent, “due to my gayness, I was totally harassed—daily by inmates and staff alike.”<sup>21</sup> Their experience reveals the excessive aggression and violence to which LGBTQ prisoners are forcibly exposed and expected to combat and survive—so much so that thirty-eight percent of respondents have requested to be housed in solitary confinement in the interest of their own safety.<sup>22</sup> However, solitary confinement functions as its own hellish prison experience. Even the United Nations Committee Against Torture has warned against the nonutility and inhumaneness of solitary confinement:

According to the Inter-American Court of Human Rights, “prolonged isolation and coercive solitary confinement are, in themselves, cruel and inhumane treatments, damaging to the person’s psychic and moral integrity and the right to respect of the dignity inherent to the human person.” Because of its potentially deleterious effect on prisoners’ mental and physical health, the Committee Against Torture, the official body established pursuant to the Convention Against Torture (a treaty ratified

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<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

by the United States and part of United States law), has recommended that the practice be abolished altogether.<sup>23</sup>

Sadly, based on the information provided in the survey, all respondents calculated together have spent a total of 5,110 years in solitary confinement which—when averaged amongst the question's 874 respondents—amounts to a total of 5.85 years in solitary confinement per respondent.<sup>24</sup>

Furthermore, the results of Black & Pink's report reveal that black LGBTQ prisoners experience harsher treatment than their white counterparts. At the time of the survey, 33% of respondents currently in solitary confinement identified as Black although Black respondents only made up 26% of the survey response pool; conversely, white respondents represented 29% of the population in solitary confinement and 43% of the overall response pool.<sup>25</sup> Additionally, white respondents were disproportionately likely to have been in solitary confinement for "safety," both by their own request and against their will, while nearly half of the Black respondents in solitary confinement were sent "never for safety."<sup>26</sup> Further, trans women, Two-Spirit people, and cisgender gay men were put into solitary confinement against their will at the highest rates.<sup>27</sup> The data suggests that the protection of whiteness (and cisgender identity) is a practice which extends (even) to the prison—but also, it suggests that blackness, particularly in regard to black LGBTQ prisoners, exists as a marker of confinement and unruliness.

Unsurprisingly, the usage of solitary confinement by prison authorities increases with the

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<sup>23</sup> Jules Lobel, "Prolonged Solitary Confinement and the Constitution," *University of Pennsylvania Journal of Constitutional Law* 11, no. 1 (2008): 115, accessed March 10, 2017, <http://scholarship.law.upenn.edu/jcl/vol11/iss1/6>.

<sup>24</sup> *Ibid.*, 34.

<sup>25</sup> *Ibid.*, 36.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*, 37.

security level of the facility, escalating from 5% usage in minimum security prisons to 10% in medium, 34% in maximum, and 71% in supermax prisons.<sup>28</sup> The data also reveals that 8% of LGBTQ respondents occupied supermax prisons, of which 10% of them identified as Black.<sup>29</sup> In regard to maximum security prisons, 47% of respondents populated these facilities, of which 57% were black.<sup>30</sup> However, Black respondents possessed the lowest rate of occupation in medium and minimum security facilities (23% and 8% respectively) and represented only 2% in pre-release facilities.<sup>31</sup>

My intention for my Independent Study project is to explore the experience of Black LGBTQ prisoners through the lens of social death and the necropolitical production of “death worlds.” The relationality of black folk to the prison is distinguishable from that of white people because of the modern-day prison's genealogical connection to the slave plantation and systems of convict leasing (which I will explore further in the following chapter). The black body on colonized American soil (and globally) has continuously existed as the raw human material by which white people have exploited and extracted free labor to build and maintain empires. Thus the conversation of Black LGBTQ prisoners must first begin with the understanding of blackness (and the black body) as a point of deviance and confinement. I frame my understanding of the black LGBTQ prisoner experience as a deliberate function of the postcolony's predestination of certain communities—in this case black/LGBTQ/poor folk—for incarceration. In reference to the Prison Industrial Complex (PIC), as defined by Black & Pink:

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<sup>28</sup> Ibid, 26.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

The prison industrial complex is a system of control. It is the prisons, jails, and detention centers—the concrete and steel buildings that warehouse people. The prison industrial complex is also how the government and companies work together to control, punish, and torture poor communities and communities of color. This includes the police, immigration enforcement, and courts. This also includes the ways the news and movies portray "criminals." It includes cameras used to surveil communities, and the companies making money on prison phone calls. The prison industrial complex includes the way schools are set up to fail. Also in this vein, we use the term "criminal legal system," and the conscious choice to avoid the term "criminal justice system" is an acknowledgement of the fact that this system does not produce justice for most people in the United States, and that it has perpetuated and continues to perpetuate violence and inequality on already marginalized people, especially people of color, poor people, immigrants, and queers.<sup>32</sup>

Black & Pink's definition of the PIC highlights its existence as a system organized by collective parts of a seemingly innocuous societal infrastructure—however, when placed in the context of anti-blackness and post-colonial literature, the true functioning of these bits of the PIC become evident.

### **Theories and Concepts**

The theoretical and conceptual frameworks which ground my research include Critical Race Theory, Black Feminist Thought, and Black Queer Theory. Within Critical Race Theory, I particularly utilize intersectionality to investigate the lived experiences of people marked by systems of race, class, gender, and sexuality. The term intersectionality was coined by legal scholar Kimberle Crenshaw in order to address how the systems of gender and race converge to produce violence against women of color. As Crenshaw notes, "Feminist efforts to politicize experiences of women and antiracist efforts to politicize experiences of people of color have frequently proceeded as though the issues and experiences they each detail occur on mutually exclusive terrains. Although racism

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<sup>32</sup> Ibid, 13.

and sexism readily intersect in the lives of real people, they seldom do in feminist and antiracist practices,"<sup>33</sup> leaving women of color marginalized within discourses that adopt unidimensional politics. My study uses intersectionality to contend that folk who are doubly-, triply-, and quadruply-marked by overlapping systems of oppression exist as composites of their identities' entangled histories. Therefore, when I consider the experience of black lesbian youth in the prison industrial complex, I take great care not to silo their identities into additives of black (and) lesbian (and) youth, i.e. "a person who happens to be black and lesbian and young," but to merge the identities into a single entity: black lesbian youth. As Crenshaw states, there is power and agency in the politics of naming, particularly in one's ability to take "the socially imposed identity and empower it as an anchor of subjectivity," e.g. "I am a black lesbian youth."<sup>34</sup>

The contributions of Black Feminist Thought help to locate images and depictions of the black woman as located within the histories of slavery. As intersectionality proceeds from a history of black feminist theoretical traditions, Black Feminist Thought affirms the necessity of occupying intersectional subjectivities as spaces of critique and resistance. Particularly, Black Feminist Thought identifies the black feminist standpoint as a distinctive consciousness of material reality which arises out of black women's economic and political positionalities.<sup>35</sup> Similarly, Black Queer Theory explores the

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<sup>33</sup> Kimberle Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color," *Columbia Center for the Study of Social Difference*, accessed March 24, 2017, [http://socialdifference.columbia.edu/files/socialdiff/projects/Article\\_\\_Mapping\\_the\\_Margins\\_by\\_Kimblere\\_Crenshaw.pdf](http://socialdifference.columbia.edu/files/socialdiff/projects/Article__Mapping_the_Margins_by_Kimblere_Crenshaw.pdf), 1242.

<sup>34</sup> Crenshaw, "Mapping the Margins," 1297.

<sup>35</sup> Patricia Hill Collins, *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment* (New York, NY: Routledge, 2001).



production of knowledge as it relates to a sexual subjectivity dimensionalized by the social positionalities of race, gender, and class.<sup>36</sup>

Furthermore, my project engages with the conceptual frameworks of afro-pessimism, social death, and necropolitics. Afro-pessimism functions as a critical departure from the mainstream Africana dictum of afro-optimism, or the glorification of Blackness as a cultural identity and the belief in the potential for radical social change through activism and multicultural social action coalitions. Contrarily, afro-pessimism contends that "Blackness" is a by-product of the transatlantic slave trade in which Africans were transmuted into "black bodies"—i.e., points of capitalist accumulation, labor extortion, and sexual degradation. Thus, afro-pessimism necessitates the break from civil society which, in America, is entangled with the history of capitalism which, in turn, is the history of black subjugation. Anti-blackness, then, serves as the bedrock of social and civil organization in America, and thus demands a politic which identifies blackness as the zero-point of contemporary manifestations of violence. The racialized chattel slavery of America had lasting, quantum-like implications for the black folk who inherited the consequences of enslavement—an inheritance which extends beyond the abolishment of slavery in 1865 and strokes the material and subjective realities of the present. Thus, afro-pessimism emerges as

an informal tendency that could be designated as a constellation of theorists, ideas and artistic works ruminating upon the structural condition of black existence as indelibly marked by the residual echoes of the *slave relation*. For the Afro-pessimists, the advent of emancipation did not signal any substantial break with the content of slavery. Instead the

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<sup>36</sup> E. Patrick Johnson and Mae G. Henderson, *Black Queer Theory: a Critical Anthology* (Durham, NC: Duke University Press, 2005).

passage from slavery to freedom marked the transition from one mode of racialised [*sic*] domination to another.<sup>37</sup>

I employ Orlando Patterson's concept of social death as a means to measure the "residual echoes of the slave relation" as it pertains to the prison industrial complex.

My interest in Orlando Patterson's concept of social death lies in its potential to illuminate the interior analytical landscape of the carceral system as a legacy of slavery in its relationship to domination. The powerlessness of the slaves, their natal alienation, and their general dishonoring relate to the conditions of the prisoner. The powerlessness of the slaves and the nigh sovereign power of the master reveal an obfuscation of the slaves' subjectivity, or in other words, their humanity and claim to selfhood in the legal and social fabric of antebellum America. The prisoner is often represented as powerless and at the mercy of the state, which will exercise all power to ensure the social control of its subject. When speaking of the prisoner, I do so from the position of blackness, which makes it important to consider the roles (and histories) of race, religion, gender, nationality, sexuality, class, and (dis)ability in the construction of the raw material from which prisons and the prisoner are formed. Similar to the words of Judge Ruffin's case ruling, "With slavery . . . the end is the profit of the master, his security and the public safety," the concerns of security and public safety are directly related to the historical and contemporary concerns of a "free" black population.<sup>38</sup>

Furthermore, the privatization of prisons has produced the figure of a 'master' who indubitably profits from the labor of an incarcerated black population. The natal

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<sup>37</sup> R.L., "Wanderings of the Slave: Black Life and Social Death," accessed March 24, 2017, <http://www.metamute.org/editorial/articles/wanderings-slave-black-life-and-social-death>.

<sup>38</sup> Patterson, *Slavery and Social Death*, 3.

alienation and social death of the prisoner is a derivative of the plantation as well. In the words of Isaiah Butler, a South Carolina ex-slave, "Dey didn't have a jail in dem times. Dey'd whip em, and dey'd sell 'em. Every slave know what 'I'll put you in my pocket, Sir' mean."<sup>39</sup> Butler's account provides an implicit recognition that in the absence of a developed carceral system, the threat of corporal punishment and separation reified the natal alienation and social death of the slave. However, now the carceral state has risen as a mechanism to expand the desocialization, or social death-making, of black persons, and thus it efficiently creates what Malcolm X would consider "20th-century slaves."<sup>40</sup> While the status of incarceration isn't explicitly inheritable by parental relationships, meaning children will not be asked to fulfill the remaining sentence of an incarcerated parent in the case of the death of said parent, it is important to acknowledge a sort of racial kinship to the prison system and the insidious funneling of black people into the carceral state. Just as for the slave, the conjunction of powerlessness and natal alienation and social death of the prisoner produces the dishonoring of their person and their barring from acquiring social worth. The result is the: "direct and insidious violence, the namelessness and invisibility, the endless personal violation, and the chronic inalienable dishonor."<sup>41</sup>

The capacity to understand the experience of the prisoner is contingent upon understanding the consequences of their dishonor. The prisoner faces daily the "direct and insidious violence" of an institution which attempts to exert sovereignty over their body whilst also rendering them "nameless and invisible" through their isolation from familial, conjugal and other forms of kinship which are not defined by the prison. The

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<sup>39</sup> Ibid, 6.

<sup>40</sup> "Malcolm X: The Price of Freedom is Death," YouTube video, 0:32, posted by "Hapi Sankofa," May 23, 2016, <https://www.youtube.com/watch?v=IPQePHSWYME>.

<sup>41</sup> Ibid, 12.

"endless personal violation" and "chronic inalienable dishonor" refers to the social and moral conditions which dishonor the prisoner, thus making them an object by which masters, or those who exercise a greater authority of power, "can raise without envy and destroy without danger."<sup>42</sup> This is particularly true of black women and black queer/gender non-conforming folk within prisons who are subjected to extreme rates of sexual and physical violence at the hands of other prisoners and guards themselves. The "nameless and invisible," I would argue, also refers to the unspeakable/unnamable acts of violence which are made possible through the dishonoring of the prisoner and the "invisibility" of the prison. Necropolitics emerges as a critical advancement of social death in the wake of systems which mark certain populations for death.

*Queer Necropolitics* infuses the necropolitical and 'queered' into a conjoined critique of the ways "queer subjects [are] invited into life and queerly abjected populations [are] marked for death."<sup>43</sup> The necropolitical is an examination of the role of power in the postcolony to "make the murder of the enemy its primary and absolute objective."<sup>44</sup> Mbembe defines the postcolony as

a specific system of signs, a particular way of fabricating simulacra or re-forming stereotypes. It is not, however, just an economy of signs in which power is mirrored and *imagined* self-reflectively. The postcolony is characterised [*sic*] by a distinctive style of political improvisation, by a tendency to excess and a lack of proportion as well as by distinctive ways in which identities are multiplied, transferred and put into circulation. But the postcolony is also made up of a series of corporate institutions and a political machinery which, once they are in place, constitute a distinctive regime of violence. (emphasis in original)<sup>45</sup>

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<sup>42</sup> Ibid, 8.

<sup>43</sup> Jin Haritaworn, Adi Kuntsman, and Silvia Posocco, introduction to *Queer Necropolitics*, edited by Jin Haritaworn, Adi Kuntsman, and Silvia Posocco (Abingdon, Oxon: Routledge, 2014), 2.

<sup>44</sup> Achille Mbembé and Libby Meintjes, "Necropolitics," *Public Culture* 15, no. 1 (March 25, 2003): 12.

<sup>45</sup> Achille Mbembe, "Provisional Notes on the Postcolony," *Africa: Journal of the International African Institute* 62, no. 1 (1992): 3, doi:10.2307/1160062.

Within the postcolony, the queered constitutes several things, but for the purpose of my use of necropolitics, it marks "a point of tension to normativity."<sup>46</sup> The intersection of the necropolitical and the queered delineates a point in which the nonnormative subject is marked as a threat and enemy to the gendered and sexualized regimes of the postcolony and thusly marked for death. The death(s) relegated to the subjects differ in the mechanisms and processes used to enforce their elimination. For the purpose of my research, I will investigate the ways *Queer Necropolitics* conceptualizes the prison as a site of death-making.

In Part 1, "Death Worlds," the authors of *Queer Necropolitics* explore the contemporary production of 'death worlds,' which are defined as "new and unique forms of social existence in which vast populations are subjected to conditions of life conferring upon them the status of *living dead*" (emphasis in original).<sup>47</sup> Building upon Orlando Patterson's notion of "social death," Gilmore argues that carceral regimes facilitate social death through "fundamentally racialized and racializing structures of captivity where 'inhuman humans' [i.e. super predators] deemed to be beyond rehabilitation are not only physically removed from the social realm but, more fundamentally, are exposed to premature death."<sup>48</sup>

My interpretation of *Queer Necropolitics*' exploration of 'death worlds' and 'social death' is the construction of a non-human [i.e., non-living] black entity, non-human vis-a-vis its denied access to an 'appropriate' life and forced proximity to premature death. I inquire how are prisons constituted as "death worlds" and what are the consequences for

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<sup>46</sup> Haritaworn, *Queer Necropolitics*, 3.

<sup>47</sup> Mbembe, "Necropolitics," 40.

<sup>48</sup> Haritaworn, *Queer Necropolitics*, 6.

racialized queer and gender non-conforming bodies within the prison? According to Eric

Stanley:

death-making, figured in relation to the brutal murders of trans/queer people in the United States and the exceptional violence inflicted on murdered subjects after death, holds important ontological consequences ... the legal category of 'overkill' may account for the vicious assaults that these working-class and largely people of colour [*sic*] gender non-conforming subjects are subjected to in death, and for how their remains become the object of further affront.<sup>49</sup>

Even further, "the kinship with death that all queer and trans people seem to nostalgically inherit is very literal for sexually and gender non-conforming people whose race and class locations are marked as targets and topoi of cruelty."<sup>50</sup> The extreme vulnerability of black and people-of-color queer/gender non-conforming subjects, both within and outside of the prison's walls, reveal how multiple markers of identity oppression produce greater degrees of marginalization.

### **Literature Review and Methodology**

The texts I used for my study comprised conceptual frameworks, historiographies of the prison, analyses of gender and sexuality on the plantation, contemporary critiques of masculinity and sexuality within the prison, and recent studies conducted on the experiences of LGBTQ+ youth and prisoners. However, what I found was that in many of the studies, their research methods were devoid of race-specific and gender-specific frameworks. Additionally, many of the studies failed to contextualize their findings in political positionalities of the identities they investigated. Thus, a number of studies researching the experiences of LGBTQ+ individuals spoke of their conclusions en masse,

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<sup>49</sup> Ibid, 8.

<sup>50</sup> Ibid, 18.

disregarding the implications of racialized and gendered subjectivities. The reports I used for my project were mostly produced by LGBTQ+-advocacy and prison abolitionist organizations, including: Break OUT!, Gay-Straight Alliance Network, Black & Pink, Impact Justice, Women of Color Network, and The Anti-violence Project. I also sometimes engaged with legislative documents regarding the functioning of the prison, such as the National Institute of Corrections statement on the Prison Rape Elimination Act.

I primarily engaged in textual and data analysis, and critical engagement with pop culture media to bring this project to fruition. A limitation of my study is the absence of interviews and data collection conducted by myself. However, because of the absence of critical engagement with afro-pessimism, social death, and necropolitics in analyses of black queer and gender nonconforming populations, particularly in the prison, I believe my research effectively contributes a unique insight into previously existing discourses regarding mass incarceration and the prison industrial complex.

## **Chapter Overview**

Chapter 1 of my Independent Study, "A Brief Historiography of the Modern-Day Prison," provides an overview of the birth of the penitentiary in colonial America.

Originally, the penitentiary emerged as a corrective agent for white men who had strayed from "proper" societal norms. The emergence of penitentiaries also coincided with the eventual abolishment of public forms of punishment such as floggings, hangings, and the pillory. However, those same practices existed in full swing on the plantation. Thus the birth of the penitentiary also exposed a racialized logic of black bodies versus white

bodies and the distinction in the forms of violence meted the two. While the white body represented the potential for progress and rehabilitation, the black body was perceived to be the embodiment of incorrigibility.

Chapter 2, "Black Lesbian Women and the Prison Industrial Complex," explores the representation of the killer black butch lesbian in F. Gary Gray's blockbuster hit *Set It Off* (1996). The chapter also investigates the positionalities of black poor lesbian youth in the prison industrial complex and the factors which drove them there.

Chapter 3, "Black Men and the Queering of Youth in the Prison," considers the performance of prison masculinity and its influence on perceptions of sexuality in the prison. Particularly, I analyze the HBO Series *The Night Of* as a visual representation of the prison's intrinsic production of social death. This chapter also discusses the possibility of "sexual necropolitics," and the possibilities of HIV-transmission via sexual assault which constitute the necropolitical functions of the prison.

My concluding chapter is a brief reflection on the "the least of these," or those of us who bear identities which make our lives a quotidian practice in navigating the necropolitical. I am speaking of trans women of color, and particularly trans women, whose experiences are too often disregarded by the media and those of us engaging in limited political praxis regarding prison abolition.



## CHAPTER 1: Linking the Prison to the Plantation

The consistent theme throughout the plantation to convict leasing to the modern prison is the confinement of the black body and the extraction of its labor for the purposes of economic development and pleasure. On October 28, 1996, the *San Francisco Chronicle* published an article alleging that guards at one of the highest-security prisons in California, Corcoran State Prison, were surreptitiously organizing fights between rival gang members in order to bet on the outcome. The gang members would be released into the yard at the same time and, once a winner became apparent, guards would order the prisoners to desist and would open fire if they did not do so. Since the prison's opening in 1988, more than fifty prisoners had been shot in this manner, and seven had died from the wounds sustained. In May 2000, eight guards were brought before a federal court in Fresno, California, for setting up fights and murdering prisoners—yet, all were acquitted.<sup>1</sup> The guards' expropriation of the prisoners' bodies for their amusement is reminiscent of slave owners' organized battles amongst male slaves. The fact that prison guards were able to maintain the organized fights for nearly a decade, despite the numerous casualties and deaths, reveals the pernicious circumstances of the prisoners. In light of the anecdotes and narratives which seldom escape the confines of the contemporary "peculiar institution," the prison emerges as a system of death—both in the social death it produces in its subjects, but also in the deathscape that defines the institutions' internal workings. What I mean by that is the prison forces its inhabitants to

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<sup>1</sup> Don Sabo, Terry A. Kupers, and Willie London, "Gender and the Politics of Punishment," in *Prison Masculinities*, eds. Don Sabo, Terry A. Kupers, and Willie London (Philadelphia: Temple University Press, 2001), 12.

face the threat of premature death on a daily basis, and for some prisoners, particularly black/people-of-color LGBTQ prisoners, the peril of the prison is more pointed.

Ultimately, the prison, and the prison industrial complex, is a system interlocked within the fabric of racism, homophobia, patriarchy, classism, and transmisogyny that neglects the humanity of those who are doubly-, triply-, and quadruply-marked for marginalization and exclusion.

### **The Beginnings of the Penitentiary**

As noted by Mark E. Kann in "Penitence for the Privileged: Manhood, Race, and Penitentiaries in Early America," state coercion in colonial America was employed to deter crime and punish criminals through the use of capital punishment, corporal punishment, and public humiliation. Capital offenders were executed in public as symbols of the civic and religious authority vested in magistrates and ministers.<sup>2</sup> Contrarily, corporal punishments such as public whippings, brandings, and the pillory were used to punish and humiliate younger offenders and to dissuade onlookers from future crimes.<sup>3</sup> Unlike the contemporary United States, prisons played a minor role in colonial criminal justice systems and existed in few cities or towns. Instead, the participation of the public, though coerced, was key to the colonial state's deployment of humiliation as a tool of corrective reform. Where prisons did exist, men may have been held there while awaiting trial but, once found guilty, were more likely to be sentenced to some form of corporal or capital punishment rather than be "remanded to the lengthy

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<sup>2</sup> Mark E. Kann, "Penitence for the Privileged: Manhood, Race, and Penitentiaries in Early America," in *Prison Masculinities*, eds. Don Sabo, Terry A. Kupers, and Willie London (Philadelphia: Temple University Press, 2001), 25.

<sup>3</sup> Kann, "Penitence for the Privileged," 25.

custodial care of the state."<sup>4</sup> According to Kermit L. Hall, "Incarceration was a temporary rather than a punitive measure" or, in other words, "jails were for short-term detention, not long-term punishment."<sup>5</sup> However, in the late 1780s, rebuttals against the usefulness of public humiliation and capital punishment began to surface in Pennsylvania, eventually leading to a shift in punishment trends. The reformers' primary argument was that capital punishment prompted "degenerate males" to engage in crime as a means to redeem their lost manhood. As noted by Mann in his observations on the execution of British Major John André, who was executed for his involvement as a spy during the American Revolution, his hanging only served to "redeem his manhood."<sup>6</sup> Benjamin Rush, a civic leader in Philadelphia, wrote more than ten years after André's execution, he writes:

The spy was lost in the hero; and indignation everywhere gave way to admiration and praise . . . [the] admiration which fortitude under suffering excites has in some instances excited envy [and] induced deluded people to feign or confess crimes which they had never committed on purpose to secure to themselves a conspicuous death.<sup>7</sup>

In addition, the issue of public sympathy for criminals being whipped or pilloried also posed a challenge to public punishments. Critics also grew concerned with the presence of criminals in public places as they completed labor sentences, commenting that such sentences "afforded criminals the opportunity to engage 'crowds of idle boys' in 'indecent and improper conversation.'"<sup>8</sup> As Kann observes, "Critics wanted criminals condemned and officials honored."<sup>9</sup>

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<sup>4</sup> Ibid.

<sup>5</sup> Kermit L. Hall, *The Magic Mirror: Law in American History* (New York: Oxford University Press, 1989), 34.

<sup>6</sup> Kann, "Penitence for the Privileged," 26.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

Kann's observation of the role of honor, which Orlando Patterson defines as the measure of one's social value and capacity for respect,<sup>10</sup> identifies a critical shift in the governing ideologies which shaped the goals of the penitentiary. Thus, the penitentiary emerged as an increasingly popular alternative to public punishments with the hope that "under proper conditions, prisoners could experience feelings of penitence, welcome rehabilitation efforts, redeem their manhood, and be restored to their friends and families."<sup>11</sup> The penitentiary employed isolation as its primary tool to discipline men into respectable citizens. Seeking to inflict a punishment severe enough to permanently deter men from criminal activity, reformers' thought it fitting to reduce them to a subject likened to that of the slave. In a note decrying the use of capital punishment, Bush argues "The death of a malefactor is not so efficacious a method of deterring from wickedness as the example of continually remaining . . . a man who is deprived of his liberty."<sup>12</sup> In the disavowal of bodily death, Bush advocates for the social death of criminals—their sentencing to extensive lengths of seclusion from loved ones and the stripping of their honor while under the subjection of an all-powerful institution. In the same note, Rush writes:

Let a large house . . . be erected in a remote part of the state. Let the avenue to this house be rendered difficult and gloomy by mountains or morasses. Let its doors be of iron; and let the grating, occasioned by opening and shutting them, be increased by an echo from a neighboring mountain, that shall extend and continue a sound that shall deeply pierce the soul. . . [isolation from family and friends] is one of the severest punishments that can be inflicted upon a man [because] attachment to kindred society is one of the strongest feelings in the human heart.<sup>13</sup>

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<sup>10</sup> Orlando Patterson, *Slavery and Social Death: a Comparative Study* (Cambridge, Massachusetts: Harvard University Press, 1982).

<sup>11</sup> *Ibid.*, 27.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

Thomas Jefferson wrote that to be in seclusion from one's loved ones "is worse than death inasmuch as [death] ends our sufferings whereas [isolation] begins them."<sup>14</sup> Their efforts had the result of producing a state of "death" amongst the incarcerated men—which, in effect, rendered them less-than-human. In a letter to President Jefferson petitioning his release from a debtors' jail, Samuel Quarrier confided "This ignominious imprisonment unmans the heart."<sup>15</sup> The "unman-ing" of Quarrier was indicative of the early penitentiary's capacity to uproot human subjectivity, thereby producing in the incarcerated a sense of haunting inhumanity. As noted by John Dickinson, "to be in solitary is to be wretched."<sup>16</sup>

While severe, the use of isolation as a tool of discipline was not new or unfamiliar to America—it was very much a practice used in and perfected on the slave plantation. Orlando Patterson coined the concept of social death to define the unique position of the slave as a state of powerlessness, natal alienation, and dishonor. The natal alienation of the slave describes their status as a "socially dead person," fully "alienated from all 'rights' or claims of birth, [they] ceased to belong in [their] own right to any legitimate social order," including familial relations due to the threat of loved ones being sold.<sup>17</sup> However, where the enslaved black person differs from the incarcerated white criminal is that the social of death of the slave was a permanent status inherited from the mother, while the penitentiary existed as a temporary suspension of the man's liberty until he was reformed and capable of returning to society as a productive citizen. Rush describes his rhapsodized vision of the rehabilitated convict rejoining his family as such: "I already

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<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Patterson, *Slavery and Social Death*, 5.

hear the inhabitants of our villages and townships . . . running to meet him on the day of his deliverance. His friends and family bathe his cheeks with tears of joy; and the universal shout of the neighborhood is, 'This our brother was lost and is found—was dead, and is alive.'<sup>18</sup> By 1805, Pennsylvania's experimentation with penitentiaries had sparked inspiration beyond state boundaries, spreading to New York, New Jersey, Connecticut, Massachusetts, and Virginia as the innovative and progressive method for states to exercise social control and male reformation. Curiously, among the capital offenses legislated to rehabilitation in the penitentiary were rape and sodomy, both viewed as manifestations of frenzied desire and temporary insanity.

### **Blackness and the Limits of Penitence**

Unlike criminal white men, black men and women were excluded from the logic of rehabilitation and penitence. Prior to emancipation, the majority of black people living in the United States were legislated to the status of chattel. The basis for their subjugation was provided by racist ideologies documented and circulated by key leaders of the nation. In Thomas Jefferson's *Notes on the State of Virginia* (1776), Jefferson writes on the moral and physical characteristics of black folk which made them ineligible for full humanhood (as predicated upon whiteness). What made Jefferson's arguments particularly dangerous was the comportment with which he examined the differences of the "Negro," as if they were solidified in biological fact. According to Jefferson's notes, the Negro's black skin "proceeds from the colour [*sic*] of the blood, the colour [*sic*] of the bile, or from that of

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<sup>18</sup> Kann, "Penitence of the Privileged," 27-28.

some other secretion," and is of a difference "fixed in nature."<sup>19</sup> The rhetoric Jefferson employs to describe the black body refers to the animal body as a means to render its primitive nature intelligible to his readers:

They secrete less by the kidneys [*sic*], and more by the glands of the skin, which gives them a very strong and disagreeable odour [*sic*]. This greater degree of transpiration renders them more tolerant of heat, and less so of cold, than the whites. Perhaps too a difference in the pulmonary apparatus, which a late ingenious experimentalist has discovered to be the *principal regulator of animal heat*, may have disabled them from extricating, in the act of inspiration, so much of that fluid from the outer air, or obliged them in expiration, to part with more of it. (emphasis mine)<sup>20</sup>

Furthermore, Jefferson insinuates that the biological deformities of blacks are matched by their inferior faculties of logic and reason, with black folks being solely capable of responding to only the simplest stimuli of sentiment and sensation:

A black, after hard labour [*sic*] through the day, will be induced by the slightest amusements to sit up till midnight, or later, though knowing he must be out with the first dawn of the morning. They are at least as brave, and more adventuresome. But this may perhaps proceed from a want of forethought, which prevents their seeing a danger till it be present . . . *They are more ardent after their female: but love seems with them to be more an eager desire, than a tender delicate mixture of sentiment and sensation* . . . In general, their existence appears to participate more of sensation than reflection . . . Comparing them by their faculties of memory, reason, and imagination, it appears to me, that in memory they are equal to the whites; in reason much inferior, as I think one could scarcely be found capable of tracing and comprehending the investigations of Euclid; and that in imagination they are dull, tasteless, and anomalous. (emphasis mine)<sup>21</sup>

The arguments raised by Jefferson necessitate that the enslavement of blacks on the plantation was essential to maintaining the order of the nation. The black body's physiology and mental ineptitude purportedly predetermined slaves to be better suited to

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<sup>19</sup> Thomas Jefferson and William Peden, *Notes on the State of Virginia* (Chapel Hill, North Carolina: The University of North Carolina Press, 1982), <http://site.ebrary.com/lib/alltitles/docDetail.action?docID=11149792>, 138.

<sup>20</sup> Jefferson, *Notes*, 139.

<sup>21</sup> *Ibid.*

the labor of the plantation. The specter of the slave existed in popular thought as a licentious, sex-crazed creature. To enfold the enslaved black populace into the national body politic would be "as monstrous and unnatural as a mongrel half white man and half negro."<sup>22</sup> The fear of miscegenation, or race mixing, was central to proslavery arguments and the confinement of slaves to the plantation. As Jefferson notes,

Many of their advocates, while they wish to vindicate the liberty of human nature, are anxious also to preserve its dignity and beauty. Some of these, embarrassed by the question "What further is to be done with them?" Join themselves in opposition with those who are actuated by sordid avarice only. Among the Romans emancipation required but one effort. The [Roman] slave, when made free, might mix with, without staining the blood of his master. But with us a second is necessary, unknown to history. When freed, he is to be removed beyond the reach of mixture.<sup>23</sup>

The deployment of notions of black sexuality as irredeemable and corrupted spawned stereotypes such as the black buck and the promiscuous jezebel. Focal to these stereotypes was the threat these figures posed to white familial structures. New England rape narratives were one medium through which threatening portrayals of black male lust were circulated. *The Life and Dying Speech of Arthur* (1768) is an example of a typical narrative in which Arthur, a black slave, forwent the virtues of piety and industry in pursuit of vice—drinking, theft, promiscuity, and the ultimate transgression of raping a white woman.<sup>24</sup> Arthur's narrative serves three functions for its primarily white audience: to establish the innate depravity of blackness, romanticize the institution of slavery, and reaffirm the need for strict confinement of black people. The narrative's opening frames Arthur's criminality as separate and distinct from the conditions of his upbringing as a slave. According to the narrative, "[I] was learned to read and write, and was treated very

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<sup>22</sup> Kann, "Penitence for the Privileged," 29.

<sup>23</sup> Jefferson, *Notes*, 143.

<sup>24</sup> Kann, "Penitence for the Privileged," 29.



kindly by my master."<sup>25</sup> Yet, despite his gracious upbringing, Arthur committed himself to a life of "many notorious Crimes . . . crimes I have been since famous."<sup>26</sup> The primary body of the text reads as an itinerary of Arthur's many crimes and sinful pursuits, including numerous escapes from law enforcement authorities and countless acts of theft and larceny. The narrative's account of Arthur's rape of the widow Deborah Metcalfe reads as a minute point included among an excess of immoral acts. On the night of her rape, Arthur had been drinking heavily and, according to the narrative, "the Devil put it into my Head to pay a Visit to the Widow Deborah Metcalfe, whom I, in a most inhumane manner, ravished: The Particulars of which are so notorious, that it is needless for me to relate them."<sup>27</sup> The narrative ends with Arthur confessing to the incorrigibility of his soul and requesting forgiveness from the parties he wronged in his short-lived life. The ending is of particular importance because it corroborates the proslavery rhetoric of black slaves being beyond the pale of redemption—even that of divine measure.

The rhetoric of black slaves as unsalvageable licentious characters aided in the development of a two-tier criminal justice system. While the penitentiary emerged as a space of confinement for white men who needed rehabilitation, the plantation functioned as a site of confinement and discipline for enslaved black people whose baseness was intrinsic to their biological makeup. While the penitentiary enforced isolation as a means of reformatory punishment, the use of isolation and corporal punishment on the plantation existed as a means of control and subjugation.

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<sup>25</sup> "Arthur, 1747-1768. The Life, and Dying Speech of Arthur, a Negro Man; Who Was Executed at Worcester, October 20, 1768. For a Rape Committed on the Body of One Deborah Metcalfe," accessed March 17, 2017, <http://docsouth.unc.edu/neh/arthur/arthur.html>.

<sup>26</sup> "Arthur, 1747-1768," <http://docsouth.unc.edu/neh/arthur/arthur.html>.

<sup>27</sup> "Arthur, 1747-1768," <http://docsouth.unc.edu/neh/arthur/arthur.html>.

## The Conundrum of the North's Free Blacks

It is important to note that the north and south instated the abolishment of slavery at different points in time; by 1804 northern states had all passed ordinances for the abolishment of slavery within their borders,<sup>28</sup> yet the south would not relinquish its hold on its enslaved population until the ratification of the Thirteenth Amendment in 1865. However, the north's abolishment of slavery did not lead to the totalized freedom of the black population. As mentioned in the previous section, the controlling images of black depravity and criminality precipitated the uncertainty of governing leaders and advocates concerning what to do with a freed black population. Part of their response to the issue lies in the very legislation for abolishing slavery—instead of altogether releasing the enslaved population from bondage, many states introduced gradual emancipation laws which provided deadlines for when all slaves would be freed based on age or labor contracts. One of the first states to legislate the gradual emancipation of enslaved black people was Pennsylvania. In 1780, Pennsylvania passed its Act for the Gradual Abolition of Slavery.<sup>29</sup> The act reads as follows:

[W]e rejoice that it is in our power, to extend a portion of that freedom to others, which hath been extended to us ... We esteem it a peculiar blessing granted to us, that we are enabled this day to add one more step to universal civilization, by removing, as much as possible, the sorrows of those, who have lived in undeserved bondage . . .

III. Be it enacted, and it is hereby enacted, That all persons as well Negroes and Mulattoes as others, who shall be born within this state from and after the passing of this act, shall not be deemed and considered as servants for life, or slaves; and that all servitude for life, or slavery of children, in consequence of the slavery of their mothers, in the case of all

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<sup>28</sup> Nicholas Boston and Jennifer Hallam, "The Slave Experience: Historical Overview," *Public Broadcasting Service*, accessed March 24, 2017, <http://www.pbs.org/wnet/slavery/experience/freedom/history.html>.

<sup>29</sup> Boston and Hallam, "The Slave Experience," <http://www.pbs.org/wnet/slavery/experience/freedom/history.html>.

children born [sic] within this state from and after the passing of this act as aforesaid, shall be, and hereby is, utterly taken away, extinguished, and forever [sic] abolished.

IV. Provided always, and be it further enacted, That every Negro and Mulatto child, born within this state after the passing of this act as aforesaid (who would, in case this act had not been made, have been born a servant for years, or life, or a slave [sic]) shall be deemed to be, and shall be, by virtue of this act, the servant of such person, or his or her assigns, who would in such case have been entitled to the service of such child, until such child shall attain unto the age of twenty-eight years, in the manner, and on the conditions, whereon servants bound by indenture for four years are or may be retained and holden [sic] . . .<sup>30</sup>

According to Pennsylvania's act, although black people born in the state of Pennsylvania would not be born as slaves, they would be compelled to labor for the person who would have owned them until the age of twenty-eight. Passed under the pretense of extending liberty to black citizens, the legislation had the effect of reproducing systems of enslaved black labor. According to a federal census conducted in 1850, there remained hundreds of young blacks in Pennsylvania in bondage until their twenty-eighth birthday.<sup>31</sup>

Additionally, in 1790, only ten years after Pennsylvania's introduction of gradual emancipation, the state had converted its Walnut Street jail into a penitentiary.<sup>32</sup> While the legislation may have been read as a step towards "universal civilization," a deeper inspection of its language and the actions of the state following its ratification reveals the state's investment in maintaining control over black labor. However, Pennsylvania's narrative is not dissimilar from that of other northern states. In 1799, New York's legislature passed "An Act for the Gradual Abolition of Slavery" that fully abolished

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<sup>30</sup> "Pennsylvania Act for the Gradual Abolition of Slavery 1780," cited in Dorothy Schneider and Carl J. Schneider, eds. *Slavery in America: From Colonial Times to the Civil War* (New York: Facts on File, 2000), accessed on March 21, 2017, <http://www.pbs.org/wnet/slavery/experience/freedom/docs2.html>.

<sup>31</sup> Boston and Hallam, "The Slave Experience," <http://www.pbs.org/wnet/slavery/experience/freedom/history.html>.

<sup>32</sup> Price, *Prison and Social Death*, 82.

slavery by 1825.<sup>33</sup> In 1816, the state established its second penitentiary shortly after in Auburn, New York, and later provided the funds to build the Sing Sing Correctional Facility, which operates today as a maximum security prison in Ossining, New York.<sup>34</sup> Connecticut began the process of gradually abolishing slavery in 1773 and built its first prison in December of that same year.<sup>35</sup> Thus the boom in the construction of penitentiaries and prisons, although initially intended as social institutions for the rehabilitation of white men, coincided with the north's need to confine and control a potentially volatile black population.

According to an 1833 study of the United States penitentiary conducted by Gustave de Beaumont and Alexis de Tocqueville, African Americans represented twenty-five percent of the New York state prison population, even though they were under ten percent of the population.<sup>36</sup> To further disenfranchise the free black population, the New York Constitutional Convention of 1821 lifted the voter legislation's property requirement for white men, originally established in the first constitutional convention of 1777, but retained it for black men unless "[they] shall have been for three years . . . [citizens] of this state, and for one year next preceding any election, shall be seized and possessed of a freehold estate of the value of two hundred and fifty dollars, over and above all debts and incumbrances [*sic*] charged thereon."<sup>37</sup> The north, in its deceptive performance of democracy, utilized the legislature and penal system to incapacitate and

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<sup>33</sup> Ibid, 82.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Gustave de Beaumont and Alexis de Tocqueville, *On the Penitentiary System in the United States and its Application in France* (Carbondale: Southern Illinois University Press, 1964).

<sup>37</sup> "The Second Constitution of New York, 1821," *New York State Unified Court System*, accessed March 20, 2017, [https://www.nycourts.gov/history/legal-history-new-york/documents/Publications\\_1821-NY-Constitution.pdf](https://www.nycourts.gov/history/legal-history-new-york/documents/Publications_1821-NY-Constitution.pdf).

immobilize a freed black population and, in some respects, served as a precursor to the south's Jim Crow politics.

### **From the Convict Lease System to the Supermax Prison**

During slavery, the discipline of the slave was legislated to the purview of the slave master. In 1829, North Carolina judge Thomas Ruffin ruled that the intentional wounding of a hired slave did not constitute a crime. The reasoning Judge Ruffin supplied was that the slave lacked the faculties to properly govern himself and lived "without the capacity to make anything his own." Thus, "With slavery . . . the end is the profit of the master, his security and the public safety . . . the power of the master must be absolute, to render the submission of the slave perfect."<sup>38</sup> Judge Ruffin's indictment reveals not only the perceived threat black people posed in the popular imagination, but also the support for institutions capable of containing and mitigating that threat. However, the emancipation of enslaved black people and their subsequent enfoldment into the body politic of the nation posed a significant danger to the entrenched racial regimes of the south. Thus, in response southern states adopted Black Code—race-specific laws that severely limited the political, social, and economic mobility and functionality of the newly freed black population. Many of the southern states adopted Black Codes during the Reconstruction era—the twelve-year period following the American Civil War when the United States government rebuilt the south and established laws to protect its new black citizenry (approximated to be four million based on the

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<sup>38</sup> Orlando Patterson, *Slavery and Social Death: a Comparative Study* (Cambridge, Massachusetts: Harvard University Press, 1982), 3-4.

1860 U.S. census).<sup>39</sup> The state of Mississippi was the first to instate Black Codes that served as the model for the other southern states. The Mississippi Black Codes were adopted in 1866 and, like all of the southern states' Black Codes, made provisions to regulate black life. Among its edicts was the criminalization of interracial black and white relationships; while the marriage of black men and women were now recognized by the law, intermarrying became a felony punishable by life in prison.<sup>40</sup> However, the Black Codes' most deleterious contribution was to the burgeoning carceral system of the south with its vagrancy laws. The black codes of the south imposed heavy fines on violators and, if they were unable to pay the fine, they would be leased to employers who would pay off the violators' debts. Thus the (black) violators became entrapped in a system of debt in which the punishment was often incarceration and leasing to a white employer.

### *The Mississippi Black Codes*

The Mississippi Black Codes constituted several powers and edicts which helped birth the infrastructure of the convict leasing system. In Section 7 of Article 1 of the Mississippi Black Codes, the law not only granted white persons the power to "arrest and carry back to his or her legal employer any freedman, free negro, or mulatto who shall have quit the service of his or her employer before the expiration of his or her term of service without good cause."<sup>41</sup> It also offered payment for their participation in the incarceration of freed black persons. The apprentice, vagrancy, and penal laws of the

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<sup>39</sup> U.S. Census Bureau, *Population of the United States in 1860*, by Joseph C. G. Kennedy, <http://www2.census.gov/prod2/decennial/documents/1860a.zip>, (accessed on March 20, 2017), vii.

<sup>40</sup> "(1866) Mississippi Black Codes | The Black Past: Remembered and Reclaimed," accessed March 21, 2017, <http://www.blackpast.org/primary/1866-mississippi-black-codes>.

<sup>41</sup> "Mississippi Black Codes," <http://www.blackpast.org/primary/1866-mississippi-black-codes>.

Black Codes capitalized on the population's social, economic, and political vulnerabilities and used the legislation to restore a semblance of the racialized labor regime organized under slavery. The apprentice laws maintained that

all freedmen, free negroes, and mulattoes, under the age of eighteen, in their respective counties, beats or districts, who are orphans, or whose parent or parents have not the means or who refuse to provide for and support said minors; and thereupon it shall be the duty of said probate court to order the clerk of said court to apprentice said minors to some competent and suitable person, on such terms as the court may direct, having a particular care to the interest of said minor: Provided, that the former owner of said minors shall have the preference when, in the opinion of the court, he or she shall be a suitable person for that purpose.<sup>42</sup>

Essentially, the apprentice laws maintained that black minors, in the absence of parental supervision and support, were lawfully mandated to be relinquished to the care of a "suitable person," who, in some cases, could be the minor's previous owner. The newly instated "master or mistress" of the apprentice was required to provide security and housing, along with food and clothing, medical care, and education; in return, the apprentice was contracted by law to not "leave the employment of his or her master or mistress, without his or her consent, [lest] said master or mistress may pursue and recapture said apprentice."<sup>43</sup> However, if the apprentices were to leave their employment "without good cause," they would be subject to investigation by the court and, if found guilty, would be punished until they agreed to return to the service of their employer. While the law attempts to symbolize the state as a benign, protective parent, the language of "master/mistress," "employment," and the practice of "recapturing" runaway black youth indicates an attempt to maintain the system's selfsame definitions and practices of power and confinement as operated under slavery. Apprentice laws penalized black youth

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<sup>42</sup> Ibid.

<sup>43</sup> Ibid.

for circumstances which were not only outside of their control, but also were the ramifications of generational enslavement and denial of access to state institutions, liberties and resources.

Similarly, the Black Codes' vagrancy laws criminalized a population unable to procure stability in the wake of a disastrous war which ravaged the south. The laws' definition of "vagrant" was far-encompassing, stating that

. . . all rogues and vagabonds, idle and dissipated persons, beggars, jugglers, or persons practicing unlawful games or plays, runaways, common drunkards, common night-walkers, pilferers, lewd, wanton, or lascivious persons, in speech or behavior, common railers and brawlers, persons who neglect their calling or employment, misspend what they earn, or do not provide for the support of themselves or their families, or dependents, and all other idle and disorderly persons, including all who neglect all lawful business, habitually misspend their time by frequenting houses of ill-fame, gaming-houses, or tippling shops, shall be deemed and considered vagrants, under the provisions of this act, and upon conviction thereof shall be fined not exceeding one hundred dollars, with all accruing costs, and be imprisoned at the discretion of the court, not exceeding ten days.<sup>44</sup>

The law extends the status of vagrant beyond the lack of secure housing and employment to encompass behaviors which transgressed the boundaries of respectability as expected of proper citizens. In particular, the behaviors listed in the law existed as popular deployments of anti-black prejudice often used to describe the black citizenry. The Black Codes' characterization of vagrants and their proposed response to the issue intersected with Jefferson's ideology that contested black people were only inclined to work if forced to do so. According to the penal laws of Mississippi, violators of the state's vagrancy laws were subject to excessive fines and, if they were unable to pay, were subject to be leased to any white person willing to pay said fines and costs.<sup>45</sup> Thus, the convict lease system

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<sup>44</sup> Ibid.

<sup>45</sup> Ibid.



steadily took root in the post-antebellum south as a means to extract labor and capital from a black population "biologically suited" and penally condemned to the performance of hard labor. As noted by Joshua M. Price in *Prison and Social Death*,

Keeping people of color captive also had a clear economic rationale. If the end of slavery made it impossible to hold human beings any longer as private property, the birth of the penitentiary made it possible to hold human beings as public property, that is, as property of the state. The state could then lease those people-as-property to private interests who could exploit them as workers and as captive consumers.<sup>46</sup>

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<sup>46</sup> Price, *Prison and Social Death*, 81.

## CHAPTER 2: Black Lesbian Women and the Prison Industrial Complex

In her essay "Modern Day Slavery: Inside the Prison-Industrial Complex," Kemba Smith describes her experience as a black woman at the Federal Correctional Institution of Danbury, Connecticut. Smith begins her essay in the present tense with a gerund absent of a direct subject, a rhetorical tool used to insert the reader into the moment she is depicting: "Sitting in an empty classroom in the Education Department at FCI Danbury, while others are participating in Christmas caroling on the yard, I take time to reflect on the holidays that have gone by since I have been in this oppressed state—incarceration."<sup>1</sup> Smith's language conjures images of isolation and nostalgia as she reflects on her inability to meaningfully connect with the other inhabitants of FCI Danbury and reminisces about a distant past and the chasm of imprisonment which separates her from that past. Continuing in this vein, Smith writes:

It is unbelievable that this is my fifth Christmas locked down, not in the sense that time has been flying, because it has not. On December 12, 1994, still imprisoned, I gave birth to my son. Thirteen days after his birth, I spent Christmas staring at jail cell bars, partially understanding what our ancestors were forced to endure when torn apart from their babies in the Motherland. Longing to be home with my parents, to smell and touch my newborn baby's skin, I wondered what my fate would be.<sup>2</sup>

Smith's narrative reveals the subjectivity of black womanhood which colors her experience of the prison as a continuation of the cultural memory of slavery. For Smith,

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<sup>1</sup> Kemba Smith, "Modern Day Slavery: Inside the Prison-Industrial Complex," in *Global Lockdown: Race, Gender, and the Prison-Industrial Complex*, ed. Julia Sudbury (New York: Routledge, 2005), 105.

<sup>2</sup> Smith, "Modern Day Slavery," 105.

the experience of being an incarcerated black mother is centered around alienation from her son—in particular, a son who was born under the conditions of imprisonment. Drawing on the cultural trauma of slavery, Smith frames her imprisonment and alienation from her son in a continuum of black women's incapacitated reproductive agency under state violence. Smith's narrative also highlights the ways in which prisons produce social death in its incarcerated subjects. In *Prison and Social Death*, Joshua M. Price identifies the prison as a site of social death, particularly in regards to its practice of natal alienation and infringement upon the reproductive freedom of incarcerated women.<sup>3</sup> However, while Price marginally considers the legacies of racism in the construction of the modern-day prison, he fails to fully account for the positionality of race in different folks' prison experience, and particularly that of black women. Yet, as Smith expresses, the implications of her positionality as a black woman significantly impacts her understanding of her imprisonment in ways that exist for neither white women nor black men.

This revelation brings into question the experience of incarcerated black lesbians, particularly black lesbians who are Masculine of Center (MoC), a term coined by B. Cole of the Brown Boi Project that "recognizes the breadth and depth of identity for lesbian/queer/ womyn who tilt toward the masculine side of the gender scale and includes a wide range of identities such as butch, stud, aggressive/AG, dom, macha, tomboi, trans-masculine etc."<sup>4</sup> While Smith's experience as an incarcerated cisgender black woman centers on the biological impediments experienced by the state and the sanctioning of her

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<sup>3</sup> Joshua Price, *Prison and Social Death* (New Brunswick, NJ: Rutgers University Press, 2015), 19.

<sup>4</sup> "FAQS," BUTCH Voices, accessed March 12, 2017, <http://www.butchvoices.com/faqs/>.

reproductive rights as a mother, the experiences of MoC black women, in addition to the issues raised by Smith, focuses on the social construction of black lesbian deviance and danger and the prison's obligation to "correct" them. The particular challenges to exploring the experience of black lesbian women, which usually begin with nonconforming behavior early in youth, are especially difficult in the context of the prison industrial complex. The scholarship produced on black prison experiences have primarily centered on the experiences of black men. Only recently with the advent of queer theory, queer of color critique, and black feminist thought, and their dissemination within the academy, have black subjects marked as deviant moved to the center of abolitionist discourses. However, these discussions often reproduce the same structures they once sought to fight against. By this I mean the focus on queer and trans/gender nonconforming communities without seriously considering the marker of racial identity in determining the violence which is meted upon that body. Instead, academics and activists, who are often white, will discuss the experiences of a particular community, without exploring the dimensions of racial subjectivity which may expose members of that community to trauma unintelligible to the observer. Furthermore, in cases where the dimensions of race are present in one's critique of queer and trans/gender nonconforming subjectivities in the prison, the consideration of lesbian and butch/MoC identities are rendered invisible and unexplored.

### **Black Feminist Thought and Black Queer Identity Matrix**

Sheena C. Howard's *Black Queer Identity Matrix: Towards an Integrated Queer of Color Framework* serves as a critical intervention in black studies and women's, gender, and sexuality studies. *Black Queer Identity Matrix* centers the experiences of

black lesbian women as fundamental to comprehending the nature of interlocking systems of oppression in race, gender, class, and sexuality. The black lesbian woman represents the thrice marginalized subject and provides valuable insight into the workings of identity in the United States:

Rights have always been a luxury in this country, afforded to those who are born the proper race, gender, and sexual orientation. Protection under the law is merely an amenity, for those who can afford it. The currency is our identity, which none of us have control over. It is this history, United States history, which gives birth to a book such as the one you hold in your hands.<sup>5</sup>

As stated previously in this chapter, the omission of black lesbian experiences from analyses and critiques of LGBTQ prison experiences occludes our vision in identifying the workings of the prison industrial complex in the most marginal spaces. According to Donna A. Champeau and Susan M. Shaw,

When the barriers of gender, race, and class (as well as ethnicity, sexual orientation, age, ability, and religion) intersect in women's lives, they establish and organize social relations of domination *in which each oppressive system depends on and shapes all others* (emphasis mine).<sup>6</sup>

Patricia Hill Collins echoes this sentiment in *Black Feminist Thought*, stating:

Viewing relations of domination for Black women for any given sociohistorical context as being structured via a system of interlocking race, class and gender oppression expands the focus of analysis from merely describing the similarities and differences distinguishing these systems of oppression and focuses greater attention on *how they intersect* (emphasis mine).<sup>7</sup>

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<sup>5</sup> Sheena C. Howard, *Black Queer Identity Matrix: Towards an Integrated Queer of Color Framework* (New York, NY: Peter Lang, 2014), xiii.

<sup>6</sup> Donna A. Champeau and Susan M. Shaw, "Teaching about Interlocking Oppressions: The Case of HIV and Women," *Feminist Teacher* 14, no. 3 (2003): 208.

<sup>7</sup> Patricia Hill Collins, *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment*, 2nd ed., Rev. tenth anniversary ed. (New York: Routledge, 2000), 222.

Therefore, the freedom of black lesbian women is inseparably connected to freedoms across the range of social and political positionalities across the United States. The inclusion of black lesbian subjectivities in our critiques of interlocking systems of oppression will illuminate new methods to dismantle oppressive systems and materialize our collective freedom.

Throughout her text, Howard makes reference to ill-informed representations of black lesbian women—either they are rendered invisible or the void is filled by the promulgation of misleading, caricatured images of black lesbian women in mainstream popular media.<sup>8</sup> In "Gleeful Gay Killers, Lethal Lesbians, and Deceptive Gender Benders: Queer Criminal Archetypes," authors Joey L. Mogul, Andrea J. Ritchie, and Kay Whitlock explore the creation and dissemination of destructive portrayals of queer deviance and their impact within the prison industrial complex:

It is the enduring product of persistent melding of homosexuality and gender nonconformity with concepts of *danger, degeneracy, disorder, deception, disease, contagion, sexual predation, depravity, subversion, encroachment, treachery, and violence*. It is so deeply rooted in U.S. society that the term *stereotype* does not begin to convey its social and political force. The narratives it produces are so vivid, compelling, and entrenched that they are more properly characterized as *archetypes*—recurring, culturally ingrained representations that evoke strong, often subterranean emotional associations or responses.<sup>9</sup>

### **Setting It Off**

The movie *Set It Off* (1996) is arguably one of the quintessential black films to emerge out of the nineties.<sup>10</sup> Directed by F. Gary Gray, *Set It Off* is an American crime

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<sup>8</sup> Ibid, 6-7.

<sup>9</sup> Joey L. Mogul, Andrea J. Ritchie, and Kay Whitlock, "Gleeful Gay Killers, Lethal Lesbians, and Deceptive Gender Benders: Queer Criminal Archetypes" in *Queer (in)justice: The Criminalization of LGBT People In the United States* (Boston: Beacon Press, 2011), 23.

<sup>10</sup> *Set It Off*, directed by F. Gary Gray (New Line Cinema, 1995), DVD.

story set in inner-city Los Angeles about four black women, economically vulnerable and politically disengaged, who resort to the criminalized economy of bank robbery as their last-ditch effort to escape the hood. F. Gary Gray, also known for directing *Friday* (1995), another film set in the hood of Black Los Angeles, portrays the four central characters of *Set It Off* as archetypal images of black urban womanhood: Stony, the big sister who becomes the primary provider and caregiver to her younger brother in the absence of parental support; Frankie, the model black urban girl who successfully dons "professionalism" as a teller in the chambers of a reputable downtown bank; T.T., a young, single mother who struggles to provide care to her child while also securing enough hours at her minimum-wage service job; and Cleo, a black butch lesbian in relationship with a black femme woman, who loves cars and acts as the protector of the group. The film can be credited as providing a salient critique of the state-sanctioned assault on black women. In commemoration of the film's twentieth anniversary on November 11, 2016, *Black Entertainment Television* published an article on the film's contribution to black feminist iconography, citing the film's "critiques of racial, gender, sexual and class politics, sexual and state violence, reproductive rights and the practice of solidarity among women."<sup>11</sup> Throughout the film, viewers experience the numerous attacks which push the women further towards their climactic armed robbery.

In the opening scenes, Frankie is the victim of a bank robbery in which she recognizes the robber as someone from her housing project. Because of this, when the bank directors are interviewing employees, Frankie is fired under the assumption that her

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<sup>11</sup> Mecca Jamilah Sullivan, "Why 'Set It Off' Is a Seminal Film for Black Feminism," *BET.com*, accessed March 13, 2017, <http://www.bet.com/celebrities/news/2016/11/07/set-it-off-20th-anniversary.html>.

proximity to the robber was a sign of collusion. During the interview, one of the police officers, the only other Black woman present in the room, behaves impassively as her partner—a white man—abrasively interrogates Frankie, disregarding her inability to "follow the procedure" because of the tangible threat to her life presented before her. Frankie's encounter with the state apparatus of the criminal legal system and the bank's upper-class white employers reveals the disposability of urban black women. Stony and T.T. also face encounters similar to Frankie's: Stony, in order to provide the necessary funds to enable her brother to enroll in college and escape the hood, engages in nonconsensual sex work with a local black business owner only to have her brother murdered at the hands of a SWAT team for being mistakenly perceived as armed and dangerous; and T.T., because of her inability to secure childcare as a single mother, is constrained into bringing her young toddler to her janitorial job where he wanders from her sight and incidentally ingests cleaning fluid, resulting in her loss of custody. Interestingly, Cleo's trajectory is the oddity of the group—viewers aren't shown a traumatic event which "pushes her over the edge." Indeed, though she is the one who initially proposes the idea of robbing a bank, it seems to emerge from nowhere but Cleo's deviant criminal pleasure. In their 1996 review of the film, *The New York Times* reports this of Cleo:

The only member of the quartet who isn't personally devastated by an uncaring social system is Cleo (Queen Latifah), a butch lesbian (with a pretty girlfriend) in whom bank-robbing brings out the latent outlaw. In a performance of explosive emotional heat, the popular rap star makes this potentially unsympathetic character the most endearing of the four. As Cleo takes a wild anarchic pleasure in robbing banks, she also becomes the quartet's fierce mother hen, a protective, self-sacrificing warrior.<sup>12</sup>

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<sup>12</sup> Stephen Holden, "Just Trying to Get Even While They Get Rich," *nytimes.com*, accessed March 14, 2017, <http://www.nytimes.com/movie/review?res=9F02E3D81338F935A35752C1A960958260>



In relation to the other three central characters, Cleo stands out as a limited figure in the film—and perhaps for reasons presented by the director's limited subjectivity as a straight black man. Because of the contextual void in which Cleo's character exists, viewers are left to interpret her as "the only member of the quartet who isn't personally devastated by an uncaring system,"<sup>13</sup> as someone whose current political, social, and economic positionalities are not determined in part by an anti-black, anti-woman, and anti-queer society.

Indeed, Cleo's character falls into the script of the killer black butch lesbian, framed by the image of "Black, working-class, gender-nonconforming women as perpetrators rather than targets of violence . . . the violent, man-hating lesbian . . . wear[ing] 'thuggish' (read, hip-hop, gender-nonconforming, or both) clothing."<sup>14</sup> Perhaps nothing says this more than Cleo's death, or rather disposal by the state. Every one of the four central characters, with the exception of Sonny, dies at the hands of state violence: T.T. is shot by the bank's security during the heist and later dies in the arms of Sonny; Frankie is shot in the back by a police officer after confronting the officer who originally interrogated her at the beginning of the film; and Cleo is gunned down after a wild police chase through Los Angeles. However, it is the alterity of Cleo's death which serves as the ultimate marker of her existence as a black butch lesbian woman. After ramming her vehicle into the barricade of police officers and cop cars, the militia of officers rain bullets upon Cleo's inert vehicle. Emerging from the vehicle wounded and armed with a semi-automatic rifle in hand, Cleo is greeted with the expulsion of pistols, assault rifles,

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<sup>13</sup> Holden, "Just Trying to Get Even While They Get Rich," *nytimes.com*.

<sup>14</sup> Joey L. Mogul et al., "Queer Criminal Archetypes," 42.

shotguns, and whatever other artillery the state officers possess. The final scene portrays Cleo flipped over the door of her car, her rear facing the officers and welcoming the stream of bullets flying from their weapons. The scene represents Cleo's "overkill," a term Eric Stanley defines in relation to the "vicious assaults that these working-class and largely people of colour [*sic*] gender non-conforming subjects are subjected to in death, and for how their remains become the object for further affront."<sup>15</sup> Cleo therefore suffered not only a bodily death, but also the symbolic execution of her gender deformation. The positioning of her body in death mirrors forced penetration and the eventual vanquishing of her perverted masculinity into submissive femininity. Cleo's overkill "holds important ontological consequences" for black lesbian subjectivities and their existences in the midst of interlocking raced, gendered, classed, and sexualized systems of oppression which promulgate destructive depictions that ultimately influence their encounters with the criminal legal system.<sup>16</sup>

### **Black Lesbian Youth in the Prison Industrial Complex**

In his essay "Rounding Up the Homosexuals: The Impact of Juvenile Court on Queer and Trans/Gender-Non-Conforming Youth," Wesley Ware, co-director of BreakOUT!, an organization working to end the criminalization of LGBTQ youth in New Orleans, Louisiana, explores the juvenile legal system's persecution and attempts to "rehabilitate" queer and trans/gender nonconforming youth. Throughout the essay, he charts the racialized foundation of the juvenile system and its inception as a social institution for the treatment and rehabilitation of deviant white children because of their

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<sup>15</sup> Jin Haritaworn, Adi Kuntsman, and Silvia Posocco, introduction to *Queer Necropolitics*, edited by Jin Haritaworn, Adi Kuntsman, and Silvia Posocco (Abingdon, Oxon: Routledge, 2014), 8.

<sup>16</sup> Jin Haritaworn et al., *Queer Necropolitics*, 8.

ill-treatment in adult prisons. However, black children, who were perceived as incorrigible and beyond rehabilitation, continued to be sent to adult prisons. According to Ware, "In Louisiana, black youth were sent to work the fields at Angola State Penitentiary, a former slave plantation, until 1948 when the State Industrial School for Colored Youth opened."<sup>17</sup> While the practices of the juvenile legal system have changed to keep youth in their homes and communities when possible, the system's original intent remains intact: to provide treatment and rehabilitation for young deviants.

For many queer and trans/gender non-conforming youth, their exposure to the juvenile legal system is predicated upon their parents' inability to enforce hegemonic regimes of gender and sexuality upon their children. Once inside the juvenile legal system, queer and trans/gender nonconforming youth are at risk of "treatment." "[Since] sexual and gender transgressions have been deemed both illegal and pathological, queer and trans youth . . . are not only subjected to incarceration but also to harassment by staff, conversion therapy, and physical violence."<sup>18</sup> Thus queer and trans/gender nonconforming youth are at risk of internalizing an inherent sense of corruption and the need to be "cured." Ware cursorily notes the preponderance of black youth in Louisiana's state juvenile system—which is astronomically high at eighty-percent—and he cites several cases of black queer and trans/gender nonconforming youth's encounter with the juvenile system, including the "16-year-old, black self-identified 'stud' in detention after her mom referred her to family court for bringing girls to the house," the black trans-

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<sup>17</sup> Wesley Ware, "Rounding Up the Homosexuals: The Impact of Juvenile Court on Queer and Trans/Gender-Non-Conforming Youth" in *Captive Genders: Trans Embodiment and the Prison Industrial Complex*, Expanded Second Edition, eds. Eric A. Stanley and Nat Smith (Oakland, CA: AK Press, 2015), 98.

<sup>18</sup> Ware, Rounding Up the Homosexuals," 99.

feminine youth from New Orleans who was "threatened with contempt for wearing feminine clothing to her court hearing," and "the black lesbian arrested over and over again for any crime where witnesses described the perpetrator as an African American 'boyish-looking' girl."<sup>19</sup> Later in the essay, he draws connections between the juvenile legal system and the adult criminal system noting, that the two "can be traced to slavery, the commodification of bodies as free labor, institutionalized racism, and state regulation of low-income people of color, immigrants, and anyone deemed otherwise 'deviant' or a threat to the political norm."<sup>20</sup> Ware further goes on to quote Audre Lorde's "A Litany for Survival," a poem written by a black lesbian for black lesbians, as the organizing metaphor for the existence of queer and trans/gender nonconforming youth of color in the juvenile system: "[they] were never meant to survive."<sup>21</sup> Yet, despite his seeming recognition of the precarious marginality of queer and trans/gender nonconforming youth of color, Ware continues the discussion of their experiences in absence of the possible racial implications. Much like F. Gary Gray's one-dimensional depiction of Cleo, Ware's analysis of LGBTQ youth ignores the structural and social impediments which compel black lesbian women to engage in criminalized economies and other activities which result in their incarceration or execution by the state.

Beth Richie discusses the experience of black lesbian women in the prison industrial complex in her essay "Queering Antiprison Work: African American Lesbians in the Juvenile Justice System." In line with Champeau, Shaw, and Collins, Richie prefaces her work with a reminder that the "larger political project of reducing structural

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<sup>19</sup> Ibid, 97-98.

<sup>20</sup> Ibid, 100.

<sup>21</sup> Ibid.

inequality and eliminating the concentration of disadvantage that leads to mass imprisonment requires that the most marginalized group become most central to the struggle against global lockdown."<sup>22</sup> Amongst the troubles plaguing young black lesbians in the juvenile legal system, sexual violence, economic vulnerability, compulsory heterosexuality, and social invisibility and misrecognition are the issues which consistently resurface in the data presented by Richie. Furthermore, it is also worth noting that of the nine individual responses highlighted in Richie's analysis, the ages range from fourteen to sixteen, suggesting that black lesbians' marginalization from legally-sanctioned systems of progress, like education, begins at a young age.

For example, Linda, age 14, reports that she didn't go to school the morning of her arrest: "Just like some friends, I was not feeling the boys that day. We just get sick of them hitting on us. And we are over the teachers too. It happens on a regular basis, in school, around school and in the neighborhood. And don't those security guards care a thing about us [*sic*]." <sup>23</sup> Linda's account not only highlights the hypersexualization of black women's bodies, but also the compulsory heterosexuality expected of her and her friends and the mental and emotional harm it inflicts. Even in school, Linda must deal with the sexual harassment and objectification of her body, along with the lack of care and support she receives from teachers and staff which ultimately drives her to truancy (and thus her eventual incarceration as a minor). According to a 2016 report conducted by Impact Justice on the school-to-prison pipeline, LBQ/GNCT<sup>24</sup> black and Latinx<sup>25</sup> girls

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<sup>22</sup> Beth Richie, "Queering Antiprison Work: African American Lesbians in the Juvenile Justice System" in *Global Lockdown: Race, Gender, and the Prison-Industrial Complex*, ed. Julia Sudbury (New York: Routledge, 2005), 73.

<sup>23</sup> Richie, "Queering Antiprison Work," 74.

<sup>24</sup> Lesbian, bisexual, queer/gender nonconforming, trans.

<sup>25</sup> Latinx, pronounced latin-ex, is a gender-inclusive identifier used to counter the masculine-centered Latino.

in the national legal system were punished more severely in school than their straight/gender conforming counterparts. In fact, they experienced the highest rate of punishment across racial and gender lines, including LBQ/GNCT black and Latinx boys.<sup>26</sup> This information suggests that LBQ/GNCT women of color are more susceptible to gender and sexual policing than any other group. One of the students involved in Impact Justice's study, Melanie, age sixteen, is a black gender nonconforming girl who was suspended multiple times for "'stupid little things' like chewing gum or playing with her cell phone" and was eventually expelled by the principal who became "frustrated with her history of suspensions." As a result of her expulsion, Melanie was enrolled into a remedial alternative high school program, despite her history of academic achievement. Because of her probationary status for previously dealing drugs, Melanie was rejected from other schools and thus denied access to higher education which would have granted her access to legal modes of social and economic mobility.<sup>27</sup> The true offense in Melanie's case was the disciplinary actions of a system intent on inflicting punishment on a young, gender nonconforming black girl systematically barred from socially acceptable modes of advancement and thus marked for (eventual) incarceration. However, experiences of disenfranchisement for young black lesbian women isn't limited to the education system. For Keisha, age 14, the home functions as a space of terrorizing surveillance:

But staying home didn't help either in some cases. The boys at home are not better. It's bad when you have to watch your back when you bathe, sleep, cook or sit down to watch TV. Being gay, they will run a train on

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<sup>26</sup> Angela Irvine and Aishatu Yusuf, "New Information About the School-to-Prison Pipeline: Up to Nine in Ten Juvenile Justice-Involved Youth Have Been Disciplined in School, *Impact Justice*, accessed March 15, 2017, [http://impactjustice.org/wp-content/uploads/2016/10/school.to\\_.prison.30aug2016.final-1.pdf](http://impactjustice.org/wp-content/uploads/2016/10/school.to_.prison.30aug2016.final-1.pdf), 3.

<sup>27</sup> Irvine et al., "New Information About the School-to-Prison Pipeline," 2.

you in a minute. But especially the older ones who can't seem to keep their hands to themselves.<sup>28</sup>

Keisha's account is consistent with studies of the sexual assault of Black women.

According to a report published by the Women of Color Network, "approximately 40% of Black women report coercive contact of a sexual nature by 18."<sup>29</sup> However, Keisha's narrative complicates the common narrative of Black women's sexual assault by implicating her sexuality as a driving factor in her increased risk of assault, even suggesting that it may have encouraged more spectacular performances of violence.

Drawing on the image of Cleo's death scene in *Set It Off*, the threat of a group of men "running a train" signifies an emerging theme of collective masculinities gathering to conquer black lesbian women rendered "deviant" because of the threat they pose to fixed regimes of masculine performance or because of their sexual inaccessibility. Yet, in many cases, black lesbian girls are driven to engage in criminalized economies, particularly sex work with men, to access physical and economic security. This line of work makes them particularly vulnerable to physical and sexual assault by their male providers and clients. Furthermore, black lesbian women conducting sex work are prone to experiencing cognitive dissonance around their sexual identity and are disproportionately susceptible to HIV-transmission. Nickki, age 15, shares:

I got so tired of that life. Way too much sex with men that I didn't want, but I had to do it for money, a place to stay, and even though I got my ass kicked, it was some protection. I went to the neighborhood clinic to get birth control, but don't you know I showed up positive for HIV? Here it is, I live with a pimp who takes advantage of me and I am pregnant again. How can that be true if I am gay? All because of his customer who forced himself on me when I was only supposed to be dancing for him.<sup>30</sup>

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<sup>28</sup> Richie, "Queering Antiprison Work," 74.

<sup>29</sup> "Women of Color Network Facts & Stats: Sexual Violence in Communities of Color," *Crime Victims' Services Division*, accessed March 15, 2017, [http://www.doj.state.or.us/victims/pdf/women\\_of\\_color\\_network\\_facts\\_sexual\\_violence\\_2006.pdf](http://www.doj.state.or.us/victims/pdf/women_of_color_network_facts_sexual_violence_2006.pdf).

<sup>30</sup> Richie, "Queering Antiprison Work," 74-75.

Nickki's story highlights how interlocking systems of race, class, and gender oppression drive her to engage in sex work as a means of survival, while also teasing out the tensions of doing so as a lesbian-identified woman. The reality of her circumstance—being sexually exploited by a pimp, while pregnant with his child, and contracting HIV from sex with a man—reveals a tragic irony about the seemingly heterosexual portrayal of her life because she is unable to live a full life as a black lesbian youth. Even further, Nickki's narrative highlights the susceptibility of black lesbian women to HIV-transmission.

Several of the narratives collected by Richie highlight this same conundrum:

The clinic couldn't really help me because what could I tell them? I am hooking? I don't use condoms? I'm gay? I don't even know how it feels to be loved? I picked up some of their papers and tried to read them, but I just stopped. They are not talking to me. (Tiffany, age 16)<sup>31</sup>

Sisters. Get real. Like me, you have to stop thinking the security guards, older men acting as pimps, workers at health clinics will help you. You need to find a way to hook up with one of these brothers who will really stand by you. How? Show them you will stand by them first. Get involved in his con game, spot for him, carry his bundles, put out for his crew even if you are funny. You've got to give up on the straight life and run with those who will really protect you. No girl, no programs can cover for you. (Latara, age 15)<sup>32</sup>

As black lesbian youth engaging in criminalized economies, their ability to access healthcare, or even their knowledge of how to access healthcare, is limited based on their invisibility in the health sector. Because of their high risk of sexual assault and forced engagement in criminalized economies, black lesbian youth are prone to contract HIV through nonconsensual sexual acts, thus complicating their relationship to health clinics. As mentioned by Tiffany, the experiences of economically vulnerable black lesbian youth aren't reflected in the community narratives and approaches community health clinics use

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<sup>31</sup> Ibid, 75.

<sup>32</sup> Ibid.



to spread information about prevention and safe-sex practices. Even more so, how accessible are safe-sex practices for black lesbian youth engaging in sex work under the influence of exploitative pimps? To fully divulge the circumstances of their pregnancies and HIV-contractions would likely incriminate them and the men they depend upon for protection and support. In response, some youth have developed survival strategies to help cope with their circumstances. According to Tiffany, age 16, and Shelia, age 15:

And even if you get caught, find a way to turn the officer out. That's right, if you can't lie or cover for yourself, then turn him out and offer the only sure way to get out of any hard spot you find yourself in; use the p-thing.<sup>33</sup> I know it sounds hard, ladies, but you all have to understand that we don't have a chance in this world. Look around you. Do you see anyone protecting us? Look at your mamas. Who is there for them? Does your teacher care? Does your counselor care? Do your people care? Do the police care? You've got to care for each other . . . raise each other up. And we've got to take care for ourselves before they bang us out of our minds.<sup>34</sup>

Their accounts reveal the existence of agency in the margins. For Tiffany, even in the midst of harrowing strife and degradation, she is able to exercise sexual agency in the choice to use her sex as a tool of power. Her comment is reminiscent of Audre Lorde's essay "Uses of the Erotic: The Erotic as Power," where Lorde states:

There are many kinds of power, used and unused, acknowledged or otherwise. The erotic is a resource within each of us that lies in a deeply female and spiritual plane, firmly rooted in the power of our unexpressed or unrecognized feeling. In order to perpetuate itself, every oppression must corrupt or distort those various sources of power within the culture of the oppressed that can provide energy for change. For women, this has meant a suppression of the erotic as a considered source of power and information within our lives.<sup>35</sup>

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<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Audre Lorde, "Uses of the Erotic: The Erotic as Power" in *Sister Outsider: Essays and Speeches*, The Crossing Press Feminist Series (Trumansburg, NY: Crossing Press, 1984), 53.

The use of the erotic for Tiffany most obviously serves as a bargaining chip to resist her arrest by officers. However, its use also affirms and reasserts her subjectivity as a being capable of influencing others, rather than simply existing as a static object subject to the pressures of existing influences. Similarly, Shelia's rallying cry for black lesbian youth to gather in radical community and practice self-care and care for one another is a declaration of black lesbian subjectivity and humanhood. "You've got to care for each other . . . raise each other up" is a protestation that black lesbian youth are not victims, but survivors. As stated by Lorde in her poem "Call":

We are learning by heart  
what has never been taught  
you are my given fire-tongued  
Oya Seboulisa Mawu Afreketé  
and now we are mourning our sisters  
lost to the false hush of sorrow  
to hardness and hatchets and childbirth  
and we are shouting  
Rosa Parks and Fannie Lou Hamer  
Assata Shakur and Yaa Asantewa  
my mother and Winnie Mandela are singing  
in my throat  
the holy ghosts linguist  
one iron silence broken<sup>36</sup>

Lorde's poem reflects the circumstances which the black lesbian youth in Beth Richie's study find themselves, at the intersection of "their communities' failure to recognize them, social service agencies' failure to support them, and law enforcement's aggressive posture toward them,"<sup>37</sup> leaving them to learn "by heart / what has never been taught." Yet, in the midst of "mourning our sisters / lost to the false hush of sorrow / to hardness

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<sup>36</sup> Farah Tanis, "Claiming All That Is Within Me And Loving Myself Fiercely," *The Feminist Wire*, February 24, 2014, accessed March 15, 2017, <http://www.thefeministwire.com/2014/02/claiming-all-that-is-within-me-and-loving-myself-fiercely/>.

<sup>37</sup> Richie, "Queering Antiprison Work," 76.

and hatchets and childbirth," Lorde, and the black lesbian youth, are shouting the names of black women who have accomplished the remarkable in the face of hardship and systemic oppression. The poem's gradual ending, "my mother and Winnie Mandela are singing / in my throat / the holy ghosts linguist / one iron silence broken," evokes a radical community of black women—the very same community Shelia noted as key to her survival—and ends in the radical potentiality of a silence broken.

Much like Lorde's poem, Richie's research on the experiences of black lesbian women in the juvenile legal system symbolized "one iron silence broken" as she brings to center a community left untouched by the "gender-neutral analysis of racism that characterizes much of the antiprison work and the race-neutral analysis of patriarchy and sexuality that many feminist scholars and activists rely upon."<sup>38</sup> The plight of black lesbian youth signify the ways that race, gender, class, and sexuality are embedded into the functioning of a criminal legal system that "relies on the production of a criminal class who play a key role in feeding the economic and political interest of the conservative state."<sup>39</sup> Furthermore, the lack of representation of black lesbian experiences in our communities, social service agencies, and law enforcement policies reflects a socially dead population characterized by their powerlessness, alienation, and humiliation via constricting images circulated in popular media. The contributing factors and outcomes of black lesbian youth must be present in our future analyses and political programming to halt the growth of the prison industrial complex and its consumption of our most marginalized communities.

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<sup>38</sup> Ibid.

<sup>39</sup> Ibid, 82.

## **CHAPTER 3: Black Men and the Queering of Youth in the Prison**

The purpose of this chapter is to explore the dimensions of sexuality, gender expression, and sexual violence in men's prisons. I am interested in sexuality's mutability in the context of prison masculinities. Folk who self-identify as gay/bi/queer are more susceptible to sexual violence than those who identify as straight, but those who are read/perceived as GBQ, particularly young folk, are also susceptible to sexual violence. In particular, I examine how one's failure to perform prison masculinity, characterized by the ability to exercise violence and domination, leaves one to be perceived as "queer" by the prison population, thus resulting in one's increased vulnerability to sexual violence in the prison. For young black men who are sentenced to time in prison for participating in criminalized economies (like drug sales), the prison becomes a death world where a two-year sentence can become a death sentence because of HIV-transmission through nonconsensual sexual acts. The ubiquitous culture of sexual assault, and the lack of action by prison administrations and national actors, creates a death world where HIV is rapidly transmitted amongst the prison population.

### **The Night Of**

The HBO mini-series *The Night Of* depicts the descent of young, Pakistani-American college student Nasir "Naz" Khan into the underworld of Rikers Island Prison

Complex after he is framed for the rape and murder of a young white woman.<sup>1</sup> The show incorporates subtle critiques of American social and political culture: the latent islamophobia of post-9/11 New York City, figurations of the model minority experience, and the corruption of the criminal justice system. The series was well received among reputable pop culture critics like *Rotten Tomatoes*, *The New York Times*, *The Guardian*, and *The Atlantic*. While the series does not engage in an exhaustive excavation of the prison industrial complex and its intimacies with anti-blackness and the legacies of slavery, it does offer some provocative imagery and circumstances that intimate the aforementioned claims. Particularly, the series, whether knowingly or not, draws on the cultural and mnemonic imagery of the transatlantic slave trade and chattel slavery to communicate Naz's social death in the wake of incarceration. Furthermore, the depictions of the prison are rife with the imagery of the maimed, dead, and dying black bodies of the prisons' inhabitants. Several times throughout the series Naz (and other prisoners) are subjected to severe bodily injury or, in some cases, death. The threat of death is a palpable reality, as if at any moment one could fall victim to the prison's lethal machinations. Thus *The Night Of* also provides a glimpse into the necropolitical functions of the prison.

In episode two, "Subtle Beast," Naz is transferred to Central Booking and, after pleading not guilty at his arraignment, to Rikers Island. The scene depicts Naz being handcuffed by the guard as he is prepped for shipping to Rikers. The scene is absent of sound, except for a deep rumbling and the sharp clink of the handcuffs securing his hands

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<sup>1</sup> *The Night Of*, directed by Richard Price and Steven Zaillian. HBO. Accessed March 20, 2017. <http://play.hbogo.com/series/urn:hbo:series:GVzn8KwEon8N1swEAAAAO>.

behind his back as he casts a final glance towards his mother, father, and younger brother in the courtroom pews behind him. Unable to extend a final goodbye, the scene is reminiscent of enslaved parents and family members unable to prevent the sale or abuse of loved ones under the despotic authority of the slave master (or, in this case, the American legal system). Naz is cuffed to another prisoner and led in a procession of mostly black men while guards surveil their every move. Although Naz is physically conjoined to another individual, this does not denote intimacy or genuine human relation—it is meant to illustrate the solitude prisoners are made to experience while even among the company of each other. Naz glances upwards towards the sky and the expansive freedom it seems to suggest. However, this will be Naz's final unfettered look at the sky before he is transported on a gated bus across the bridge to Rikers Island. The camera longingly pans across the bridge as the bus traverses above the waters of the Atlantic. The imagery of the unending watery chasm between Rikers and New York City visualizes the prisoners' disarticulation from society while also conjuring the ghost of the middle passage. The prison transport bus thus becomes the modern-day slave ship carrying precious cargos to their fated (social) death. When the bus finally arrives at Rikers, the camera accentuates the metallic machinations of the complex: the barbed wire, the iron gates, the shackles on the prisoners' bodies. The inside of the building is lined with cement blocks and secludes but only the barest slivers of light before the door closes and the credits roll in absolute darkness. The metal, the water, and the expansive distance between Rikers Island and the mainland illustrate the social death of the prison experience. It is also worth noting that Naz's interactions within the prison take place

among a mostly black prison population, another subtle critique of the disproportionate representation of black men in the prison industrial complex.

While in the prison, Naz develops a bond with Freddy, a once-renowned boxer sentenced to life in prison after being convicted of murder. Freddy functions as the underground kingpin of Rikers, utilizing his connections to the streets of New York to exercise his influence and power among prisoners and guards alike. Since his arrival, Naz has been cut with a knife along his forearm, his bed has been torched by other prisoners, and most recently he has suffered severe burns from a prison-brew of baby oil and boiling water. Naz is particularly at risk within the prison because he is marked as a charged sex offender, putting him in the crosshairs of the prison's extralegal justice system. Naz's positionality highlights that identity within the prison influences one's predilection to harm and the kind of harm inflicted upon oneself. The violence meted upon his body—without consequence to the other prisoners—reveals the ineffectiveness, or rather disinclination, of prison guards to protect the prison population. Furthermore, the ability of prisoners to fashion weapons and lethal instruments out of the mundane objects of the prison, and to use them successfully (meaning without consequence), provides a glimpse into the prison's death world. While the medic staff treats Naz's arm, a correctional officer asks him who inflicted the wound to which Naz refuses to answer. As noted in *Prison Masculinities*, "the consequences of the alternative—snitching—is dire," and prisoners are often left to choose between "solitary confinement and sudden death" when reporting an incident.<sup>2</sup> Yet, Freddy believes in Naz's innocence, and thus

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<sup>2</sup> Don Sabo, "Gender and the Politics of Punishment," 11.

extends his protection, which Naz accepts, and he secretly makes plans to avenge him in light of the burn attack.

The episode begins with the camera steadily panning over the naked black body of the prisoner who burned Naz. The prisoner, Calvin, lies prostrate on the tiled restroom floor as Freddy and Victor, a member of his crew, tower above him; a puddle of blood streams from his head and decorates the restroom stalls. The controlled and unwavering lens of the camera diminishes Calvin—and all the subjectivity and claims to humanhood that come with naming—into a maimed and dying black body trapped in the prison's death world. A prison guard leads Naz to the scene, the camera positioning Calvin's inert body as an offering to him. Provoked by Calvin's emasculating epithets, Naz launches into a ravaging assault on Calvin, delivering numerous kicks and punches to his ribs and head, before being pulled off by Victor. The scene reveals the sexual terrorism which is a key technology of the prison "as a proven technique of discipline and power."<sup>3</sup> Petey emerges later in the episode as an incarcerated black youth who has been severely abused. When introduced to Naz, Petey's disposition is solemn and he is silent; Petey's face is swollen and puckered with bruises. Freddy divulges that Petey has come under his protection in exchange for his mother smuggling drugs into the prison during her visitations. Petey's disposition and silence, signs of his inability to perform prison masculinity, mark him as a queer (i.e., othered/nonnormative) character within the series. Petey's queerness is also marked by his inability to "be a man" and protect himself in the prison—instead, he is dependent on his mother's services to protect him. That night, as

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<sup>3</sup> Jessi Lee Jackson, "Sexual Necropolitics and Prison Rape Elimination," *Signs* 39, no. 1 (2013): 201, doi:10.1086/670812.



Naz is leaving Freddy's cell, he walks by Victor's cell and just so happens to peer inside only to lock eyes with Petey as he fellates Victor. Petey's gaze is empty and devoid of emotion; his eyes, set deep in his battered face, are obscured by shadows cast from Victor's forearm guiding his head. Noticing that something is awry, Victor turns towards the cell door and notices Naz peering through, causing Naz to hastily retreat. The following morning, as Naz showers in a secluded restroom, Victor grabs him from behind and pierces his neck with a razor, threatening to take his life if he should ever reveal what he knows to Freddy. That night, as Naz relieves himself in the restroom, he discovers Petey's dead body slumped in an open stall, his eyes staring bleakly into the distance and wrists dangling over a toilet bowl, cut into ribbons with a shard of glass from a broken window. When Freddy learns of Victor's transgressions, he slits his throat in the common room with a homemade blade crafted from a razor fused to the melted bristles of a toothbrush while Naz distracts the prison guards. Again, the tools of death and their successes emphasize the nature of the prison as a death world. From the secluded restroom to the populated common room, the deathly realm pervades every inch of the prison as to create the "deathscape," a landscape in which death is entwined into the very function of the environment itself. Furthermore, Petey's circumstance points to the invisibilized suffering and labor of folk marked as queer within the prison. It also highlights the precarity of youth serving time in adult institutions. Since the majority of youth sent to prison are poor black children forced to engage in criminalized economies that lead to imprisonment, the issue of Petey in *The Night Of*, although fictional, is a depiction which compels change within the prison industrial complex and prison masculinities.

## The Queering of Youth in a Midwestern Prison

In his essay "The Culture of Transgression: Initiations into the Homosociality of a Midwestern State Prison," Carl Bryan Holmberg, a white professor and author, reflects on his experience as a teacher in a Midwestern state prison in the early-1970s. One of his experiences was with a black youth newly admitted into the prison, similar to Petey. As a teacher within the prison, Holmberg was regularly assisted by two prisoners who acted as his clerks: Bobbie and Mack. On the second day of Mack's employment as an assistant to Holmberg, he offered to walk Holmberg through the facility, as far as he was allowed to go. As they passed through, Mack made a comment about a new inmate who had recently begun working as a clerk: "Give it two days, three tops, and that one will be taken."<sup>4</sup> Holmberg did not understand him the first time, so Mack attempted to relay the message through bodily expression, thrusting his crotch forward with a grunt "You know . . . Taken," meaning that the new inmate would ultimately fall prey to sexual assault. Mack explains that, although the new prisoner seemed tough and defiant, he was young and good looking, estimably in his late teens to early twenties and, in the words of Mack, "just too pretty."<sup>5</sup> When Holmberg further questions him about the prevalence of sexual assault in the prison, Mack responds, "All the time, [it's a] fact of life, one way or another."<sup>6</sup> Some prisoners were able to avoid the castigations of the prison by performing prison masculinity either in physique or in deed. In the case of Joe, another clerk who temporarily worked for Holmberg, though he was once a "skinny, gawky boy," over the

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<sup>4</sup> Carl Bryan Holmberg, "The Culture of Transgression: Initiations into the Homosociality of a Midwestern State Prison," in *Prison Masculinities*, eds. Don Sabo, Terry A. Kupers, and Willie London (Philadelphia: Temple University Press, 2001), 82.

<sup>5</sup> Holmberg, "The Culture of Transgression," 82.

<sup>6</sup> *Ibid.*

course of three and a half years in the prison, he managed to develop a "truly awesome musculature" and a reputation for being mild, loyal, and kind, yet deadly when need be, thus "subordinating [the] sexual order" of the prison.<sup>7</sup> However, Joe's deployment of prison masculinity did not protect him from institutionalized modes of sexual assault and victimization, since he was forced to shower under the supervision of guards. Holmberg later noted the drastic change in the disposition of the young recently admitted prisoner: "The new convict, the young one Mack had pointed out to me, was no longer defiant. In fact, he was quiet and introverted. The wax was gone from his walk. I learned later that he had indeed been quickly passed around by the most manly of the cons until they settled on whose property "the boy" would be."<sup>8</sup> The young prisoner's inability to acclimate to the culture of the prison rendered him vulnerable to subjugation under the logic of the sexual order. As noted by Don Sabo, Terry A. Kupers, and Willie London in "Gender and the Politics of Punishment," the act of prison rape often occurred within the context of relationships of domination, in which the sexual assault committed among male prisoners would be coded in terms of men and women or slave and master.<sup>9</sup> The dynamics of prison sexual relations were further made clear by an incident involving the young aforementioned prisoner, whom Holmberg referred to as Little Pretty. During a class discussion of *Conan the Barbarian*, Mr. Vic, a well-known and revered prisoner, entered the room and motioned for a seat next to Little Pretty, which, though occupied, was readily made available for him. Mr. Vic was not a member of the class, and his presence prompted some tension in the classroom, causing some of Holmberg's students

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<sup>7</sup> Ibid, 82-83.

<sup>8</sup> Ibid, 83.

<sup>9</sup> Sabo, "Gender and the Politics of Punishment," 11.

to become nervously animated and talkative. Yet, throughout the lesson, Little Pretty masturbated Mr. Vic underneath the table and, although the class grew raucous as the students acted out scenes of the book, Holmberg noted that "Mr. Vic unquestionably came."<sup>10</sup> When the class let out, there was a janitor already waiting outside of the room with a mop and bucket and, ironically, it was the only classroom cleaned that day.

The character of Mr. Vic, an influential and powerful prisoner within the system, mirrors that of Freddy in *The Night Of* and, similarly, Petey and Little Pretty. In the absence of accessible histories of young black men in the prison who are marked as queer and subjected to forced sexual labor, Holmberg's narratives and *The Night Of* function as critical devices in illustrating a reality buried within the confines of the prison. The stories of young black men performing compulsory sexual labor reveals much about the prison system, including the malleability of sexuality in the prison, the social death and death worlds which constitute the experience of black queer/queer-read young men, and the particular risk of HIV-transmission for incarcerated black youth.

### **Sexual Necropolitics**

In Jessi Lee Jackson's article "Sexual Necropolitics and Prison Rape Elimination," she argues that "antiviolence activists can explode the limiting biopolitical frame of the National Prison Rape Elimination Commission, acknowledge the necropolitical function of prisons, and build an antiviolence politics around thick notions of bodily and erotic autonomy that limit, rather than expand, state power."<sup>11</sup> As suggested by Black & Pink's report "Coming Out of Concrete Closets," the protections of white, cisgender identity

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<sup>10</sup> Holmberg, "The Culture of Transgression," 87.

<sup>11</sup> Jackson, "Sexual Necropolitics," 198.

extends into the prison. Thus, as Jackson attempts to tease out in her article, the centering of whiteness in the antiviolence politics of activists and legislators alike ignore "incarceration . . . itself as an act of racialized sexualized violence, one enabled by the mobilization of fantasies of violent black male sexuality."<sup>12</sup> The biopolitical critique of the prison which assumes the prison's goal to be "the disciplining and controlling of bodies to create a healthier, more productive citizenship," occludes the black queer and gender nonconforming bodies which are excluded from the body politic in ways that produce mass injury and death.<sup>13</sup> As Jackson notes, "approaching sexual violence in prisons requires asking questions about how the state interacts with bodies."<sup>14</sup> One such example is that of Roderick Johnson, a black gay man convicted of possession of cocaine while serving a ten-year probationary sentence for a nonviolent burglary in Texas. Already, Johnson's narrative is haunted by the surveillance of the state which marks him as an exceptional threat due to his aberrant race and sexual positionalities. Originally sentenced in the low-security prison, where he was placed in "safe housing" on the basis of his feminine appearance and sexual orientation, Johnson was transferred to the maximum security prison in the Allred Unit.

Upon arrival, Johnson requested safe housing and was denied it by the prison officials who told him "we don't protect punks [gay men] on this farm."<sup>15</sup> During his time housed in Allred, Johnson was "repeatedly raped, masturbated on, bought and sold by other prisoners to perform sexual acts, physically assaulted whenever he refused to

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<sup>12</sup> Ibid, 198.

<sup>13</sup> Ibid, 199.

<sup>14</sup> Ibid, 198.

<sup>15</sup> Joey L. Mogul, Andrea J. Ritchie, and Kay Whitlock, "Caging Deviance: Prisons as Queer Spaces," in *Queer (In)justice: The Criminalization of LGBT People In the United States* (Boston: Beacon Press, 2011), 92.

engage in coerced sexual activity, and forced to perform 'wifely' duties such as cooking, cleaning, and laundry."<sup>16</sup> Although Johnson repeatedly reported the sexual violence he suffered, he was disciplined by prison officials; in one case Johnson attempted to resist an assault, yet was disciplined and placed in solitary confinement for fifteen days, an experience he found "even more psychologically traumatic than his daily ordeals on the cellblock."<sup>17</sup> Prison officials referred to Johnson as a "ho" and suggested putting him in a high security unit where he would "get fucked all the time."<sup>18</sup> The officials' projections of Johnson as hypersexual drew from racialized archetypes framing black gay men as sexually degradable and unworthy of sexual protection. In an appeal to the Texas Department of Corrections by the ALCU on Johnson's behalf, Allred officials deployed portrayals of Johnson as manipulative and "requesting protective custody to be near another inmate."<sup>19</sup> Despite the evidence of Johnson's sexual assault and terrorization, the Texas jury ruled in favor of the prison officials.

Johnson's narrative stands out as one representation of a common circumstance among black queer men within the prison. While legislation exists to attempt to curb prison rape, it does not take into account the racial and sexual markers which predetermine some bodies as more readily vulnerable to sexual assault than others, particularly black youth and queer men. The use of a necropolitical analysis of sexual assault within the prison reveals the defenseless positions in which heavily-marked bodies find themselves.

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<sup>16</sup> Mogul, "Caging Deviance," 92.

<sup>17</sup> Ibid, 93.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

## Conclusion: The Least of These

In November 2012, Ashley Diamond, a 34-year old black trans woman in the state of Georgia, began serving an 11-year sentence in a Georgia state prison for a nonviolent offense.<sup>20</sup> Not only was Diamond sentenced to a male prison, but she was also denied the hormone therapy treatments she had been taking since she was 17-years old.<sup>21</sup> The case garnered international attention in early 2015 after the Southern Poverty Law Center (SPLC) filed a federal lawsuit against the Georgia Department of Corrections (GDC) claiming that Diamond has been denied medical treatment and has been sexually assaulted by other inmates in the prison.<sup>22</sup> In April 2015, the U.S. Department of Justice issued a statement supporting Diamond, and remanding the denial of her hormone treatments as unconstitutional.<sup>23</sup> During this same time, celebrities Elton John and Michael Stipe of rockband R.E.M. issued a joint statement demanding justice for Diamond and all transgender inmates in Georgia.<sup>24</sup> In the latter half of April, the GDC restored Diamond's treatments, but U.S. District Judge Marc Treadwell denied Diamond's request for transferal to a lower-security prison for her safety,<sup>25</sup> stating that while transferal may be "the optimal solution," higher courts have warned district judges

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<sup>20</sup>"Ashley Diamond, Transgender Georgia Inmate, Released Early from Prison," *LGBT Institute*, accessed March 26, 2017, <http://www.lgbtinstitute.org/news/2015/9/1/ashley-diamond-transgender-georgia-inmate-released-early-from-prison>.

<sup>21</sup> Lila Shapiro and Saki Knafo, "Georgia Accused Of Sentencing Transgender Woman To 'Torture,'" *Huffington Post*, accessed March 26, 2017, [http://www.huffingtonpost.com/2014/05/13/transgender-inmate-\\_n\\_5317413.html](http://www.huffingtonpost.com/2014/05/13/transgender-inmate-_n_5317413.html).

<sup>22</sup> "Ashley Diamond," *LGBT Institute*.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

“not to second-guess prison authorities.”<sup>26</sup> Yet, in May 2015, GDC officials agreed to transfer Diamond from Georgia State Prison to Rutledge State Prison, a medium-security facility; however, in a holding cell at the Georgia State Prison, Diamond was sexually assaulted and filed a Prison Rape Elimination Act (PREA) complaint. Shortly following her PREA complaint in July 2015, Diamond received death threats from inmates at Rutledge State Prison after Warden Shay Hatcher released information about her complaint. Within a month, on August 31, 2015, Ms. Ashley Diamond was released from prison, months before she would have been eligible for her first parole hearing in November 2015.<sup>27</sup>

Diamond’s case provides a glimpse into the experience which haunts black trans women in the prison. Unlike black lesbian women and queer black men, whose cis gender identities do not require hormone therapy, the black trans prisoner is subjected to the violence of the gender binary in ways that aim to obliterate their humanity and the truth of their existence. According to GDC policy, Georgia’s prisons are required to provide hormones to all inmates who began taking them before their incarceration. However, because of her trans identity, Diamond was denied hormone treatment, stating: “No one would deny a diabetic prisoner insulin . . . No one would sentence a person to a gender change. But because I am transgender, I am denied basic medical care and forced to change gender. Nobody should be sentenced to torture like this.”<sup>28</sup> The sudden discontinuation of hormone therapy has dire medical consequences, which include hot

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<sup>26</sup> Deborah Sontag, “Judge Denies Transgender Inmate’s Request for Transfer,” *The New York Times*, accessed March 26, 2017, <https://www.nytimes.com/2015/04/21/us/judge-denies-ashley-diamonds-a-transgender-inmate-request-for-transfer.html>.

<sup>27</sup> “Ashley Diamond,” *LGBT Institute*.

<sup>28</sup> Shapiro and Knafo, *Huffington Post*.



flashes, dizziness, anxiety, suicidality, desire to engage in a self-castration, and other things that can have very dire physical consequences.<sup>29</sup>

Furthermore, the criminal activity which predetermine black trans populations for incarceration are embedded into their positionality within the prison industrial complex. In Diamond's case, in 2009 she was convicted of nonviolent burglary and theft and sentenced to probation, which led to her incarceration two years later for another nonviolent offense.<sup>30</sup> However, Diamond's crimes emerged out of a system which severely limits the economic mobility of black trans women. According to the National Transgender Discrimination Survey of 2008, of the 381 respondents who identified themselves as black only or black and multiracial, 34% reported a household income of less than \$10,000 per year—over twice the rate of transgender people of all races (15%), four times the rate of the general black population (9%), and over eight times that of the general U.S. population (4%).<sup>31</sup> Additionally, black trans and gender nonconforming people experience the highest unemployment rate at 26%—almost two times the rate of transgender people of all races (14%) and over three times the rate of the general population (7%).<sup>32</sup> Because of their economic vulnerability, black trans people are constrained to participate in criminalized economies—50% of the survey respondents reported engaging in sex work and drug sales to bolster their income.

Black trans and gender nonconforming people also experience bias in the criminal legal system. In June of 2012, 23-year old black trans woman Chrishaun “CeCe”

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<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> “National Transgender Discrimination Survey: A Look at Black Respondents,” *National Center for Transgender Equality*, accessed March 26, 2017, <http://www.transequality.org/issues/resources/national-transgender-discrimination-survey-look-black-respondents>.

<sup>32</sup> “National Transgender Discrimination Survey,” *National Center for Transgender Equality*.

McDonald was sentenced to forty-one months in prison for second-degree manslaughter in what was clearly a case of self-defense.<sup>33</sup> On June 5<sup>th</sup>, 2011, McDonald, a college student in Minnesota, was out with some friends when some patrons of the Schooner Tavern began to yell racist and transmisogynist epithets at the group. The two white women and Dean Schmitz, a white man, referred to them as “n\*ggers, f\*ggots, and chicks with dicks,” when one of the women attacked McDonald with a cocktail glass, puncturing her cheek and salivary gland. In an act of self-defense, a fight ensued and resulted in the death of Schmitz. That same night, McDonald was the only person arrested. She was ultimately charged and convicted of the crime. Similar to the case of Diamond, McDonald was sentenced to a men’s prison.<sup>34</sup> On October 28, 2011, Ky Peterson, a 20-year old black trans man from Americus, Georgia, was knocked unconscious while walking from the store and raped.<sup>35</sup> In an act of self-defense, Peterson fired the gun he kept in his bookbag as a precaution, and his rapist fell dead. Aware of his marginalization and assumed criminality as a black trans man, and afraid of the consequences, Ky and his brothers attempted to bury the body but were ultimately caught. Peterson was convicted to twenty years in a women’s prison. Because of Ashley Diamond’s influence on the GDC’s policy on hormone treatment, Peterson received his first dose of hormone therapy on February 26, 2015—five years after his initial imprisonment.<sup>36</sup>

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<sup>33</sup> Marc Lamont Hill, “Why Aren’t We Fighting for CeCe McDonald?,” *EBONY*, accessed March 26, 2017, <http://www.ebony.com/news-views/why-arent-we-fighting-for-cece-mcdonald>.

<sup>34</sup> Hill, “CeCe McDonald,” *EBONY*.

<sup>35</sup> “Black Trans Man Kills His Rapist, Gets Sent to Prison,” *EBONY*, accessed March 26, 2017, <http://www.ebony.com/news-views/black-trans-man-kills-his-rapist-gets-sent-to-prison-981>.

<sup>36</sup> Sunnive Brydum, “Locked in Prison, Ky Peterson Gets Some Good News,” accessed March 26, 2017, <http://www.advocate.com/transgender/2016/2/23/locked-prison-ky-peterson-gets-some-good-news>.

On the surface, the cases of Ashley Diamond, CeCe McDonald, and Ky Peterson reveal the staunch anti-LGBTQ festering in our criminal justice system. Yet, when read in the context of social death and a necropolitical critique of the prison industrial complex, a more insidious reading becomes invisible. As race- and gender-deviant individuals, black trans and gender nonconforming populations are inexorably marked for death—whether it be bodily or socially. In the *New York Times* article titled “Ashley Diamond, Transgender Inmate, Is Out of Prison but Far from Free,” Diamond’s sister states “She is not the same Ashley . . . She’s fearful and jumpy. She gets these blank stares. She can’t hold a decent conversation. Prison is supposed to rehabilitate people; she’s come out more damaged.”<sup>37</sup> Though Diamond managed to escape the death world of the prison, she did not leave unscathed—as her sister observes, part of Ashley died in the prison. As Orlando Patterson maintains, the social death of the slave was “the *permanent*, violent domination of natively alienated and generally dishonored persons” (emphasis mine).<sup>38</sup> For the black trans prisoner/formerly incarcerated prisoner, the dominion of social death follows them outside of the prison. Furthermore, the death world, which operates most pointedly in the prison in regards to black cis gender individuals, becomes a function of the black trans and gender nonconforming individual’s daily life. In 2017, at least eight trans women have been murdered, seven of them trans women of color, and six of the seven being black.<sup>39</sup> Their murders are mostly left without investigation.

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<sup>37</sup> Brydum, “Ky Peterson,” *Advocate*.

<sup>38</sup> Patterson, *Slavery and Social Death*, 13.

<sup>39</sup> Human Rights Campaign, “Violence Against the Transgender Community in 2017,” *Human Rights Campaign*, accessed March 26, 2017, <http://www.hrc.org/resources/violence-against-the-transgender-community-in-2017/>.

As Mbembe notes in his essay on the postcolony, “the grotesque and the obscene are two essential characteristics that identify postcolonial regimes of domination.”<sup>40</sup> Within a span of eight days, at least three transwomen were killed in Louisiana—Chyna Gibson, Ciara McElveen, and Jaquarrius Holland, ages 21, 31, and 18. The overkill of black transwomen illuminates “the kinship with death that all queer and trans people seem to nostalgically inherit is very literal for sexually and gender nonconforming people whose race and class locations are marked as targets and topoi of cruelty.”<sup>41</sup> The social positionalities of black trans and gender nonconforming people illuminate the workings of a system designed to mark and kill populations that exist in excess of its strict raced, gendered, and sexualized regimes of normativity. There is injustice at every turn for black trans and gender nonconforming communities, since the system is set up in direct denial of their lived truths. Within further investigation, I hope to expand my study by collecting primary source data through a lens which acknowledges the raced- and gendered-positionalities of my research collaborators. Black trans and gender nonconforming people are “the least of these,” and, until they are free, neither are we.

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<sup>40</sup> Mbembe, “Notes on the Postcolony,” 4.

<sup>41</sup> Haritaworn, *Queer Necropolitics*, 18.

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