

Lynching and the Archive: A History

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This dissertation by Jane'a D. Johnson is accepted in its present form
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INTRODUCTION

LYNCHING IN THE AMERICAN CONSCIOUSNESS

What constitutes a lynching is the subject of debate. Some scholars, such as James Cutler describe it as “an illegal and summary execution at the hands of a mob or a number of persons, who have in some degree the public opinion of the community behind them.”¹ Others like Stewart E. Tolnay and E.M. Beck have used a definition that requires killings to be illegal, to have the support of the community and involve three or more participants.² EJI Ashraf H. A. Rushdy describes lynching as “an act of extralegal collective violence by a group alleging pursuit of summary justice.”³ Rushdy has argued that notion of societal support has “overdetermined” studies of lynching by excluding mob violence that is functionally identical to lynching but was without consolidated popular support.⁴ The Equal Justice Initiative (EJI) distinguishes “racial terror” lynchings from other lynchings and other forms of racially motivated mob violence.⁵ All told, the number of recoded “racial terror” lynchings stand at over 4300, with African-Americans lynched in the greatest numbers.⁶ Scholars like Jackie Goldsby have suggested abandoning the term all together, arguing that it is too fraught and that scholars ought to invent a new term.⁷ What can be agreed upon is that lynching is not the gallows alone. It

¹ James Elbert Cutler. *Lynch-Law: An Investigation into the History of Lynching in the United States*. (New York, London and Bombay: Longmans, Green, And Co. 1905), 276.

² Stewart Emory Tolnay, and E. M. Beck. *A Festival of Violence: an Analysis of Southern Lynchings, 1882-1930*. (Urbana: University of Illinois Press, 1995), 260.

³ Ashraf H. A. Rushdy. *American Lynching*. (New Haven: Yale University Press, 2012), 20.

⁴ Ibid at 9-10.

⁵ Equal Justice Initiative. LYNCHING IN AMERICA: CONFRONTING THE LEGACY OF RACIAL TERROR THIRD EDITION. <https://lynchinginamerica.eji.org/report/>

⁶ Ibid.

⁷ Ibid at 8.

is not a hanging, or the rope alone. A lynching usually involves circumventing the legal system. It is often associated with torture, public shaming, and the scapegoating of groups that are vulnerable. That vulnerability can take many forms and it includes things such as: gender, sexuality, disability, political affiliation, ethnicity, religion, race or some combination thereof. In the United States, lynching is most closely associated with African-American victims and white perpetrators during the period after Reconstruction, from 1880-1930. The association is strong in part because of the sadistic nature of many of the lynchings from that period, in part because of their effectiveness as a form of sociopolitical control, and finally because of the gruesome photographs the perpetrators left behind.

In Mark Twain's 1901 satirical essay *The United States of Lyncherdom*, Twain chalks lynching up to moral cowardice. He describes most Americans as unwilling to buck popular opinion, even if popular opinion is depraved. Twain wrote the essay in response to a mass lynching in Pierce City, Missouri, but he includes the lurid details of several lynchings across the United States.⁸ In the end, he argues that American missionaries who have been trying to convert the Chinese to Christianity ought not be sent to China, but sent en masse to the dim, backward corners of the United States. The Chinese are "plenty good just as they are" writes Twain bitterly "...almost every convert runs a risk of catching our civilization."⁹

⁸ Mark Twain. *The Complete Works of Mark Twain: Europe and Elsewhere*. (New York: Harper and Brothers, 1923), 239.

⁹ Ibid at 247.

Twain knew very well the reason—the reasons—that mobs of “white” people were lynching innocent “black” ones. He did not need to say too pointedly what was already obvious: that lynching was driven by some combination of fear, pettiness, ignorance and greed. Perhaps it was the obviousness of the piece, what was left for readers between the lines, that was too inflammatory for the American public, rather than the slick insults actually contained on the page. Twain shelved the essay for fear of public backlash; it was published in a collection of writings called *Europe and Elsewhere* thirteen years after his death.¹⁰ The fear of public backlash from Twain, who is known as much for his acid tongue as he is known for his disregard for popular opinion, serves to emphasize how taboo criticism of lynching is in American discourse.

Over 100 years after Twain’s essay was written, the understanding of lynching not as some abstract concept, but as a very concrete sociopolitical tool, has greatly receded in mainstream discourse. Its specific contours have been “forgotten”. By forgetfulness, I mean the intentional and unintentional tendency to deemphasize the importance of maintaining black Americans as a permanent undercaste to the social, political and economic order in the United States, as well as blotting out the specific tactics of the violence that creates and recreates this undercaste every generation.¹¹ Lynching is but one iconic example. This permanent racial undercaste is marked by less access to education, property, voting rights, economic prosperity, and political influence. By forgetfulness, I

¹⁰ Mark Twain. *The Complete Works of Mark Twain: Europe and Elsewhere*. (New York: Harper and Brothers, 1923).

¹¹ Stewart Emory Tolnay, and E. M. Beck. *A Festival of Violence: an Analysis of Southern Lynchings, 1882-1930*. (Urbana: University of Illinois Press, 1995), 3. Tolnay and Beck refer to the particular nature of the Southern caste system. It is important to emphasize that my statement is referencing race as a caste system that permeates the entirety of the United States, though there are specific regional iterations of that caste system.

also mean the tendency of many modes of discourse to overlook lynching's importance to the geographic expansion of the country, the development of our ideas of justice, and the maintenance of sociopolitical norms among all Americans. The significance of lynching in the United States has been omitted in everything from basic high school textbooks to more sophisticated scholarly tomes—this is to say nothing of its near universal absence in popular discourses about the foundation of our nation.

In the same way that half of native-born Americans struggle to answer basic questions about the U.S. government and only 26 percent of Americans can name all three branches of the U.S. government, the mainstream understanding of lynching is largely a misunderstanding.¹² Still, lynching retains its importance as a powerful American reference. Lynching tends to be used in all manner of instances in public discourse, especially around politics. Supreme Court Justice Clarence Thomas called the unfavorable testimony of Anita Hill in his confirmation hearing part of a “high-tech lynching”.¹³ Vice President Joe Biden called the impeachment trial of Bill Clinton a “partisan lynching”, rhetoric for which he has since apologized.¹⁴

¹² “Americans Are Poorly Informed About Basic Constitutional Provisions.” *The Annenberg Public Policy Center of the University of Pennsylvania*, January 21, 2020.

<https://www.annenbergpublicpolicycenter.org/americans-are-poorly-informed-about-basic-constitutional-provisions/>; Grant Addison. “Failing the Civics Test, Coast to Coast.” *National Review*. National Review, April 20, 2017. <https://www.nationalreview.com/2017/04/most-americans-fail-basic-civics-test/>.

¹³ “NOMINATION OF JUDGE CLARENCE THOMAS TO BE ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES.” Accessed April 22, 2020. <https://www.govinfo.gov/content/pkg/GPO-CHRG-THOMAS/pdf/GPO-CHRG-THOMAS-4.pdf>. 157.

¹⁴ William Cummings. “After Slamming Trump for ‘Lynching’ Tweet, Biden Apologizes for Using the Term about Clinton Impeachment.” *USA Today*. Gannett Satellite Information Network, October 23, 2019. <https://www.usatoday.com/story/news/politics/2019/10/23/joe-biden-sorry-lynching-remark/4069082002/>.

When lynching is discussed in mainstream discourse, it is often molded into a narrow, simple narrative that is easy to understand. That master narrative paints lynching as an aberrative Southern phenomenon whose victims were black men; it tends to explain lynching away by fear or economic pressures or sadism, rarely enumerating the ways that they overlapped. That narrative almost never includes women, children, non-black victims or the mob itself. Without these inconvenient details, it is easier to compartmentalize lynching in a way that separates it from the present and detaches it from reality.

This work is in part a description of the role that the photograph—the moment of its capture, its circulation, its creation as an archival object and its exhibition, plays in the construction and maintenance of that master narrative. At the same time, it is also an enumeration of that ways that people, African-Americans in particular, have forged their own ways of understanding the continuum of racial violence African-Americans have had to endure. That continuum stretches from before slavery to the present moment. It includes the horrors of enslavement, the failed promises and ceaseless racial terror of Reconstruction, the indignities of Jim Crow laws, the crushing blow of redlining, and the raw pain of police violence.

As will be shown, the specter of lynching and racial violence has never fully receded from public consciousness. Lynching has recently started to resurface in public discourse in relationship to other forms of racial violence, such as police shootings and the unequal application of the death penalty. Lynching is national phenomenon woven into the fabric

of our country, a form of violence that distinguishes Americans from centralized nation-states who exercise a monopoly over violence, rule or law, and justice.¹⁵ It “was an important aspect of a distinctive American trajectory from the late eighteenth century through the early twentieth centuries, registering many Americans’ rejection of due process and the exclusive claims of state authority in criminal law.”¹⁶ It is and has always been a permanent fixture in the American unconscious for those reasons, if always kept on the fringes of our accepted narrative.

In chapter 1, “Of Archives, Exhibitions, and Collecting” I examine how curatorial, scholarly and archival practice around lynching photographs tends to reinscribe racist ideas and promote erroneous ideas about lynching itself, such as the number of victims, the gender of victims, types of abuse, and the “race” of victims through naming, framing and common place justifications for exhibition. I draw on the work of Susan Sontag, Ariella Azoulay, James Baldwin, W.E.B. Dubois, and others, to challenge the “universal spectator” as well as argue for understanding lynching photography in the eternal present.

In chapter 2, “Lynching Photography (1880-1930)” I argue that lynching derived from slavery and its laws, laws that were first developed in the British colony that prefigured the United States. These laws considered black people a form of property and a transferrable commodity; various state laws starting in the late 1700s gave able-bodied poor white citizens benefits such as tax breaks and jobs to manage the enslaved by

¹⁵ Michael J. Pfeifer. *Lynching beyond Dixie: American Mob Violence Outside the South*. (Urbana: University of Illinois Press, 2013), 3.

¹⁶ Ibid.

violence. In order to fully understand the ways that the circulation of lynching photographs were integral to lynching, the chapter argues for a fuller understanding of the ways in which the laws and social order of slavery set the stage for a festival of violence during Reconstruction. It then reads illustrated postcards and caricatures alongside real photo lynching postcards. Postcards and photographs are considered not merely as vehicles for representation in the chapter, but also as material objects that produce power relations by their circulation. In this sense, the inscriptions on the back of postcards or the notes on photographs, as well as the prices of the cards and their nature as commodities, become key to understanding their fundamental function in renewing the racial order of slavery after it ended.

In chapter 3, “Looking Backwards: Police Violence, Lynching, and The Epistemological Status of the Photograph” I examine the shifting place of photographic evidence in the courtroom, starting in the 19th century with judicial analogies. This chapter includes surveillance video such as dashcams, bodycams, security cameras and sousveillance such as cell phone video. It argues that by focusing on photography as fact, racism is transmuted into a problem of scale and collecting, one of quantity rather than epistemology. I suggest that scholars and the general public can only truly appreciate how very strange the assumption that photographic evidence will result in convictions or better police practices by looking back at the archive of lynching and remembering how public the displays of lynching photographs were.

Chapter 4, “Memorials and Afterlives” begins with the 2017 protests and subsequent global debates around race, gender, and art concerning a painting of Emmett Till called “Open Casket” by Dana Schutz that was featured in the Whitney Museum Biennial. The chapter examines how various artistic representations and memorials to lynching have been conceived as a response to the archive of lynching photographs, such as “The Lynch Quilts Project”, a women’s interracial quilting project created by artist Lashawnda Crowe Storm. It argues that when race is conceived of solely as identity rather than as an identity and an epistemological construct, arguments about the ethics of artistic representation become stuck in a binary discourse of ownership versus freedom. The chapter also explores how African-Americans, who have been unable to establish their ideas and epistemology in mainstream discourse, use memorials to advance their own conceptions of a 500-year history. That long epoch links together historical events such as: lynching, slavery, colonialism, ethnic cleansing, and the Holocaust through imperialism and race formation.

Studies of lynching photography have tended to focus on representation rather than circulation and materiality. Still, scholars’ studies that emphasize representation were integral to the formation of this project. It was those scholars’ breadcrumbs that I followed to piece together a coherent theory of the ways that the circulation of lynching images are fundamental to racial violence. *Lynching and the Archive* builds on the work of Leigh Raiford, for example, who describes the circulation of lynching photographs as creating an “imagined community” that expanded the reach of racist ideas, but also describes the ways that lynching photographs galvanized black Americans to recast those

same photographs to stem the tide of racial violence.¹⁷ Dora Apel's examination of the class differences in the mob pictured in photographs also informed the way the dissertation conceived of circulation.¹⁸ Ken Gonzalez-Day's brilliant intervention describing the ways that the race of non-black victims has been ignored through the institutional naming of lynching photographs from the West, too, helped frame the project's analysis of the way race works in archives.¹⁹ Rather than a clean departure from representation, the work seeks to balance analysis of representation with materiality, to acknowledge the ways that power exists in networks, not merely in objects.

More than any one scholar, the work takes its conceptual framework from the deep well of black memory in the United States. Consider this quotation, which describes an encounter between an elder Civil Rights leader in Mississippi named Amzie Moore and a young organizer named Charlie Cobb from Student Nonviolent Coordinating Committee in the 1960s:

Cobb recalls that the first time he entered Carroll County [Mississippi] with Amzie Moore, Moore, in the course of teasing Cobb, went into hair-raising detail about a massacre that had occurred in Carrollton when a group of Black farmers had attended a trial after being warned not to. The massacre he was talking about had taken place in 1886, but Moore painted so vivid a picture that Cobb thought he was talking about something contemporary.²⁰

¹⁷ Leigh Raiford. "Lynching, Visuality, and the Un/Making of Blackness." *Nka Journal of Contemporary African Art* 2006, no. 20 (January 2006): 22. <https://doi.org/10.1215/10757163-20-1-22>.

¹⁸ Dora Apel. *Imagery of lynching: black men, white women, and the mob*. (New Brunswick New Jersey: Rutgers University Press, 2004).

¹⁹ Ken Gonzales-Day, *Lynching and the West: 1850-1935*. (Durham, North Carolina: Duke University Press, 2006).

²⁰ Charles M. Payne. *I've Got the Light of Freedom: the Organizing Tradition and the Mississippi Freedom Struggle*. (Berkeley: University of California Press, 2007), 178. This story was likely recounted in 1965; Cobb does not give the date that he first visited Carroll County, but his tenure in Mississippi lasted from 1962 until 1967.

The unique way that African-Americans conceive of time—more like an unfolding accordion that can press back on itself than a straight line—is clearly evident in this quotation. The deep well of black memory I am describing tends to experience racial violence in a way that is present, even when we are well aware that the events referenced took place at a different time. It created framework where social categories like race were not always fixed and unchanging, but were constantly being enforced, made and remade according to political and social needs.

This is a memory that sees not just the victimhood of black people, but the fortitude and strength as well as the spirit of defiance that has sustained them over time. What we see in lynching photographs are not just the end product of brutal torture, but a meticulous construction of a false reality. The rationale for lynchings often proved false, but the repetition of those rationales in and of themselves can also have the effect of overshadowing the actual rationales. In other words, we should never be so stunned by the handiwork of those tormentors that we fall into the trap of seeing their victims only as prey. Black people spent their lives organizing cooperative farms, defending their property, demanding fair wages and protecting their wrongly accused kin. Rather than bear witness to their suffering, this dissertation is a call to bear witness instead to those victims' lives.

CHAPTER 1

OF ARCHIVES, EXHIBITIONS AND, COLLECTING

COLLECTING

In the fall of 2016, I attended the Boston Book Fair, one of the largest antiquarian book fairs in the country. It was humming with energy. Having never been to a rare book fair, I was totally unaccustomed to seeing so many objects that looked like they should be in a junk heap being sold for such exorbitant prices. But more than that, everyone was puttering around, chatting and browsing, like it was completely normal. When I finally plunged into the crowd to explore the booths myself, one of the first things I saw at the booth of a book seller out of Virginia was a black and white photograph of a dead, unnamed black man hanging from a noose.

I was taken aback by seeing the photograph displayed so openly—it was lit well, as to attract the right buyer from the busy throng of well-heeled hunters. It almost glowed. I cannot remember how much it was, but it could not have been cheap. I looked around. Not a black face in sight. Never mind that Boston has its own uncomfortable history of racial violence, red-lining, and dog-whistle politics. There was a certain amount of dark humor in the awkwardness of my position. I was aghast, yet, there I was, trying to be an academic anyway. Shall I buy the photograph and lock it away? I could take it off the market. Shall I buy the photograph and plan to use it in the classroom? It could be

educational. After all, I teach on violence and photography. I could mount an exhibition; do it “right”. But if I bought it, then I would become a collector of lynching photographs. I might buy more. I felt I might become complicit in something which I did not yet understand, just by paying this man for this photograph, a photograph that he proudly displayed as a thing among his other prized things. A genuine find. I decided to leave it there, lit up for everyone to see. But the display, and the questions it prompted stuck with me. What does it mean, really, to be a connoisseur of lynching photographs?

James Allen is one of the best-known collectors of lynching photography, in part because starting in the year 2000, he mounted the largest travelling exhibition of them to date: *Without Sanctuary: Lynching Photography in America*. He is a well-known antiques collector—a “picker” from Florida that began his career hunting for objects in the swap meets, flea markets, pawn shops, and estate sales of the Southern United States. Allen, however, is not the only collector of lynching photographs. For example, The Loewentheil Collection of African-American Photographs at Cornell, which contains many lynching photographs, was assembled by Stephan Loewentheil and donated by the Loewentheil family. Loewentheil is a professional antiquarian that graduated from Cornell Law School, a relationship he has maintained since he became a preeminent rare books dealer. He is known for his high-profile relationships with Presidents and his extraordinary purchases.

Loewentheil owns a copy of Darwin's original manuscript of *On the Origin of Species*, portions of the Gutenberg bible, and Shakespeare's First Folio.²¹ He also collects African Americana, and lesser known photographs; he has amassed the largest private collection of Chinese historical photographs outside of China.²² Bryan L. Bossier's collection of postcards also contains numerous lynching photographs—they command some of the highest prices of all of the photographs in the collection.²³ Not much is known about the collection, other than it was donated by Bossier, a well-to-do business man from central Louisiana. It was acquired by Newberry Library in 2016 from the Lake County Forest Preserve District.²⁴ There are hundreds of lynching photographs floating around in private collections, institutions, and local archives. Still, it is Allen's collection and exhibition that has resonated deeply with the public; he has dedicated his life to collecting these specific photographs and molded himself into moral crusader emotionally bound to his collection.²⁵ Individual collectors of African-Americana, lynching photographs and ephemera in general, tend to be wealthy, white, and educated.

Without Sanctuary: Lynching Photography in America has been exhibited at least seven times, in seven very different venues.²⁶ Institutions vary from the New-York Historical

²¹ Kathryn Vasel. CNN. <https://money.cnn.com/2016/06/14/luxury/darwin-origin-of-species-manuscript-sothebys/index.html>. Canadian Broadcasting Corporation. <http://www.cbc.ca/news/entertainment/rare-audubon-book-sells-for-11-6m-1.970838>. "Foiling the Thieves". *The Economist*. <https://www.economist.com/prospero/2015/07/02/foiling-the-thieves>.

²² British Broadcasting Network. <https://www.bbc.com/news/in-pictures-34697724>.

²³ Bryan L. Bossier postcard collection spreadsheet.

²⁴ Mick Zawislak, "Lake County officials prepare to transfer ownership of postcard collection", *Daily Herald*. <https://www.dailyherald.com/article/20161003/news/161009682/>.

²⁵ Brian Lyman. *Montgomery Advertiser*. <https://www.montgomeryadvertiser.com/story/news/2018/04/25/without-sanctuary-and-how-we-remember-lynching/499641002/>. Dora Apel. "On Looking: Lynching Photographs and Legacies of Lynching after 9/11." *American Quarterly* 55, no. 3 (September 2003), 460.

²⁶ Levine Museum of the New South. <https://www.museumofthenewsouth.org/exhibits/without-sanctuary-lynching-photography-in-america>.

Society, to the Andy Warhol Museum, the Charles H. Wright Museum of African-American History, the Chicago Historical Society, and the Martin Luther King Jr. National Historic Site.²⁷ It has garnered both praise, and some derision from the general public.²⁸ Despite the controversy around the exhibition and collection, or perhaps because of it, it saw record breaking attendance at every single venue.²⁹ The images, which are photographs and postcards from the personal collection of James Allen and John Littlefield, depict various “lynchings” from the 1890s through the 1940s. The exhibition’s express goal was to expose spectators to the history of lynching, which sounds harmless enough. But embedded in that premise is an assumption about universality of ignorance around racism, hardly a universal fact. I am arguing that the exhibition conceived its spectator as being very much like Allen himself—someone who needed to consume lynching photographs to acknowledge racial violence. Curators never stopped to ask *fundamental* (rather than surface) questions about who its spectators were, which is connected to their experience of history. In other words, I am positing that they stopped at identity and never graduated to epistemology, that is, knowledge structures, or social ontology, what sorts of properties define differences among groups. If they had, the exhibition could have looked wildly different.

The idea that someone was trying to hide the photographs and by extension hide the history of lynching and racism underpins the rationale for James Allen’s collection and

²⁷ Ibid.

²⁸ Dora Apel. *Imagery of lynching: black men, white women, and the mob*. “On Looking”. (New Brunswick New Jersey: Rutgers Univ. Press, 2004), 13.

²⁹ Natasha Barnes. “On Without Sanctuary”, *Nka: Journal of Contemporary African Art*, Number 20, Fall 2006, 88.

his exhibition. He told the *Montgomery Advertiser* in 2018, “When we found out ‘Oh my God, there’s more of them out there,’ I started calling around to libraries, state university libraries, state societies. Nobody would know or admit they had any of these. That was the real impetus of what I was doing this for. The violence was *buried*.”³⁰ Buried from whom? Buried when? The unbroken, though shape-shifting stream of racial violence against black people from their enslavement to the present was certainly not forgotten by African-Americans, irrespective of their knowledge of the photographs. Lynching photographs may have receded from view, but African-American memories of that peculiar form of racial violence did not recede with them.

Allen was echoing his earlier comments from 2000: “*We* hope people will walk away with the idea that this was a very frequent act of violence. *We* won’t be able to deny it any longer.”³¹ To defend that exhibition, even Joseph F. Jordan, the African-American curator of the exhibition in Atlanta, argued that “bearing witness” was important. Jordan, however, sought to humanize and reclaim the victims, rather than the perpetrators. Putting the photographs, “back in the trunks” he argued, only served to deny the victims the recognition of their humanity that they deserve and further the goal of the perpetrators.³² To be clear, this is not to say that the photographs do not spur valuable conversation or attention—it is only to point out the nuances of the kind of conversation they have tended to invite and the type of spectator the assume, despite the curators’

³⁰ Brian Lyman. *Montgomery Advertiser*.
<https://www.montgomeryadvertiser.com/story/news/2018/04/25/without-sanctuary-and-how-we-remember-lynching/499641002/>.

³¹ Maria Hinojosa, “Exhibit of lynching photos is a harsh display of hatred”. *CNN*.
<http://www.cnn.com/2000/US/01/18/lynching.photography/>.

³² Dora Apel. *Imagery of lynching: black men, white women, and the mob*. “On Looking”. (New Brunswick New Jersey: Rutgers Univ. Press, 2004), 14.

earnest efforts to engage with community concerns and build consensus. It should be noted that the exhibition changed considerably as it traveled from place to place in an effort to exhibit the photographs “sensitively.” In New York, the photographs were installed on bare walls; by the time it was exhibited in Detroit, there were three segments: “Lynching: A Somber Phenomenon,” “Anti-Lynching: A Movement That Changed the Nation,” and “Contemporary Lynching Issues: We Must Learn From Our Past.”³³ The exhibition merely added resistance to racism’s brutality; it never shed the fundamental assumption of an unsuspecting universal spectator that required racism of the past be revealed in the present. The name of the last section of the exhibition in Detroit “Contemporary Lynching Issues: We Must Learn From Our Past” only emphasizes that point. Further, the “Anti-Lynching” segment consisted of “leaflets, literature and memorabilia” that detailed the efforts of black people to pass an Anti-Lynching bill, but that section did little to counter what was described by one critic as the “numbing redundancy” that occurred from exhibiting image after image of lifeless bodies without individual stories or notes.³⁴

Spectators—particularly African-American spectators—are rightly suspicious of such displays of lynching photographs, and their suspicion is not always rooted in offense at the images themselves. Some visitors were disappointed that the exhibitions were not built around calls for justice.³⁵ The oft-repeated idea that exhibitions like *Without*

³³ Eddie B. Allen, *The Metro Times*. <https://www.metrotimes.com/detroit/the-hangmans-legacy/Content?oid=2179267>.

³⁴ Ibid.

³⁵ RM Wolff. *Museums and Photography: Displaying Death*. (New York, New York: Routledge, 2017), 139.

Sanctuary “counter historical amnesia” assumes a kind of “past-ness” that is fundamentally alien to the African-American experience of racism—systemic or otherwise.³⁶ Consider this quotation from James Baldwin in a debate at Cambridge University with the father of the modern American conservative movement, William F. Buckley Jr.:

I am stating very seriously, and this is not an overstatement: *I* picked the cotton, *I* carried it to the market, and *I* built the railroads under someone else’s whip for nothing. For nothing. The Southern oligarchy, which has still today so very much power in Washington, and therefore some power in the world, was created by my labor and my sweat, and the violation of my women and the murder of my children. This, in the land of the free, and the home of the brave. And no one can challenge that statement. It is a matter of historical record.³⁷

For black people in America, racism is not and has never been a matter of a progressive linear timeline with a neatly arranged past, present, and future. Whether lynching continues in its 19th century form is not at issue. Rather, it is the acknowledgement of the persistence of the historical-ideological structures of the systemic, scientific, and interpersonal racism that made lynching possible in the first place. Interestingly, Baldwin himself appeals to the historical record, not as the arbiter of Truth, but as the arbiter of Buckley’s truth, skillfully interweaving his own epistemological structures into his disavowal of Buckley’s. In other words, it is possible for lynching photographs to be both evidence of horrific acts that occurred in the past, but also to be understood in the eternal present. African-Americans are far from being merely shocked by or ashamed of the photographs—though the existence of these feelings might be enough to reconsider

³⁶ Ibid. Dora Apel. *Imagery of lynching: black men, white women, and the mob*. “On Looking”. (New Brunswick New Jersey: Rutgers Univ. Press, 2004), 3, 13. Jessy J. Ohl, Jennifer E. Potter. “United We Lynch: Post-Racism and the (Re)Membering of Racial Violence in Without Sanctuary: Lynching Photography in America”. *Southern Communication Journal* 78, no. 3 (2013): 185-201.

³⁷ “James Baldwin Debates William F. Buckley [1965],” Vimeo Video, 21:56, posted by “LS,” January 3, 2011, <https://vimeo.com/18413741>.

exhibiting the images. On the contrary, it is the circulation of such photographs as if they are revelatory that limits their effectiveness as documents.

However, “looking,” as an individual, is only one part of experiencing lynching photographs and perhaps not even the most complex part.³⁸ Double consciousness, Du Bois argued, was about “measuring one’s *soul* by the tape of a world that looks on in amused contempt and pity.”³⁹ The spectacle of lynching photographs, no matter if the intention is contempt or pity, remains spectacle. It is not an accident that Du Bois makes little distinction between contempt and pity. Racism is about power, not intention. The power to collect and circulate the images shadows the exhibition as much as the content of photographs themselves. A photograph taken of Frank Embree in 1899, stripped naked with his body lacerated before he was lynched, was purchased by John Littlefield and James Allen for \$30,000. By comparison, the classic Andy-Warhol painting “Macintosh” sold for \$30,000 in 2018—at least twenty years later.⁴⁰ Though some photographs are purchased for as little as \$15 dollars, the point here is about how money intersects with

³⁸ Dora Apel has argued that Du Bois thought the terror of lynching was “in the looking”, but I have not been able to locate the direct quotation or writing to which Apel refers. Apel’s footnote points to page 221 of Grace Elizabeth Hale’s *Making Whiteness: The Culture of Segregation in the South, 1890-1940*. (New York, New York: Vintage, 1999). Hale’s footnote does not give the specific writing where Du Bois made the comment, but asserts that Du Bois described lynching as amusement. The explanation of “the cultural power of lynching coming from looking” is an extrapolation by Hale who is engaging with Dana B. Polan’s, “Above All Else to Make You See”: Cinema and the Ideology of Spectacle, *boundary 2*, Vol. 11, No. 1/2, *Engagements: Postmodernism, Marxism, Politics* (Autumn, 1982 - Winter, 1983), 129-144. It does not appear to be a statement from Du Bois. He does however, mention the lynching of Sam Hose in *Dusk of Dawn* (Piscataway, New Jersey: Transaction Publishers), 2011 on page 67, and he wrote an account of the lynching of Jesse Washington, published as an eight-page supplement to the July 1916 issue of *The Crisis*, using Elizabeth Freeman’s reporting.

³⁹ W.E.B. Du Bois, *The Souls of Black Folk* (New York, New York: Bantam Dell, 2005), 3.

⁴⁰ Robin Pogrebin. *The New York Times*. “A Quest for Photographs He Could Barely Look At”. <https://www.nytimes.com/2000/01/13/arts/a-quest-for-photographs-he-could-barely-look-at.html>
Woodshed Art Auctions. “Andy Warhol Apple Macintosh”. <https://bid.woodshedartauctions.com/lots/view/1-NYTPZ/andy-warhol-apple-macintosh>

power to create a market where objects circulate. The relatively small subculture of antiques dealers, rare book purveyors, curators, collectors, and special collections librarians are overwhelmingly white Americans. It is they who price, assess, archive, name, sell, buy, and exchange these photographs among themselves in their own networks.

Further, the key to double consciousness is not visual: it is metaphysical. While double consciousness is a curse, it also gives rise the gift of “second sight,” which forces black people to not only understand themselves from their own unique perspective, but to also to understand themselves as they might be perceived from the outside. This is mirrored by the paradox of being “African” and apart, but also deeply “American,” and the desperate desire to merge the two without denial or abuse.⁴¹

Despite Du Bois’ adeptness at countering the visual stereotypes of biological racism with works like his World’s Fair exhibition in Paris, double consciousness can never be reduced to a purely visual theory.⁴² When Du Bois is referencing “one’s soul,” he is pointing to the title of his work—not an individual soul, but the collective souls of black folk. A student of German philosophy, it was the Geist of the Volk that he was ultimately after, sometimes translated as national or cultural spirit. This is evidenced in the other chapters in *The Souls of Black Folk*, which are rarely explored by scholars of visual

⁴¹ Ibid.

⁴² See Shawn Michelle Smith’s excellent study *Photography on the Color Line: W. E. B. Du Bois, Race, and Visual Culture* (Durham, North Carolina: Duke University Press Books, 2004), 25. There, she argues from Du Bois as an early visual theorist of race by focusing on his concept of “double-consciousness” and “the veil”.

culture.⁴³ On the dashed hopes of Reconstruction for African-Americans in Tennessee, he wrote in Chapter 4, “My log schoolhouse was gone. In its place stood progress; and Progress, I understand, is necessarily ugly.”⁴⁴ Part of the emotional estrangement caused by viewing lynching photographs in the 21st century has to do with the fact that the photographs undermine the idea of Progress in America by reverberating across time and space. Progress—the claim that life is better now than it was before—is a sacrosanct idea in the United States, and it functions as political opium.

When looking at lynching photographs in the archive—whether physical archives or digital search engines—a striking pattern emerges: there is no obvious pattern. The fragmentary nature of the archive of lynching photographs makes it very difficult to “curate” it in the traditional sense, since curatorial practices typically involve the imposition of some kind of narrative: linear, geographic, visual, or otherwise. There are very few ways to understand lynching photography as an aggregate, particularly in the context of lynching itself. Just as in lynching, the photographs are varied, complex and motivated by a number of factors. Still, there are three ways that these photographs might be interrogated that overlap to make sense of them: the moment of cataloging, the composition, and their recurrence. Examining cataloging allows us to map how naming and categorization affects the presentation and consumption of lynching photographs. Composition and recurrence illustrate, more than anything else, the gaps in the archive.

⁴³ Du Bois’ other chapters include an examination of schooling, music, children, geography. His entire oeuvre covers history, philosophy, early sociology, literature, poetry. Visual culture scholars tend to focus narrowly on a few concepts from *The Souls of Black Folks* and apply to them broadly visual representations, rather than to keep his concepts in context.

⁴⁴ Ibid at 52.

What we do not find in the archive, or what we do not see, is the key to grasping the extraordinary brutality that can be seen.

RECURRENCE

The practice and visibility of lynching declined in the 1930s, but the scholarship on lynching photography does not necessarily speak to that, since, for example, images of the 1930 lynching of Thomas Shipp and Abe Smith and the 1935 lynching of Rubin Stacy are among the most common images found across physical archives and online searches.⁴⁵ They were also used heavily in NAACP anti-lynching materials, which is one possible reason why they reoccur so often.⁴⁶ Lynching peaked in the 1890s although Arkansas experienced a spike in the 1910s and Florida a spike in the 1920s.⁴⁷ Lynchings often occurred around the time that landowners needed to settle their accounts with mostly African-American sharecroppers, most of whom were formerly enslaved, among other socio-economic and interpersonal motivations.⁴⁸ By the late 1930s, Jim Crow laws

⁴⁵ Google. 2005. Accessed August 7, 2018.

https://www.google.com/search?q=lynching&source=lnms&tbm=isch&sa=X&ved=0ahUKEwj1jpHM99vcAhWYCDQIHSc8DgkQ_AUICygC&biw=1005&bih=592.

Duck Duck Go. Accessed August 7, 2018. <https://duckduckgo.com/?q=lynching+&atb=v120-7&iar=images&iax=images&ia=images>.

Photographs of Rubin Stacy, Thomas Shipp and Abe Smith are found in the Library of Congress, Visual Materials from the National Association for the Advancement of Colored People Records, The New York Public Library's Schomburg Center for Research in Black Culture, Photographs and Prints Division, The James Allen and John Littlefield Collection of Lynching Photographs, The Loewentheil Collection of African-American Photographs, Cornell University and The Bryan L. Bossier Post Card Collection, Newberry Library.

⁴⁶ Amy L. Wood, *Lynching and Spectacle: Witnessing Racial Violence in America, 1890-1940*. (Chapel Hill, North Carolina: University of North Carolina Press, 2009), 220.

⁴⁷ Equal Justice Initiative. LYNCHINGS IN THE SOUTH, 1877 - 1950
<https://lynchinginamerica.eji.org/report/>

⁴⁸ Ibid. John C. Willis, *Forgotten Time: The Yazoo-Mississippi Delta after the Civil War*. (Charlottesville: University of Virginia Press, 2000), 154–155.

were firmly established and the hopes of economic and social equality promised during Reconstruction faded, but the sadism of lynching when it did occur, remained.⁴⁹

The recurrence of particular lynching images can easily be construed as importance, and thus these images occupy an outsized place in scholarship—but it can also lead to a kind of logical slippage that confuses grasping the visual language of a prominent images with understanding the entire context of a single lynching and therefore lynching as a whole. For example, Thomas Shipp and Abe Smith were lynched on August 7th, 1930 in Marion, Indiana.⁵⁰ The lynching was the subject of wide news coverage at the time and the photograph was circulated in local networks and in newspapers. Gruesome keepsakes like hair, clothing and rope were taken from the scene and kept by the crowd; the thousands of photographs sold by Lawrence Beitler for fifty cents apiece were just one element of the living museums created by perpetrators.⁵¹

Shipp and Smith were charged with robbing and murdering a white factory worker, Claude Deeter, and raping his “girlfriend”, Mary Ball on August 6th, 1930.⁵² The next day, a mob broke into the jail with sledgehammers. Tom and Abe were eventually moved to the court house, and hanged from a tree for the “rape” of Mary Ball. Ball’s rape, like so many claims of rape made by white women against black men, was never proven. In fact, Mary gave contradictory statements about whether she was assaulted at all, and the

⁴⁹ Amy L. Wood, *Lynching and Spectacle: Witnessing Racial Violence in America, 1890-1940*. (Chapel Hill, North Carolina: University of North Carolina Press, 2009), 193.

⁵⁰ James H. Madison. *A Lynching in the Heartland: Race and Memory in America*. (New York, New York: Palgrave Macmillan 2003), 2.

⁵¹ James Allen, *Without Sanctuary*. https://www.withoutsanctuary.org/pics_27_text.html. via James Cameron, *A Time of Terror: A Survivor’s Story*. (Black Classics Press, 1982/reprint 1994).

⁵² *Ibid* at 5.

Deeter family knew nothing of her before Claude's murder.⁵³ Several African-American witnesses testified that Mary was involved with Shipp and Smith, but the white press framed Ball as an innocent virgin, violated by Shipp and Smith, with whom she had no prior relationship with.⁵⁴

Regardless of Mary's status as a virgin or as sexuality active the press used her to make Shipp and Smith look like craven beasts.⁵⁵ They neither show the fact that Thomas Shipp was first hanged from the bars of the jail and stabbed before the rope could kill him, nor that that he tried to free himself from the noose as his body was strung up, but the mob lowered him and held his arms so that he could not get away.⁵⁶ Abe Smith was beaten relentlessly by men and women in the crowd, spat upon and stripped, then dragged through the streets and finally hanged in front of the courthouse.⁵⁷ Thomas Shipp's body was later cut down and moved to the courthouse to hang alongside Abe Smith; hours after the initial ordeal, Lawrence Beitler took his famous photograph.⁵⁸

The photographs and framed mementos with the victims' hair also conceal that there were three men in the jail that night; sixteen-year-old James Cameron was spared the fate of Shipp and Smith because an unidentified person insisted that he had nothing to do with the incident.⁵⁹ The only known survivor of a lynching attempt, he went on to start the

⁵³ Ibid at 69.

⁵⁴ Ibid at 68.

⁵⁵ Ibid 68-69.

⁵⁶ Ibid at 9.

⁵⁷ Ibid at 9.

⁵⁸ Ibid at 111.

⁵⁹ Ibid at 10.

Black Holocaust Museum in 1984 after moving to Milwaukee, Wisconsin.⁶⁰ It the very first permanent museum dedicated to the memory of lynching victims, created sixteen years before the *Without Sanctuary* exhibition in New York and over thirty years before the Equal Justice Initiative's National Lynching Memorial in Alabama.⁶¹

Rubin Stacy was lynched on July 19th, 1935 in Fort Lauderdale.⁶² He reportedly knocked on the door of Marion Jones, seeking a glass of water.⁶³ Stacy was arrested two days after the incident with Jones and turned over to Broward County Sheriff, Walter Clark.⁶⁴ He denied attacking her, but rumors spread that she had been both beaten and raped. En route to the Dade County jail, a mob of over 50 people ran the car carrying Stacy off the road.⁶⁵ They later took him to the home of Marion Jones and hanged him from a pine tree using a wire clothesline from Jones's house, shooting his corpse multiple times after it was lynched. Like the lynching of Thomas Shipp and Abe Smith, spectators collected souvenirs, like the wire, tree bark, and pieces of Stacy's clothing. Several witnesses who were interviewed 50 years later claimed that it was Sheriff Clark himself who planned the lynching and that he and his brother had killed black people other than Rubin Stacy with no repercussions.⁶⁶ The photograph of his limp body show none of these details, and

⁶⁰ *America's Black Holocaust Museum*. <https://abhmuseum.org/category/about-abhm/>.

⁶¹ Equal Justice Initiative. <https://eji.org/national-lynching-memorial>. National Public Radio. <https://www.npr.org/2018/05/04/608477810/as-new-lynching-memorial-opens-a-look-back-on-americas-history-of-racial-terror>

⁶² Amy L. Wood, *Lynching and Spectacle: Witnessing Racial Violence in America, 1890-1940*. (Chapel Hill, North Carolina: University of North Carolina Press, 2009), 196.

⁶³ Bryan Brooks. "The Day They Lynched Reuben Stacey." *Sun Sentinel*. 17 July 1988. http://articles.sun-sentinel.com/1988-07-17/features/8802110707_1_black-man-lynching-pine-tree

⁶⁴ Ibid.

⁶⁵ "Negro Hanged by Mob in Sight of Home of Women He Slashed with Knife." *Reading Eagle* 20 July 1935.

⁶⁶ Bryan Brooks. "The Day They Lynched Reuben Stacey." *Sun Sentinel*. 17 July 1988. http://articles.sun-sentinel.com/1988-07-17/features/8802110707_1_black-man-lynching-pine-tree

it is easy for all differences to fall away in the service of analyzing photographs for a totalizing theory.

To be clear, there *are* commonalities in terms of the way lynching is carried out, and the typical rationales deployed around race and gender. But this is not to be mistaken for commonalities between the photographs contained in the archive. The point is not to rehearse the eloquent explanations of lynching by anti-lynching crusaders such as Ida B. Wells which have been echoed by theorists of visual culture in post-structuralist terms, but to highlight that the photographs themselves point to two mutually reinforcing aspects often glazed over in most theoretical accounts. First, lynching occurred across time, but also widely across geography and in vastly different circumstances and at different times. For example, the James-Allen collection contains a lynching photograph from as “late” as 1961, well after the heyday of lynching.⁶⁷ The photograph of David Jackson was taken in McDuffie County, Georgia and is complicated by the fact that police took the picture—which somehow ended up on the market for lynching photography. His body was found by two little boys and ruled a suicide, despite evidence to the contrary.⁶⁸ Lynching is often considered an extrajudicial phenomenon limited to the Southern United States that ranges from the late 19th century to the early 20th century; it is assumed to be committed by a spontaneous, engaged posse of townsfolk. In other words, the common understanding of lynching which is rife in studies of visual culture, presupposes that there are clear victims and perpetrators, clear boundaries between the law and the mob and that

⁶⁷ James Allen, Hilton Als, Congressman John Lewis, and Leon Litwack, *Without Sanctuary: Lynching Photography in America*. (Santa Fe, NM: Twin Palms Publishers, 2000), 172-173.

⁶⁸ Ibid.

lynching occurred during a time distant from the 21st century. Jackson's photograph, among others, calls those assumptions, and the totalizing theories based on those assumptions, into question.

Second, the visual language of all these photographs do not necessarily share much in common—save for fact that a black person has been hanged. Roosevelt Townes and Robert McDaniels were lynched in 1937 in Duck Hill, Mississippi for an allegedly murdering a store clerk; the photographs of the two men brutally tortured were published in *Time* and *Life Magazine*.⁶⁹ McDaniels and Townes however, were pictured chained to trees rather than hanged. Though there was said to be a crowd of over 500 people, they were not pictured.⁷⁰ There are not always crowds; sometimes there is only the body, or, in the case of one photograph from the late 19th century, an unknown location, and two visible onlookers (we cannot of course see who or how many were behind the camera, and we do not know how many were there at the time of the victims' death).⁷¹ Some lynching photographs appear to be taken shortly after death; others obviously taken long after death.

⁶⁹ Amy L. Wood, *Lynching and Spectacle: Witnessing Racial Violence in America, 1890-1940*. (Chapel Hill, North Carolina: University of North Carolina Press, 2009), 197. One of the photographs was also included in the Family of Man Exhibition curated by Edward Steichen; it was withdrawn after 11 weeks and was not included on the exhibitions world tour.

⁷⁰ "MOB JUSTICE - Lynching of Two Negroes - The Argus (Melbourne, Vic. : 1848 - 1957) - 29 May 1937." Trove. Accessed April 3, 2020. <https://trove.nla.gov.au/newspaper/article/11067786>.

⁷¹ Cornell University. "Lynching." 1885. <https://digital.library.cornell.edu/catalog/ss:1508537>.

Lynching occurs across time, but also across geography and status: Bristol, Virginia in 1885,⁷² Anadarko, Oklahoma in 1913,⁷³ Duluth, Minnesota in 1920,⁷⁴ Siskeston, Missouri in 1942⁷⁵. Waco, Texas was a bustling industrial town in 1916 with a small but successful black middle-class.⁷⁶ It was not a backwater. In 1935, Fort Lauderdale was still largely agricultural, with a steadily growing black population. It was reeling from the Great Depression and butting up against the failure of the land boom in the 1920s.⁷⁷ African-Americans were lynched for various offenses concocted by their murderers, from assault or rape to damaging a shoe-shine stand.⁷⁸ Some were exceptionally sadistic, like the lynching of Will James, whose burned, severed head was placed on a pole by his murderers. It was not uncommon for victims to be castrated, as in the case of Nelse Patton's 1908 lynching in Oxford, Mississippi.⁷⁹ Zachariah Walker and John Lee were burned alive on the same day: Walker in Coatesville, Pennsylvania and Lee in Durant, Oklahoma.⁸⁰ Others were run-of-the-mill lynching violence, if there is such a thing. So-called spectacle lynching—of the type that attracted thousands of spectators, like Jesse Washington's lynching in Waco, or Will James' lynching in Cairo, Illinois, were

⁷² Cornell University. "Lynching." 1885. <https://digital.library.cornell.edu/catalog/ss:1508541>.

⁷³ James Allen, Hilton Als, Congressman John Lewis, and Leon Litwack, *Without Sanctuary: Lynching Photography in America*. (Santa Fe, NM: Twin Palms Publishers, 2000), 51.

⁷⁴ The Library of Congress. "Clayton, McGhie, & Jackson, Duluth, Minn." 1920 June 15. <http://www.loc.gov/pictures/item/95520061/>.

⁷⁵ Dora Apel. *Imagery of lynching: black men, white women, and the mob*. "On Looking". (New Brunswick New Jersey: Rutgers Univ. Press, 2004), 38.

⁷⁶ Amy L. Wood, *Lynching and Spectacle: Witnessing Racial Violence in America, 1890-1940*. (Chapel Hill, North Carolina: University of North Carolina Press, 2009), 179-180.

⁷⁷ Donald Rapp. *Bubbles, Booms, and Busts: The Rise and Fall of Financial Assets*. (New York, New York: Springer, 2015), 164-165.

⁷⁸ James Allen, Hilton Als, Congressman John Lewis, and Leon Litwack, *Without Sanctuary: Lynching Photography in America*. (Santa Fe, NM: Twin Palms Publishers, 2000), 189.

⁷⁹ Jennie Lightweis-Goff, *Blood at the Root: Lynching as American Cultural Nucleus*. (New York: State University, New York, 2011), 107.

⁸⁰ Matt Reimann. *Timeline*. 2017. <https://timeline.com/the-forgotten-lynching-of-zachariah-walker-was-one-of-our-most-shameful-and-it-was-in-the-north-678871b13f2d>.

never common.⁸¹ It was through the circulation of postcards and later newspapers that most Americans looked at the now infamous images of lynching. Spectacle lynching, the sort with large crowds of jeering white onlookers, were the exception not the rule, and those photographs have come to stand in for all photographs of lynching, as well as for the dynamics of lynching itself.⁸² Why? As Amy Wood has argued, The NAACP's array of anti-lynching materials in the 1930s are partially responsible for turning attention from black victims to the white gaze to appeal to liberal allies who might get their anti-lynching legislation passed.⁸³ Crucially, Du Bois resigned in 1934 to pursue Black nationalist strategies and international audiences, leaving Walter White to fully advance his integrationist, assimilationist agenda as the leader of the NAACP—a mere fifteen months before the famous anti-lynching campaign featuring Stacy. “Do not look at the Negro,” says a caption underneath a cropped 1935 photograph of Rubin Stacy in the *Crisis*. “His earthly problems are ended. Instead, look at the WHITE children who gaze at this gruesome spectacle.”⁸⁴ Curators, collectors, and academics have followed suit without thinking critically about how the archive can blind us. Wendy Wolters Hinshaw has pointed out that on the cover of the coffee table book for the *Without Sanctuary*

⁸¹ W. Fitzhugh Brundage. “Mobs and Ritual.” In *Lynching in the New South: Georgia and Virginia, 1880-1930*, 19. (Urbana, Illinois: University of Illinois Press, 1993).

⁸² Out of the thousands of lynchings and hundreds of lynching photographs considered for this study, only small fraction had crowds in the hundreds or thousands. That does not however, mean that smaller crowds did not have were not spectacular. It is only to point out that there is more visual and circumstantial variance than some studies have let on. The Marion, Indiana lynching of Thomas Shipp and Abram Smith in 1930, the Waco, Texas lynching of Jesse Washington in 1916, the Cairo, Illinois lynching of Will James in 1909, the Duluth, Minnesota lynching of Elias Clayton, Elmer Jackson, and Isaac McGhie in 1920, the Lawrenceville, Georgia lynching of Henry Campbell in 1906, the Cartersville, Georgia lynching of Will Jackson in 1901, the Durant, Oklahoma lynching of John Lee in 1911 and the Waco, Texas lynching of Roy Mitchell in 1923 are known to have had large crowds of over 100 people. At least 4,084 African-Americans were lynched over the 60-year period of 1880-1940.

⁸³ Amy L. Wood, *Lynching and Spectacle: Witnessing Racial Violence in America, 1890-1940*. (Chapel Hill, North Carolina: University of North Carolina Press, 2009), 204.

⁸⁴ Ibid at 206.

exhibition, the lynching photograph of Lige Daniels is cropped to emphasize his hanging body, fetishizing the body of the victim.⁸⁵ I would push her assertion a step further: the crop manages to fetishize Daniels' corpse by emphasizing only part of him (his feet), and to use the corpse as a prop to encourage the disavowal of the perpetrators by redirecting the spectator's eye to the people in the crowd. Refusal to fetishize a body does not necessitate that spectators dis-engage with Black victims and engage with the perpetrators. It requires that they disengage from "spectacular black suffering" as something to be consumed, collected, exhibited, and most of all, aestheticized.

The original exhibition of 60 photographs from James Allen's collection was not curated at any of the number of educational venues available in New York City.⁸⁶ Rather, it opened in at the Ruth Horowitz Gallery on the upper East side of Manhattan. The Horowitz Gallery is a venue that normally only exhibits a small amount of "art" photographs. The aesthetic orientation—irrespective of the way that Allen has framed the experience of these photographs as documents of history—sabotages the spectator.⁸⁷ Natasha Barnes wrote that, "postcards were hung simply on bare walls, without any of the accouterments of professional curatorship: they had no sequence, no markers of time and place, no captions of any kind."⁸⁸ In her critique of Roland Barthes, Ariella Azoulay argues that shock photos exhibited in art galleries can be trapped in a "vicious aesthetic

⁸⁵ Wendy Wolters Hinshaw. *Without Sanctuary: Bearing Witness, Bearing Whiteness*. *JAC*, Vol. 24, No. 2, Special Issue, Part 1: Trauma and Rhetoric (2004), 400.

⁸⁶ Natasha Barnes. "On Without Sanctuary", *Nka: Journal of Contemporary African Art*, Number 20, Fall 2006, 89.

⁸⁷ Maria Hinojosa, "Exhibit of lynching photos is a harsh display of hatred". *CNN*. <http://www.cnn.com/2000/US/01/18/lynching.photography/>.

⁸⁸ Natasha Barnes. "On Without Sanctuary", *Nka: Journal of Contemporary African Art*, Number 20, Fall 2006, 89.

cycle” that causes the spectator to bracket “what is there” because they are too busy assessing whether the photograph has made them “shudder” effectively or not.⁸⁹ In the case of *Without Sanctuary*, one is encouraged to consume black suffering as art—the more sadistic the more effective—and become morally outraged. Allen was the only person in the Horowitz Gallery who knew information about the photographs. In some ways, he was like one of Derrida’s Greek archons (from which the word archive is derived), an all-important Greek official vested with authority to approve the interpretation of state documents. Allen was even more powerful than a Greek archon, since he alone was vested with hermeneutic control of his “documents.”⁹⁰

Lynching required witnessing to be an effective form of terror, but not necessarily first hand witnessing, which is why these images were circulated so widely after the fact locally and nationally. However, individual images of lynching all ask for spectatorship in vastly different ways. So, what then, does “witnessing” as a framework for lynching photographs mean in the face of thinking about circulation, collection, content, exhibition and power, rather than the content of a few lynching photographs that have been recycled by theorists, book publishers, and archives alone? Witnessing, for Dora Apel in “On Looking,” is based on an ontological assumption about a seamless relationship between the eye, perception, the mind and morality. Despite Apel’s acknowledgement of the questionable reasons for lynching, the photograph itself escapes such criticism.

Witnessing is constructed as a kind of contradictory double comment on the “objectivity”

⁸⁹ Ariella Azoulay, *The Civil Contract of Photography*. (London, United Kingdom: Verso, 2012), 161-165.

⁹⁰ Natasha Barnes. “On *Without Sanctuary*”, *Nka: Journal of Contemporary African Art*, Number 20, Fall 2006, 89. Jacques Derrida, and Eric Prenowitz. *Archive fever: a Freudian impression*. (Chicago: The University of Chicago Press, 2005), 2.

of the image put before the spectator based on “correct” notions of subjective moral outrage. It is informed by occularcentrism—privileging the visual in a way that considers the photograph not objective but magical, some version of transparent that results in transcendence.⁹¹

Now, says the spectator, we know better than that. We can look at the perpetrators, understand them as normal every-day joes instead of monsters, and comfortably disavow not them, but their beliefs about the world, as if that world is not the same one in which we live, move, and breathe now. While Apel does not directly invoke the hypothetical shared experience as spectators that Susan Sontag criticizes in *Regarding the Pain of Others*, she does invoke “we” implicitly, despite a spirited attempt to acknowledge the trauma that looking at lynching photographs might produce for African-Americans. But an implicit “we”—that is educated, white progressive spectators—has already foregrounded the earlier argument justifying the exhibition of these photographs. Sontag writes of this “we”:

WHO ARE THE "WE" at whom such shock-pictures are aimed? That "we" would include not just the sympathizers of a smallish nation or a stateless people fighting for its life, but—a far larger constituency—those only nominally concerned about some nasty war taking place in another country. The photographs are a means of making "real" (or "more real") matters that the privileged and the merely safe might prefer to ignore.⁹²

⁹¹ Martin Jay, “Vision in Context: Reflections and Refractions,” in *Vision in Context: Historical and Contemporary Perspectives on Sight*, ed. Teresa Brennan and Martin Jay (New York: Routledge, 1996), 1-14.

⁹² Susan Sontag, *Regarding the Pain of Others* (New York, New York: St. Martin’s Press, 2003), 4.

In the case of lynching photographs, for some spectators, the *past* is a foreign country.⁹³ Dora Apel writes “A civic sharing grounded in contemporary looking produces an equally public acknowledgement of the brutalizing effects of racism, while its opposite, keeping the history of race hatred *buried* and hidden, forecloses any possibility of reconciliation,” as if lynching is something “we” need to come to terms with in the neutered context of a gallery.⁹⁴ The photograph here becomes evidence, revelation and talisman. Apel herself argues that during the heyday of lynching, “it was not necessary to look to be terrorized by the spectacle of lynching; it was enough to know that thousands of others looked and were amused.”⁹⁵ As long as that racial terror she references stays safely anchored in the past, the rationale for exhibiting lynching photographs—which is based on the assumption of a white spectator regardless of the invocation of black spectators—is allowed to stand.

The notion of “witnessing”, with all of its baggage, has for better or worse been informed by Holocaust discourse and studies of Shoah related materials. Annette Wieviorka has convincingly argued in *The Era of the Witness* that Holocaust witnessing has gone through three distinct eras. The first “concerned the testimony left by those who did not survive the events.”⁹⁶ The second era followed the televised war crimes trial of Adolph Eichmann in 1961. It was during this time that cultural indifference to survivors’ stories and their absence from U.S. political and cultural life gave way to the image of the

⁹³ See David Lowenthal, *The Past is a Foreign Country* (Cambridge: Cambridge University Press, 1999).

⁹⁴ Dora Apel. *Imagery of lynching: black men, white women, and the mob*. “On Looking”. (New Brunswick New Jersey: Rutgers Univ. Press, 2004), 14-15.

⁹⁵ Ibid at 15.

⁹⁶ Annette Wieviorka. *The Era of the Witness*. (Ithaca, N.Y: Cornell University Press, 2006). xv.

witness as not only the “bearer of history”, but as the ultimate public authority beyond even that of an historian.⁹⁷ At the same time, historians were largely distrustful of using survivor testimony in historical studies. The third and final phase is what Wieviorka calls the “era of the witness,” the evolution and exaltation of the witness in a society that uses survivor testimony for various political and pedagogical purposes.⁹⁸ It calls on the entire society—particularly in the United States—to remember the atrocities committed from 1941-1945 against the Jewish people by reading Shoah literature, viewing Shoah related fictional as well as documentary photographs and films, and listening to survivor testimony, all as surrogate witnesses. Though not necessarily an improper invocation, it is important to examine its suitability for lynching, considering that lynching occurred both prior to and contemporaneously with the Holocaust. Scholars, journalists and collectors writing about lynching photography have been working with a largely unexamined general concept of witnessing that might be ill-suited for lynching photography in particular.

Lynching, particularly through the 1930s, was not clandestine like the camps. It was a public carnival meticulously designed to be looked at, circulated and consumed, no matter the size of the audience. In many photographs, signs are hung on bodies and heads are propped up with sticks. Victims who had their clothes ripped off during the process of lynching were covered again for photographs. Lynch mobs embraced photography in part because it served the purpose of its ultimate goal: to fully crop their brutality out of the frame and justify their actions. Despite the possibility of taking photographs during the

⁹⁷ Annette Wieviorka. *The Era of the Witness*. (Ithaca, N.Y: Cornell University Press, 2006). 83, 120.

⁹⁸ Ibid at xv.

process of lynching, very few survive.⁹⁹ One of the only commonalities among lynching photographs is that the black people in them are almost always already dead.

The OED defines a witness as, “A person who sees an event, typically a crime or accident, take place.”¹⁰⁰ A legal witness can provide an account of something outside of his or herself. Their testimony is used as evidence; it corroborates facts. The concept of a witness to the Holocaust has been defined by debates about the conflict between subjectivity and objectivity, history and memory, and questions about whether it is truly possible for anyone to testify to the enormity of the Holocaust.¹⁰¹ To understand the rejection of lynching photographs as the arbiter of lynching memory, scholars might take their cue from a different kind of witnessing—witnessing in the African-American church, which is the polar-opposite of juridical witnessing. Like the “second sight” of Du Bois, it is metaphysical. One bears witness to the Truth through their relationship with God, not to facts outside of themselves. This concept can be related to the original Old English root of witness, “witan”, which simply means, “one who knows”, and has more relation to knowledge, intellect and consciousness than to legality or to evidence.

⁹⁹ James Allen, Hilton Als, Congressman John Lewis, and Leon Litwack, *Without Sanctuary: Lynching Photography in America*. (Santa Fe, NM: Twin Palms Publishers, 2000), 181. Frank Embree, lynched in 1899 in Fayette, Missouri, is one example of a series of photographs taken of a lynching victim, although the photographs are not of the lynching process per se, but of his public whipping and torture, then the aftermath of being hung. The photographs however, do make plain that he was nude for his torture and re-clothed for the photograph of his hanging.

¹⁰⁰ Oxford English Dictionary, “Witness”.

<http://www.oed.com/view/Entry/229713?rskey=NJhLw8&result=1&isAdvanced=false#eid>.

¹⁰¹ Giorgio Agamben, *Remnants of Auschwitz: The Witness and the Archive*. (Boston, Massachusetts: MIT Press, 2002).

Du Bois mentions the lynching of Sam Hose in 1899 as an awakening for him in his 1940 work *Dusk of Dawn*—an awakening full with ontological and epistemological consequences. He realized that he could never be a detached scientist while “Negros were being lynched.”¹⁰² He never saw the knuckles of Sam Hose on display—though they were said to be in a shop on the very street he was walking down that day—and he never referred *directly* to crowds of onlookers.¹⁰³ Merely hearing about Hose’s fate and learning that his body parts had been dispersed before he got a chance to deliver his “reasoned”¹⁰⁴ statement concerning the “evidence and facts”¹⁰⁵ to the *Atlanta Constitution* shook him to his epistemological core:

I regarded it as axiomatic that the world wanted to learn the truth and if the truth was sought with even approximate accuracy and painstaking devotion, the world would gladly support the effort. This was of course, but a young man’s idealism, not by any means false, but also never universally true.¹⁰⁶

Objective facts, learned to Du Bois, were simply not enough. He needed to change the way he thought about witnessing.¹⁰⁷

Race as an existential category, however, inflects religious witnessing. White Southern Evangelicals constructed lynching as a form of witnessing too—newspapers and Protestant preachers often framed lynching audiences as witnesses to divine

¹⁰² W.E.B. Du Bois, *Dusk of Dawn* (Piscataway, New Jersey: Transaction Publishers, 2011), 67.

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.* at 67-68.

¹⁰⁷ It is important to point out that Du Bois was reflecting on his awakening in 1940, 6 years from having resigned from the NAACP in 1934 to pursue an African-American nationalist strategy advanced by African-American controlled schools, institutions and economic cooperatives. Walter White took up the helm after Du Bois and was strictly integrationist.

punishment.¹⁰⁸ In other words, the idea that the function of these photographs can be transformed is not necessarily problematic. In fact, lynching photographs have historically been subject to all manner of transformations. The problem is uncritically assimilating categories like “evidence” and “witnessing” to justify their collection, exhibition and circulation.

ARCHIVAL VIOLENCE AND CATALOGING

The nature of the archive of lynching photographs has consequences in relation to understanding the event of lynching—consequences rarely considered when exhibiting photographs. Out of the 130 lynching photographs consulted for this study, only one—Laura Nelson, who was lynched along with her son on May 25th, 1911 in Okemah, Oklahoma—was a woman. This, however, does not mean that black women were not lynched.¹⁰⁹ It only means that taking photographs of lynched black women did not serve the ideological purpose of perpetrators. The mutilated body of a black woman undermines the idea, as it has been so often pointed out by theorists, that lynching black men was predicated on the image of chivalrous white men protecting white women from the brutality of black men. Black women’s absence from the archive of lynching photography can be related to the general absence of the process of lynching black men, and the emphasis instead on the final product of lynching. Bodies are posed like props, almost as if they lynched themselves.

¹⁰⁸ Amy L. Wood, *Lynching and Spectacle: Witnessing Racial Violence in America, 1890-1940*. (Chapel Hill, North Carolina: University of North Carolina Press, 2009), 46, 61, 63.

¹⁰⁹ Equal Justice Initiative. LYNCHING IN AMERICA: CONFRONTING THE LEGACY OF RACIAL TERROR THIRD EDITION. <https://lynchinginamerica.eji.org/report/>

Further, I have not recovered a single photograph that shows the rape or mutilation of a black woman, despite reports that they were abused in these ways.¹¹⁰ Laura Nelson, for example, was raped before she was hanged.¹¹¹ Mary Turner was lynched in 1918 by a white mob in Lowndes County, Georgia for protesting the lynching death of her husband Hazel Turner. Turner was eight months pregnant, and likely raped. A white mob ripped her clothes off, hung her upside down by the ankles, soaked her clothes with gasoline, and she was burned.¹¹² Her baby was cut from her stomach as she hung upside down and stomped to death.¹¹³ She was thirty-three years old.¹¹⁴ The lynching was widely reported, yet no photographs have surfaced. Black women were lynched for their political affiliations, poisoning wells, theft, “miscegenation,” murder, and associations with men in their lives who had been accused of some wrong.¹¹⁵ The sexual abuse and mutilation black women suffered at the hands of their overseers, slave masters, mistresses and their children was brutal. But we should remember that the protection from outside violence

¹¹⁰ Newspapers routinely used euphemisms for pregnancy and rape. Julie Buckner Armstrong, *Mary Turner and the Memory of Lynching*. (Athens, Georgia: University of Georgia Press, 2011), 32, 99. Allen W. Trelease *White Terror: The Ku Klux Klan Conspiracy and Southern Reconstruction*, 58, 224, 293, 306, 341. Lisa Cardyn, “Sexualized Racism/Gendered Violence: Outraging the Body Politic in the Reconstruction South”, 100. See Hannah Rosen’s germinal work *Terror in the Heart of Freedom: Citizenship, Sexual Violence, and the Meaning of Race in the Postemancipation South*. (Chapel Hill, North Carolina: The University of North Carolina Press), 2009. Equal Justice Initiative. LYNCHING OUTSIDE THE SOUTH, 1877-1950 <https://lynchinginamerica.eji.org/report/> Dora Apel. *Imagery of lynching: black men, white women, and the mob*. (New Brunswick New Jersey: Rutgers Univ. Press, 2004), 25.

¹¹¹ Julie Buckner Armstrong, *Mary Turner and the Memory of Lynching*. (Athens, Georgia: University of Georgia Press, 2011), 99.

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ Historians have disputed the age of Mary Turner. Different sources put her age at 19, others at 21. While her exact age is not known, the most current research, based on accounts from her family rather than the census, put her birthday at 1884 or 1885, making her in her early thirties at the time she was lynched. Phillip Williams, *Wiregrass Region DHP*. <https://sites.google.com/view/wiregrassrdhp/mary-turner>.

¹¹⁵ Maria Delongoria, “Stranger Fruit”: The Lynching Of Black Women The Cases Of Rosa Richardson And Marie Scott”. Appendix A: Recorded Cases of Black Female Lynching Victims 1886-1957. Hannah Rosen, *Terror in the Heart of Freedom: Citizenship, Sexual Violence, and the Meaning of Race in the Postemancipation South*. (Chapel Hill, North Carolina: The University of North Carolina Press, 2009), 197-198.

against black women evaporated during Reconstruction, as they were no longer plantation property.¹¹⁶ Like police violence against black women, which is treated with relative silence, the intersection of race and gender in lynching violence has gone largely unexamined—though not forgotten. By unexamined, I mean that it has not become the subject of numerous studies, nor is the gendered nature of that violence often highlighted in popular culture or exhibitions. However, it is not forgotten, because African-American communities have passed down memories of this violence orally, and they have developed sophisticated memorial strategies that defy the ideological intentions of perpetrators.¹¹⁷ The Mary Turner Project in Georgia and the Lynch Quilts project based in Indiana, are grassroots collectives that honor black women who were lynched through oral histories, plaques, commemorations, public programs, and art.¹¹⁸

The relationship between absences in the archive, absences in historical narratives, and absences in exhibitions is one of mutual reinforcement: perpetrators arrange their version of reality using lynching photographs, and curators looking back use those same photographs but offer sympathetic readings of the photographs with respect to the African-American victims without stopping to sufficiently question the nature of the photographs. Failing to actively engage with specific ways that lynching photographs are constructed compounds the historical ignorance of lynching and antipathy toward the realities of racial violence. The anti-black racism that dictates what lynching photographs

¹¹⁶ Ibid.

¹¹⁷ Examples include: ‘The Mary Turner Project’, ‘The Equal Justice Initiative’, ‘The Lynch Quilts Project’. It is important to note however, that these stories do not always have organized repositories.

¹¹⁸ LaShawnda Crowe-Storm, The Lynch Quilts Project. [TheLynchquiltsproject.com](http://www.maryturner.org/mtp.htm). The Mary Turner Project. <http://www.maryturner.org/mtp.htm>.

are typically archived and re-circulated continues to also construct blind spots in relation to the formation of race. Photographs of non-black lynching victims have much to teach about how perceptions of race change from era to era, from place to place and from moment to moment.

Ken Gonzales-Day's artistic work on the lynching of Mexican and Native Americans in the West removes lynched bodies from his photographs. Gonzales-Day's academic work, *Lynching in the West, 1850-1935*, tries to recover lynchings from the archive, which he contends are unacknowledged by a binary racial system that tended to classify Hispanics and Native Americans as white, or alternatively obscured the racial motivations of lynchings perpetrated against these groups.¹¹⁹ Lynchings of African-Americans are marked by their sadism, their numbers, and the large body of photographic materials the perpetrators left behind. Lynchings however, regardless of race, were perpetrated against "Others."

Why then, do exhibitions of lynching photographs focus so heavily on black suffering at the expense of exposing how anti-black racism functions in America? Exposing race, and "whiteness," as mutable unsettles the traditional power dynamics of spectatorship in lynching photographs. It asks spectators who might be comfortable with dominant discourses of race to question their own identity and its contingency, rather than reinforcing and fixing the racial lines with which they might already be familiar. Anti-black racism uses blackness as a scale by which to judge human worth. The closer one is

¹¹⁹ Ken Gonzales-Day, *Lynching and the West: 1850-1935*. (Durham, North Carolina :Duke University Press, 2006), 47.

to black, the less one is worth, and the less one is seen as deserving of social and economic benefits. Racism functions precisely by walling in blackness and ignoring the historical contingency and instability of “whiteness”. Once one realizes that whiteness is defined completely in the negative—that it is merely another word for a set of benefits—what was once invisible reveals itself as a complete farce, and much of the power dynamics of looking evaporate.

Considering class differences among white spectators in crowds is not enough.¹²⁰ The, “...emergence of the “Anglo-American,” writes Gonzales-Day in *Lynching in the West*, “is directly linked to the degradation of blacks, Asians, American Indians, and persons of Mexican or Latino descent—racially, ethnically, and legally.”¹²¹ If we are to truly think about the motivations of the perpetrators in these photographs, as James Allen and others have argued for, then we must start not by taking the “white” in white supremacy for granted. We must start by understanding and then undoing race. In other words, the conceptual categories we have for race cause curators and scholars to ignore the possibilities of images that do not fit their ideas of black victimhood; it stops them from doing the genealogical work necessary to understand lynching apart from and alongside its photographic archive. This in turn produces wider assumptions about lynching and race. Showing black suffering is easy, since it so readily available materially. But it is also ready-made ideologically.

¹²⁰ See Dora Apel’s work Dora Apel. *Imagery of lynching: black men, white women, and the mob*. (New Brunswick New Jersey: Rutgers Univ. Press, 2004). and Amy L. Wood’s book, *Lynching and Spectacle: Witnessing Racial Violence in America, 1890-1940*. (Chapel Hill, North Carolina: University of North Carolina Press, 2009), for discussions of class and white spectatorship of lynchings.

¹²¹ Ken Gonzales-Day, *Lynching and the West: 1850-1935*. (Durham, North Carolina :Duke University Press, 2006), 4.

Repeatedly across archives, images of lynchings of African-Americans are described as “Black” or “African American,” but their perpetrators race is never stated or elaborated on.¹²² It remains unmarked and unexamined. In the Loewentheil Collection of African-American Photographs for example, a photograph of Rubin Stacy’s lynched body entitled “lynching” is archived as such:

Description:

Last lynching of African American man in Palm Beach.

Subject:

African Americans

African American men

Men

Lynching¹²³

The Library of Congress subject headings for a photograph of a 1925 lynching in Rocky Ford, Mississippi are:

Lynchings--Mississippi--1920-1930.

African Americans--Civil rights--1920-1930.

African Americans--Punishment & torture--1920-1930.¹²⁴

The photograph, sourced from the international newswire, depicts the aftermath of burning a seventeen-year-old timber cutter named L.Q. Ivy on a metal stake.¹²⁵ Although Ivy is barely visible in the photograph, the archive declines to also categorize it by its most visible element—the group of twenty perpetrators posing for the photograph. Who are they? What exactly are their backgrounds? The archive even uses the original caption

¹²² Here I am referring to the archives I examined for the study, which include one “private” and several institutional archives, some of which were once private collections.

¹²³ Cornell University. “Lynching.” <https://digital.library.cornell.edu/catalog/ss:1508536>.

¹²⁴ The Library of Congress. “Lynching, Rocky Ford, Miss.” 1925. <https://www.loc.gov/pictures/item/89716346/>.

¹²⁵ Ibid.

from the newspaper as the description for the photograph, despite the unreliable ways newspapers often framed lynchings.¹²⁶

The Schomburg Collection of lynching photographs at the New York Public Library and Newberry Library's Bryan L. Bossier postcard collection abound with similar examples that address "black" death but not "white" terrorism, irrespective of if photographs include perpetrators or not.¹²⁷ The unidentified subject headings and descriptions often have the chilling effect of fixing racial categories, and making it seem as if victims lynched themselves.

"White" victims, too—to the extent that they are assumed to be white—are also left unmarked. William Null, Garland Stemler, Luis Moreno, and Lawrence Johnson were lynched in Yreka, California in 1895.¹²⁸ The four men were awaiting trial for unrelated charges.¹²⁹ Even Gonzalez-Day, who points out that Moreno was of Mexican descent, fails to mention that Null was Irish and Stemler was Jewish—hardly considered "white" at the time.¹³⁰ Gonzalez-Day's point that when added up, Native-American, Mexican, Asian and African-Americans make up the vast majority of lynching victims is an

¹²⁶ Ibid. Hannon, Charles. *Faulkner and the Discourses of Culture*. Baton Rouge: Louisiana State University Press, 2012), 132-133. Stewart Tolnay and E.M Beck. *A Festival of Violence: An Analysis of Southern Lynchings, 1882-1930*. (Chicago: University of Illinois Press, 1992), 87.

¹²⁷ There are however, some exceptions. The Bryan L. Bossier collection includes one photograph of an unidentified man entitled, "Hanging in Georgia (black man hung by a white mob)".

https://collections.carli.illinois.edu/cdm/singleitem/collection/nby_teich/id/7660/rec/4

¹²⁸ Timothy Hughes Rare & Early Newspapers. "THE OMAHA DAILY BEE, Nebraska, August 27, 1895." <http://www.rarenewspapers.com/view/633032> .

¹²⁹ Ibid.

¹³⁰ California Digital Newspaper Collection. "San Francisco Call, Volume 78, Number 88, 27 August 1895, QUADRUPLE LYNCH WAS DONE AT YREKA." <https://cdnc.ucr.edu/cgi-bin/cdnc?a=d&d=SFC18950827.2.2>.

important one. But in his attempt to prove that many of the lynchings called “frontier justice” were racially motivated and that archives often wrongly classify many Hispanic and Native American victims of lynching as white, he is unable to fully interrogate his work’s brilliant and most fundamental premise: whiteness is a fiction.¹³¹ It is merely another word for a set of material benefits on a sliding scale of Anglo-Saxon, held in place both by legal and ideologically configurations, spurred on by consuming and subsuming new groups of non-Anglo-Saxons when the circumstances necessitate it.

James Allen’s *Without Sanctuary*—the coffee table book version of his personal lynching collection—tends to fix racial categories through the absence of text. Ironically, as has been pointed out by Wendy Wolters Hinshaw, Allen is more likely to comment on race if the victims are “white,” setting them up as an exception, rather than interrogating their actual racial status according to the racial categories at the time they were lynched.¹³² Captions in the book tend to vary, but are in general sparse. Detailed commentary, which also varies in length and format, is reserved for the back of the book. Consider the photograph of Angelo Albano and Castenge Ficarrota, lynched on September 9th, 1910 in Tampa, Florida for “shooting a strikebreaker.”¹³³ They hang bound together back-to-back from a tree in the swamp, surrounded by male onlookers. Their bodies are unmolested, save for a note attached to one of their boots that reads, “Others take notice or go the same way,” and a pipe placed in the mouth of one of the victims.¹³⁴ The way

¹³¹ Gonzalez-Day has interrogated this to some extent in his 2018 exhibition “How to Talk About Whiteness”, which uses Sara Ahmed’s work as its starting point.

¹³² Wendy Wolters-Hinshaw. “Without Sanctuary: Bearing Witness, Bearing Whiteness.” *JAC* 24, no. 2 (2004): 411.

¹³³ James Allen, Hilton Als, Congressman John Lewis, and Leon Litwack, *Without Sanctuary: Lynching Photography in America*. (Santa Fe, NM: Twin Palms Publishers, 2000), 167.

¹³⁴ Ibid.

that Albano and Ficarrotta's bodies are posed for the camera is a testament to their ambiguous racial status: too white to be physically brutalized in the way of many African-American lynchings; not quite white enough to escape the mocking usually reserved for black corpses.¹³⁵

Allen does mention that Albano and Ficarrotta were Italian immigrants, but he avoids examining how their overlapping ethnic, racial, immigration, and religious status made them vulnerable to the mob.¹³⁶ Albano and Ficarrotta emigrated not just from Italy, but from Sicily, perceived as an extremely suspect racial group during the early 20th century not considered wholly white by exacting North American, Anglo-Saxon standards. Sicilians were considered so suspect that the United States Bureau of Immigration classified Northern and Southern Italians as two distinct races.¹³⁷ The emergency immigration quota in 1921 and 1924 restricted immigration from mostly from Southern Italy—not Northern Italy.¹³⁸ Southern Italians were also known to have socialist and anarchist political leanings. Scribbled on the back of one version of a photograph of

¹³⁵ Ibid. Amy L. Wood, *Lynching and Spectacle: Witnessing Racial Violence in America, 1890-1940*. (Chapel Hill, North Carolina: University of North Carolina Press, 2009), 209. The bodies of African-Americans were posed in any number of ways for photographs, including placing signs on them, posing them, re-clothing and costuming them, and placing objects in their mouths or on their person.

¹³⁶ James Allen, Hilton Als, Congressman John Lewis, and Leon Litwack, *Without Sanctuary: Lynching Photography in America*. (Santa Fe, NM: Twin Palms Publishers, 2000), 167.

¹³⁷ Stephen Puelo, *The Boston Italians: A Story of Pride, Perseverance, and Paesani, from the Years of the Great Immigration to the Present Day*. Boston, Massachusetts: Beacon Press, 2008), 81.

¹³⁸ Because immigrants from Southern Italy came to the United States in larger numbers, the 3% quota in 1921 by the and 2% quota imposed but the 1924 law impacted Southern Italian immigration more seriously. Office of the Federal Register. "Immigration Act of 1924, or Johnson-Reed Act,," <http://legisworks.org/sal/43/stats/STATUTE-43-Pg153a.pdf>. Office of the Federal Register. "Emergency Quota Act." <http://legisworks.org/sal/42/stats/STATUTE-42-Pg5a.pdf>.

Albano and Ficarrotta, “Labor agitators Lynched During the cigar makers Strike, Tampa Fla.”¹³⁹

The men worked at a factory in the Southern United States, an area dominated by evangelical Protestants known for their anti-Catholic, anti-papal sentiments and their opposition to organized labor. In some parts of South, “Italian children were forbidden by law from attending white schools.”¹⁴⁰ Albano had come to America through New Orleans, a city known for lynching Italians both for their racial characteristics and for their close associations with African-Americans.¹⁴¹ African-Americans, for their part, came out in droves to mourn lynched Italians.¹⁴² The lynching of Albano and Ficarrotta stemmed as much from xenophobia and political strife as it did from racism. “Italians,” once said the governor John M. Parker of Louisiana, “are just a little worse than the Negro, being if anything filthier in their habits, lawless, and treacherous.”¹⁴³ In other words, understanding how *proximity to blackness* colors the Albano and Ficarrotta lynching and the photographs it produced helps us understand the archive of lynching in a much more precise way. It also gives spectators an opportunity to see these photographs on the shifting racial ground that they belong, rather than from fixed positions of with preconceived power relations. Binary racial categories are a result of the continuing

¹³⁹ James Allen, Hilton Als, Congressman John Lewis, and Leon Litwack, *Without Sanctuary: Lynching Photography in America*. (Santa Fe, NM: Twin Palms Publishers, 2000), 168.

¹⁴⁰ Ibid.

¹⁴¹ Ibid. Italians and African-Americans were employed in similar low-wage laborer jobs in the South. The pseudo-scientific discipline of Eugenics was also in vogue at the time, and Italians fell low on the racial totem-pole. See Stephen Puelo, *The Boston Italians: A Story of Pride, Perseverance, and Paesani, from the Years of the Great Immigration to the Present Day*. (Boston, Massachusetts: Beacon Press, 2008).

¹⁴² Ibid.

¹⁴³ Cristogianni Borsella, *On Persecution, Identity & Activism: Aspects of the Italian-American Experience from the Late 19th Century to Today* (Wellesley, Massachusetts: Dante University Press, 2011), 239.

processes anti-black racism: the categories in and of themselves do not obscure “cases involving other non-white communities”.¹⁴⁴

Historical studies and filmic portrayals of lynching have long focused on people on “the frontier”—which is a euphemism for people of color and white Americans in the West—not African-Americans who were lynched throughout the United States.¹⁴⁵ As Gonzales-Day has argued, the larger cultural association of African-Americans with lynching has seeped into the archive and into exhibitions. The two realms intersect and overlap, but there are salient differences. John Heath, for example, was lynched in 1884 in Tombstone, Arizona.¹⁴⁶ His blindfolded body hangs from a utility pole while a well-dressed, buttoned up mob looks on. He was accused of planning a robbery in Bisbee, Arizona.¹⁴⁷ The prosecution was not able to secure proper evidence to tie him to the robbery but eventually produced a witness tying him to the crime.¹⁴⁸ He was found guilty of second-degree murder and sentenced to life in prison—unlike the four men who were supposed to be his accomplices, who were hanged. The townspeople were unsatisfied with verdict, so they assembled a lynch mob, pulled him out of the county jail, and

¹⁴⁴ Ken Gonzales-Day, *Lynching and the West: 1850-1935*. (Durham, North Carolina Duke University Press, 2006), 13.

¹⁴⁵ C. Waldrep, *The Many Faces of Judge Lynch: Extralegal Violence and Punishment in America*, New York, New York: Palgrave Macmillan, 2002), 115. David Grasse, *The Bisbee Massacre: Robbery, Murder and Retribution in the Arizona Territory, 1883-1884*. Jefferson, North Carolina: McFarland), 154. Michael R. Wilson, *Frontier Justice in the Wild West: Bungled, Bizarre, and Fascinating Executions*. (Guilford, Connecticut: Globe Pequot Press, 2007), 67–68. Newspaper accounts and his tombstone make it clear that Heath was lynched, in contrast with the other perpetrators, who have epitaphs that read “legally hung”.

¹⁴⁶ Newberry Library, Brian L. Bossier Collection. "Lot 21 Hanging of John Heath from a pole in Tombstone, AZ., ca. 1884, pu, VG."

https://collections.carli.illinois.edu/cdm/singleitem/collection/nby_teich/id/289945/rec/4

¹⁴⁷ David Grasse, *The Bisbee Massacre: Robbery, Murder and Retribution in the Arizona Territory, 1883-1884*. (Jefferson, North Carolina: McFarland), 154.

¹⁴⁸ *The Tombstone Republican* 23 February 1884.

hanged him in front of the courthouse.¹⁴⁹ After he expired, the mob placed a placard on the pole with their version of events, describing Heath as “a *proved* accessory”—lest there be any doubt that the mob was justified.¹⁵⁰ Heath’s photograph is archived in the Bryan L. Bossier collection as such:

Subject Photography
Special events
Subcategory Photography--Postmortem
Events--Executions¹⁵¹

Nowhere does it mention his race, the race of the perpetrators, or the fact that Heath was not just executed, but lynched. By all accounts, Heath seems to be unambiguously an Anglo-Saxon.¹⁵² The point here is that Heath, because of his race he is somehow unable to recognized in the archive as lynched, though this is not always the case in historical works where he is mentioned.¹⁵³ Disentangling how photographs are catalogued from their (usually illustrative) use in historical studies is essential to understanding exhibitions, which tend to float somewhere in between the archive and the historical tome. African-Americans in the Bryan L. Bossier Collection are typically given two extra subject headings: “African-American” and “Lynching”. Irrespective of the information known about the event or the title of the entry, “white” men are only ever hung, “black” men are only ever lynched. “Photography” appears as the first subject heading of “white” victims, “African American” is the first subject heading for “black” victims. The point here is that wrong-headed assumptions about race and its relationship to lynching cut

¹⁴⁹ Ibid at 164.

¹⁵⁰ *The Arizona Weekly Citizen*, 1 March 1884.

¹⁵¹ Newberry Library, Brian L. Bossier Collection. “Lot 21 Hanging of John Heath from a pole in Tombstone, AZ., ca. 1884, pu, VG”.

https://collections.carli.illinois.edu/cdm/singleitem/collection/nby_teich/id/289945/rec/4

¹⁵² Heath is a last name of English origin.

¹⁵³ “How An Arizona Mob Disposed Of One Of The Bisbee Murderers: Tombstone, Arizona, Feb. 23” *The New York Times*, 1884; “February 28, 1884”, *The Kaufman Sun*, 1884.

both ways. Anti-black racism both caused the ferocious nature and unequal numbers of actual African-American lynchings, and it informs the stilted way lynching photography is understood in the present. Photographic exhibitions and the archives they use have developed their own way of looking based on the idea of a stable white identity that only started to exist in the late 1960s, and a notion of lynching that is based more on a fixed idea of race than a sliding scale of vulnerability and anti-black racism.

CONCLUSION

Archivists and curators alike can escape the typical pitfalls of working with lynching photographs if they look beyond the fixed categories they are given instead of focusing on a desire to unmask heretofore hidden facts about the past.¹⁵⁴ Walter Benjamin has written that, “to articulate the past historically does not mean to recognize it ‘the way it really was.’ It means to seize hold of a memory as it flashes up at a moment of danger.”¹⁵⁵ Here, Benjamin is arguing for a redemptive, reflective relationship with the contradictory fragments of the past, rather than using the past instrumentally to create a progressive, linear story that can predict a “better” future.¹⁵⁶ What would it mean to take a cue from Benjamin’s critique of historicism and return to theological time?

Throughout the African continent and the African diaspora—belief that ancestors influence the affairs of their living descendants are an important part of everyday life.¹⁵⁷

¹⁵⁴ Similar ideas have been advanced Elizabeth Cowie. *Recording Reality, Desiring the Real*. “The Spectacle of Actuality and the Desire for Reality” (University of Minnesota Press, 2011), 10.

¹⁵⁵ Walter Benjamin, *On the Concept of History*. Createspace Independent Publishing Platform, 2016.

¹⁵⁶ Ronald Beiner, “On the Concept of History”. *Political Theory*, Vol. 12, No. 3 (Aug, 1984), 424.

¹⁵⁷ Anthony Ephirim-Donkor. Preface. *African Religion Defined: A Systematic Study of Ancestor Worship Among the Akan*. (Lanham, Maryland: University Press, America), vi.

In religions like Akwasidai, Homowo, Voodoo, Akwanmbo, Nyantor (Aboakyir), Candomble and Santeria, ancestors are often important intermediaries to God, conceived of as *in front* of the living rather than behind them.¹⁵⁸ Ancestors serve as examples of how to live ethically, they are to be venerated rather than exposed or instrumentalized. Respecting the dead, who die only when the relationship with their progeny on earth is severed, can offer a theological curatorial imperative rather than a fraught, unworkable educational imperative.¹⁵⁹

The numbers of African-American lynchings do not necessarily justify the repetition of African-American lynching photographs. Rather, they are a challenge to curate based on a qualitative basis, to organize around the specifics of race and lynching. It will not make perfect “sense”, but that is the point—that is the governing logic of American consciousness is and has always been a form of complex nonsense. Race, wrote Du Bois, is a bundle of contradictory forces, facts and tendencies.¹⁶⁰ It includes things like time, geography, ethnicity, religion, class, and gender. Once curators abandon framing based on tinned ideas like forward progress, whiteness and blackness, past and present, lynching photographs can be seen anew.

¹⁵⁸ Ibid.

¹⁵⁹ There are racist or exclusionary religious imperatives; here I am referencing a specific theological imperative that has the potential to be liberatory.

¹⁶⁰ W.E.B. Du Bois, *Dusk of Dawn* (Piscataway, New Jersey: Transaction Publishers, 2011), 133.

CHAPTER 2

LYNCHING PHOTOGRAPHY (1880-1930)

PHOTOGRAPHS

Lynching photographs, like so many “historical relics” plucked from their milieu to be displayed or analyzed singularly, once existed among a multitude of objects. Lynching photographs in particular existed among other material objects and forms of entertainment emerging at the end of the 19th century. This chapter attempts to engage with lynching photographs in the context of the economy of violence in which they emerged, rather than treating the photographs purely as works in and of themselves. The circulation of such photographs is intimately related to the rise of commodity culture and the uncertainty about the political, economic, and social status of black people in the aftermath of the Civil War. How did the practice of photography and photographs fit into and shape a war-torn landscape filled with the formerly enslaved attempting to assert their newfound social, political, and economic power in opposition to the former planters and poor white overseer classes?

RECONSTRUCTION AND THE LOGIC OF LYNCHING

The Civil War was the bloodiest conflict in United States history, leaving almost 1 million people dead in its wake.¹⁶¹ It gave way to racial terrorism and fears of racial equality across the nation, not just in the Southern United States.¹⁶² African-Americans

¹⁶¹ J. D. Hacker. *The New York Times*. <https://opinionator.blogs.nytimes.com/2011/09/20/recounting-the-dead/>.

¹⁶² African-Americans were targeted and brutalized in the so-called “New York City Draft Riots” of 1863 by Irish Immigrants who resented competing with African-Americans for jobs, as well as wealthy white Americans who could pay military commutation fees. Many abolitionists in the North advocated for

were subject to violence, harassment and humiliation in various forms after the Civil War over a decade—it was only when the disenfranchisement of black voters and thousands of poor white voters became “permanent and legal” in the decades following, with laws like poll taxes and literacy tests, that violence began to decline.¹⁶³ In the immediate aftermath of the war, groups of masked men broke into the homes of the formerly enslaved and forced them back onto plantations to work for their former masters.¹⁶⁴ Victims were often beaten and raped. In instances that occurred in the countryside, white men often forced black women to dance for them, smile, or give verbal “consent” to be sexually assaulted.¹⁶⁵ Such theatrical violence was a cornerstone of intimidation. In cities like New Orleans and Memphis in 1866, not only were African-Americans beaten, killed, lynched, and raped, perpetrators also burned their property in an effort to drive them out. One historian estimates that the property damage in Memphis caused by marauding “white” (predominately Irish) mobs totaled one hundred thousand dollars, and mostly affected African-Americans.¹⁶⁶ The tactics worked. By 1870, the black population of Memphis has fallen by twenty-five percent compared to 1865.¹⁶⁷ The near constant state of terror has been well documented:

These riots signaled the beginning of a decade of racial tumult, with significant anti-Black rioting in Camilla, Georgia (1868), Laurens, South Carolina (1870), Eutaw, Alabama (1870), Meridian,

colonization, wanting to end slavery but never desiring to live equality or integrated with Black Americans. They hoped to send Black Americans to colonize Liberia or Haiti to rid themselves of “The Negro Problem”.

¹⁶³ Kimberly Menaster. *Political Violence in the American South: 1882-1890*. (Massachusetts Institute of Technology, 2009), 6.

¹⁶⁴ Hannah Rosen. *Terror in the Heart of Freedom: Citizenship, Sexual Violence, and the Meaning of Race in the Postemancipation South*. (Chapel Hill, North Carolina: The University of North Carolina Press, 2009), 157.

¹⁶⁵ Hannah Rosen. *Terror in the Heart of Freedom: Citizenship, Sexual Violence, and the Meaning of Race in the Postemancipation South*. (Chapel Hill, North Carolina: The University of North Carolina Press, 2009), 208.

¹⁶⁶ James Ryan. "The Memphis Riots of 1866: Terror in a Black Community During Reconstruction." *The Journal of Negro History* 62, no. 3 (1977), 243.

¹⁶⁷ Ibid at 254.

Mississippi (1871), Vicksburg, Mississippi (1874), Clinton, Mississippi (1875), and Hamburg and Ellenton, South Carolina (1876).¹⁶⁸

The use of the term “race riot” is common in historical texts, but the term “riot” can imply that racial tension between African-Americans and “white” Americans caused these outbreaks of violence. Put more accurately, African-Americans were the *targets* of ruthless violence for political and economic gain. The logic of “race-riots” denies African-Americans their rightful status as victims of terrorism; whether or not they fought off their attackers is not at issue. There was also violence aimed at intimidating African-Americans in Colfax, Grant Parish Louisiana, in 1873.¹⁶⁹ Some of the violence was perpetrated by the Ku Klux Klan,¹⁷⁰ a military force serving the interests of the Democratic party and the planter class. Men dressed themselves in hooded sheets, often sewn by their wives and daughters; they clothed themselves in white robes to make themselves appear as if they were floating on their horses, for added effect.¹⁷¹ Other violence was perpetrated by groups calling themselves the White Brotherhood, the Invisible Empire, the Pale Faces, the Knights of White Camellia, and the Constitutional Guard.¹⁷² Precursors to most of these terror groups can be found in antebellum slave patrols.¹⁷³ To, “continue an economy in which black people labored to create wealth for

¹⁶⁸ Stewart Tolnay and E.M Beck. *A Festival of Violence: An Analysis of Southern Lynchings, 1882-1930*. (Chicago: University of Illinois Press, 1992), 5.

¹⁶⁹ Ibid.

¹⁷⁰ I am referencing the first iteration of Ku Klux Klan, which was formed in Tennessee between 1865-1866 in response to the Confederacy’s defeat and Reconstruction. The second iteration formed around 1915 in Stone Mountain, Georgia—in part driven by the success of the D. W. Griffith’s film *The Birth of a Nation*. The third Klan typically reference the 1950s on, describing lots of disparate, loosely organized terrorist groups that use the Klan’s name and memory, espouse white supremacy and violence against African-Americans.

¹⁷¹ Hannah Rosen. *Terror in the Heart of Freedom: Citizenship, Sexual Violence, and the Meaning of Race in the Postemancipation South*. (Chapel Hill, North Carolina: The University of North Carolina Press, 2009), 18.

¹⁷² Stewart Tolnay and E.M Beck. *A Festival of Violence: An Analysis of Southern Lynchings, 1882-1930*. (Chicago: University of Illinois Press, 1992), 6.

¹⁷³ Ibid. Ashraf Rushdy. *American Lynching*. (New Haven: Yale University Press, 2014), 59.

the privileged,” conspicuous, copious violence and intimidation continued to be a necessary tool.¹⁷⁴

In 1871, violence was so widespread and out of control that Congress called on African-American victims to testify.¹⁷⁵ That same year, Congress passed The Klan Act, which made much of Klan activity a federal offense.¹⁷⁶ This act, along with the 1870 Force Act, was used to enforce the first section of the Fifteenth Amendment throughout the United States.¹⁷⁷ It barred state officials from discriminating in voter registration on the basis of race, color, or previous condition of servitude, as well as establishing penalties for interference with voting. It also gave federal courts jurisdiction over any interference. The laws were put in place just as former Confederates were being allowed to vote again, and they did little to stop the emergence of paramilitary groups associated with Southern Democrats like the White League and Red Shirts.

Suppressing African-American men’s newly acquired right to vote was an early, important priority to maintain white hegemony politically. Social priorities also included regulating the domestic sphere. Violence was specifically engineered to deny black men another newly acquired patriarchal right: the right to dominion over their wives and

¹⁷⁴ Stewart Tolnay and E.M Beck. *A Festival of Violence: An Analysis of Southern Lynchings, 1882-1930*. (Chicago: University of Illinois Press, 1992), 5.

¹⁷⁵ Hannah Rosen. *Terror in the Heart of Freedom: Citizenship, Sexual Violence, and the Meaning of Race in the Postemancipation South*. (Chapel Hill, North Carolina: The University of North Carolina Press, 2009), 180. Stewart Tolnay and E.M Beck. *A Festival of Violence: An Analysis of Southern Lynchings, 1882-1930*. (Chicago: University of Illinois Press, 1992), 6.

¹⁷⁶ Eric Foner. *Reconstruction: America's Unfinished Revolution, 1863-1877*. (New York: Harper & Row, 1997), 454.

¹⁷⁷ Ibid.

children. Hence the brutal humiliation and assaults that occurred, often at night, in the homes of formerly enslaved people—sometimes in former slave cabins.¹⁷⁸

Black women were also sometimes beaten and attacked for cohabitating with white men. Sexual relations between white men and black women, while generally frowned upon, did not typically provoke assaults against black women. These relationships only necessitated violence when white men were found to be treating black women as wives rather than concubines.¹⁷⁹

It is important to point out the way that the cultural and legal realms overlap, particularly in this short period when there was ambiguity about the future status of black people in the United States in two mutually reinforcing ways. One, there was an open question about the status of black people as the foundation of an extraction economy: who was to do the backbreaking labor necessary to keep the country going and to keep a small number of landowners in the South and factory owners in the North wealthy? How would former slaves, now “free,” resume laboring? Two, the question of black people’s status as a permanent underclass with no access to the rights and protections of citizens: if black people were no longer slaves, than what was the meaning of being a citizen? It was in part the immutability of African-American bondage despite of all the changes and variances in the institution of slavery—what free people were not—that helped Americans make sense of their own status in the United States.

¹⁷⁸ Hannah Rosen. *Terror in the Heart of Freedom: Citizenship, Sexual Violence, and the Meaning of Race in the Postemancipation South*. (Chapel Hill, North Carolina: The University of North Carolina Press, 2009), 18.

¹⁷⁹ Ibid 198.

Ashraf Rushdy has convincingly argued that the genesis of lynching can be traced back to the Revolutionary War, and that the very idea of “American-ness” arose with lynching. While the origins of lynching are muddled, the namesake is not. Colonel Charles Lynch is considered the first acknowledged “lyncher”, and his actions help shed light on the concept that bears his name. He was the leader of a militia in Bedford, County Virginia that was notorious for capturing, hanging, beating, and torturing insurgent Tories during the Revolutionary War without trial:

The governor of Virginia, Thomas Jefferson, wrote a tactful letter to Lynch to commend him for what he had done, although Jefferson, realizing just what a precedent had been set by Lynch’s actions, suggested that in the future Colonel Lynch ought to take any prisoners he captured and deliver them to the Commonwealth rather than deal with them his own way.¹⁸⁰

Colonel Lynch’s men justified their actions by arguing that they received the “joint consent” of nearly 300 of his soldiers.¹⁸¹ In other words, they were convinced that there was a kind power that both superseded and underpinned Jefferson’s rule of law, a kind of ordinary democratic authority that was the underlying source of *all law*—otherwise known as popular sovereignty. Early Americans believed that the authority of a state and its government were created and sustained by the consent of its people, and that, not written law, was the source of all political power. Lynch ignored Jefferson and continued to “punish” Tories.¹⁸² A few years later he began to deploy the newly coined “lynch law” to Welsh miners, illegal slave traders, and anyone else he and his band “deemed enemies of the state.”¹⁸³ At the core of “lynch law” is the way people define themselves as

¹⁸⁰ Ashraf, Rushdy. *American Lynching*. (New Haven: Yale University Press, 2014), 23.

¹⁸¹ Ibid.

¹⁸² Ibid at 24.

¹⁸³ Ibid at 24.

Americans through violence against those deemed “un-American.” Lynch law functions alongside the Jeffersonian notion that there may be a difference in application, but not an appreciable difference in intention between the will of the people and the will of the state.¹⁸⁴ The careful wording of Jefferson’s letter, and his refusal to condemn Lynch’s actions outright highlight the peculiar American relationship between the “law” and the “mob” that dates back to the country’s infancy.

The lynching of African-Americans in particular has been explained in various ways by scholars, who tend to locate motivations for lynching in everything from economic pressure to ritual sacrifice.¹⁸⁵ Very few however, have looked for the cultural and legal origins of lynching, which can be found in the plantation system itself. The plantation genealogy of lynching is completely missing from scholarship on lynching photography. Early colonial slave laws, among them fugitive slave laws (Virginia stands out as particularly important) “created lynch mobs not as extralegal entities challenging the state’s orderly dispensation of justice, but as licensed free-roaming bands of white citizens with no restraint on their capacity to maim and destroy, legalized by virtue of the status of their agents (white “persons”) and the non-status of their victims (“slaves”).”¹⁸⁶

Lynching, then, was woven into the cultural milieu of the United States via early colonial laws that enshrined white supremacy and sanctioned popular sovereignty in the form of

¹⁸⁴ Ibid.

¹⁸⁵ Brundage, W. Fitzhugh. "Mobs and Ritual." In *Lynching in the New South: Georgia and Virginia, 1880-1930*. (Urbana, Illinois: University of Illinois Press, 1993), 19. Orlando Patterson. "Feasts of Blood: 'Race', Religion and Human Sacrifice in the Postbellum South." In *Rituals of Blood: Consequences of Slavery in Two American Centuries*. (Washington, D.C.: Civitas/CounterPoint, 1998), 179.

¹⁸⁶ Ashraf, Rushdy. *American Lynching*. (New Haven: Yale University Press, 2014), 147.

violence against black people. Questions of legal or extra-legal, lynching or race riot, are of very little consequence in a world “without restraint.”¹⁸⁷ Like Hannah Arendt’s notion of a concentration camp (borrowed later by Giorgio Agamben and revised by Achille Mbembe), black bodies themselves in the Anglo colonies came to signify the principle by which “everything is possible.”¹⁸⁸ The bodies—that is—blackness—are the nomos of the modern, not the plantation.¹⁸⁹ Nomos is sometimes associated with law but it refers more generally to convention; it is derived from the Greek root *nemo*, meaning to allot or dispense.¹⁹⁰ In other words, the racialization of black people and their eventual exclusion from the Western political body undergirds a whole host of modern social and political categories that determine who receives what and why, such as citizen and non-citizen. We should remember that “the election of races, the prohibition of mixed marriages, forced sterilization, even the extermination of vanquished peoples are to find their first testing ground in the colonial world,”¹⁹¹ and the United States was a colony.¹⁹² The camp and the blackness differ in that a permanent state of exception was legally carved out on the flesh of a people over hundreds of years without need of war or martial law as an excuse to strip protections normally afforded to citizens. “Whoever entered the camp,” writes Agamben, “moved in a zone of indistinction between outside and inside, exception

¹⁸⁷ Ibid at 149.

¹⁸⁸ Giorgio Agamben. *Homo Sacre Sovereign Power and Bare Life*. (Redwood City: Stanford University Press, 1998), 36, 170.

¹⁸⁹ Achille Mbembe. “Necropolitics”, *Public Culture* 15(1), 15.

¹⁹⁰ Tim Waterman and Joshua Zeunert. *Routledge Handbook of Landscape and Food*. (Routledge, 2018), 438.

¹⁹¹ Ibid 22-23.

¹⁹² In a long chat with Kellen Farnham, we discussed the ways in which The United States teaches its history institutionally by ignoring its status as a colony, and its primary function as a place to extract resources and wealth, rather than a place to provide its citizens with positive rights. It is a status it has left behind politically, but never ideologically. The conversation was inspired primarily by two books: Ibram X. Kendi’s *Stamped From the Beginning*. (New York: Nation Books, 2017) and David Bryon Davis’s *Inhuman Bondage: the Rise and Fall of Slavery in the New World*. (Oxford: Oxford University Press, 2008).

and rule, licit and illicit, in which the very concepts of subjective right and juridical protection no longer made any sense. What is more, if the person entering the camp was a Jew, he had already been deprived of his rights as a citizen by the Nuremberg laws and was subsequently completely denationalized at the time of the Final Solution.”¹⁹³ Unlike the erosion of rights that led to the creation of concentration camps where all rights were dissolved, being born *black and/or enslaved* meant to natively alienated, deprived of rights at birth, and in a constant state of martial law. In other words, enslaved black people were located in an interstitial place sociologist Orlando Patterson calls “socially dead” and Achille Mbembe calls “death in life.”¹⁹⁴

Lynching, argues Rushdy, rather than simply replacing the slave system, was a product of that system.¹⁹⁵ It is not an accident that the law of the mother (*Partus sequitur ventrem*), which came to define slavery by tying it to the wombs of black women, was first adopted in colonial Virginia in 1662.¹⁹⁶ Virginia had the highest population of free black people in the South in relation to the numbers of the enslaved as early as 1668, and the number of free black people continued to be the highest in the South at least into the 1820s, second only to the first colony with official slave patrol laws, South Carolina.¹⁹⁷ Their presence came to be seen as an existential threat to free labor. In 1705 free African

¹⁹³ Giorgio Agamben. *Homo Sacre Sovereign Power and Bare Life*. (Redwood City: Stanford University Press, 1998), 170.

¹⁹⁴ Achille Mbembe. “Necropolitics”, *Public Culture* 15(1), 21.

¹⁹⁵ This is in contrast to conclusion of previous literature; Rushdy relies on previous literature for most of his book, but introduces new statutes, laws and ideas. See Stewart Tolnay and E.M Beck. *A Festival of Violence: An Analysis of Southern Lynchings, 1882-1930*. (Chicago: University of Illinois Press, 1992), 88-89.

¹⁹⁶ Jennifer L. Morgan. “Partus sequitur ventrem: Law, Race, and Reproduction in Colonial Slavery.” *Small Axe* (2018) 22 (1 (55)): 1-17.

¹⁹⁷ Slave Statistics. *University of Maryland, Baltimore County*.
<https://userpages.umbc.edu/~bouton/History407/SlaveStats.htm>

Americans in Virginia were barred from testifying in court, and in 1723 they lost the right to vote.¹⁹⁸ In the same way that Virginia set legal precedent with its attempts to lock in the informal structures of perpetual bondage and discrimination against of African-Americans via the law, it set more precedent by legally empowering mobs to uphold that always unstable, inconsistent, violent and volatile system of perpetual bondage. Racializing slavery took time, and it required force.

It should be noted that although some states like South Carolina required every white man, under threat of a forty-shilling penalty, to arrest and discipline slaves found away from their home without papers starting in 1704, formalized slave patrols were hardly ever made up of planters themselves.¹⁹⁹ Instead they were “staffed” by poor or working-class “white” citizens who often received tax emptions, like in Virginia, in addition to monetary rewards for their work.²⁰⁰ The dirty work of whipping, terrorizing, and brutalizing slaves to keep them from escaping the master’s brutality on the plantation fell mostly to the wretched classes—just as police forces and fire departments became (and still are) a means for working-class, now formerly “ethnic white,” groups, like Irish and Italian, to earn racial privileges.²⁰¹

¹⁹⁸ “An Act directing the trial of Slaves, committing capital crimes; and for the more effectual punishing conspiracies and insurrections of them; and for the better government of Negros, Mulattos, and Indians, bond or free” (1723).

[https://www.encyclopediavirginia.org/ Act directing the trial of Slaves committing capital crimes and for the more effectual punishing conspiracies and insurrections of them and for the better government of Negros Mulattos and Indians bond or free 1723](https://www.encyclopediavirginia.org/Act_directing_the_trial_of_Slaves_committing_capital_crimes_and_for_the_more_effectual_punishing_conspiracies_and_insurrections_of_them_and_for_the_better_government_of_Negros_Mulattos_and_Indians_bond_or_free_1723) “An act concerning Servants and Slaves” (1705). [https://www.encyclopediavirginia.org/ An act concerning Servants and Slaves 1705](https://www.encyclopediavirginia.org/An_act_concerning_Servants_and_Slaves_1705)

¹⁹⁹Sally E Hadden. *Slave Patrols: Law and Violence in Virginia and the Carolinas*. (Cambridge: Harvard University Press, 2017), 17-18.

²⁰⁰Ibid at 37.

²⁰¹ Richard Bessel, and Clive Emsley. *Patterns of Provocation: Police and Public Disorder*. (New York, New York: Berghahn Books, 2000), 87. Samuel Walker, Charles Katz. *The Police in America: An Introduction*. (New York, New York: Mc-Graw-Hill, Eighth Edition 2013), 31. Paul Moses. *An Unlikely*

Whiteness entitled everyone to share the degradation of black people in common, despite distinctions in the ways in which different classes and ethnic groups participated in that degradation. Put another way, the constant degradation of black people was integral to the continued resonance of white identity built by both law and custom. Further, slaves were an *exchangeable commodity* with a value determined by the market. It is worth emphasizing that, despite some formerly enslaved gaining freedom or the fact that many African-Americans were born free, they were always at risk of being perceived as slaves merely because they were black; black skin branded the body as a bonded, exchangeable commodity to be shared and degraded at will. With an estimated 4 million formerly enslaved people, who were once tightly and viciously regulated, freed, there was both cognitive dissonance among white citizenry and fear of economic peril. It was against this background that lynching photographs began to surface, and they cannot be extricated from the political and social upheaval of Reconstruction. The point I am making here is that there was a 200-hundred-year-old relationship between the commodification, degradation, and racialization of black skin produced both through legal and ideological means that threatened to break apart after the Civil War.

At the same time, new forms of technology and entertainment began to make their way across the Southern States. The Southern relationship with photography was not identical to that of the North, which had first been introduced during the early 1840s in the form of

Union: the Love-Hate Story of New York's Irish and Italians. (New York: New York University Press, 2017), 151-153.

the daguerreotype.²⁰² Later the tin type became available.²⁰³ Photography was at first regarded with some suspicion by elites.²⁰⁴ Itinerant photographers, however, quickly found ways to market to regional sensibilities, but they largely found audiences with common people in much the same way they found them in the North. Depiction of family members became popular adornments in middle-class homes, with the availability of portrait photography slowly trickling down to even the smallest towns and rural areas by the first decade of the 20th century.²⁰⁵ Representations of family were heavily intertwined with religion, spirituality, and death, both literally and figuratively. Photographers often advertised photographs as buoy against grief—mementos with much more strength than other tokens of remembrance.²⁰⁶

In the same newspapers where a literate Southerner might see classified advertisements for photographic services in the antebellum period, they might also see advertisements for the sale of slaves. In the case of the South Carolina newspaper *Greenville Mountaineer* in 1853, advertisements for the sale of photographs and slaves appear both side-by-side and diagonal from one another:

SKY-LIGHT DAGUERROTYPE GALLERY.

The undersigned is now prepared to take Daguerreotype Likenesses in the best style of Photography. He has on hand very superior Gold Locketts, for one, two or four Pictures. Also, Bracelets, Breast Pins, &c., to which he respectfully invites the citizens of Greenville and surrounding country.

Pictures taken in rainy, as well as in clear weather.

A.H. Rowand.

Greenville, S.C., March 3, 1853.²⁰⁷

²⁰²Kent A. McConnell. "Photography, Physiognomy, and Revealed Truth in the Antebellum South." *The Southern Quarterly* 52, no. 4 (2015), 40. <https://muse.jhu.edu/> (accessed November 21, 2018).

²⁰³*Ibid.*

²⁰⁴*Ibid* at 36.

²⁰⁵Amy L. Wood, *Lynching and Spectacle: Witnessing Racial Violence in America, 1890-1940*. (Chapel Hill, North Carolina: University of North Carolina Press, 2009), 89.

²⁰⁶Kent A. McConnell. "Photography, Physiognomy, and Revealed Truth in the Antebellum South." *The Southern Quarterly* 52, no. 4 (2015): 41. <https://muse.jhu.edu/> (accessed November 21, 2018).

²⁰⁷*Greenville Mountaineer* (Greenville, South Carolina), Thursday, May 12, 1853; Issue 51.

Three Valuable Negroes For Sale.

The undersigned, as Agent for the owner offers for sale a Negro woman aged about 35 and her two boys some 8 and 10 years old—the boys remarkable grown and good looking. The above mentioned negroes if not sold at private sale before Sale-day in April next, will be disposed of at public auction before the Court House.

Terms cash or credit, as may suit the purchaser.

S.A. Townes.

March 31²⁰⁸

The fungibility of an enslaved person is a fundamental part of what makes that person enslaved. Notice that the enslaved have no names, simply ages and descriptions. The negroes are “valuable” and the gold locket for the photographs are “superior.” The goods are specifically described only so that they fit a general idea of quality. It is through fungibility that a person becomes a commodity, and thus a good or service among other goods and services. Fungibility is defined as a good that is exchangeable, interchangeable, and fundamentally replaceable.²⁰⁹ Saidiya Hartman has describes how blackness depends on being transferrable in the economic and ideological sense:

...the fungibility of the commodity makes the captive body and abstract vessel vulnerable to others’ feelings, ideas, desires, and values; and, as property, the dispossessed body of the enslaved is the surrogate for the master’s body since it guarantees his bodied universality and acts as the sign of his power and dominion.²¹⁰

Lynching photographs, then, were an important part of “reinscribing of the black body as commodity”²¹¹ because they, through the magic of light and shadow, made black people fungible again, as they had been during slavery. A photograph could become the “abstract vessel,” the “dispossessed body,” when actual bodies could no longer function in the same, more concrete ways. Further, these photographs satisfied the pseudo-spiritual

²⁰⁸ Ibid.

²⁰⁹ “Fungible.” *Merriam-Webster*. <https://www.merriam-webster.com/dictionary/fungible>.

²¹⁰ Saidiya V Hartman. *Scenes of subjection: terror, slavery, and self-making in nineteenth-century America*. (New York: Oxford University Press, 1997), 21.

²¹¹ Leigh Raiford. *Imprisoned in a Luminous Glare: Photography and the African American Freedom Struggle*. (Chapel Hill: The University of North Carolina Press, 2013), 38.

needs of Southerners that already associated photography with two parallel functions: revealing objective truth and capturing the true essence—moral or otherwise—of a person.²¹² Amateur photography was taking off right around the time when lynchings peaked in the United States. The Kodak camera and its roll film system was invented in the mid-1880s.²¹³ By 1900, Eastman had introduced the Brownie camera; film could be sent to Kodak or developed by local photography studios.²¹⁴ It was sold for one dollar, the equivalent of around 100 dollars today.²¹⁵ In other words, the collision of amateurism, commodity culture, sentimentality, and the unresolved question of the fungibility of the formerly enslaved, which was essential to the political and social order of the United States, produced the conditions for lynching photography.

Fungibility has another, more chilling definition in the context of the mutilation that occurred during many lynchings: something (such as money or a commodity) of such a nature that one part or quantity may be replaced by another equal part or quantity in paying a debt or settling an account.²¹⁶ Oil and wheat, for example, are fungible. Money is fungible—and the enslaved themselves were often used to settle both small scale individual debt and large scale institutional debt. The sale of 272 enslaved people in 1838 by Jesuit priests, for example, saved Georgetown University from financial ruin.²¹⁷ This means that the bodies of black people were thought about as individual parts to be

²¹² Ginger Hill. “Rightly Viewed”: Theorizations of Self in Frederick Douglass’s Lectures on Pictures. *Pictures and Progress*. (Durham, North Carolina: Duke University Press, 2012), 54.

²¹³ Amy L. Wood, *Lynching and Spectacle: Witnessing Racial Violence in America, 1890-1940*. (Chapel Hill, North Carolina: University of North Carolina Press, 2009), 77.

²¹⁴ Ibid at 284.

²¹⁵ Ibid.

²¹⁶ “Fungible”. *Merriam-Webster*. <https://www.merriam-webster.com/dictionary/fungible>.

²¹⁷ Rachel L. Swarns. *The New York Times*. <https://www.nytimes.com/2016/04/17/us/georgetown-university-search-for-slave-descendants.html>.

converted into value in a very broad sense. Fingers pick, backs bend over, arms lift, breasts nurse, wombs produce more enslaved. These people were not thought of as whole beings, but as the sum of their parts. This is an association that began but hardly ended with the institution of slavery. The fact that vast amount of formerly enslaved people were kept in debt by sharecropping—a soft form of slavery in which the “free” worker becomes a near permanent servant to the land owner to be leveraged and used accordingly—is proof positive that although slavery as an institution ended, the association between race and objecthood never dissolved. The obsession with collecting ears and genitals, or cutting babies from the wombs of lynching victims by white mobs during those festivals of violence, is behavior born out of the illogical principles of chattel slavery.

This notion of fungibility permeated every facet of American society and identity, North and South. Stereotypes about African-Americans that painted them as worthless, indistinguishable from one another, criminal, or buffoons were not limited to Southern states. This explains the popularity, for example, of blackface minstrelsy around the entirety of the country and “Coon Cards,” postcards featuring stereotypical, caricatured images of black people sent around the country.²¹⁸ It also explains why some lynching photographs were taken of black victims in the North—and why Southern photographs were circulated there via postcards and newspapers. Both Pennsylvania and Minnesota have recorded lynchings and lynching photographs.²¹⁹ We should also remember that

²¹⁸ The JBHE Foundation, Inc. “Coon Cards”: Racist Postcards Have Become Collectors' Items." *The Journal of Blacks in Higher Education* 25 (1999), 72-73.

²¹⁹ Here, I am referring to Duluth, Minnesota in 1920 and Coatesville, Pennsylvania in 1911. Ralph Ginzburg's *100 Years of Lynching* and W. Fitzhugh Brundage's *Lynching in the New South* make mention

many racist eugenics courses were founded at Northern Ivy League Institutions like Brown University and taught as late as the 1950s, despite vocal critics in luminaries like Franz Boas and G. K. Chesterton.²²⁰ “As far as I am concerned”, said Malcolm X in 1964, nearly 100 years after the 13th amendment finally abolished slavery in every state, “Mississippi is anywhere South of the Canadian border.”²²¹ Racism and white supremacy are fundamental to the American psyche and its legal system, with differing mutations across time, place, and space.

The circulation of lynching photographs has largely been considered in terms of the content of the photographs they produced. Taking their cues from Alan Sekula and Michel Foucault who explored myths about working-class criminality in Europe in the 19th century, Leigh Raiford, Amy Louise Wood, and Shawn Michelle Smith have written extensively about how the myth of “negro criminality” that emerged after the end of slavery both influenced lynching photography’s visual language and links it to its equal and opposite, the white middle-class portrait in America.²²² Little has been written, however, about the intricacies of *how* those photographs circulated or *what* they circulated with. In particular, very little has been written about their circulation outside of

of more Pennsylvania lynchings. Because lynching has had an unclear definition and the perception of lynching as a Southern and Western issue, lynching in the North is likely underestimated.

²²⁰ Herbert Eugene Walter papers, 1844-1948, X. Eugenics, Brown University. Boas, Franz. “Eugenics.” *The Scientific Monthly* 3, no. 5 (November 1916). 471-478. G.K. Chesterton. *Eugenics and Other Evils*. (Cassell, London, UK: CreateSpace Independent Publishing Platform, 2014).

²²¹ Malcolm X. *The Autobiography of Malcolm X as Told by Alex Haley*. (New York: Ballantine Books, 1965). The Emancipation Proclamation only abolished slavery in the ten Southern states in open rebellion; it did not abolish slavery in any of the slave-holding border states.

²²² Amy L. Wood, *Lynching and Spectacle: Witnessing Racial Violence in America, 1890-1940*. (Chapel Hill, North Carolina: University of North Carolina Press, 2009), 91-92. Shawn Michelle Smith. *Pictures and Progress*. “Looking at One’s Self Through the Eyes of Others”. (Durham, North Carolina: Duke University Press, 2012), 277. Leigh Raiford. *Pictures and Progress*. “Ida B. Wells and the Shadow Archive”. (Durham, North Carolina: Duke University Press, 2012), 302.

newspapers—though it is clear from oral histories, anecdotal reports, and later archival acquisitions that these photographs did circulate in personal networks.²²³ Obtaining such information is very difficult for two reasons. First, the personal circulation networks which would include the names of photographers and spectators, as well as details about prices, were not always shared in ways that would have registered in historical archives. Second, both victims and perpetrators were sometimes unlikely to volunteer such information publicly or privately to outsiders. Lynching was public torture and humiliation, but, at the same time, it was a strangely private ritual. Perpetrators understood that outside of the bounds of their physical or ideological community, what they had done might be understood in a different way.²²⁴ Still, there are ways of understanding circulation with what has been left in and alongside the historical record.

MEMENTO CULTURE: POST-CARDS, SOUVENIRS, AND TRINKETS

It was not uncommon for lynch mobs to collect souvenirs from the scene in the form of body parts from the victim, pieces of rope, or bark from the hanging tree.²²⁵ Before Sam Hose was lit on fire in 1899, his ears, genitals, and fingers were cut off.²²⁶ The skin,

²²³ Robin Pogrebin. *The New York Times*. “A Quest for Photographs He Could Barely Look At”. <https://www.nytimes.com/2000/01/13/arts/a-quest-for-photographs-he-could-barely-look-at.html>

²²⁴ Amy L. Wood, *Lynching and Spectacle: Witnessing Racial Violence in America, 1890-1940*. (Chapel Hill, North Carolina: University of North Carolina Press, 2009), 76-77.

²²⁵ James H. Madison. *A Lynching in the Heartland: Race and Memory in America*. (New York, New York: Palgrave Macmillan 2003), 64. Sherrilyn Ifill. *On the Courthouse Lawn: Confronting the Legacy of Lynching in the Twenty-first Century*. (Boston: Beacon Press, 2007), 60.

²²⁶ Ida B. Wells-Barnett, Louis P Le Vin, Daniel Murray Pamphlet Collection, and Harry Houdini Collection. *Lynch law in Georgia: a six-weeks' record in the center of southern civilization, as faithfully chronicled by the "Atlanta journal" and the "Atlanta constitution": also the full report of Louis P. Le Vin, the Chicago detective sent to investigate the burning of Samuel Hose, the torture and hanging of Elijah Strickland, the colored preacher, and the lynching of nine men for alleged arson*. [Chicago: This pamphlet is circulated by Chicago colored citizens, 1899] Pdf. <https://www.loc.gov/item/91898209/>. “Chapter II”. 9-10. The report of detective Louis P. Le Vin from Well’s pamphlet writes that the true name of Hose was Tom Wilkes.

stripped from his face, was collected by his assailants.²²⁷ All were sold.²²⁸ Even Hose's bones were "snatched by a crowd of people"²²⁹ and sold for 25 cents; pieces of the stake on which he burned were chopped up and carried away.²³⁰ The crowd could buy bits of his cooked liver for 10 cents.²³¹ In Doddsville, Mississippi, Luther Holbert and his wife's fingers were cut off too, one by one; they were distributed as souvenirs to the crowd before the Holberts were burned at the stake.²³² George Ward, who was lynched in 1901 in Terre Haute, Indiana had his toes sold to the highest bidder.²³³

Clothes were also fair game for collectors. They cut off pieces of coats, took buttons, shoes, and stockings as relics for their homes to remember lynchings and to share with loved ones who were not present.²³⁴ Orlando Patterson has written extensively about the tendency to collect body parts from black victims and the propensity for white mobs to think of black flesh as food. One of the messages that accompanied the barely

²²⁷ Ibid.

²²⁸ Harvey Young. "The Black Body as Souvenir in American Lynching." *Theatre Journal* 57, no. 4 (2005), 639. <http://www.jstor.org/stable/25069734>.

²²⁹ Ida B. Wells-Barnett, Louis P Le Vin, Daniel Murray Pamphlet Collection, and Harry Houdini Collection. *Lynch law in Georgia: a six-weeks' record in the center of southern civilization, as faithfully chronicled by the "Atlanta journal" and the "Atlanta constitution": also the full report of Louis P. Le Vin, the Chicago detective sent to investigate the burning of Samuel Hose, the torture and hanging of Elijah Strickland, the colored preacher, and the lynching of nine men for alleged arson*. [Chicago: This pamphlet is circulated by Chicago colored citizens, 1899] Pdf. <https://www.loc.gov/item/91898209/>. "Chapter II". 9-10. The report of detective Louis P. Le Vin from Well's pamphlet writes that the true name of Hose was Tom Wilkes.

²³⁰ Ibid.

²³¹ Harvey Young. "The Black Body as Souvenir in American Lynching." *Theatre Journal* 57, no. 4 (2005), 639-57. <http://www.jstor.org/stable/25069734>.

²³² *Lynched Negro and Wife Were First Mutilated*, Vicksburg (Miss.) *Evening Post*, Feb. 8, 1904, in *Ralph Ginzburg, 100 Years of Lynching* 62-63. (1996). See National Association For The Advancement OF Colored People, *Thirty Years Of Lynching In The United States*. 15 (1919). Luther Holbert's wife's name is not mentioned in either of these accounts, not any accounts consulted for the chapter.

²³³ Harvey Young. "The Black Body as Souvenir in American Lynching." *Theatre Journal* 57, no. 4 (2005), 640. <http://www.jstor.org/stable/25069734>.

²³⁴ David Meyers, Elise Meyers Walker. *Lynching and Mob Violence in Ohio, 1772-1938*. (Jefferson, North Carolina: McFarland, 2018), 129.

recognizable body of Jesse Washington, lynched in Waco, Texas in 1916 reads thusly:

“This is the barbecue we had last night. My picture is to the left with a cross over it. Your son, Joe.”²³⁵ He sounds as if he has been on a vacation. Not only does Joe identify himself in the photograph quite casually, he writes rather offhandedly to his parents about his exploits in the same way. For Joe, lynching is constructed as a leisure activity, like hunting. The badly burned body of Washington, which was moved from where it was first burned to where it was photographed by Fred Gildersleeve hanging from a telephone pole, is something like a spoil of that leisure. Later, Jesse Washington’s image was bought and sold at local gas stations for those who missed their chance at buying his teeth or the pieces of his chain, which went for twenty-five cents a link.²³⁶

The lynching postcard serves as a way to complete the task of sharing black people in common, started by the lynching itself. The ritualistic nature of many lynchings and the peculiar messages that accompany lynching postcards have been analyzed by scholars.²³⁷ It has not, however, been explored in a way that connects commodity culture, amateurism and the specific kind of racism solidifying during the years following Reconstruction.

Memento culture was a fundamental part of lynching, though not every lynching is described in the historical record as accompanied by the orgy of violence and

²³⁵ James Allen, Hilton Als, Congressman John Lewis, and Leon Litwack, *Without Sanctuary: Lynching Photography in America*. (Santa Fe, NM: Twin Palms Publishers, 2000), 174.

²³⁶ Elizabeth Freeman, W.E.B. Dubois. *The Crisis*. “Special Supplement to The Crisis: The Waco Horror”. July 1916. 6.

²³⁷ See Orlando Patterson. “Feasts of Blood: ‘Race’, Religion and Human Sacrifice in the Postbellum South.” In *Rituals of Blood: Consequences of Slavery in Two American Centuries*, 181. (Washington, D.C.: Civitas/CounterPoint, 1998), 10. See also Dora Apel. *Imagery of lynching: black men, white women, and the mob*. “On Looking”. New Brunswick N.J.: Rutgers University Press, 2004. 13.

carnavalesque spectatorship that occurred at the most spectacular lynchings. Memento culture has been too strongly linked by scholars to spectacular lynching (which account for about one-third of known lynchings) to explain what they deem unfathomably sadistic behavior—which is no more unfathomable than the racist violence of today that is its progeny.²³⁸ It is important to understand that memento culture played a significant role in the everyday lives of 19th century Americans, and that memento culture inflects lynching practices, irrespective the level of violence, the circumstances of the lynching, or numbers of spectators present.²³⁹ 19th century Americans were surrounded by sentimentality: the “precious mementos” in their homes and domestic spheres consisted of objects like, “curls, yellowed letters, preserved childhood garments, dried clovers, withered roses that formed an ever-accumulating, nostalgically redolent mass of memory stimuli.”²⁴⁰ The world that included lynching was a world full of sentiment for both the material objects they collected and for what those objects symbolized. All sorts of material objects of differing origins, including photography, would have been co-mingling under one roof, united under than banner of sentiment. Not all photographs and cards found in archives were taken by highly professionalized photographers like Gildersleeve, who was notified of Jesse Washington’s lynching in advance and struck a deal to distribute the photographs with Waco’s mayor.²⁴¹ Many were taken by amateur photographers as well as sold, circulated, and amassed by amateurs. Indeed, amateur

²³⁸ Here I am referencing scholars of visual culture such as Shawn Michelle Smith, Dora Apel, and historians like Walter Brundage. See *Imagery of Lynching: Black Men, White Women, and the Mob* (2004) *Lynching Photographs* (2007) and *Lynching in the New South* (1993).

²³⁹ Dolf Sternberger, *Panorama of the Nineteenth Century* (New York: Urizen Books, 1977), 60-62.

²⁴⁰ *Ibid.*

²⁴¹ Amy L. Wood, *Lynching and Spectacle: Witnessing Racial Violence in America, 1890-1940*. (Chapel Hill, North Carolina: University of North Carolina Press, 2009), 77.

photography and postcards became popular around the same time as lynching peaked in the U.S.—the 1890s:

By 1900 postcard culture had transfixed people worldwide across all lines of social difference. Having flourished in Europe since the late 1860s, the trade in postcards did not take off in the U.S. until century's end. When it did, though, its impact was staggering: what critics of the day termed the postcard "craze" grew with such intensity that in 1908 the U.S. post office handled 670 million cards, while by 1913, postcard circulation had reached nearly a billion. The numbers help to indicate the significance of the "craze"—not just a popular hobby but indeed a ritualized practice touching every aspect of early-twentieth-century life. Lynching cards, then, seem more conceivable as a kind of mass media when we understand that, at the moment they began to emerge, absolutely everything was postcard-ready.²⁴²

Lynching postcards were not the only anti-black postcards floating around in American souvenir shops, family albums, and mailboxes at the turn of the century. Postcards depicting African-Americans as intellectually inferior, prone to criminality, laziness, drunkenness, or in otherwise unflattering manners were also incredibly popular; in fact, they were among the most popular of all post cards.²⁴³ Sometimes called "Coon Cards," they played on the eugenics and anthropological discourses of the day that originated among the European-American intelligentsia. As such, they exaggerated what are considered typically 'African' features, giving their cartoon subjects monstrously large lips, disproportionately broad, flat noses, and ink black skin.²⁴⁴ The cards included different types of stereotypical images and text, some which made black people seem threatening, others which made them seem harmless and docile, but nearly all of them portrayed African-Americans as half-wits and beasts.²⁴⁵

²⁴² Mark Simpson. *Archiving Hate: Lynching Postcards at the Limit of Social Circulation*. ESC 30.1 (March 2004), 21.

²⁴³ Wayne Martin Mellinger. "Postcards from the Edge of the Color Line: Images of African Americans in Popular Culture, 1893–1917." *Symbolic Interaction* 15, no. 4 (1992), 415.

²⁴⁴ *Ibid* at 429.

²⁴⁵ *Ibid* at 417-426.

For example, illustrations on postcards depicting caricatured, idle black people eating watermelons with looks of confusion and pleasure were very common at the time; they are available in abundance in the Bryan L. Bossier postcard collection at Newberry Library and the National African American Museum of History and Culture, as well as for sale on Ebay.com, Amazon.com and Bonanza.com from individual collectors.²⁴⁶

Captions often included ironic statements like, “I’m very busy just now.”²⁴⁷ One example of a variation of this type of postcard was produced in 1905 by J. Ottmann Lithographing Company, but sent in the summer of 1909. It was written by a man in Foxboro, Massachusetts to his family in New Hampshire. The message on the card eerily echoes the message on the 1916 Jesse Washington card. It reads:

[getting ready to / go to the seashore / Harwich port on / the Cape. We go the / middle or last of the / week for the summer. / I like the Dr. & Mrs. / Bragg very much and / Foxboro is fine too. / I'm awfully sorry we / lose you from Royalston. / We shall miss you & / Margaret. Wasn't it / sad about Gladys Jackson? / How does Wesley take it?]. The inscription continues on the verso [Hope you are all / well and happy. / How is old Jim & / sport? If you will / answer this I / will try to give / you more details / next time. My address / is Olive H. Holden, / Foxboro, Mass. / of Dr. F. A. Bragg / Ask Marge to please / write].²⁴⁸

The message does not directly address the image, but it has everything to do with it.

White Americans often purchased these cards on vacation or during travel, sending them with cheery, cheeky messages to recipients. Cards were kept in family albums both as cherished memories and as proud collections to show off, just as lynching photographs and postcards were kept in family albums as mementos, often with equally as ambivalent

²⁴⁶ “Watermelon Post Card – African Americana”. Ebay.

https://www.ebay.com/sch/i.html?from=R40&trksid=p2334524.m570.l1313.TR1.TRC0.A0.H0.Xwatermelon+postcard&_nkw=watermelon+postcard&sacat=0&LH_TitleDesc=0&odkw=watermelon+coin+card&osacat=0. “Watermelon Post Card – African Americana”. Bonanza.

[https://www.bonanza.com/items/search?q\[catalog_id\]=&q\[country_to_filter\]=US&q\[filter_category_id\]=&q\[in_booth_id\]=&q\[ship_country\]=1&q\[shipping_in_price\]=0&q\[sort_by\]=relevancy&q\[suggestion_found\]=&q\[translate_term\]=true&q\[search_term\]=watermelon%20postcard](https://www.bonanza.com/items/search?q[catalog_id]=&q[country_to_filter]=US&q[filter_category_id]=&q[in_booth_id]=&q[ship_country]=1&q[shipping_in_price]=0&q[sort_by]=relevancy&q[suggestion_found]=&q[translate_term]=true&q[search_term]=watermelon%20postcard).

²⁴⁷ “Postcard depicting a caricatured boy eating a slice of watermelon”. Richard F. Outcault. National Museum of African American History and Culture. 2014. https://nmaahc.si.edu/object/nmaahc_2007.7.404.

²⁴⁸ Ibid.

or nonchalant messages in relationship to the images they depict. That archivists have sometimes avoided digitizing the more “mundane” messages on “coon cards” or avoid describing geographical information, in favor of digitizing and describing the images alone, is telling. It speaks both to expediency, but also to how archival categorizations can reproduce scholarly assumptions.

One entry for a similar postcard from the Bryan L. Bossier Collection ignores the inscription, but takes the time to add metadata for the inscription in the category of message that says: “Yes - not relevant to postcard image.”²⁴⁹ The fact that the message on the reverse has, on the surface, little to do with the content of the card might only emphasize how fully racist imagery had been absorbed by the American public—its mundane nature could be of the highest importance. It could, like the message above, reinforce the association between idleness and African-Americans—but all of this is preemptively denied by first categorizing the message as irrelevant to the image.

Illustrated postcards floated around with real photograph post cards of young African-American children eating or holding watermelons and smiling, or sitting for the camera in rural areas with captions like “living easy,” which comes from a Photochrom card manufactured around the turn of the century by the Detroit Publishing Company.²⁵⁰ That

²⁴⁹ Curt Teich Postcard Archives Digital Collection. “Living Easy”. Circa 1900. http://collections.carli.illinois.edu/cdm/singleitem/collection/nby_teich/id/429056/rec/1. The original black & white photograph was taken in 1890, and is available through the Library of Congress. <https://www.loc.gov/item/2016817767/>

²⁵⁰ Curt Teich Postcard Archives Digital Collection. “Living Easy”. Circa 1900. http://collections.carli.illinois.edu/cdm/singleitem/collection/nby_teich/id/429056/rec/1. The original black & white photograph was taken in 1890, and is available through the Library of Congress. <https://www.loc.gov/item/2016817767/>

black Americans were lazy, licentious, and beastly were lies that served as a justification for slavery, but these ideas took on new life after slavery ended, in part through the circulation of popular culture ephemera like postcards.²⁵¹ Watermelons became associated with three main negative stereotypes:

Laziness, because growing watermelons is so easy, and it's hard to eat watermelon and keep working—it's a fruit you have to sit down and eat. Childishness, because watermelons are sweet, colorful, and devoid of much nutritional value. And unwanted public presence, because it's hard to eat a watermelon by yourself.²⁵²

Never mind the fact that plantation owners would sometimes cut watermelons for the enslaved as a “treat,” expect them to run to get their slice, and to eat it quickly *in front of them* as a sign of gratitude.²⁵³

One card shows a side profile of an African-American man turning into watermelon in four stages —watermelon would have been recognized by the senders and recipients of such cards as being a fruit for which black people are supposed to have a natural affinity. The card reads, “Evolution of a Coon.” It resembles physiognomic portraiture, the pseudoscience pioneered first by Pieter Camper with sketches in the 18th century²⁵⁴ and later continued with photography in the 19th century by Sir Francis Galton.²⁵⁵

Physiognomy attempts to connect morality by extrapolating mathematical formulas from

²⁵¹ Wayne Martin Mellinger. “Postcards from the Edge of the Color Line: Images of African Americans in Popular Culture, 1893–1917.” *Symbolic Interaction* 15, no. 4 (1992), 417. Ibram X. Kendi. *Stamped From the Beginning*. New York: Nation Books, 2017, 70. Amy L. Wood, *Lynching and Spectacle: Witnessing Racial Violence in America, 1890-1940*. (Chapel Hill, North Carolina: University of North Carolina Press, 2009), 74-75.

²⁵² William R. Black. “How Watermelons Became a Racist Trope.” *The Atlantic*. <https://www.theatlantic.com/amp/article/383529/>.

²⁵³ Ibid.

²⁵⁴ Wayne Martin Mellinger. “Postcards from the Edge of the Color Line: Images of African Americans in Popular Culture, 1893–1917.” *Symbolic Interaction* 15, no. 4 (1992): 417.

²⁵⁵ Allan Sekula. “The Body and the Archive.” *October*, Vol. 39 (Winter, 1986), 18.

facial features and facial angles. While illustrated cards and the real photo postcards ideological function are much the same, illustrated cards tended to be more grotesque. Frederick Douglass was noted for his irritation with the way illustrations depicted black Americans. He described his frustration in an 1849 edition of *The North Star* newspaper:

...[N]egroes can never have impartial portraits, at the hands of white artists. It seems to us next to impossible for white men to take likenesses of black men, without most grossly exaggerating their distinctive features. And the reason is obvious. Artists, like all other white persons have adopted a theory respecting the distinctive features of Negro physiognomy. We have heard many white persons say, that "negroes look all alike," and that they could not distinguish between the old and the young. They associate with the Negro face, high cheek bones, distended nostril, depressed nose, thick lips, and retreating foreheads. This theory impressed strongly upon the mind of an artist exercises a powerful influence over his pencil, and very naturally leads him to distort and exaggerate those peculiarities, even when they scarcely exist in the original.²⁵⁶

He is careful to point out that his frustrations are not due to the medium in and of itself, but rather, the belief in a specific "negro physiognomy" that defined black people.

Unsurprisingly, most illustrators typically gave African-Americans and Celts "prognathous" facial features, like abnormally large jaws and chins, which were erroneously associated with immorality and lack of intelligence.²⁵⁷ The logic is of course circular, because it is based on racist assumptions. The illustrations are fantasies designed to pathologize and thus justify the exploitation of these two groups. African-Americans and Celts do not really have prognathous features at higher rates than any other groups, and they are not immoral or lacking in intelligence by virtue of being of African or Celtic

²⁵⁶ Frederick Douglass. "Tribute to the Negro." *The North Star*. April 7, 1849. *Nineteenth Century U.S. Newspapers* (accessed April 17, 2020). <https://link-gale.com.revproxy.brown.edu/apps/doc/GT3013080896/NCNP?u=prov98893&sid=NCNP&xid=2b1286ce.17> Envisioning Emancipation

²⁵⁷ Wayne Martin Mellinger. "Postcards from the Edge of the Color Line: Images of African Americans in Popular Culture, 1893–1917." *Symbolic Interaction* 15, no. 4 (1992), 417.

origin.²⁵⁸ The cards serve as physical “proof” of invented categories that do not and cannot really exist. The very idea of an “African” is a particularly false category, since the continent is made up of various ethnic groups with differing features, none of whom would have identified as “African” before European contact. African-Americans are an amalgam of Indigenous American, “European,” and “African” ancestry, adding another layer of absurdity to the illogical claims of physiognomy.

The watermelon card signifies that African-American’s are intemperate, covetous, lazy, and no more intelligent than a piece of fruit, effectively and efficiently transforming an entire people (back) into objects. It objectifies in three ways. First, it reduces living people to a caricature. It then reduces that caricature to an inanimate object. Finally, the process and the ideas therein are printed on a postcard, which is bought, sold, and circulated as a commodity. Watermelon cards served a particular ideological function:

[That] African Americans are excessively fond of watermelon emerged for a specific historical reason and served a specific political purpose. The trope came into full force when slaves won their emancipation during the Civil War. Free black people grew, ate, and sold watermelons, and in doing so made the fruit a *symbol of their freedom*. Southern whites, threatened by blacks’ newfound freedom, responded by making the fruit a symbol of black people’s perceived uncleanness, laziness, childishness, and unwanted public presence. This racist trope then exploded in American popular culture, becoming so pervasive that its historical origin became obscure.²⁵⁹

The relationship between the specific stereotypes of “backwardness” and poverty associated with watermelon did not begin with African-Americans after Reconstruction. They were first applied to Arabs and Italian peasants by early modern Western

²⁵⁸ It should also be noted that Jewish people were often the subject of stereotypical and physiognomic portraiture with a heavy focus on animalistic depictions since at least the early modern period. See Jay Geller. *Bestiarium Judaicum: Unnatural Histories of the Jews*. New York: Fordham University Press, 2018.

²⁵⁹ William R. Black. “How Watermelons Became a Racist Trope.” *The Atlantic*. <https://www.theatlantic.com/amp/article/383529/>.

Europeans.²⁶⁰ A British soldier in Egypt in 1801 shared an account that reads similarly to the way African-Americans are described interacting with watermelons. They are described as eating watermelons “ravenously”²⁶¹ and littering them through the streets. More generally, the soldier insists that Arabs stuff food down their throats rather than eating it; the account attacks the people as “filthy”²⁶² and smelly. According to the soldier’s account, the populace seems to sleep constantly, and when they are awake, the shopkeepers help customers “without moving from their seat.”²⁶³

In America, watermelon was associated with poverty and poor white farmers just as much as it was with slaves in the antebellum period; it was only the threat of full personhood being attained by black people that necessitated the near total association between watermelons and black people. How could a black person sell a watermelon when they were the same class of object *as* a watermelon? One account cited by historian William R. Black describes a young boy named Henry Evans who would not “eat what free Negroes ate.”²⁶⁴ Evans refused to take watermelon as a peace offering from his former slave Clara after seeing her on the street in Houston in 1865. Clara had been his nanny when she was enslaved. He was incensed that she struck out on her own selling watermelon, rather than staying on as his nanny as she had been when she was enslaved.²⁶⁵

²⁶⁰ Ibid.

²⁶¹ Major C. Doyle. "Observations made in Egypt : describing the country, its inhabitants, their manners and customs." A non-military journal (1803). <https://gallica.bnf.fr/ark:/12148/bpt6k1053506/f42.image>. 22.

²⁶² Ibid at 23.

²⁶³ Ibid at 23.

²⁶⁴ William R. Black. “How Watermelons Became a Racist Trope.” *The Atlantic*. <https://www.theatlantic.com/amp/article/383529/>.

²⁶⁵ Ibid.

One solution to the dilemma of the incompatibility of black skin with socio-economic freedom (the freedom that so incensed Evans), is to “capture” black people and freeze them in time as a circulating commodity, so that “consciousness of their body is solely a negating activity.”²⁶⁶ Hence the explosion of innumerable racist caricatures on fungible, collectable popular culture objects like postcards. Postcards could have contained any number of images, ideas and illustrations, yet, racist images of black people, whether cartoon or photographs, were among the most popular.

Photography works especially well for that above-mentioned purpose, and it is common parlance to “capture and image.” According to Amy Wood, the earliest advertisements for amateur photography in the South were marketed as giving operators the ability to hunt—to shoot and capture their prey—without the interference of game laws.²⁶⁷ Black Americans too knew the power of photography as a circulating commodity and as a representational device, which is why they sought it out after the end of slavery to fashion positive images of themselves as free men and women—to show that they were “owned” only by themselves.²⁶⁸ There are two important points here: one, that despite some reluctance from scholars in the past to engage with the economic and fetishistic elements

²⁶⁶ Franz Fanon. *Black Skin, White Masks*. “The Fact of Blackness”. (New York, New York: Grove Press), 110.

²⁶⁷ Amy L. Wood, *Lynching and Spectacle: Witnessing Racial Violence in America, 1890-1940*. (Chapel Hill, North Carolina: University of North Carolina Press, 2009), 89.

²⁶⁸ See Deborah Willis and Barbara Krauthamer. *Envisioning Emancipation: Black Americans and the End of Slavery*. Philadelphia: Temple University Press, 2017 and Maurice O. Wallace and Shawn Michelle Smith. *Pictures and Progress: Early Photography and the Making of African American Identity*. (Durham: Duke University Press, 2012).

of lynching at the same time,²⁶⁹ these elements are clearly mutually reinforcing; and two, that precisely what lynching postcards from this era can teach us is *how* that that relationship works.

RUSSELLVILLE, KENTUCKY

Fourteen people are known to have been lynched in Kentucky in 1908.²⁷⁰ Before then, the record appears to show that lynching was declining in the state, though historians can never be certain if they actually declined or on the specifics of the decline. Many recorded lynchings took place in public or were subject to public announcements before they took place; a decline in recorded lynchings may only indicate that there were unrecorded lynchings done in private.²⁷¹ Nevertheless, Virgil Jones, Robert Jones, Thomas Jones, and Joseph Riley were among those lynched in Kentucky in 1908.²⁷² The mob circulated a rumor that they were plotting the assassination of “several prominent white citizens” in Logan County—a flight of fancy.²⁷³ In reality, the three of them were lynched for asserting economic independence. They, along with other African-American laborers in the area “formed a cooperative association among black tobacco farmers that opposed the interest of the local whites.”²⁷⁴

²⁶⁹ Amy L. Wood, *Lynching and Spectacle: Witnessing Racial Violence in America, 1890-1940*. (Chapel Hill, North Carolina: University of North Carolina Press, 2009), 97.

²⁷⁰ George C Wright. *Racial Violence In Kentucky: Lynchings, Mob Rule, and 'Legal Lynchings'*. (Baton Rouge, London: Louisiana State University Press, 1990), 105.

²⁷¹ Ibid.

²⁷² Ibid at 125.

²⁷³ Ibid at 125.

²⁷⁴ Linda Kim. “A Law of Unintended Consequences: United States Postal Censorship of Lynching Photographs.” *Visual Resources An International Journal of Documentation* 28, no. 2, 179.

Days before the men were lynched, Rufus Browder, a black sharecropper, got into dispute with James Cunningham, the white farmer on whose land he worked. As Browder walked away, Cunningham shouted expletives and hit him with a whip. He then pulled out a pistol and shot Browder in the chest. Browder responded in kind by pulling out his pistol and killing Cunningham. After Browder fled for his life to Louisville, the police raided a meeting of black sharecroppers taking place at a private home and arrested them for disturbing the peace.

A group of at least 100 men demanded their jailer release the four men to their custody on the night of August 1st.²⁷⁵ The jailer obliged. They were hanged from the same cedar tree used to lynch Arch and Dink Proctor on December 18th, 1896, two white men who had run afoul of the Russellville townspeople for several murders.²⁷⁶ George C. Wright's tome on racial violence in Kentucky describes a note pinned to one of the black men's bodies that read: "Let this be a warning to you niggers to let white people alone or you will go the same way."²⁷⁷

The photograph of the aftermath was taken at dawn.²⁷⁸ It depicts the four men, hands all bound behind their back, all with their shoes removed, hanging from a large tree. Two of the men are stripped down to their britches. The composition is such that each body and a large portion of the tree is clearly visible in the frame's foreground. In the background at

²⁷⁵ George C Wright. *Racial Violence In Kentucky: Lynchings, Mob Rule, and 'Legal Lynchings'*. (Baton Rouge, London: Louisiana State University Press, 1990), 125.

²⁷⁶ Ibid.

²⁷⁷ Ibid.

²⁷⁸ James Allen, Hilton Als, Congressman John Lewis, and Leon Litwack, *Without Sanctuary: Lynching Photography in America*. (Santa Fe, NM: Twin Palms Publishers, 2000).

the right side of the frame, two black onlookers, one with a bicycle, can be seen, along with two horses. It is unclear by whom the photograph was taken, but the image on the postcard was copyrighted in 1908 by a salesman named Jack Morton. He was based in Nashville, Tennessee at the Stahlman Building, which is still standing today, only a stone's throw from the Cumberland River. The lithographed postcard was sold for 15 cents with a caption that did not merely describe the scene; it set it:

"Taken from death," lynching at Russellville, Logan County, Kentucky", July 31st, 1908. Hanged on the Old Proctor Lynching Tree. This is a multiple cedar tree and these four make a total of nine men lynched on this tree. Some were white men. This tree is an old landmark and was an old cedar tree, even in the youngest days of the oldest settlers. Russellville is one of the pioneer towns of Kentucky and was settled in a cane break. This is an exact photograph taken at Dawn Aug. 1 '08.²⁷⁹

The caption does several things. First, it nearly sanctifies the tree as a symbol of American progress, quite the opposite of how many Northern newspapers and anti-lynching discourses of the 1930s (from black and white elites in the North and South) constructed lynching as an “irrational,” “anti-modern” lapse back into barbarism.²⁸⁰ It clearly connects lynching to the history of the United States as a settler-colonial enterprise. Kentucky, it seems, could not and would not have been settled by its “pioneers” without lynching. The tree, which has seen and will see many lifetimes beyond those of men, is past, present, and future. Interestingly, it includes the fact that “some white men” were lynched, leaving the reader to infer what they would already have known about lynching—that most victims were black. The specter of lynching haunts all black people because they are black, but only “some white men” will be

²⁷⁹ Ibid at 194.

²⁸⁰ Amy L. Wood, *Lynching and Spectacle: Witnessing Racial Violence in America, 1890-1940*. (Chapel Hill, North Carolina: University of North Carolina Press, 2009), 206-207, 210, 217-218.

lynched for the sake of the republic. In the struggle over who reaps the benefits of an extraction economy, it is only black people that are unconditionally excluded.

It is important that there are two living black men in the background of the Russellville photograph. While we cannot be sure exactly why they were there and where they were going, it is clear that the photographer did not see them as disadvantageous to his photograph—one he planned to sell later. The men in background underscore the pure terror that lynching images traffic in: they signify that anyone black is subject to violence at any time. Put another way, the image stresses that any white person is entitled to destroy a black person at any time with impunity. There are at least three versions of this photographic postcard in different archives.²⁸¹ One uncommon version, found in the Brian L. Bossier Collection of the Newberry Library, is a vertical photograph. The composition is much the same, but the black onlookers from the horizontal photograph are absent, as well as any caption. A lithographed version of that photograph has not been recovered.

In the original photographs, the message pinned to the man in the overalls shows up as bright white. On the lithographed version, black text reads “WARNING”—a threat of

²⁸¹Newberry Library, Brian L. Bossier Collection. "Four black men hung at the same tree." http://collections.carli.illinois.edu/cdm/singleitem/collection/nby_teich/id/4378/rec/1. Newberry Library, Brian L. Bossier Collection. "Taken from death, lynching at Russellville, Logan County, Kentucky." http://collections.carli.illinois.edu/cdm/singleitem/collection/nby_teich/id/4084/rec/1. Oshkosh Public Museum. "Lynching in Russellville, Logan County, Kentucky". <https://oshkosh.pastperfectonline.com/photo/AC00E102-8B2C-4971-ABDF-974360873100>. The Gilder Lehrman Institute of American History. "Morton, Jack (fl. 1908) [Color reproduction of a photograph depicting the lynching of four African Americans]". <https://www.gilderlehrman.org/content/color-reproduction-photograph-depicting-lynching-four-african-americans>. James Allen, Hilton Als, Congressman John Lewis, and Leon Litwack, *Without Sanctuary: Lynching Photography in America*. (Santa Fe, NM: Twin Palms Publishers, 2000), 134.

violence to any other black farmers who might defy white landowners. The men refused to participate in schemes to functionally re-enslave them. In other words, they were resisting being turned back into discrete, individual, yet fungible objects. On the contrary, Virgil Jones, Robert Jones, Thomas Jones and Joseph Riley were trying to turn to their community to create a jointly owned, democratically controlled tobacco farming cooperative to avoid being exploited and reduced to cheap, disposable labor. Sadly, the postcard offered up a tangible way to assert not their worthlessness, but a kind of circumscribed worth as fully exchangeable commodity with a price—just as they might have had during slavery.

One version includes an inscription that hints at the truth of the matter:

I bought this in Hopkinsville 15¢ each. They are not on sale openly. I forgot to send it until just now I ran across it. I read an account of the night riders affairs where it says these men were hung without any apparent cause or reason whatever. A law was passed forbidding these to be sent through the mail or to be sold anymore.²⁸²

Though this postcards of the Russellville lynching was not successfully mailed, there is no indication that the card was not mailed in other locations, and it certainly did not stop the card from being shared by other means.

On August 12th, 1908, an unidentified person walked into the post office in Hopkinsville, Kentucky with a photographic postcard that featured the lynched bodies of Virgil Jones, Robert Jones, Thomas Jones, and Joseph Riley.²⁸³ The inquirer wanted to know if the postcard was “mailable” under the law. Hopkinsville was 35 miles from where the men

²⁸² James Allen, Hilton Als, Congressman John Lewis, and Leon Litwack, *Without Sanctuary: Lynching Photography in America*. (Santa Fe, NM: Twin Palms Publishers, 2000), 195.

²⁸³ Linda Kim. "A Law of Unintended Consequences: United States Postal Censorship of Lynching Photographs." *Visual Resources An International Journal of Documentation* 28, no. 2, 179.

were murdered just three weeks prior in Russellville, Kentucky.²⁸⁴ The person, according to the work of historian Linda Kim, was described by some regional newspapers as the photographer himself.²⁸⁵ The question was forwarded by John W. Breathitt, the postmaster in Hopkinsville, to the Postmaster General in Washington D.C.²⁸⁶

It was section 3893, a revised version of the 1873 Comstock Act that concerned lynching photographs, though they were not the intended target. Lynching photographs were merely caught in the cross-hairs of a law intended by Theodore Roosevelt to purge the country of anarchist political material in the wake of President William McKinley's assassination by Polish-American anarchist Leon Czolgosz. What was once a law that targeted sexuality and contraception through banning obscenity in the mail became a law that included banning materials "of a character tending to incite arson, murder or assassination."²⁸⁷ Unlike a previous case in Pensacola, Florida involving a lynching postcard of Leander Shaw which was deemed obscene by virtue of its written message on the back—not the photograph itself—the Russellville lynching postcard was deemed obscene.²⁸⁸ The reason was never given for blocking the Russellville postcard from circulating in the mail, but Kim speculates that postcards were typically censored because

²⁸⁴ "Hopkinsville, Ky – Russellvill, Ky".

<https://www.google.com/maps/dir/Russellville,+KY/Hopkinsville,+KY/@36.8553689,-87.4681388,10z/data=!4m14!4m13!1m5!1m1!1s0x8865a0a4a6759037:0xe6aa8f732658e3d3!2m2!1d-86.887219!2d36.8453199!1m5!1m1!1s0x88653429bd0e1147:0x5873be34ca1ff080!2m2!1d-87.4886186!2d36.8656008!3e2>

²⁸⁵ Linda Kim. "A Law of Unintended Consequences: United States Postal Censorship of Lynching Photographs." *Visual Resources An International Journal of Documentation* 28, no. 2, 179.

²⁸⁶ Ibid at 180.

²⁸⁷ Ibid at 174.

²⁸⁸ Ibid at 180. The postcards included a message which could have been interpreted as a kind of support: "This is the nigger brute they hung in the Plaza July 29, and riddled him with bullets. Dock, how is this for the Pensacolians?" The other message read: "This is Leander Shaw that the people lynched July 29. Cousin Susie, how is this for the Pensacolians?"

of their text and not the photographs in and of themselves, based on other cases that call out the text specifically and not the images:

The problem was not simply that the text made too explicit what had always remained implicit in lynchings and their photographic postcards. The text actually restructured the white individual's relationship to lynching's message, transforming the role of the white recipient of the postcard from a *passive, casual consumer of the image* into being recruited quite explicitly by the reference to race in the lynch mob's activities. Like the hypothetical pedestrian hailed by the police ("Hey, you there!") in Marxist political theorist Louis Althusser's analysis of ideology, the white person receiving such a postcard was interpolated by the racial ideology of the text.²⁸⁹

Yet Kim's trenchant analysis of how the text interpellates white spectators neglects the tension she briefly points out because she does not fully consider materiality. What is it, exactly, that is implicit in lynching post cards that the text makes explicit? It is not enough to use the general phrases "white supremacy" and "caste gains."²⁹⁰ White supremacy and "caste gains" are propped up by very specific notions about black people and their socio-economic place in the United States—notions rooted in the exchangeability and objectification of black people. There is no "passive, casual consumer of the image" waiting to be radicalized—this gives the text far too much credit. These objects were actively bought, sold and circulated as souvenirs on both an open and clandestine market, with or without text. Why? The cards are both a cause and consequence of a racist system in transition trying desperately to put itself back together again. 110 years after the establishment of racialized slavery, we are witness to the reconstruction of antebellum norms without the scheme of slavery.

The violence it takes to secure fungibility can be implied by the photograph and the possession, purchase, and circulation of the card, but *calling out its ideological function*

²⁸⁹ Ibid at 183.

²⁹⁰ Ibid at 183.

explicitly violates the purpose and power of such a card in the formulation of the norm.

Consider the absurd description of the mob as an orderly, self-respecting, mild-mannered bunch by The Adair County news: “The Negroes were taken out and lynched. The work was done so quietly that no one Russellville knew until the morning that a lynching had taken place.”²⁹¹

This is one defining characteristic of the way that racial violence in the United States began to work after the fall of slavery—it exposed itself, but at the same time it refused to acknowledge its crimes as crimes. One of racism’s most effective tools is denying its very existence and thus denying the monstrosities it is responsible for. The point here is that the revised version of the 1873 Comstock Act was not, in fact, an attempt to regulate the circulation of these cards as has been implied by some scholars, but it forced a sporadic reckoning with the ideas they circulated anyway.²⁹² As a result, a record exists of how people in the United States were beginning to think about and reconcile that black skin was no longer a stable marker of social death.²⁹³

²⁹¹ *The Adair County News.*, August 12, 1908, Image 7.
<https://chroniclingamerica.loc.gov/lccn/sn86069496/1908-08-12/ed-1/seq-7/#date1=1908&index=3&rows=20&words=lynching+Russellville&searchType=basic&sequence=0&state=&date2=1909&proxtext=Russellville+Lynching&y=15&x=13&dateFilterType=yearRange&page=1>

²⁹² James Allen, Hilton Als, Congressman John Lewis, and Leon Litwack, *Without Sanctuary: Lynching Photography in America*. (Santa Fe, NM: Twin Palms Publishers, 2000), 195.

²⁹³ Achille Mbembe. “Necropolitics”, *Public Culture* 15(1), 21.

CHAPTER 3

LOOKING BACKWARD: POLICE VIOLENCE, LYNCHING, AND THE EPISTEMOLOGICAL STATUS OF PHOTOGRAPHIC EVIDENCE

LOOKING BACKWARD

Hundreds of lynching photographs have survived to the present day. It is likely that many more were taken, but they are lost to time, considering that confirmed cases of racial lynchings number in the thousands.²⁹⁴ There were records of these crimes, yet histories of lynching very rarely, if ever, end in convictions for the perpetrators. The existence of lynching photographs seems strangely at odds with the lack of convictions. I have not recovered a single case of lynching prosecuted using photographic evidence, despite their abundant numbers and brazen circulation. Most lynching photographs depict the aftermath—though sometimes the process—of brutal crimes for which no one was ever charged. With the recent police killings of Walter Scott, Philando Castile, Joe Mcknight, Eric Garner, Oscar Grant, Keith Lamont Scott, Alton Sterling, Stephon Clark and Sandra Bland, the significance of photography as evidence and its intersections with race has been thrust back into public consciousness.

Rather than focus solely on the discursive practices employed in the reading of photographic evidence in cases of police violence, this chapter focuses on how analogical reasoning in the courtroom around photographs, developed in the early days of

²⁹⁴Equal Justice Initiative. LYNCHINGS IN THE SOUTH, 1877 – 1950.
<https://lynchinginamerica.eji.org/report/>

photography, undergirds certain discursive practices and structures perception. It reads cases of police brutality backwards to help clarify how photographs of lynching might have been understood at the time they were taken and how they could circulate so widely with little to no legal repercussions for perpetrators. Looking backwards helps us understand that it is not necessarily a one-to-one comparison of composition but, rather, the production of visual facts that unite lynching photographs and images of police brutality.

Much has been written, in an array of disciplines, examining notions of “indexicality”, and the historical mechanisms, and ideologies that have constructed photographs as evidence.²⁹⁵ The photographic image’s claim to accurately represent reality been critiqued and examined by thinkers such as Susan Sontag, Tom Gunning, John Tagg, Roland Barthes, and Neil Postman.²⁹⁶ The judicial analogy, however, played a crucial role in constructing the photograph—a new and dangerous form of record—as evidence. Precedent and analogy dominate legal reasoning, particularly in the United States and England.²⁹⁷ These forms of reasoning are based on similarity; to understand some new

²⁹⁵ John Tagg. *The burden of representation: essays on photographs and histories*. University of Minnesota Press, 1993; Sekula, Allan. “The Body and the Archive.” *October*, Vol. 39 (Winter, 1986), 3.

²⁹⁶ John Tagg. *The burden of representation: essays on photographs and histories*. University of Minnesota Press, 1993; Tom Gunning. “PLENARY SESSION II. Digital Aesthetics. What’s the Point of an Index? or, Faking Photographs.” *Nordicom Review* 25, no. 1-2 (January 2004), 39–49. <https://doi.org/10.1515/nor-2017-0268>; Susan Sontag. *On Photography*. Harmondsworth: Penguin, 2019; Roland Barthes, and Richard Howard. *Camera Lucida*. London: Vintage Classics, 2020; Neil Postman. *Technopoly: the Surrender of Culture to Technology*. (New York: Vintage Books, 1993).

²⁹⁷ Cass R. Sunstein. “On Analogical Reasoning.” *Harvard Law Review* 106, no. 3 (1993), 741. <https://doi.org/10.2307/1341662>; Lamond, Grant. “Precedent and Analogy in Legal Reasoning.” *Stanford Encyclopedia of Philosophy*. Stanford University, June 20, 2006. <https://plato.stanford.edu/entries/legal-reas-prec/#Ana>.

situation or object, analogical reasoning and reasoning based on precedent compares what is new to what came before.

The risk of this form of analogical reasoning in particular is thus: it deforms the new object by glossing over the differences between it and the familiar object of comparison to focus on the similarities. Very few studies of photography have considered in detail how judicial analogies about photography from the 19th Century affect current cases or case law itself. Even fewer studies attempt to bring together the literature from the fields of legal, cultural, and art history. Although photographic evidence is generally considered to be illustrative evidence, in practice it occupies a much more ambiguous space at the intersection of illustration and proof.

19TH CENTURY CONCEPTIONS OF PHOTOGRAPHY

Judicial analogies about photography were borne out of two competing ideas about the nature of photography in the second half of the 19th Century, coinciding with end of the Civil War, Reconstruction and the birth of Jim Crow laws.²⁹⁸ One viewed photography as automatic—or “self-operating”; the other conceived of photography as shaped primarily by human intervention.²⁹⁹ The belief that photography was a faultless reproduction of reality was not, at least at first, based on the notion that the mechanical process of the apparatus dictated the production of the photograph. Rather, it was based

²⁹⁸ Jennifer L Mnookin. “The Image of Truth: Photographic Evidence and the Power of Analogy.” *Yale Journal of Law & the Humanities* 10, no. 1 (May 8, 2013): 4.

²⁹⁹ Ibid.

on the belief *that the sun was the agential force* in producing photographs.³⁰⁰ In other words, the photographer did not create the photograph; his job was to allow sunlight to reproduce nature. Joel Snyder has suggested that “the characterization of the daguerreotype as “mechanical” can be seen as an extension of the vocabulary of artistic education and practice,” which associated the word mechanical with the dexterity it took to produce hand drawn copies.³⁰¹ Despite the use of the word mechanical in many instances, the “pencil of the sun” belief about the camera had little to do with the apparatus itself, in contrast to the opposing view, which emphasized the photographer’s role in controlling both the apparatus and the chemical processes.

It is important to point out that these debates about the nature of photography exist contemporaneously with a few different types of photographic practices, all of which were complicated and labor intensive. The daguerreotype, which was invented in 1839, fixed images by using an iodine-sensitized silver coated copper plate and mercury vapor.³⁰² It did not produce a negative, and every image was unique. The calotype process, which produced an image by sensitizing paper with silver iodide and was invented in 1841, did produce a negative.³⁰³ However, it created an image that was far less sharp than the daguerreotype and would thus seem unappealing for widespread use in the courtroom.

³⁰⁰ Joel Snyder. “Res Ipsa Loquitur”. In *Things that talk: object lessons from art and science*. Edited by Lorraine Daston. 204. (New York: Zone Books, 2004).

³⁰¹ Ibid.

³⁰² Jennifer L Mnookin. "The Image of Truth: Photographic Evidence and the Power of Analogy." *Yale Journal of Law & the Humanities* 10, no. 1 (May 8, 2013), 6.

³⁰³ Ibid at 9.

According to Jennifer L. Mnookin, use of photographs as evidence may have occurred shortly after the wide adoption of daguerreotype technology, but it was not taken up in earnest until the 1850s. Until the invention of, “a new collodion carrier that adhered to glass plates [and] functioned as photographic negatives,” there was no stable, inexpensive way to produce a negative from which to make positive paper prints of relatively clear images.³⁰⁴ In the 1850s, photography went from miraculous to mundane, from divine to the realm of industry and low-wage print makers.³⁰⁵ It was the commercialization of photography and the subsequent proliferation of photographs that led to an increase use in the courtroom. This forced the judicial system to reckon with what photography was, and what kind of knowledge production it was capable of.

While the general public of 19th century may not have understood the particularities of the photographic processes mentioned, it helps contextualize an era in which two seemingly contradictory views of the nature of photography could exist without one completely overtaking the other. This is in sharp contrast to a 21st century public that views photography as a homogenous and singular process; it is largely cut off from the interworkings of *any* kind of photographic processes—digital or otherwise. Still, if the explanations about the nature of photography have changed, debates about photography’s veracity seem strangely unchanged. The continuity of these debates shows in the ways that courts attempted and continue to attempt to assimilate photographic evidence via judicial analogies.

³⁰⁴ Ibid.

³⁰⁵ Joel Snyder. “Res Ipsa Loquitur”. In *Things that talk: object lessons from art and science*. Edited by Lorraine Daston. 206. (New York: Zone Books, 2004).

There are four types of general types of evidence recognized by courts: real evidence, demonstrative evidence, documentary evidence, and testimonial evidence.³⁰⁶ It is important to understand that during the 19th century, courts focused primarily on real and testimonial evidence. Real evidence comprises tangible, material objects that played a role in the matter that gave rise to the case, such as a weapon used in the commission of a crime.³⁰⁷ Documentary evidence is proof that can be produced in writing.³⁰⁸ Testimonial evidence refers to spoken, oral testimony, given by a witness under oath.³⁰⁹ Demonstrative evidence is considered to be a type of real evidence which involves a representation of an object, such as medical exhibits, graphics, animations, and sometimes photographs; it is thought to be independent of testimony because it can be seen.³¹⁰ All evidence must be relevant—that is, logically connected to the facts which are trying to be established by the prosecution or defense.

In order to establish how new types of technologies can be assimilated, judges often use analogical reasoning: “a comparison between two objects, or systems of objects, that highlights respects in which they are thought to be similar.”³¹¹ Analogy is a central

³⁰⁶ “Summary of the Rules of Evidence.” Findlaw. Accessed March 7, 2020.

<https://corporate.findlaw.com/litigation-disputes/summary-of-the-rules-of-evidence.html>.

³⁰⁷ “What is REAL EVIDENCE?” *The Law Dictionary*. Accessed December 15, 2016.

<http://thelawdictionary.org/real-evidence/>.

³⁰⁸ “What is DOCUMENTARY EVIDENCE?” *The Law Dictionary*. Accessed December 15, 2016.

<http://thelawdictionary.org/documentary-evidence/>.

³⁰⁹ “What is TESTIMONIAL EVIDENCE?” *The Law Dictionary*. Accessed December 10, 2016.

<http://thelawdictionary.org/testimonial-evidence/>.

³¹⁰ “What is DEMONSTRATIVE EVIDENCE?” *The Law Dictionary*. Accessed March 10, 2016.

<https://thelawdictionary.org/demonstrative-evidence/>.

³¹¹ Paul Bartha. “Analogy and Analogical Reasoning.” *Stanford Encyclopedia of Philosophy*. 2013. Accessed December 15, 2016. <https://plato.stanford.edu/entries/reasoning-analogy/>.

feature of legal reasoning in general, particularly in the Common Law systems of the United Kingdom and the United States, which are based primarily on precedent, as opposed to statutes.³¹² All new cases are considered in the context of older cases in the Common Law system, thus making comparisons a necessary part of decision making. Illustrative evidence is supposed to merely support more substantive evidentiary categories like testimony or real evidence: it is not considered proof in and of itself. Although during the latter half of the 19th century, photographs eventually became illustrative evidence, supposedly subordinate to testimony, different ways of thinking about photography as evidence played themselves out in courtrooms in several puzzling, contradictory ways.

Photographs were admitted as evidence without any stable doctrine for some time. They were used to show the boundaries of property, confirm identity and settle paternity cases, among other things.³¹³ Many lawyers and judges compared the photograph to a “deaf, dumb witness,” capable only of showing the truth—no verification necessary.³¹⁴ In some ways, this anticipates the later “silent witness” theory that became more common during the latter half of the 20st century. It treats photographic evidence, most commonly surveillance footage, as self-authenticating. Others likened photography to a mirror that could fix its images.³¹⁵ No matter what analogy lawyers or judges who wanted to admit photographs used that characterized photography as automatic, they appealed to its

³¹² Grant Lamond. “Precedent and Analogy in Legal Reasoning.” *Stanford Encyclopedia of Philosophy*. June 20, 2006. Accessed December 16, 2016. <https://plato.stanford.edu/entries/legal-reas-prec/>.

³¹³ Jennifer L Mnookin. “The Image of Truth: Photographic Evidence and the Power of Analogy.” *Yale Journal of Law & the Humanities* 10, no. 1 (May 8, 2013), 11, 49.

³¹⁴ *Ibid* at 18.

³¹⁵ *Ibid* at 16.

objectivity and lack of bias as perfectly aligned with the highest ideals of the law. This is not to say that every analogy arguing for the admissibility of photographs based on objectivity argues that photographs are exact reproductions of reality, but that their objective character is precisely what made them of value, no matter what “kind” of reality they reproduced.

However, a distinct strain of legal thinking sought to exclude photographs from evidence because they might be considered hearsay.³¹⁶ Hearsay is defined as a statement said out of court, the report of another person’s words by a witness.³¹⁷ Joel Snyder cites the famous case, *Robinson v. Mandell*, litigated in 1868.³¹⁸ The case concerned the disputed will of Sylvia Ann Howland, a millionairess. One will left half of Howland’s estate to her only surviving heir and niece Hetty Robinson with various stipulations.³¹⁹ The other, earlier will produced by Robinson herself, left Robinson the estate in its entirety with instructions that no other, later will be honored.³²⁰

Thomas Mandel, the executor of Howland’s estate, accused the “earlier” will of tracing the signatures on the “later” will. Robinson responded by suing. The case is less well known for its use of photography and more for its controversial attempt to use mathematics to examine the statistical probability of a forged signature—but the two are

³¹⁶ Joel Snyder. “Res Ipsa Loquitur”. In *Things that talk: object lessons from art and science*. Edited by Lorraine Daston. 214. (New York: Zone Books, 2004).

³¹⁷ “What is HEARSAY?” The Law Dictionary. Accessed December 20, 2016.
<http://thelawdictionary.org/hearsay/>.

³¹⁸ Ibid.

³¹⁹ Paul Meier and Sandy Zabell. “Benjamin Peirce and the Howland Will.” *Journal of the American Statistical Association* 75.371 (1980), 497.

³²⁰ Ibid.

connected.³²¹ Benjamin Pierce and his son Charles Sanders Pierce, the mathematician and logician whose theory of signs would later influence the study of images, helped to examine the signatures and testified for Mandel.³²² They contrasted the disputed signatures with the original and with 42 photographic copies of other signatures by Sylvia Ann Howland to try to figure out the probability of the first signature's downstrokes being exactly the same as the second.³²³ It was not very likely, but Robinson had her own experts that disputed the "experimental" findings based on microscopic examination of the signatures.³²⁴

It became common during the latter half of the 19th century to try to use photographs as proof to confirm identity and signatures, but it was just as common to have the use of photographs challenged.³²⁵ To lay the foundation for the case, Mandel's council introduced photographs of various signatures with similarities to counter the impossibility of Robinson forging Howland's signature. Robinson's lawyers argued that the photographs were neither evidence that his client traced the signatures, nor were they evidence at all—only "hearsay of the sun."³²⁶ His reasoning from the original case is not reproduced in Snyder, but it is worth quoting, since it is mingled with several different arguments:

We are not aware of any decision admitting such testimony upon a question of handwriting. It is hearsay of the sun. This case is an instance of the number of collateral issues raised. The

³²¹ Ibid.

³²² Ibid.

³²³ Ibid at 498.

³²⁴ "The Howland Will Case." Reprint. *University of Pennsylvania Law Review. The American Law Review*, no. 4 (July 1870), 580.

³²⁵ Jennifer L Mnookin. "The Image of Truth: Photographic Evidence and the Power of Analogy." *Yale Journal of Law & the Humanities* 10, no. 1 (May 8, 2013), 10-11.

³²⁶ Joel Snyder. "Res Ipsa Loquitur". In *Things that talk: object lessons from art and science*. Edited by Lorraine Daston. 215. (New York: Zone Books, 2004).

correctness of the lens, the state of the weather, the skill of the operators, the color of the impression, the purity of the chemicals, these, and many others issues, easily conceivable, would be raised in every case. Again, the competency of the similarity of the signatures of J. Q. Adams, Stephen Fairbanks, and the rest, seems extremely doubtful, as tending to prove that Sylvia Ann Howland's signatures would have the same similarity. **True, this is introduced to contradict assertions of the respondents' witnesses, that no two signatures of the same person would cover; which was a reason given by many of them for their opinion of the want of genuineness of Sylvia Ann Howland's. But in point of fact, how can it be possible to argue one person's liability to reproduce her signature, from the habit of six others selected for this concededly singular peculiarity?** It would be as well, as was suggested, to infer one's power of shooting with precision, ploughing a straight furrow, or drawing a straight line from an examination of the performances of others. A variety of collateral issues are raised; **it must be shown** not only that the person wrote the signature, **but under what circumstances he wrote;** what was his bodily health and his state of mind; and this must be repeated as to every signature.³²⁷ [**emphasis mine**].

First, he points to the lack of precedent, and then proceeds by way of analogy. His general line of reasoning analogizes photographs to words rather than vision, and it excludes them on interesting grounds. It is not that the photograph (merely) unfaithfully reproduces nature, but that the agent which produces it, the sun, cannot be cross-examined in court.³²⁸ It is also worth noting that he does emphasize the contingent nature of photographic practice, but does not quite claim it is inherently fallible or able to be manipulated. Further, and perhaps most importantly, his argument emphasizes that photographs do not actually show a process, as much as they show a product—which is to say that an argument that seems to only be about hearsay is both about the primacy of speech in the court room and about the impossibility of photographs producing knowledge about the specificities of a time and space. Photography is shown to be a series, rather than a single product, more estimation than exact representation.

³²⁷ “The Howland Will Case.” Reprint. *University of Pennsylvania Law Review. The American Law Review*, no. 4 (July 1870), 580-581.

³²⁸ Joel Snyder. “Res Ipsa Loquitur. In *Things that talk: object lessons from art and science*. Edited by Lorraine Daston. 215. (New York: Zone Books, 2004).

Here, the weakness of the evidence is compounded by being both photographic and speculative. Robinson's lawyer hints in his argument that using photography to refute previous testimony might be acceptable—but ultimately decides to skirt the issue by arguing against the findings gleaned from the photographs rather than the photographic image itself. While the first part of his argument delegitimizes the photograph, the second seems to accidentally legitimize it as evidence by partially engaging it as the thing it stands in for.

Charles Pierce himself considered photography to be a good example of “likeness,” a kind of sign that gave information by way of imitation and that gave no “independent knowledge of the circumstances of the production.”³²⁹ Photography, like other speculative, probabilistic endeavors, functions more like a good “guess,” but the slippage between possibility, probability and certainty was a source of constant jockeying during the period, and not just in the realm of photography. However, even Pierce was aware that certain objects might exhibit iconic, indexical, and symbolic representational qualities all at the same time.³³⁰ Whether or not lawyers understood the nature of the myriad of photographic processes or its intricacies, the analogy makes plain the complexities of both the ontological and epistemological status of photographs in the courtroom. The photographs were not excluded, but the case was eventually dismissed on other grounds.³³¹

³²⁹ Charles S Pierce. "What Is a Sign? ." What Is a Sign?. 1894. Accessed December 15, 2016. <https://www.marxists.org/reference/subject/philosophy/works/us/peirce1.htm>.

³³⁰ Albert Atkin. “Peirce's Theory of Signs.” *Stanford Encyclopedia of Philosophy*. 2006. Accessed December 19, 2016. <https://plato.stanford.edu/entries/peirce-semiotics/>.

³³¹ “The Howland Will Case.” Reprint. *University of Pennsylvania Law Review. The American Law Review*, no. 4 (July 1870), 580-581.

Mnookin uses a particular case from 1869 against spirit photograph William H. Mumler to illustrate the still tentative nature of photographic evidence during the period. The court needed to determine whether a spirit photographer named William H. Mumler could be charged for defrauding his clients with “fake” pictures of spirits.³³² During the trial, there were three separate arguments about the nature of photographic evidence. The prosecution argued that the photographs spoke for themselves as clear evidence of fraud, calling expert witnesses to explain how such photographs could be faked by someone with highly specialized knowledge of the photographic process.³³³ Some of the defense witnesses testified that the photographs were evidence of spirits, as if the medium of photography itself could tap into the spirit world.³³⁴ The defense ultimately argued that the photographs did not show the process of photography, proved nothing, and were not evidence at all, closely following the argument made in the Howland will case.³³⁵ In the end, the judge agreed with the defense despite thinking Mumler was a huckster, and he acquitted him of all charges, citing the photographs’ lack of probative value.³³⁶

In the United States, judges began to link photography analogically to maps, diagrams and models sporadically. These forms of evidence merely help to illustrate facts in support of testimony; they are supposed to function merely as aids. But it was not until

³³² Jennifer L. Mnookin. "The Image of Truth: Photographic Evidence and the Power of Analogy." *Yale Journal of Law & the Humanities* 10, no. 1 (May 8, 2013), 27.

³³³ *Ibid* at 34.

³³⁴ *Ibid* at 41.

³³⁵ *Ibid* at 40; “The Howland Will Case.” Reprint. *University of Pennsylvania Law Review. The American Law Review*, no. 4 (July 1870), 580-581.

³³⁶ *Ibid*.

the 1880s that the courts reached a consensus on the status of photographs.³³⁷ Analogical reasoning is important because of its heuristic value, but I am arguing that it is a risky form of reasoning that is often inconsistent, since analogies work by comparison and vary in terms of strength. If one object in the analogy is too dissimilar in fundamental ways, it can have profound consequences for the object to which it is being analogized. In the case of photography, it upgraded an entire category of supplemental visual evidence that had far less import before the advent of photography, and ushered in an entire new culture in the courtroom regarding evidence.³³⁸

In later cases, photography was often admitted for what seems like the *same* reason that it could have been excluded—that it was like speech. There were several different forms of judicial analogy circulating during this time, with different implications. The first describes a photograph as a sign, a fallible representation like written testimony or oral testimony. Because the photograph may err, went the reasoning, it may also be a witness. This analogy maintains photography’s internal integrity as its own unique kind of sign, despite its status as a fallible representation. The second analogy makes photographs equivalent to the portrait. In this analogy, a photograph becomes a description, like an oral human description. By extension, oddly, visual descriptions could become just as legitimate as oral human description.

³³⁷ Jennifer L. Mnookin. “The Image of Truth: Photographic Evidence and the Power of Analogy.” *Yale Journal of Law & the Humanities* 10, no. 1 (May 8, 2013): 43.; Joel Snyder. “Res Ipsa Loquitur”. In *Things that talk: object lessons from art and science*. Edited by Lorraine Daston. 216. (New York: Zone Books, 2004).

³³⁸ Ibid at 6.

The first analogy keeps photography as unique, but as a fallible sign among signs.³³⁹ The second makes photography exactly like other kinds of visual evidence, but also equivalent in status to testimony.³⁴⁰ Unlike the Snyder example, these two analogies, cited by Mnookin, were based explicitly on the conception of photography as a product of human agency, rather than the sun. Photographs eventually became locked in circular logic: they were evidence because they were fallible, and they were fallible because they were evidence. Rather than facts in themselves, they had to be authenticated by someone familiar with the circumstances, and they became subordinate to testimony.

Mnookin contends that not only was visual evidence given legitimacy (essential to this legitimacy is the desire to dispute it) by analogizing the highly unstable photograph to other forms of visual evidence, the photograph created a courtroom culture of “construction.” She writes generally of visual evidence: “Indeed, by the end of the century, the use of visual evidence had blossomed, and images of many sorts, from photographs to diagrams to three-dimensional models, were frequently used in an effort to persuade the jury. Visual representation, not limited to photography, had become a significant persuasive technique in the courtroom. Now, an attorney or witness could not only locate evidence, but could create it himself.”³⁴¹ Rather than clarifying the muddled status of photography, the court, conservative by nature, demoted it by promoting other forms of visual evidence.

³³⁹ Ibid at 24.

³⁴⁰ Ibid 25.

³⁴¹ Ibid at 5.

The analogy generally adopted by the courts—that photographs were like other forms of visual evidence and thus were unreliable—had unintended consequences for proof and evidence. The word “demonstrative” was once reserved for something that was both certain and metaphysical, but it eventually it became an appeal to these senses over and against, in particular, the written word.³⁴² The acceptance of photography helped solidify the expectation that the jury should be seeing evidence, and understanding narrative as pictures: that truth was inextricably linked to what they saw.³⁴³

Mnookin offers several reasons courts declined to allow photographs to become independent proof, even after they might be authenticated by experts: fear of manipulability, judicial conservatism, and the threat of photography’s verisimilitude to judicial order.³⁴⁴ These later analogies had the effect of preserving the fact-finding duties of the jury, the judge’s authority over what was and was not evidence, and the authority of words. The reign of words did not exactly become the reign of pictures, but words and pictures entered into an uncomfortable marriage.

Outside of the courtroom, the paradox of being both representational and indexical was not as dire, and so certain kinds of beliefs about photography lived on independently of the judicial system. The court enshrined the photograph as unreliable and ignored the fact that people would see it as truth—that it could persuade as well as illustrate. But Mnookin also asserts that the paradox of photography did continue to show up in cases,

³⁴² Ibid at 68.

³⁴³ Ibid at 66.

³⁴⁴ Ibid 54-59.

especially cases that used photographs to settle disputed facts.³⁴⁵ In those examples, photographs do not just support oral testimony, they are used to show and prove; they are facts in themselves. In yet another way of analogizing the photograph from 1877, photographs also became linked to vision, and, through vision, they became like eye witness testimony.³⁴⁶ Even though “the judge relieved them of their capacity to speak... their value as legal testimony continued to be contingent on their ability to communicate by way of language. Photographs lost their voice but achieved the status of truthful texts.”³⁴⁷ In addition to the murky analogies employed by the court, there was, and still is, a large gap between the formal rule and reality. That gap between the formal rule and reality of how photographic evidence is used in court cases has survived through to the 20th and 21st century.

RACE, RODNEY KING AND PHOTOGRAPHIC EVIDENCE

The confused status of photographic evidence inside and outside of the courtroom was perhaps never more apparent than in the trial of four officers for the beating of Rodney King. In 1991, four officers named Stacey Koon, Laurence Powell, Theodore Briseno, and Timothy Wind, beat an unarmed black man who had been stopped for speeding. It was caught on video tape by George Holliday, who was also a witness. The officers were tried in a criminal trial for the beating in 1992. The trial and the tape received massive amounts of news coverage, but all of the officers were acquitted. It is important to note

³⁴⁵ Ibid

³⁴⁶ Joel Snyder. “Res Ipsa Loquitur”. In *Things that talk: object lessons from art and science*. Edited by Lorraine Daston. 220. (New York: Zone Books, 2004).

³⁴⁷ Ibid at 221.

that the trial was moved from Los Angeles County, which is a racially mixed county, although it is segregated block by block, to the nearly all white Simi-Valley area.³⁴⁸

The Rodney King case is not the first case of police brutality to use photographic evidence, but perhaps the best known. The first federal investigation of a police torture in 1940 used photographic evidence of victim's cuts, bruises, burns, and abrasions extensively.³⁴⁹ The key difference in the King case was that the photographic evidence documented a crime in progress, and was tried at the state level. Several other instances of police brutality before King had been caught on tape but were either never tried or received very little attention. In the police torture case in 1940, as in the King case, all of the officers were acquitted.³⁵⁰

Video was first produced to capture live images from television broadcasts in the early 1950s by "converting the information into electrical digital impulses and saving this information on magnetic tapes."³⁵¹ Cameras were at first heavy and fixed like their early film counterparts, but portable video cameras were eventually developed for out-of-studio recording. In 1967, "the Sony DV-2400 video rover emerged as the first truly portable video recording system."³⁵² The videocassette recorder (VCR) was introduced

³⁴⁸ "Why Seeing Isn't Always Believing: A Look at Videotape Evidence and Change of Venue in the Wake of Rodney King". *Western State University Law Review*. Vol: 21. Issue: 1. 7.

³⁴⁹ *Ibid* at 2.

³⁵⁰ Silvan Niedermeier. "Violence, Visibility, and the Investigation of Police Torture in the America South, 1940-1955." In *Violence and visibility in modern history*. 91. Edited by Martschukat, Jürgen, and Silvan Niedermeier. (New York, NY: Palgrave Macmillan, 2013).

³⁵¹ Barbara R. Greenberg, and Dianne Patterson. *Art in Chemistry, Chemistry in Art*. (Westport, CT: Teacher Ideas Press, 2008), 304.

³⁵² David Buckingham, Maria Pini, and Rebekah Willett. *Home Truths?: Video Production and Domestic Life*. (Ann Arbor, MI: The University of Michigan Press, 2011), 9.

by Sony in 1971; it could record television broadcasts and play prerecorded tapes.³⁵³ By the 1970s the cost to produce video cameras dropped, and companies such as JVC and Sony began to manufacture them for commercial use. While still relatively expensive for the average consumer, during the late 1980s and early 1990s various forms of domestic videocassette recorders and camcorders as well as the tapes they used became commonplace.³⁵⁴

Generally, under the law, admissibility is the same for photographs and video, except that the silent witness theory seems to apply more to moving pictures, and exclusions can more easily apply to video because of the addition of sound. Authentication of photographic evidence is “typically is provided by the testimony of a witness familiar with the subject.”³⁵⁵ Usually, this is the camera operator.³⁵⁶ But witness testimony may not be available in certain circumstances—such as where evidence is obtained from an automatic surveillance camera. Courts have “increasingly admitted such evidence under the silent witness theory” which requires no authentication of the tape itself, only the camera’s installation.³⁵⁷ But if photographic evidence is not proof in itself, then it should not be possible to call upon it without authentication by a person, even if it is only being used in support of testimony later.

³⁵³ Ibid.

³⁵⁴ Ibid at 10.

³⁵⁵ “Why Seeing Isn’t Always Believing: A Look at Videotape Evidence and Change of Venue in the Wake of Rodney King”. *Western State University Law Review*. Vol: 21. Issue: 1. 7.

³⁵⁶ Ibid.

³⁵⁷ Ibid.

Courts have denied the admittance of videotaped evidence even if it is relevant and authentic, if it is considered prejudicial. For example, during the trial of officer Johannes Mehserle for the murder of Oscar Grant, footage from several camera phones was challenged because they recorded an officer at the scene uttering racial slurs.³⁵⁸ In determining prejudice, “three factors are considered: (1) the potency of the evidence; (2) the opportunity for a party to selectively stage or fabricate an event for the purposes of litigation; and (3) whether the jurors' understanding of the material facts will be aided or confused by the film or tape.”³⁵⁹ In the case of Rodney King, the tape was admitted into evidence, and it was not considered prejudicial. In the criminal trial, the prosecution argued that the tape was unambiguous, obvious, and self-evident.³⁶⁰

The defense, on the other hand, seized the opportunity to raise doubt. They did not just make the tape seem ambiguous. They *demoted it* from evidence in itself to a simple illustration of police techniques; experts and officers could produce oral testimony to make those techniques plain. The tape was used to support oral testimony in court, rather than letting the tape “speak for itself.” Puzzlingly, the prosecution never called on Rodney King take the stand. Instead:

The jury in the state case was shown the videotape more than thirty times during the course of the trial. The tape was projected at various speeds and was even broken down into a number of still frames. Each of these frames was then subjected to lengthy analysis by the defense witnesses and attorneys. The defendants' chief use of force witness performed a frame by frame breakdown of the tape, testifying that all fifty-six blows were in response too "aggressive", "combative," or "resistive" moves by King.' Defendant Wind was clearly visible on the videotape swinging his baton and kicking King about fifteen times. His attorney replayed the videotape in slow motion

³⁵⁸ “Why Seeing Isn’t Always Believing: A Look at Videotape Evidence and Change of Venue in the Wake of Rodney King”. *Western State University Law Review*. Vol: 21. Issue: 1. 2-3.

³⁵⁹ Ibid at 3.

³⁶⁰ Ibid at 4.

during closing arguments describing each of Wind's moves in a precise manner. A use-of-force expert for the prosecution, using super-slow motion, flipped through each frame of videotape and then stopped the tape at the moment when in his opinion the officers' conduct became criminal.³⁶¹

Jurors wrote down frame numbers as if they were scientists or media studies students.

Not only did the defense play the video more than 30 times; they made stills of the footage, and cropped them in misleading ways.³⁶² They were employing what anthropologist George Goodwin calls professional vision, a “socially situated, historically constituted body of practices through which the objects of knowledge which animate the discourse of a profession are constructed and shaped.”³⁶³ The farmer and the archeologist, Goodwin asserts, see “very different phenomena in the same patch of dirt.”³⁶⁴ Jurors were invited to become experts on the use of police force and virtual witnesses. The defense actively constructed the evidence, as opposed to gathering and presenting it in a narrative.

To give the video “context,” King was described by the defense in bestial terms, characterized as a “hulk-like,” monstrous, recently paroled felon, rather than an intoxicated, scared victim.³⁶⁵ Every blow, swing, and stomp was questioned during the course of the trial, along with his humanity. They also made clear that the other men in the car assumed the prone position, and King did not, as if that was a justification for beating him and fabricating the police report. Previous racial comments made by officers, and jokes about beating King made at the hospital were also apparently not considered

³⁶¹ Ibid at 6.

³⁶² Charles Goodwin. “Professional Vision.” *American Anthropologist* 96, no. 3 (1994), 606; Judith Butler. “Endangered/Endangering: Schematic Racism and White Paranoia”. In *Reading Rodney King: reading urban uprising*. Edited by Robert Gooding-Williams. (New York: Routledge, 1993), 20.

³⁶³ Ibid at 606.

³⁶⁴ Ibid at 607.

³⁶⁵ “Why Seeing Isn’t Always Believing: A Look at Videotape Evidence and Change of Venue in the Wake of Rodney King”. *Western State University Law Review*. Vol: 21. Issue: 1. 5.

relevant to the criminal case.³⁶⁶ Rather than the officers, it was King who was put on trial, and it was King who was made to appear that he was in control of the situation, because, as Judith Butler has argued, “the attorneys cultivated an identification with white paranoia in which a white community is always and only protected by police, against a threat which Rodney King’s body emblemized, quite apart from any action it can be said perform or appear ready to perform. This is an action that the black male body is always already performing within the white racist imaginary, has always already performed prior to the emergence of any video.”³⁶⁷ According to what she terms a racist episteme, Rodney King was “hit in exchange for blows he never delivered, but which he is, by virtue of his blackness, always about to deliver.”³⁶⁸ That is how an assault becomes self-defense. Nearly all justifications for lynching characterize the mobs’ actions as a legitimate responses to either an imaginary crime never committed, or to an impending black threat.

But it is not as simple as writing individual jurors, judges, and lawyers off as racist. Their racism—or at the very least, their place in a fundamentally racist system—is a given. Nor is it as simple as giving an analysis of individual instances of photographic evidence. Butler rightly acknowledges that these identifications must be (in some sense) orchestrated.³⁶⁹ There is inherent ambiguity in the category of evidence on which the prosecution staked their case. That ambiguity was exploited by the defense. Because

³⁶⁶ Ibid at 5-6.

³⁶⁷ Judith Butler. “Endangered/Endangering: Schematic Racism and White Paranoia”. In *Reading Rodney King: reading urban uprising*. Edited by Robert Gooding-Williams. (New York: Routledge, 1993), 19.

³⁶⁸ Ibid.

³⁶⁹ Ibid

photographic evidence makes certain kind of truth claims, those claims can easily be deconstructed. The ambiguity works both ways—one can construct as well as deconstruct meaning. In practice, lawyers can emphasize that photographic evidence reproduces reality, or that it distorts it, or some combination of both. Further, all pieces of archival “evidence” that make claims to represent events can be attacked in this way, one need only look to the proliferation of Holocaust denial despite mountains of archival evidence in the form of photographs, documents, structures, and bodies.³⁷⁰

In the case of Rodney King, the defense played on the fact that the videotape was an “authentic” representation of what occurred, in order to suggest a specific reading of the evidence. They used an illustrative form of evidence that is subordinate to testimony, but relied heavily on the video’s ability to assert truth claims, such as the fact that Rodney King is 6’3, which later became the more sinister claim, that he was a ‘big, dangerous black man’. Claims that King was erratic, or that they only hit him when he went for the officer’s waistband, all rely implicitly on the truth claims of photographic evidence, to show, not just to support. The courts placed so much probative value on the photographic evidence in the King case that they moved the venue. The “evidence” was already being used to tell the story of what happened, well before the trial even began.

³⁷⁰ Jaimie Baron. “Archival Fabrications: simulating, manipulating, misusing and debunking the found document.” In *The Archive Effect: Found Footage and the Audiovisual Experience of History*. (Routledge, 2014), 50. See also *Holocaust Denial as an International Movement* by Stephen E. Atkins, *Denying the Holocaust: The Growing Assault on Truth and Memory* (1993) by Deborah Lipstadt and *Denying History: Who Says the Holocaust Never Happened and Why Do They Say It?* (2002) by Michael Shermer, Alex Grobman and Arthur Hertzberg.

Much like the Mumler spirit trial, the defense exploited the unstable nature of photographic evidence, and photography itself. But unlike the Mumler trial, which was over 100 years before, the video was ultimately considered evidence of something—evidence that the police officers followed policy and used the appropriate amount of force. This strange convergence of race and reason is residue from the 19th century, perhaps in more ways than one. Dehumanizing Rodney King with language ran parallel to twisting and neutralizing the photographic evidence through accepted legal strategies based on ambiguous legal analogies about photography.

SOUSVEILLANCE AND SILENT WITNESSES

Sousveillance is defined by Steve Mann as, “observing and recording by an entity not in power, and who is the subject of the surveillance.”³⁷¹ In her book *Dark Matters*, Simone Browne explicitly names George Holliday’s video recording of Rodney King as an example of sousveillance, a citizen turning their camera back on power.³⁷²

With Rodney King in mind, an entire non-profit called the Los Angeles Community Network (LACAN) has sprung up in response to the increased police presence in Skid Row since 2006.³⁷³ Members of the group roam the streets of downtown Los Angeles filming police officers, trying to catch them on film from the start of an action to its end,

³⁷¹ Simone Browne. “Introduction”. *Dark matters: on the surveillance of blackness*. (Durham: Duke University Press, 2015), 19.

³⁷² Ibid.

³⁷³ Forrest Stuart. “Constructing Police Abuse after Rodney King: How Skid Row Residents and the Los Angeles Police Department Contest Video Evidence.” *Law & Social Inquiry* 36, no. 2 (2011), 328.

actively engaging them in conversation that they hope will give the appropriate context to their videos so that they might obtain convictions in court.

Recall that a general consensus on the status of photography in the courtroom was not reached until the late 1880s in the United States.³⁷⁴ In the 1880s, amateur photography began to flourish, in part because photographers and inventors standardized a dry plate for photographs in the late 1870s.³⁷⁵ Rather than being forced to develop photographs as soon as they were taken, the dry plate allowed photographers to make pictures out doors and develop them at a later time.³⁷⁶ By the middle of the 1880s, Eastman Company had monopolized the market, and photographers could send their plates to them “for developing, printing, and enlarging.”³⁷⁷ Capping off close to a decade of changes in the industry, Kodak introduced the portable camera In 1888.³⁷⁸ It was 25 dollars, which was still costly at the time but significantly less expensive than wet-plate cameras.³⁷⁹

The new technologies created two anxieties: one, that a photograph could now more easily be taken without a subject’s knowledge, as opposed to being taken in the controlled environment of a studio.³⁸⁰ Two, that people could and would be “caught in

³⁷⁴ Joel Snyder. “Res Ipsa Loquitur. In *Things that talk: object lessons from art and science*. Edited by Lorraine Daston. (New York: Zone Books, 2004), 215.

³⁷⁵ Jennifer L Mnookin. “The Image of Truth: Photographic Evidence and the Power of Analogy.” *Yale Journal of Law & the Humanities* 10, no. 1 (May 8, 2013): 12.

³⁷⁶ Ibid.

³⁷⁷ Ibid.

³⁷⁸ Daniel Castro, and Alan MCQuinn. “ITIF.” The Privacy Panic Cycle: A Guide to Public Fears About New Technologies | ITIF. September 2015. Accessed December 15, 2016.

<https://itif.org/publications/2015/09/10/privacy-panic-cycle-guide-public-fears-about-new-technologies>. 10.

³⁷⁹ Ibid.

³⁸⁰ Ibid at 13.

the act” of doing something, of which they would not want a photographic record.³⁸¹ All of this anxiety and confusion around “photography cranks” and “shutterbugs” is deeply familiar. Similar panics erupted in the 1990s as the video camera became cheaper and more accessible.³⁸² With the proliferation of cheap smart phones nearly anyone can capture anything. Even more importantly, camera operators can upload images and disseminate them with the push of a button.

The suppression of the truth claims of photography, or its “veridical power,” in the courtroom by way of analogy seems to have as much to do with the unruly nature of photography itself as it has to do with *who* began to have access to photography. Put another way, it is not the fact that photography is true, but the fact that its truth claim is a direct challenge to existing legal structures that prefer word to image—in large part because words (written or otherwise) are tied very closely to the status of those who provide them. Images, however, are threatening both because they appear true and because they can become much more easily untethered from stable meaning.

In the wake of a wave of “sousveillance” images of Michael Brown’s lifeless body lying in the street for hours after he had been shot by a police officer in 2014, the Ferguson Police department released a detailed police report that included image stills of what was purported to be Brown and his friend Dorian Johnson exiting a convenience store. The

³⁸¹ Ibid.; Jennifer L. Mnookin. “The Image of Truth: Photographic Evidence and the Power of Analogy.” *Yale Journal of Law & the Humanities* 10, no. 1 (May 8, 2013): 57.

³⁸² Nicholas Mack. “The Use of Amateur Videotapes as Evidence in Criminal Prosecutions: Citizen Empowerment or Little Brother’s New Silver Platter?” In *Criminal courts for the 21st century*. Edited by Lisa Stolzenberg and Stewart J. D’Alessio. (Upper Saddle River, NJ: Prentice Hall, 1999).

police report identified Brown and Johnson as suspects in the armed robbery of that convenience store—though the robbery was not related the stop that resulted in Brown’s death.³⁸³ The release of the report six days after the shooting was met with varying reactions online. Some questioned the timing of its release and the veracity of the images; others justified the officer’s use of force because of the stills, effectively considering digital images of Brown’s lifeless body as “hearsay” and the video stills as “demonstrative” since they were supported by a police report.³⁸⁴ The assumption of black criminality haunts this case, and it is photographic “evidence” that provides the arena for its dispute. Even when the stills were not directly mentioned, they were mobilized implicitly in written pieces as evidence that Michael Brown was a criminal fleeing a robbery, not a victim of police brutality.³⁸⁵ This, of course, assumes that being a criminal and a victim are *mutually exclusive*. Five years later, another piece of surveillance tape emerged, which purportedly showed Brown and the clerk exchanging materials; his family maintain that he did not rob the store.³⁸⁶ All of this was litigated in the court of public opinion; charges were never filed in the death of Michael Brown.

³⁸³ Bill Chappell. “Ferguson Police Release Name Of Officer Who Shot Michael Brown.” *NPR.org*, August 15, 2014. Retrieved from <http://www.npr.org/sections/thetwo-way/2014/08/15/340594634/ferguson-police-release-name-of-officer-who-shot-michael-brown>. See also, “Offense/Incident Report 14-12388”. Retrieved from https://s3.amazonaws.com/files.scribblelive.com/2014/8/15/766101_219776148a5ab635-69cb-4c4a-872d-72d892050697.pdf?wmode=opaque#viewer.action=download

³⁸⁴ Rich Lowry. “The Ferguson Fraud”. *The National Review*. November 26, 2014. Retrieved from <https://www.nationalreview.com/2014/11/ferguson-fraud-rich-lowry/>
See also Bramble, Victor. “Modern Culture & Media Honors Thesis”. *Modern Culture & Media, Brown University*, 2016. “SJW Tears — This Is Worth Taking Note Of. These Pictures Are...” *SJW Tears*, August 15, 2014. <https://sjw-tearss.tumblr.com/post/94849662776/this-is-worth-taking-note-of-these-pictures-are>. “That Bull Shit Not Fooling Me ...” 407movement, August 15, 2014. <http://407movement-deactivated20160819.tumblr.com/post/94846194223/that-bull-shit-not-fooling-me-they-try-to-throw>. The Ferguson Police Department Are LIARS. . .” Kudipeaches, August 15, 2014. “Cloud Mountain - ‘gentle Giant’ ...ok.” *Cloud Mountain*. Accessed April 6, 2017. <http://afeedfromcloudmountain.tumblr.com/post/94830236308/gentle-giantok>.

³⁸⁵ Ibid.

³⁸⁶ Mitch Smith. “New Ferguson Video Adds Wrinkle to Michael Brown Case”. *The New York Times*, March 11, 2017. Retrieved from <https://www.nytimes.com/2017/03/11/us/michael-brown-ferguson-police-shooting-video.html>

In 2009, Oscar Grant was shot in his back by a BART police officer named Johannes Mehserle, while he was handcuffed and immobilized on the train platform.³⁸⁷ Officer Mehserle later claimed he was going for his taser, but initially said to his colleagues that he thought Grant was “going for a gun.”³⁸⁸ The video evidence was crucial to bringing charges against Mehserle, and eventually securing a conviction. “The facts of the shooting,” the case reads, “are taken not only from witness testimony, but a BART platform surveillance video and cell phone videos taken by BART passengers.”³⁸⁹ Both information about Mehserle’s state of mind, and the fact that he tried to unholster his gun three separate times, were taken from the photographic evidence. All of the videos, irrespective of their origin, were admitted into evidence.

The defense did try to exclude the audio from the videos—on the grounds that the sound from the videotape contained racial slurs and obscenity, which were prejudicial. The prosecution countered, arguing that racial slurs were commonplace, and that the slurs, as well as the profanity, gave insight into Mehserle’s state of mind just before he shot Grant. Consider this statement by the prosecution from a memorandum from the case:

The effect of Defendant’s motion would be to include all of the portions of the video and audio of the incident that Defendant likes and exclude the portion of audio, Officer Pirone’s statements, that he does not like. To do so would give an incomplete picture of what occurred on the platform in the early morning hours of January 1st, 2009. In its simplest terms, the events on that platform...**happened the way they happened. The jury, in its search for truth, is entitled to**

³⁸⁷ “PEOPLE v. MEHSERLE.” Findlaw. Accessed December 21, 2016. <http://caselaw.findlaw.com/ca-court-of-appeal/1602999.html>.

³⁸⁸ Ibid.

³⁸⁹ Ibid.

the whole, complete picture of the incident that were memorialized in the many videos from that night...³⁹⁰ [emphasis mine]

Here, photographic evidence in the Oscar Grant case was considered to be even more than an eye witness, establishing facts, and perhaps disputing others. This, of course, does not preclude it from also being illustrative, but it is only to point out that the “old” 19th century beliefs about the photographic as “speaking for itself” are alive and well. The case also hinged on the fact that very few police officers had “accidents” mistaking tasers for guns. Particularly damning was the fact that his taser was holstered on his non-dominant side, and the handgun required a two-step process to remove the weapon.³⁹¹ Mehserle was eventually convicted of involuntary manslaughter.

CONCLUSION

In 2014, then President Barack Obama proposed allocating 263 million dollars to improve training for local law enforcement agencies that receive equipment through federal grant programs.³⁹² 75 million—nearly 30 percent of the proposed budget—was supposed to help subsidize 50,000 body cameras for police over a three-year period. With calls for more photographic evidence in the form of body cameras, dashboard cameras and surveillance units, the implicit assumption is that police violence is a problem of

³⁹⁰ District Attorney Nancy E. O'Malley: People's Memorandum of Points and Authorities in Response To Defendant's Motion to Exclude Officer Pirone's Statements. Office of The District Attorney, County of Alameda, No. 161210/AOC# 1009606-10, 06-07-10.

³⁹¹ “PEOPLE v. MEHSERLE.” Findlaw. Accessed December 21, 2016. <http://caselaw.findlaw.com/ca-court-of-appeal/1602999.html>.

³⁹² Nick Wing. “Obama Wants To Help Buy 50,000 Body Cameras For The Nation's 630,000 Police Officers”. *The Huffington Post*, December 1, 2014. Retrieved from https://www.huffpost.com/entry/obama-police-body-cameras_n_6250146 See also, “Obama Requests \$263 Million for Police Body Cameras, Training”. NBC News, December 1, 2014. Retrieved from <https://www.nbcnews.com/politics/first-read/obama-requests-263-million-police-body-cameras-training-n259161> The Justice Department's actual awards for 2015 can be found here: <https://www.bja.gov/bwc/pdfs/BWCPIP-Award-Fact-Sheet.pdf>

accumulation of facts. By focusing on photography as fact, racism is transmuted into a problem of scale and collecting, one of quantity rather than epistemology. One can only truly appreciate how bizarre that suggestion is by looking back at the archive of lynching and remembering how very public the displays of these photographs were. The photographic evidence produced by bodycams may very well be used in court to justify police shootings when they occur, rather than to dispute them. The frequently cited body camera pilot program in Rialto, California that resulted in a drop in excessive use of force *claims*—not necessarily incidents or killings—also hoped to use body camera footage to secure more convictions.³⁹³ William J. Bratton, an advocate for body cameras who led two police departments on the East and West Coast argued that, “officers tend to benefit” from using body cameras.³⁹⁴ Bratton’s quotation hints that is not the “objectivity” of body cameras that interests police forces, but their ability to supplement police testimony. Perpetrators of lynchings were unafraid, even proud of what they had done. They understood very well that those photographs could never be used to incriminate them, even if they could be used to momentarily shame them. Body cameras are praised for their objectivity by the same apparatus that routinely dismisses bystander video.

In the fatal 2018 police shooting of Stephon Clark, the dark, shaky body camera footage captured by officers was released to shore up the police officer’s account. After firing twenty rounds and hitting Clark seven times in his own backyard, they were recorded

³⁹³ Ian Lovett. “In California, a Champion for Police Cameras” *The New York Times*. Retrieved from <https://www.nytimes.com/2013/08/22/us/in-california-a-champion-for-police-cameras.html?pagewanted=all>

³⁹⁴ *Ibid.*

saying that Clark had “something in hands, looked like a gun from our perspective.”³⁹⁵

Clark was unarmed—he was holding an iPhone. Here, the use of body cameras allows the officers to frame the footage in a manner that will support *future* testimony. The words encourage viewers to conflate the eye and the camera and to pass the footage off as sight. It is telling that the officers were also recorded muting the audio to speak without being recorded. It means that they were aware, at least in some sense, that they should remain vigilant in the construction of the meaning of that footage. No charges were ever filed.

Despite a 2014 video of Eric Garner being put in a chokehold, which is prohibited by the New York Police Department, and a grand jury hearing, no charges were ever filed in his death. In the case of Philando Castille, who was shot to death while reaching for his I.D. card in 2016 by officer Jeronimo Yanez, the incident was livestreamed by his partner Diamond and captured by a dashboard camera. The footage did nothing more than help establish the “facts” in the case; Yanez was acquitted on all charges, but fired by the City of Saint Anthony the following day.³⁹⁶ The close-range shooting of Alton Sterling in 2016 by officers Howie Lake II and Blane Salamoni was captured on CCTV and by multiple bystanders’ cellphones. No charges were ever filed. Neither dashboard camera footage nor bystander footage of Sandra Bland’s arrest protected her from the neglect that resulted in her death by suicide in the Waller County Jail. The arresting officer in her case, Brian Encinia, was charged with perjury for making false statements regarding her

³⁹⁵ Daniel Brown. “Sacramento police release body cam footage of officers fatally shooting unarmed black man in his own backyard”. *Business Insider*, March 22, 2018. Retrieved from <https://www.businessinsider.com/stephon-clark-sacramento-police-shoot-unarmed-black-man-backyard-body-cam-2018-3>

³⁹⁶ “City of St. Anthony fires Yanez”. *Star Tribune*, June 17, 2017. Retrieved from <http://www.startribune.com/city-of-st-anthony-fires-yanez/428935523/>

arrest, but the charges were later dropped in exchange for Encinia agreeing never to seek law enforcement employment again.³⁹⁷ Bland's own footage of the arrest was not made public until four years after her arrest; the numerous discrepancies in the case led her family to believe she may have been murdered.³⁹⁸

Photography (and its related progeny, such as video) is both objective and at the same time only "hearsay of the sun". The logic of the archive will not save us from racism; it is one of its most well-worn tools because it promises Truth when it can only deliver "evidence". In the 19th century as now, photographic evidence morphs and changes according to the context. By looking backwards, I have produced a new set of visual facts that link lynching photography and images of police brutality, not because the images are the same, but because the mechanisms and epistemological frameworks used to understand them in the law and popular discourse are part of a malleable framework that shapeshifts across time.

³⁹⁷ Manny Fernandez and David Montgomery. "Perjury Charge Dropped Against Ex-Trooper in Sandra Bland Case". *The New York Times*, June 28, 2017. Retrieved from <https://www.nytimes.com/2017/06/28/us/sandra-bland-death-brian-encinia-texas-texas.html>

³⁹⁸ David Montgomery. "Sandra Bland, It Turns Out, Filmed Traffic Stop Confrontation Herself". *The New York Times*, May 7, 2019. Retrieved from <https://www.nytimes.com/2019/05/07/us/sandra-bland-video-brian-encinia.html>

CHAPTER 4

MEMORIALS AND AFTERLIVES

For contemporary artists and public memorials, the circulation of lynching images is intrinsically tied to reckoning with the legacy of lynching. Even when no images are present, they loom large, in part because popular understanding of lynching has been so shaped by images, and because images themselves were so important to commodifying black people after the end of slavery. Any work that purports to represent lynching abuts both history and memory. This chapter explores the ways that artistic representations of lynchings in the form of paintings, photographs, poems, quilts and sculptures attempt to engage with lynching photographs. It examines the nature of art itself and posits some ethical best practices for artistic work that involves violence, race and lynching.

EMMETT TILL

In 2017, a painting by Dana Schutz called, “Open Casket” was featured in the Whitney Museum Biennial. The painting was based on a photograph thought to be taken by David Jackson in 1955.³⁹⁹ The photograph depicts 14-year-old Emmett Till in his casket, his waterlogged face unrecognizable from being brutally beaten and floating in the Tallahatchie River for three days. He was visiting relatives in Money, Mississippi from Chicago when he was accused—falsely—of accosting at a white woman named Carolyn

³⁹⁹ Photo, TIME. “The Photo That Changed America's Civil Rights Movement.” *Time*. Time, July 10, 2016. <https://time.com/4399793/emmett-till-civil-rights-photography/>.

Bryant. On August 28th, 1955, Till was pulled from his home in the middle of the night, tortured and murdered by a gang of white men that included Bryant's husband.⁴⁰⁰

At first, the painting largely escaped notice. "Open Casket" is a sheepish painting; its colorful abstraction is the opposite of the stark, concrete image of Till's disfigured face. It was even praised in some outlets alongside the work "THE TIMES THAY AINT A CHANGING, FAST ENOUGH!," a painting by Henry Taylor that depicts the death of Philando Castille, who was shot by a Minnesota police officer in 2016.⁴⁰¹ It was only when Hannah Black wrote an open letter challenging its inclusion in the Whitney Biennial that it became the subject of derision and protest.⁴⁰² Herself an artist, Black requested that the painting be removed for several interlocking reasons. First, that the painting transmuted "Black suffering into profit and fun", treating black pain as "raw material" for white amusement.⁴⁰³ Second, that it mirrored the indifferent, callous circulation of images of lynching and police brutality. In short, the painting neither achieved its stated goal of evoking shame, nor did it seem to understand the original rationale of Mamie Till for publishing the sad image of a broken Emmet Till. The controversy produced a torrent of articles, interviews, and "think pieces." Part of the reason so many critics wrote mutually unintelligible pieces is because they did not

⁴⁰⁰ Elliot J Gorn. *Let the People See: The Story of Emmett Till*. "Memory". (Oxford University Press, 2018), 288.

⁴⁰¹ Jennifer Samet. "Painting on Message at the 2017 Whitney Biennial." *Hyperallergic*, March 17, 2017. <https://hyperallergic.com/366084/painting-on-message-at-the-2017-whitney-biennial/>.

⁴⁰² Alex Greenberger. "The Painting Must Go": Hannah Black Pens Open Letter to the Whitney About Controversial Biennial Work." *ARTnews.com*, November 18, 2019. <http://www.artnews.com/2017/03/21/the-painting-must-go-hannah-black-pens-open-letter-to-the-whitney-about-controversial-biennial-work/>.

⁴⁰³ Lorena Muñoz-Alonso. "Painting of Emmett Till at Whitney Biennial Sparks Protest." *artnet News*, March 23, 2017. <https://news.artnet.com/art-world/dana-schutz-painting-emmett-till-whitney-biennial-protest-897929>.

engage with race in a detailed way beyond identity, or challenge their assumptions about the purpose of an artist.

Much of the writing defending the painting produced some unintended irony considering the circumstances that led to Till's death, as several of the arguments hinged on Schutz's right to express herself, however banally or inaccurately, rather than Emmett Till's right to dignity.⁴⁰⁴ In this formulation, Black's demand for what I characterize as a demand for respect and dignity is seen as outrageous in the face of liberal freedoms, despite these freedoms being conceived without accounting for the difference in power and human valuation that racism engenders. Arguments supporting Schutz's freedom often conflated the right to represent an event with being morally "right"—two separate concerns.⁴⁰⁵ Arguments against the painting often hinged on ideas of possession and identity, which do not fully encompass what is at stake in representing Emmett Till.

By Schutz's own admission, her portrait was driven by empathy for Mamie Till. For Schutz, the optimal way to understand Till and his humanity was through identification with his mother. She wrote in a statement about the painting: "I don't know what it's like

⁴⁰⁴ Antwaun Sargent. "Unpacking the Firestorm around the Whitney Biennial's 'Black Death Spectacle.'" Artsy, March 22, 2017. <https://www.artsy.net/article/artsy-editorial-unpacking-firestorm-whitney-biennials-black-death-spectacle>; Klaus Speidel. "Dana Schutz's 'Open Casket': A Controversy around a Painting as a Symptom of an Art World Malady." Spike Art Magazine, March 25, 2017. <https://www.spikeartmagazine.com/en/articles/dana-schutzs-open-casket-controversy-around-painting-symptom-art-world-malady>; Coco Fusco. "Censorship, Not the Painting, Must Go: On Dana Schutz's Image of Emmett Till." Hyperallergic, March 29, 2017. <https://hyperallergic.com/368290/censorship-not-the-painting-must-go-on-dana-schutzs-image-of-emmett-till/>.

⁴⁰⁵ Antwaun Sargent. "Unpacking the Firestorm around the Whitney Biennial's 'Black Death Spectacle.'" Artsy, March 22, 2017. <https://www.artsy.net/article/artsy-editorial-unpacking-firestorm-whitney-biennials-black-death-spectacle>; Klaus Speidel. "Dana Schutz's 'Open Casket': A Controversy around a Painting as a Symptom of an Art World Malady." Spike Art Magazine, March 25, 2017. <https://www.spikeartmagazine.com/en/articles/dana-schutzs-open-casket-controversy-around-painting-symptom-art-world-malady>

to be black in America but I do know what it's like to be a mother. Emmett was Mamie Till's only son. The thought of anything happening to your child is beyond comprehension. Their pain in your pain. My engagement with this image was through empathy with his mother."⁴⁰⁶ Leaving aside the fact that African-American parents do indeed have to comprehend, in a very concrete way, the vulnerability of their children in the United States, Saidiya Hartman has written extensively on the perils of empathy as an aesthetic-political practice, particularly across racial lines. In her book *Scenes of Subjection: Terror, Slavery, and Self-making in Nineteenth-century America*, Hartman analyzes the anti-slavery prose of John Rankin in which he attempts to render slavery real by imagining himself as enslaved. Rankin was a preeminent abolitionist; his writings inspired other well-known abolitionists like Harriet Beecher Stowe and William Lloyd Garrison. Rankin imagined an entire scenario in which he, his wife, and child are being whipped by a slave master. Hartman is worth quoting in full:

Although Rankin's fantasy culminates in indignant outcries against the institution of slavery, and, clearly the purpose of this identification is to highlight crimes of slavery, this flight of imagination and slipping into the captive's body unlatches Pandora's box and, surprisingly, what comes to the fore is the difficulty and slipperiness of empathy. Properly speaking, empathy is a projection of oneself into another in order to better understand the other or "the projection of one's own personality into an object, with the attribution the object of one's own emotions." Yet empathy in important respects confounds Rankin's efforts to identify with the enslaved because in making the slave's suffering his own, Rankin begins to feel *for himself* rather than for those whom this exercise in imagination presumably is designed to reach. Moreover, by exploiting the vulnerability of the captive body as a vessel for the uses, thoughts, and feelings of others, the humanity extended to the slave inadvertently confirms the expectations and desires definitive of the relations of chattel slavery. In other words, the ease of Rankin's empathic identification is as much due to his good intentions and heartfelt opposition to slavery as the fungibility of the captive body...Put differently, *the effort to counteract the commonplace callousness to black suffering requires that the white body be positioned in the place of the black body in order to make this suffering visible and intelligible* [emphasis added].⁴⁰⁷

⁴⁰⁶ Randy Kennedy. "White Artist's Painting of Emmett Till at Whitney Biennial Draws Protests." The New York Times. The New York Times, March 21, 2017. <https://www.nytimes.com/2017/03/21/arts/design/painting-of-emmett-till-at-whitney-biennial-draws-protests.html>.

⁴⁰⁷ Saidiya V. Hartman. "Innocent Amusements: The Stage of Sufferance." In *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth-Century America*, 18–19. (New York, NY: Oxford University Press, 1997).

The relentless ethical dilemma regarding the recirculation of black suffering and its entanglement with ownership and race is a haunting, and it should be treated as such. It should be said that being an abolitionist did not prohibit espousing racist ideas or guarantee a belief in black equality.⁴⁰⁸ Schutz's gesture, and its spectacular failure, has a long and unacknowledged history. Hannah Black was incensed by "Open Casket" in part because she identified a chilling link between the painting and the murder itself—the tendency to see black people not as people at all, but as empty vessels for fears, anxieties and guilt. Anti-black racism comes in different forms, but it shares one foundational assumption: that black people hold the status of an object rather than a human. The assumption remains the same, no matter who mobilizes it or how. The swift backlash to the challenge that Black mounted, in which personhood was far more important, but glazed over in favor of focusing on Black's calls to remove the painting, only emphasizes how very provocative the declaration of *black personhood* is.

Kara Walker, an artist known for her challenging work on race and slavery, wrote during the controversy that, "The history of painting is full of graphic violence and narratives that don't necessarily belong to the artists' own life, or perhaps, when we are feeling generous we can ascribe the artist some human feeling, some empathy toward her subject."⁴⁰⁹ Walker goes on to argue that she is more than her trauma, more than her

⁴⁰⁸ Ibram X. Kendi. "Saving Souls, Not Bodies." In *Stamped from the Beginning: The Definitive History of Racist Ideas in America*, 51–52. (New York, NY: Nation Books, 2017).

⁴⁰⁹ Kara Walker. "Kara Walker on Instagram: 'The History of Painting Is Full of Graphic Violence and Narratives That Don't Necessarily Belong to the Artists Own Life, or Perhaps, When...'" Instagram. Accessed November 27, 2019. https://www.instagram.com/kara_walker_official/p/BR-3iH5l0ZW/.

ancestors, more than black, more than her experiences and more than the sum of her parts. She is right. Artists are legitimate in wanting to free themselves and their work from the limits of identity—but there is an important difference between trying to understand one’s subject and becoming it. Further, it was precisely Schutz’s mobilization of identity that doomed the painting to failure.

The original photographs of Till were not published by mainstream outlets. Rather, they were published in African-American outlets like *Jet Magazine* and the *Chicago Defender* newspaper over several weeks. The images were not viewed by most white Americans until “video documentaries made by African-Americans about the Civil Rights Movement began to appear the 1980s.”⁴¹⁰ The artist Coco Fusco has pointed out that Mamie Till never explicitly stated that the photograph was only for African-Americans to see in her now famous quotation about the photograph—Mamie may have wanted “the world to see” her son, but it was largely black people who saw him, mourned him, and were galvanized by his memory.⁴¹¹ Mainstream media outlets stopped reporting on Till by 1956.⁴¹² That the photograph in question somehow “softened” the hearts of those

⁴¹⁰Elliot J Gorn. *Let the People See: The Story of Emmett Till*. “Introduction”. (Oxford University Press, 2018), 2, 4.

⁴¹¹Fusco, Coco. “Censorship, Not the Painting, Must Go: On Dana Schutz's Image of Emmett Till.” Hyperallergic, March 29, 2017. <https://hyperallergic.com/368290/censorship-not-the-painting-must-go-on-dana-schutzs-image-of-emmett-till/>. In the September 22nd, 1955 issue of *Jet Magazine*, there is a prominent photograph of Luke Ward, a young white reverend fainting at the grave site of Emmett Till. *Getty Images* also contains a photograph of Ward crying and being comforted by Bishop H.M. Hooper of Risen Holy Nazarene Church, a black man. <https://www.gettyimages.com/detail/news-photo/collapses-at-funeral-chicago-luke-ward-junior-pastor-and-news-photo/517245512>. Neither Fusco or Christina Sharpe mention these images, but it is important to point out that in reviewing the mourners, the presence of the reverend only emphasizes that—rather than their being “no” white people to mourn Emmett Till—that white mourners were clearly the exception and not the rule. Why? At the very least, most white people accepted the status quo of segregation in Chicago; at the very worst they rejected the call for racial equality, which was issued by the photograph but went well beyond it.

⁴¹²*Ibid* at 2.

opposed to black equality or that it was interacted with widely at the time is a “pleasant untruth.”⁴¹³ If we call for a more nuanced understanding of history—as Fusco rightly has—than it must be contextual as well as factual. The *Jet Magazine* spread from September 15, 1955, featured not only images of Till’s brutalized face, it also featured images of his mother, his two teenage cousins, and his grandfather.⁴¹⁴ This particular spread very clearly sought to balance the violated images of Till with images of him whole, and the family that he left behind in death. Leigh Raiford describes African-American’s use of photography since its inception in the 19th century to counter discourses of criminality and beastliness thusly:

Seemingly disconnected, family and individual portraits and photographs of lynchings each belong the “shadow archive” of black representation...African-Americans sought to unmake the identity created for them in popular (or scientific or criminal or pornographic) derogatory depictions by countering with their own carefully cultivated self-images and by reframing the cruelest and most sadistic of these portrayals, lynching images, as the shame of the entire nation.⁴¹⁵

Shame, in this case, is “triggered by our relationships with others” and its affective potential rests on its ability to mobilize both self-consciousness and embarrassment, as well as shared moral ideals.⁴¹⁶ Black people in the United States have long understood that it is only by reclaiming their humanity that “extrajudicial killings” could become murders, crimes for which the nation itself might be disgraced for its inaction, though the actual perpetrators rarely punished. To rip the photograph of Emmett Till out of its historical context and decouple it from black Americans long ongoing process of

⁴¹³ Ibid.

⁴¹⁴ “Nation Horrified by Murder.” *Jet Magazine*, September 15, 1966.

⁴¹⁵ Leigh Raiford, “Ida B. Wells and the Shadow Archive”, in *Pictures and Progress: Early Photography and the Making of African American Identity*, ed. Maurice O. Wallace and Shawn Michelle Smith, (Durham: Duke University Press, 2012), 300.

⁴¹⁶ Erika Doss. “Shame: Duluth’s Lynching Memorial and Issues of National Morality.” In *Memorial Mania: Public Feeling in America*, 263. (London: University of Chicago Press, 2012).

attempting to shape historical meaning without thought to its effect is more than bad artistic practice—it is reckless because it further contributes to obscuring the details that help to understand the murder and its legacy. Raiford reminds us that images are always in an “intense dialogue” with another.⁴¹⁷ In other words, “Open Casket” is not only a failure of empathy as an aesthetic-political tool, but also a particularly instructive example of the level of aesthetic, historical *and* political sophistication that working successfully with iconic violent images requires. The call for the artist to voluntarily destroy the work, which should not be conflated with censorship, merely acknowledges the work’s failure based on its own premise. That some critics balked at destroying a “work of art” and mobilized discourses of censorship to defend it, gives more insight into how competing ideas about the role of an artist and the precious status of an “art work” are litigated in public discourse than it does about censorship.

In an article written by Lisa Larson-Walker titled “The Problem With the Whitney Biennial’s Emmett Till Painting Isn’t That the Artist Is White,” she argues that Schutz’s painting failed in part because of her “fanciful artistic style” and her tendency to create work that is ambivalent about the violence present in popular culture.⁴¹⁸ Like critic Klaus Speidel, Larson-Walker prefers to criticize “Open Casket” on aesthetic grounds, and she ultimately argues that the paintings problems are not reducible to the artist’s race. Walker writes that, “The modeled surface and whirling multicolor of Till’s disfigured face are consistent with her recipe for fictional dismemberment, which is present in much of her

⁴¹⁷ Ibid.

⁴¹⁸ Lisa Larson-Walker. “The Problem With the Whitney Biennial’s Emmett Till Painting Isn’t That the Artist Is White.” *Slate Magazine*. *Slate*, March 29, 2017. <https://slate.com/culture/2017/03/the-problem-with-the-whitney-biennial-s-emmett-till-painting-isn-t-that-the-artist-is-white.html>.

work and feels unconnected to the immense historical weight and significance of this particular subject.”⁴¹⁹ The latter part of this statement raises an important point about race that critics like Walker, Black, Fusco, and Speidel miss—part of being white in America means that one may choose (and, more importantly, is *licensed*) to disassociate one’s personal artistic output from the historical weight of an image like Till’s and ignore its historical particularities. This kind of bracketing is at the root of the formalism Fusco so vehemently denounces as a stumbling block for the development of black artists. Her ideas on formalism can help untie the knot of the problem with Till’s representation if they are applied consistently. Two conceptual errors on two different levels of ideas need to be corrected. First, in regard to identity, the whiteness present in the creation of Schutz’s painting is construed as the absence of race. We are implored to follow Schutz’s call to focus solely gender without objection, as if it can exist without race. As Kimberlé Crenshaw and generations of black feminists have shown, this is not the case.⁴²⁰ Second, race is also a social, political and epistemological contract, not simply an identity.⁴²¹ Whiteness does not exist without an inverted epistemology *in regard to race*—one rooted in a trifecta of ignorance, disassociation and freedom, rather than knowledge, thoughtfulness, and accountability. Individuals can opt out of that inverted epistemology (whiteness is merely a synonym for it) any time they so choose. If Fusco argues that one must not bracket blackness (among other things) out of creative works, that is, black experiences, ontologies, and epistemologies, and that “blackness” influences the creation

⁴¹⁹ Ibid.

⁴²⁰ Kimberlé Crenshaw. “Demarginalizing the intersection of race and sex: a Black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics”. *University of Chicago Legal Forum*. University of Chicago Law School, 1989, 139-168.

⁴²¹ Charles W. Mills. “Overview”. *The Racial Contract*. Ithaca, NY: Cornell Univ. Press, 2011. 9.

of art works and therefore becomes the subject of critique, the same ought to be said of critiquing the ways that whiteness informs the creation of art works. This is not to essentialize the category of race. Rather, it is to insist on the opposite claim.

Speidel's assertion that preventing outgroup criticism had dire consequences in his home country of Germany during the Nazi regime and that Black's critique would lead to "representation monopolies where Muslim media wouldn't be allowed to cover the death of Christians, only Palestinians could speak about Israeli attacks, the Armenian Holocaust could only be treated by Armenians" is a slippery slope fallacy.⁴²² It also promotes a false equivalency between African-Americans in the United States and Nazis in Germany by ignoring the difference in power wielded by those two groups. African-Americans are not the dominant political, social, or economic group in the United States as the ethnic Germans were in Nazi Germany. Again, this kind of argumentation occurs because Speidel seizes on Black's conception of race as a group identity. I would suggest that Black's critique is not wrong because it focuses on race as a group identity, but that it does stop short. Race also, and I would argue more importantly, confers a particular way of knowing, or, in Schutz's case, not knowing. An epistemology of ignorance and the presumption of innocence is one of the privileges of being "white". According to the philosopher Charles Mills, ignorance around issues of race is not just a privilege, but a cognitive requirement that bares itself out as a historical fact:

Thus, in effect, on matters related to race, the Racial Contract prescribes for its signatories an inverted epistemology, an epistemology of ignorance, a particular pattern of localized and global cognitive dysfunctions (which are psychologically and socially functional), producing the ironic

⁴²² Klaus Speidel. "Dana Schutz's 'Open Casket': A Controversy around a Painting as a Symptom of an Art World Malady." *Spike Art Magazine*, March 25, 2017. <https://www.spikeartmagazine.com/en/articles/dana-schutzs-open-casket-controversy-around-painting-symptom-art-world-malady>.

outcome that whites will in general be unable to understand the world they themselves have made....part of what it means to be constructed as “white” (the metamorphosis of the sociopolitical contract), part of what it means to achieve Whiteness, successfully to become a white person (one imagines a ceremony with certificates attending the successful rite of passage: “Congratulations, you’re now an official white person!”), is a cognitive model that precludes self-transparency and genuine understanding of social realities.⁴²³

An inverted epistemology is one of race’s most important sources of privilege and power. The black artist who wishes to shirk off the “burden” of historical weight and defy being locked in a box by pre-determined racial trauma does not aspire to be ignorant. Rather, she aspires to be free. To read Black’s critique charitably means to apply the same level of scrutiny to Schutz’s painting as to Black’s critique of it. Race does not somehow recede from Schutz’s painting because she wants it to; indeed the very conception of the painting was informed, in multiple ways, by her identity as a white woman. We must first clearly understand what defines the lived experience of “whiteness” and “blackness” if are to properly reject the notion of essentializing it.

Larson-Walker ends her article by briefly touching on the work “Standing at the grave of Emmett Till, day of exhumation, June 1st, 2005 (Alsip, IL),” a photograph taken by the artist Jason Lazarus.⁴²⁴ The photograph is stunning. It depicts a beautiful, though ordinary looking day, complete with a blue sky, green grass and mature trees. The image might have been interpreted as a park—had there not been the gaping hole in the ground and the caption, which informs us that it is a cemetery. The longer one looks at the photograph, the clearer the details that mark it as a cemetery emerge: the flowers, the crosses, the

⁴²³ Charles W. Mills. “Overview”. *The Racial Contract*. (Ithaca, NY: Cornell Univ. Press, 2011. 18).

⁴²⁴ “Standing at the Grave of Emmett Till, Day of Exhumation, June 1st, 2005 (Alsip, IL).” High Museum of Art. Accessed December 7, 2019. <https://high.org/collections/standing-at-the-grave-of-emmett-till-day-of-exhumation-june-1st-2005-alsip-il/>. The photograph was featured in a 2016 exhibition called, “Witness” at the Museum of Contemporary Art Chicago.

demarcation of the plots. The more details that emerge, the more devastating it becomes. The photograph is of course in dialogue with the famous image of Till. It is not the kind of image that trades in spectacle, though it still captures the essence of that “initial terror.”⁴²⁵ It is emotional, but it invites reflection too. Rather than Lazarus trying to be Mamie Till or Emmett Till, he opted instead to take on his own position as a witness and subject to an historical arc that he calls, “un-photographable.”⁴²⁶

Unlike Larson-Walker, I do not see a “nearly forgotten” Till in “dingy bleakness” in the Jason Lazarus photograph.⁴²⁷ Till served as an emblem for the Civil Rights Movement, but he has also served as a symbol of the continuing struggle for rights considering the recent spate of police violence against black people in the United States. Rather than to show a forgotten Till, the point of the image is to point out that the so-called “history”—the “pastness” of Emmett Till’s murder—is nothing of the sort. Despite a mountain of evidence, no one was ever found guilty for the murder Emmett Till, nor have the issues that were responsible for Till’s murder 65 years ago completely receded. The US Justice Department ordered the body to be exhumed 50 years after his death as a part of a new inquiry; they re-opened the case in 2018.⁴²⁸

⁴²⁵ Ibid.

⁴²⁶ Ibid.

⁴²⁷ Lisa Larson-Walker. “The Problem With the Whitney Biennial's Emmett Till Painting Isn't That the Artist Is White.” *Slate Magazine*. *Slate*, March 29, 2017. <https://slate.com/culture/2017/03/the-problem-with-the-whitney-biennial-s-emmett-till-painting-isn-t-that-the-artist-is-white.html>.

⁴²⁸ Gabby Raymond. “5 Things to Know About Emmett Till's Reopened Case.” *Time*. *Time*, July 12, 2018. <https://time.com/5336879/original-emmett-till-case-reopened/>; Davey, Monica, and Gretchen Ruethling. “After 50 Years, Emmett Till's Body Is Exhumed.” *The New York Times*. *The New York Times*, June 2, 2005. <https://www.nytimes.com/2005/06/02/us/after-50-years-emmett-tills-body-is-exhumed.html>.

Lazarus is not a black man, as Larson-Walker points out. This is crucial. The artist made a conscious choice to reject the *knowledge order* that so defines the racial boundaries in America, the one that dictates that black people be highly conscious of the complexities of race and racism, and “white” people remain largely unaware of those complexities. Instead of trying to ignore race, or transpose it, he went through it by creating a photograph that is as beautiful as it is self-aware. Scholar Tina Campt has called this kind of work adjacency, which she insists should not be confused with empathy:

It is not a gaze that allows you to put yourself in the place of another, nor does it allow you to presume you share another person’s experiences or emotions. It’s not about sharing the pain or suffering of differently racialized subjects. It is recognizing the disparity between your position and theirs and working to address it. It demands the affective labor of adjacency. It is the work of feeling done both in spite and because of these differences, and choosing to feel across that difference rather than with or for someone living in very different circumstances.⁴²⁹

Lazarus first recognized and then acknowledged the difference between his position and Till’s, between his position and that of all black Americans. His understanding of that difference informed the way he approached his subject, which is evidenced by the distant, respectful composition in the photograph. Yet in preserving that difference, he was able to create a work that appeals across it. I cannot overstate the importance of epistemology to both concepts of race, and by extension aesthetics, because it explains the unfortunate, unnecessary gap between Hannah Black’s critique and her detractors—however softly they may object to her concerns.

Lazarus however, is not the first artist to successfully grapple with images of lynching. In 1937, Abel Meeropol wrote a poem called “Strange Fruit,” a work that like Lazarus’

⁴²⁹ Tina Campt. “Adjacency: Luke Willis Thompson’s Poethics of Care.” *Flash Art*, October 8, 2019. <https://flash---art.com/article/adjacency-luke-willis-thompsons-poethics-of-care/>.

photograph, does not rely on transposing race or spectacle to engage with the horror of lynching.⁴³⁰ The poem was eventually set to music, and given vocals by Billie Holliday. “Strange Fruit” has become a staple of American music, sung by musicians across genre.⁴³¹ Though the song became iconic because of its haunting melody, cutting lyrics, and melancholy vocals by Holiday, the origin of the song is not well known. It was inspired by Meeropol’s encounter with a lynching photograph in the early 1930s, which historians have speculated was the Lawrence Beitler photograph taken of Thomas Shipp and Abram Smith. The two young men were lynched on August 7, 1930 in Marion, Indiana.⁴³² The poem is not just metaphorical, but evocative:

Southern trees bear strange fruit
Blood on the leaves and blood at the root
Black body swinging in the southern breeze
Strange fruit hanging from the poplar trees.
Pastoral scene of the gallant south
The bulging eyes and the twisted mouth
Scent of magnolia sweet and fresh
Then the sudden smell of burning flesh!
Here is fruit for the crows to pluck
For the rain to gather, for the wind to suck
For the sun to rot, for the trees to drop

⁴³⁰ Nancy Kovaleff Baker. “Abel Meeropol (a.k.a. Lewis Allan): Political Commentator and Social Conscience”. *American Music*, Vol. 20, No. 1 (Spring, 2002), 45. David Margolick and Hilton Als. “Strange Fruit”. *Strange Fruit: The Biography of a Song*. (Ecco Press: New York, New York, 2001), 45.

⁴³¹ “Evolution of a Song: Strange Fruit”. *National Public Radio*. Retrieved from <https://www.npr.org/2009/06/22/105699329/evolution-of-a-song-strange-fruit>

⁴³² Nancy Kovaleff Baker. “Abel Meeropol (a.k.a. Lewis Allan): Political Commentator and Social Conscience”. *American Music*, Vol. 20, No. 1 (Spring, 2002), 45; David Margolick and Hilton Als. “Strange Fruit”. *Strange Fruit: The Biography of a Song*. (Ecco Press: New York, New York, 2001), 21.

Here is a strange and bitter crop.

The strength of “Strange Fruit” is in the oscillation between literal descriptions of lynched bodies and metaphorical descriptions of bodies and sensory elements that place the reader at the scene. It refuses to “show” the bodies at first, but introduces them via metaphor by calling them “strange fruit.” Eventually it relents, but by the third line when we finally confirm it *is* the bodies of black people that Meeropol is writing about, he has already protected them by framing the victims in less exposed terms. In this way, he controls our imagination, which would have likely had as many reference points for images of lynching in 1937 as it does now. One of the differences, of course, is that living witnesses to lynchings would have been hearing the song and reading the poem in 1937.

In a similar way, Meeropol places the audience at the scene without succumbing to voyeurism. By engaging with other senses in addition to sight and masterfully using metaphor and juxtaposition, Meeropol was able to interpret the photograph in a way that gives the reader no fixed point of view, thereby exceeding the limitations of common strategies used to engage with lynching photographs, such as reframing the photograph in a different context. We feel the breeze; we smell the “sweet magnolia” and even the “burning flesh.” The juxtaposition of a “pastoral scene of the gallant south” with the “bulging eyes and the twisted mouth” of lynching victims powerfully undermines the Southern mythos of chivalry and polite society. Like Lazarus, Meeropol was not a black person—he was Jewish.⁴³³ Meeropol’s song and Lazarus’ photograph are successful on

⁴³³ Ibid at 25. Meeropol also wrote a poem that explicitly drew parallels between his experiences as Jewish man in the United States with the experiences of African-Americans without conflating them. See page 45.

aesthetic, political, historical, and moral grounds for two reasons. First, their works make more of black people than vessels for individual explorations of suffering or receptacles for ideological positions. They emphasize that black people can be human beings and still be black. Second, because they breach the political, moral, and epistemological commitments that undergird race rather than essentializing it by relying on rudimentary ideas about identity that fix racial categories instead of challenging them.

One-dimensional debates about “ownership” of Till’s legacy and “censorship” obscure the fact that artist like Hannah Black and Dana Schutz operate in different paradigms. Artists like Schutz, and to some extent Kara Walker and Coco Fusco, conceive of art-making as a form of individual development and freedom. Claudia Rankine has described being an artist as a responsibility; Black’s critique follows that logic.⁴³⁴ As such, it questions the museum’s role as merely a repository for the products of an individual artist’s exploration. In many ways, the defense of Schutz’s painting is also a defense of a specific notion of art-making that considers “the artist” as a special class of person by virtue of being an artist and their products as a special class of objects by virtue of their status as “art works.”⁴³⁵ This status entitles them and their creations to protection from critiques based on history or culture, even as they use materials from history and culture. This freedom, they would argue, like that of a satirist or comedienne, allows the artist to create masterful work—however provocative or radical—to fulfill their true purpose of

⁴³⁴ Nadja Sayej. “Claudia Rankine on Whitney Biennial Row: ‘Anyone Who Is Subject to a Culture Can Use It.’” *The Guardian*. Guardian News and Media, April 10, 2017. <https://www.theguardian.com/artanddesign/2017/apr/10/claudia-rankine-whitney-biennial-emmett-till-painting>.

⁴³⁵ It might be argued, of course, that very conceptualization of an ‘artist’ is historically and geographically contingent.

furthering culture. Nevertheless, Schutz's painting was unsuccessful not because it was too radical, but because it failed to be radical enough. For Black and others like her, being an artist is not a privileged position. It does not confer a special license to explore anything the artist desires, nor does it insulate one from censure. There is no question to whom Emmett Till's legacy belongs to. It belongs to all Americans, but it does not belong to us all in the same way. "Open Casket" illustrates that "freedom" as a guiding principle for creative work does not necessarily guarantee better artistic output than its alternative—responsibility.

LAURA NELSON

According to Christina Sharpe, for black people, "Representation in art is an arena of conflict and confrontation."⁴³⁶ Sharpe did not elaborate extensively on her claim, but I believe that it implies something important: for better or worse, *representations of black people in particular* are always overdetermined by notions outside of the representation itself in various ways. I would add that the representation of any person is full of symbolic associations; it is just that black people's symbolic associations are the most conspicuous. Part of what it means to be black, is to be marked—defined first by a modifier. The very fact that blackness is perceived even when it is not explicitly declared in art and life, while whiteness tends toward invisibility, testifies to the particularity and peculiarity of blackness as concept. "A girl," for example, is automatically conceived as white in the American imagination unless it explicitly stated she is black. A painting of a

⁴³⁶ Siddhartha Mitter. "What Does It Mean to Be Black and Look at This?" A Scholar Reflects on the Dana Schutz Controversy." Hyperallergic, March 25, 2017. <https://hyperallergic.com/368012/what-does-it-mean-to-be-black-and-look-at-this-a-scholar-reflects-on-the-dana-schutz-controversy/>.

girl who is black is considered “a black girl” rather than “a girl.” Any internet search for images of “a girl” demonstrates the same knowledge order. The modifier itself of course is not at issue; but rather, the point is that “black” is rarely ever considered normal. It often signifies a host of predetermined, negative ideas, one of the most important being a lack of humanity and complexity by virtue of being black.⁴³⁷ This, coupled with the logic of enslavement—which is defined by ownership and fungibility—creates a unique field on which to create and evaluate works. Rather than being totalizing, the field on which art works exist is a field that includes race, particularly in the case of the explicit representation of black people; this is merely a statement of fact. That fact ought not to be shirked from as a limitation, but faced. In this framework, the artist first acknowledges the specificity of the field on which they are creating. Following Claudia Rankine, if being an artist is conceived as a responsibility, what is the artist responsible for when representing a lynching photograph?

In LaShawnda Crowe Storm’s work, “The Lynch Quilts Project,” the nature of art as responsibility becomes plainer. The quilting circle Crowe Storm created engages women of all races who want to face lynching, including the descendants of perpetrators, calling on them to work in their own communities through conversations with the Lynch Quilts Project. Indeed, the quilting circle is an essential part of the work. The project began because of Crowe Storm’s encounter with a photograph of Laura Nelson, who was lynched in Okemah, Oklahoma along with her son, on May 25th, 1911.⁴³⁸ The photograph

⁴³⁷ Frantz Fanon, “The Fact of Blackness,” in *Theories of race and racism: a reader.*, ed. John Solomos and Les Back (London: Routledge, 2009.), 259.

⁴³⁸ “Lynchers Avenge the Murder of Geo. Loney”, The Okemah Ledger, May 25, 1911.

was taken by George Henry Farnum and eventually sold as a postcard.⁴³⁹ Nelson and her son were accused of murdering Okemah's deputy sheriff, George Loney, during a search of the Nelsons' farm for a stolen cow. Laura and her son were kidnapped from the county jail where they were held and hanged from the bridge across the North Canadian River; Laura was raped before she was hanged.⁴⁴⁰ Crowe Storm describes her encounter thusly, "It's not that I didn't know that black women and children had died through these heinous acts of violence. It's that the day that I encountered this photograph it really became real for me. It became a Truth that wasn't something hidden in the dark [emphasis added]."⁴⁴¹ Despite the fact that women and children were lynched regularly, there exists only one known image of such a lynching—that of Laura Nelson and her son.

Crowe Storm's work began with an observation about the ways that gaps in the photographic archive can color our experiences of history. In other words, her project started with the knowledge order of lynching, not the "revelatory power" of photography or empathy. This is not to say that the project is not personal. It is deeply personal. Crowe Storm kept the image of Laura Nelson for two years to think about how she, as a trained sculptor, might create art from within the aesthetic traditions of women to reckon with what happened to Laura Nelson and her son. With the help of experienced quilters, Crowe Storm created her first quilt based on the image of Laura Nelson in 2004, called *Her Name Was Laura Nelson*. The work is an intricate mix of machine piecing and hand

⁴³⁹ James Allen, Hilton Als, Congressman John Lewis and Leon Litwack. *Without Sanctuary: Lynching Photography in America*, Santa Fe: Twin Palms Publishers, 2000), 179-180.

⁴⁴⁰ "Crime". *The Crisis*, Vol. 2, No. 3 (July 1911), (New York: National Association for the Advancement of Colored People), 99-100.

⁴⁴¹ Ibid.

quilting, as well as glass beads; it has been installed with wall text enumerating the names of lynching victims and a metal table and chair set with two seats. The piece works on several levels. It directly confronts the place of black women and children—or lack thereof—in this history of lynching, placing a representation of Nelson in the foreground of hundreds of names of lynching victims.

Further, by using a domestic art form shared by the perpetrators of lynching and the victims, it also alludes to white women and children as spectators of and participants in the lynching of black Americans. In one photograph of Laura Nelson, for example, spectators of her lynching include white women and children. The point here is that the history of lynching a shared history and a shared responsibility, which is why the quilting circle, the act of creating the quilt, is as important as the work itself.

Crowe Storm turned to the rich history of African-American quilting—which is as old as America itself—for few reasons. First, quilting was a way for enslaved women to express themselves with intricate designs and to provide cover for their families in the cold winter months. These quilting techniques, which often used rags and discarded scraps from plantation owners, were then passed down generationally from mother to daughter. Quilts became important ways to preserve family history, either pictorially by designing a narrative or through the evolution of the complex patterns themselves. Second, some African-American women and European-American women quilted together during

slavery.⁴⁴² Quilting has always been a hybridized form. The practice of quilting outlasted slavery and is still widely practiced by black women in the United States—as it is by the descendants of their European captors.

Women from all over the United States send The Lynch Quilts Project fabric to work with that includes things like pieces of their family heirloom quilts and cloth from their baby's bibs.⁴⁴³ Some participants who cannot sew but still wish to contribute have sent in family stories detailing experiences with lynching.⁴⁴⁴ The two empty seats in the installation for "Her Name Was Laura Nelson" also emphasize the collective, reparative goals of the project.

The way that Crow Storm's project engages with Nelson's photograph contrasts significantly with the way that James Allen, the original collector of the photograph, has engaged with Nelson. According to Wendy Wolters, his lyrical description of Nelson is atypical in his book *Without Sanctuary*.⁴⁴⁵ In Allen's writings, Nelson is conceived of as an outlier, and her gender is emphasized while her race recedes:

Grief and a haunting unreality permeate this photo. The corpse of Laura Nelson retains an indissoluble femininity despite the horror inflicted on it. Specterlike, she seems to float—thistledown light and implausibly still. For many African Americans, Oklahoma was a destination of hope, where they could prosper without the laws in southern states that codified racism and repression. What was to be a promised land proved to be a great disillusionment.⁴⁴⁶

⁴⁴² Laura Sapelly. "A Feminist Pedagogy Through a Sociopolitical Stitch". *Textile Society of America* (blog), October 16, 2016, <https://textilesocietyofamerica.org/6446/a-feminist-pedagogy-through-the-sociopolitical-stitch/>.

⁴⁴³ Ibid.

⁴⁴⁴ Williams-Gibson, Jessica. "The Lynch Quilts Project: Artist Uses Quilting As a Lens into Racial History, Today's Injustices." *The Indianapolis Recorder*, December 1, 2011. http://www.indianapolisrecorder.com/news/article_23891f44-1c3c-11e1-8cce-001cc4c03286.html.

⁴⁴⁵ Wendy Wolters Hinshaw. *Without Sanctuary: Bearing Witness, Bearing Whiteness*. *JAC*, Vol. 24, No. 2, Special Issue, Part 1: Trauma and Rhetoric (2004), 413-414.

⁴⁴⁶ James Allen. *Without Sanctuary: Lynching Photography in America*, Santa Fe: Twin Palms Publishers, 2000), 178-179.

Notice how this description Nelson's femininity goes on at length, but her personal femininity has no direct relationship to the very separate collective descriptions of "African-Americans" suffering under "racism" and "oppression." It is worth noting that Nelson was described by one newspaper as "very black" and "vicious."⁴⁴⁷ Different versions of the story of Nelson's lynching recount her taking different actions—including taking possession of her gun to ward off the group of men who had entered her home—but they all describe her as defiant.⁴⁴⁸ That this photograph exists at all may be due in part to the way she was masculinized by her attackers and by the press because of her defiance. She was repeatedly called "the woman" in the most unflattering newspaper account, not by her name, like her attackers.⁴⁴⁹ Allen may have been trying to restore Nelson's subjectivity, but his attempts are stifled by his relationship to his photographic objects. Nelson is framed as an outlier in James Allen's writings for two reasons: first, because Allen is primarily a collector of images, and there are no extant photographs of a black female lynching known but the photograph of Laura Nelson, and, second, because the intersection of race and gender, like in Dana Schutz's work, must be dissolved or weakened for Allen to process the image in any meaningful way.

More recent quilts such as *Red Rum Summer 1919*, explore the wave of racist attacks on African-Americans across the United States in 1919 (Crow Strom, 2014). Other artists too have used quilting to comment on racial violence. For example, Rachel Wallis'

⁴⁴⁷ "Lynchers Avenge the Murder of Geo. Loney", *The Okemah Ledger*, May 25, 1911.

⁴⁴⁸ "Lynchers Avenge the Murder of Geo. Loney", *The Okemah Ledger*, May 25, 1911; "A Deputy Sheriff Killed", *The Independent* (Okemah), May 4, 1911; "Deputy Sheriff Loney Murdered", *The Okemah Ledger*, May 4, 1911.

⁴⁴⁹ "Lynchers Avenge the Murder of Geo. Loney", *The Okemah Ledger*, May 25, 1911.

ongoing quilt *Gone But Not Forgotten* (Wallis, 2014) commemorates victims of police shootings.⁴⁵⁰ The sophistication of Crow Storm’s work—and work like it—has been largely overlooked by journalists and scholars. Why do works like *Open Casket* receive so much attention, yet these works receive a fraction of the ink spilled to debate the merits of one single painting? There are many reasons, the first of which being the power of the Whitney Museum’s cultural cache as an institution to demand attention in similarly elite publications from scholars and journalists who come from similarly elite universities. The second reason has to do with status of quilting as an “art form”. It is true that quilts that were never intended for exhibition as well as so-called art quilts made with the intention of exhibition are found in the collection of some the United States’ most prominent museums: recent large-scale shows featuring quilts have taken place at the Smithsonian and the University of California, Berkeley.⁴⁵¹ Quilts, however problematically, are firmly established as a collectable and exhibitable item. But quilting, despite its intricacy of form and complexity, is typically done communally, much of the time by women. Quilts have also traditionally had a function. Their functionality, along with their communal nature, tends to nullify an art like quiltmaking as a medium worthy of notice. The point here is that when “art” is communal, functional, and feminized—when it does reparative work it claims to do—it commands much less attention than its

⁴⁵⁰ Vinebaum, Lisa. “The Art of Repair”. *Surface Design Journal*, (Fall 2016), 35-37. Retrieved from https://1305ddee-1678-2faf-52f0-d8dea89c53bf.filesusr.com/ugd/a6af7c_fbdb8aa573b54b32931039cfb21162a6.pdf

⁴⁵¹ Public Affairs, and UC Berkeley. “Nearly 3,000 Quilts by African American Artists Now at BAMPFA.” *Berkeley News*, October 17, 2019. <https://news.berkeley.edu/2019/10/17/quilt-collection-by-african-american-artists-at-bampfa/>; Sadie Dingfelder. “Don’t Sleep on This Smithsonian Quilt Exhibit.” *The Washington Post*. WP Company, August 1, 2019. <https://www.washingtonpost.com/express/2019/08/01/dont-sleep-this-smithsonian-quilt-exhibit/>.

counterparts, which are often controversial precisely because they are reductive, shallow, solipsistic, and created by a single “artist”.

Works that do not match with preconceived notions of an artist, that is, a singular person creating a non-functional work primarily for their own gratification, are given a soft dismissal by characterizing the complex, nested way they conceive of art making as a “community project” or a “sociological work.”⁴⁵² The Lynch Quilts Project is particularly important because it brings the intersection of race and gender to the fore, returning it to its proper position as foundational to lynching. The Lynch Quilts Project demonstrates that art works can be beautiful, reparative, communal, and pedagogical; art-making as responsibility need not be conceived of as a burden nor should responsibility and freedom be considered necessarily mutually exclusive.

LYNCHING MEMORIALS

A memorial is intended to preserve the memory of a person or a thing.⁴⁵³ It is commonly applied to objects that aid in remembering; commemorative events often center around memorials. In the last 15 years, several lynching memorial projects have been initiated, some dealing explicitly with the shadow of lynching photographs.⁴⁵⁴ Elias Clayton,

⁴⁵² The same might be said of exhibitions of some non-functional items, like photographs, which were not intended to be art. The curator often serves the function of the artist in this case.

⁴⁵³ “memorial, adj. and n.”. OED Online. December 2019. Oxford University Press. <https://www.oed.com/view/Entry/116351?rskey=XbIwUV&result=1&isAdvanced=false> (accessed January 16, 2020).

⁴⁵⁴ The Mary Turner Project. “Current Work”. The Mary Turner Project. Retrieved from <http://www.maryturner.org/mtp.htm> ; The Ed Johnson Project. “The Memorial”. The Ed Johnson Project. Retrieved from <https://www.edjohnsonproject.com/the-memorial/> ; “EJI's Community Remembrance Project.” Equal Justice Initiative. Accessed February 4, 2020. <https://eji.org/projects/community-remembrance-project/>.

Elmer Jackson, and Isaac McGhie's memorial in Duluth, Minnesota is a testament to that challenge. The young men, aged nineteen and twenty, were lynched from a utility pole on June 15th, 1920. Clayton, Jackson and McGhie were circus workers, accused of assaulting a white couple named James Sullivan and Irene Tusken.⁴⁵⁵ Rumors were circulated that the three men raped Tusken, which was later proved false by the *Duluth Ripsaw* newspaper.⁴⁵⁶ The photograph is among the more brutal depictions of lynching—it was taken close up, so the contours of their bodies and the savage beatings they received before they were hanged is visible. One of the victims is dumped, bruised and bloodied, onto the ground at the feet of the other victims who are still hanging from the utility pole. The ground is littered with clothes and trash; the crowd—all white, all male—lean in to make certain that they are captured by the camera. Photographs and postcards of the aftermath were peddled in the street and sold in shops.⁴⁵⁷

The memorial was dedicated in 2003. Erika Doss has argued that the memorial uses a “vocabulary of shame” to address the lynching. The memorial had to contend with the shame that arises from being perpetrator, but shame's power to regulate social norms often fails to “reckon with the unearned shame” of being part of a group of victims.⁴⁵⁸ While there are many conceptions of shame, she contends that memorial is based on a dual framework of shame that is profoundly social, one that “stem[s] from the acknowledgement of impropriety and regret” for past actions, but also one that seeks to

⁴⁵⁵ Erika Doss. “Shame: Duluth's Lynching Memorial and Issues of National Morality.” In *Memorial Mania: Public Feeling in America*, 272. London: University of Chicago Press, 2012.

⁴⁵⁶ Ibid at 273.

⁴⁵⁷ Ibid at 274-275.

⁴⁵⁸ Ibid at 263.

regulate bodily behaviors and passions.⁴⁵⁹ The memorial features an account of the lynching sandblasted into stone along with thirteen quotations. Doss also points out that by using bronze statues to represent the men it humanizes the victims. The bronze statues were based on local students; no photographs of the victims alive could be located.⁴⁶⁰ I would argue that this feature is the most direct rebuke to lynching and racist violence more generally and that restoration of subjectivity is a very significant part of creating a lynching memorial.⁴⁶¹ It also provides an incidental but powerful connection between the current, local African-American community and the victims, who were not from Duluth. By this action, the memorial does make some attempt to engage with the unearned shame of being black, which is to share vulnerability with absolute strangers across the sands of time on the basis of race alone. The potency of the photographs of the victims are not neutralized by the statues, but they do provide a counter image.

The hodgepodge of thirteen different quotations about “responsibility” or “justice” from luminaries like Elie Weisel, Siddhartha, James Baldwin and Marian Wright Edelman are less effective because they are quoted in a way that makes each statement universalist. These quotations have the effect of encouraging viewers to think about lynching in a more generalized, de-historicized way. This is not to say that atrocities should not be thought of in a comparative framework, but that framework should respect both the differences and similarities among them. Lynching was often designed with a specific purpose in mind—to terrorize African-Americans and to prevent them from acquiring

⁴⁵⁹ Ibid at 261.

⁴⁶⁰ Ibid at 276, 286.

⁴⁶¹ Duluth’s history of violence and intimidation includes Native Americans and Finns, though no acts of violence were carried out as brutally as the lynching of Clayton, Jackson and McGhie.

wealth by driving them out; losing that thread seriously endangers the authority of any memorial. There was tension around job competition from black workers in Duluth before the lynching. After the lynching, despite the overall population of Duluth growing, the black population fell by 16 percent; the lynching of Clayton, Jackson and McGhie was more of a culmination of a strategy than a one-off event.⁴⁶² It may have been more effective to include detailed information about Olli Kinkkonen, a Finnish immigrant who was lynched in Duluth two years prior for opposing WWI.⁴⁶³ While the memorial does not literally fall in the cliché of absence found commonly in 20th century memorial design, as Doss argues, but it *does* engage in the kind of abstraction and decontextualization that absence tends to encourage.

The Duluth Memorial succeeds in some at engaging with the visibility of lynching, but it does fail to give its audience much of a context for why the memorial was deemed necessary in the first place. Doss makes mention of the way that black residents kept the memory of lynching alive by passing stories down to their children, warning newcomers, and starting a chapter of the NAACP which later lobbied for a state anti-lynching law—and won.⁴⁶⁴ In other words, lynching was and is very present for the small community of African-Americans in Duluth. So, what exactly are we supposed to be remembering when we visit the memorial, and why? Pierre Nora has argued that what we now call memory is really history, a fixed, always incomplete form of reconstructing events that relies on

⁴⁶² Erika Doss. “Shame: Duluth’s Lynching Memorial and Issues of National Morality.” In *Memorial Mania: Public Feeling in America*. (London: University of Chicago Press, 2012), 279.

⁴⁶³ Chris Julin. “MPR: Postcard From A Lynching.” News & Features, June 2001. <http://news.minnesota.publicradio.org/projects/2001/06/lynching/olli.shtml>.

⁴⁶⁴ Erika Doss. “Shame: Duluth’s Lynching Memorial and Issues of National Morality.” In *Memorial Mania: Public Feeling in America*. (London: University of Chicago Press, 2012), 279-280.

ruins. For Nora, modern “memory” is above all, archival: “it relies entirely on the materiality of the trace, the immediacy of the recording, the visibility of the image,” and is therefore, already history.⁴⁶⁵ The Duluth memorial is respectful and sincere, offering some measure of apology, but not necessarily atonement, in part because it lacks the context that would link it to effectively to the event it memorializes or to ongoing harm in the community. The memorial is, after all, located in a “gritty...slowly gentrifying area.”⁴⁶⁶ The Duluth Lynching Memorial may have closed a conversation rather than opening one.

Perhaps modern memory is not always already history. With Nora in mind, Leigh Raiford has described black critical memory as “an ongoing, engaged practice through which a range of participants speak back to history and assess ongoing crises faced by black subjects.”⁴⁶⁷ The word *ongoing* is a crucial detail that I think distinguishes some memorials from others. One lynching memorial that attempts to “speak back to history” is the Equal Justice Initiative’s National Memorial for Peace and Justice. Dedicated in 2018, the memorial features “800 corten steel monuments, one for each county in the United States where a racial terror lynching took place.” Each column is engraved with the names of lynching victims. EJI also commissioned 800 more identical monuments in the “six-acre park surrounding the memorial ...waiting to be claimed and installed in the counties they represent.”⁴⁶⁸ The circulation of a second set of monuments are an

⁴⁶⁵Pierre Nora. “Between Memory and History: Les Lieux de Mémoire.” *Representations*, 26 (1989). 13.

⁴⁶⁶ Erika Doss. “Shame: Duluth's Lynching Memorial and Issues of National Morality.” In *Memorial Mania: Public Feeling in America*, 283. London: University of Chicago Press, 2012.

⁴⁶⁷Leigh Raiford. “Photography And The Practices Of Critical Black Memory.” *History and Theory* 48, no. 4 (2009), 114-115. <https://doi.org/10.1111/j.1468-2303.2009.00522.x>.

⁴⁶⁸“Memorial”. Equal Justice Initiative. Retrieved from <https://museumandmemorial.eji.org/memorial>.

invitation to acknowledge both the facts of the widespread nature of lynching and the Truth of it as depraved; they serve as a visual counter to the callous circulation of lynching images across the nation. A county is not required to take the monument and install it, they can do so of their own volition. There are still monuments waiting to be claimed.

Before visitors can walk among the first set of monuments, which are suspended in mid-air, they are greeted by a statue created by Ghanaian artist Kwame Akoto-Bamfo. The statue, called *Nkyinkim* depicts seven enslaved people chained together with pained expressions, including a crying mother holding a baby. One shackle is empty, representing an enslaved person who has already been sold.⁴⁶⁹ The work is a part of the *Nkyinkyim* installation at Cape Coast Slave Castle in Ghana, made up of over 1,300 heads—the installation of seven enslaved people in Alabama completes the work.

It was important to Kwame Akoto-Bamfo, the artist who created *Nkyinkyim* that black Americans know that he was Ghanaian. Despite its catastrophic political, social, and economic effects on the continent, the enslaved left African shores and almost never returned. Unlike diasporic Africans whose central ancestral narrative often begins with the middle passage, it is not a given that people from continental Africa connect themselves and their daily reality to the calamity of chattel slavery:

⁴⁶⁹Erica Ayisi. “Lynching Memorial: Ghanaian Artist Hopes Sculpture Captures Shared Pain Between African Americans and the Motherland”. *The Root*. Retrieved from <https://www.theroot.com/lynching-memorial-ghanian-artist-hopes-sculpture-captu-1825817044>

I want black people, especially people of this generation, to know that this work was not done by an American. It was done by an African person who feels their pain and who is also connected. African Americans in particular should understand that we also know their pain. We empathize.⁴⁷⁰

Nkyinkyim is effective because it suggests connections between slavery and colonialism in a way that very few historical or post-colonial tomes have. For Akoto-Bamfo, it is only through acknowledging the loss of millions of people (and, with them, their potential and family bonds) not colonial exploitation alone, that the continent can reclaim its greatness.⁴⁷¹ Colonialism in the British Gold Coast—later Ghana—began with the extraction of gold and the funneling of enslaved peoples from all over the continent of Africa. By 1874, it was an official protectorate, marked by indirect rule, disenfranchisement, and environmental exploitation. The man who “did the most to disseminate racist ideas about Africans never who never set foot on African soil.”⁴⁷² Plantation owner Edward Long’s 1774 book *History of Jamaica* is filled with anecdotal pseudoscientific diatribes about “African” inferiority, and it was widely accepted as scientific fact, though it was neither a history book nor a scientific study.⁴⁷³ His book became a rallying cry for the British political establishment to justify colonialism, and his passages echo in the books of later generations of the British that did visit Africa.⁴⁷⁴

⁴⁷⁰ Erica Ayisi. “Lynching Memorial: Ghanaian Artist Hopes Sculpture Captures Shared Pain Between African Americans and the Motherland”. *The Root*. Retrieved from <https://www.theroot.com/lynching-memorial-ghanian-artist-hopes-sculpture-captu-1825817044>

⁴⁷¹ Sulley Lansah. “Kwame Akoto-Bamfo: ‘You see the faces of our ancestors’”. British Broadcasting Corporation. Retrieved from <https://www.bbc.com/news/av/world-africa-48744703/kwame-akoto-bamfo-you-see-the-faces-of-our-ancestors>

⁴⁷² David Olusoga. “The Roots of European Racism Lie in the Slave Trade, Colonialism – and Edward Long.” *The Guardian*. Guardian News and Media, September 8, 2015. <https://www.theguardian.com/commentisfree/2015/sep/08/european-racism-africa-slavery>.

⁴⁷³ Ibid.

⁴⁷⁴ Ibid.

Nkyinkyim helps to shift the narrative away from enslavement to global white supremacy, the hinge that links colonialism and chattel slavery. Stevenson's goal for EJI as an institution was to challenge the master narrative around slavery. In a CBS interview about EJI Stevenson took pains to point out that "the greater evil of American slavery wasn't involuntary servitude and forced labor" but the ideology of white supremacy and anti-black racism that justified slavery.⁴⁷⁵ EJI's museum also tries to link lynching with slavery by acknowledging the common ideological and legal structures that sustained both practices—something that up until recently was rarely acknowledged in popular or historical discourse.⁴⁷⁶

The steel monuments to the victims call to mind both lynchings and grave stones. They also evoke the Memorial to the Murdered Jews of Europe in Berlin, which features 2,711 concrete slabs or "stelae," arranged in a grid pattern on a sloping field.⁴⁷⁷ Stevenson visited Berlin, Germany and the Auschwitz-Birkenau Concentration Camp in Poland to gain insight and inspiration for the memorial, which was eventually created by the MASS Design Group—a not for profit architecture collective.⁴⁷⁸ America's Black Holocaust Museum too references the systematic mass murder of European Jews by the Nazis from

⁴⁷⁵ David Morgan. "The North won the Civil War, but the South won the narrative war". *CBS News*. <https://www.cbsnews.com/news/bryan-stevenson-we-are-all-complicit-in-our-countrys-history-of-racism/>

⁴⁷⁶ Jessica Reed, Jamiles Lartey, Ed Pilkington, Sam Levin, Tom Silverstone, and John Mulholland. "America's First Memorial to Victims of Lynching Opens in Alabama – Live Updates." *The Guardian*. Guardian News and Media, April 26, 2018. <https://www.theguardian.com/us-news/live/2018/apr/26/americas-first-memorial-to-lynching-victims-opens-in-alabama-live-updates?page=with:block-5ae2423be4b05b151652aa16>.

⁴⁷⁷ "Field of Stelae". Retrieved from <https://www.stiftung-denkmal.de/en/memorials/the-memorial-to-the-murdered-jews-of-europe/field-of-stelae.html>

⁴⁷⁸ JTA. "New Memorial for Black Lynching Victims Influenced By Holocaust Memory". *The Jerusalem Post*. Retrieved from <https://www.jpost.com/Israel-News/Culture/New-memorial-for-black-lynching-victims-influenced-by-Holocaust-memory-552948> ; "National Memorial for Peace and Justice". Mass Design Group. Retrieved from <https://massdesigngroup.org/work/design/national-memorial-peace-and-justice> ;

1941 to 1945. It was founded in 1988 by James Cameron, the only known survivor of a lynching attempt. His friends were Thomas Shipp and Abram Smith, the two boys immortalized in the Lawrence Beitler photograph that inspired *Strange Fruit*. His museum features exhibitions on slavery, racism and lynching. Some scholars like Dora Apel have characterized uses of the term “black holocaust” as simple appropriation, but that view misses an opportunity to rethink memorial culture by narrowly interpreting the use of the word holocaust and the events it describes, particularly when slavery and lynching predate the mass murder of European Jews. According to Apel:

The appropriation of the term lynching for increasingly diverse forms threatens to trivialize the historically specific content of the term. The same is true of the proliferating references to “the black holocaust”, which appropriate the term holocaust in order to raise the visibility of the tragedy of slavery by investing it with the historical weight of the better-known Jewish Holocaust. In this way, the appropriation of lynching for other causes attempts to create a continuum by which one injustice is figured in terms of another and bears the moral weight of the original referent. This understandably leads to resentment among blacks who feel that their experience of oppression will be obscured by these rival forms of “victimhood”.⁴⁷⁹

I would argue, however, that the use of the word “holocaust” is not comparable to the inappropriate, inaccurate uses of the term lynching that Apel cites, particularly when the term “Holocaust” has itself been debated by scholars, many of whom prefer the Hebrew term Shoah (meaning catastrophe) because it is not associated with religious sacrifice as is the word “holocaust,” which derives from the Greek term for “burnt offering.”⁴⁸⁰ In modern English, the word holocaust has been used to refer to deaths of large groups of people since the 18th century, including Armenians who were murdered en masse by the

⁴⁷⁹Dora Apel. *Imagery of lynching: black men, white women, and the mob. “On Looking”*. (New Brunswick New Jersey: Rutgers Univ. Press, 2004), 18.

⁴⁸⁰Richard Evans. *In Hitler's Shadow*. (New York: Pantheon, 1989), 142; Setbon, Jessica. “Who Beat My Father? Issues of Terminology and Translation in Teaching the Holocaust”, workshop from a May 2006 conference; see Yad Vashem website. Yadvashem.org; https://www.yadvashem.org/odot_pdf/microsoft%20word%20-%206419.pdf

Ottoman Empire from 1914 to 1923.⁴⁸¹ As early as 1918, NAACP chairman Walter White referred to a rash of lynchings in Georgia as a “holocaust.”⁴⁸² It was only in 1960s that the term “Holocaust” (capitalized) began to be used widely and exclusively to describe the mass destruction of European Jews.⁴⁸³

Cultural studies scholar Michael Rothberg has suggested switching from thinking of memory as marked by scarcity, to thinking about memory in terms of plentitude.⁴⁸⁴ Holocaust memorial culture exploded in the 1960s—in part because of the televised Adolph Eichmann war crimes trial—just as the Civil Rights Movement in the United States and Decolonial movements around the world were coming of age.⁴⁸⁵ *Judgement at Nuremberg*, a film depicting a fictionalized version of the postwar Nazi war-crimes trials in Nuremberg, Germany, was broadcast to 48-million American homes on March 7, 1965 on ABC.⁴⁸⁶ The broadcast was interrupted by footage of African-American protestors in Selma, Alabama being beaten by police, trampled by horses and “choked by tear gas.”⁴⁸⁷ While historians argued about the uniqueness of the Holocaust into the 1980s, popular

⁴⁸¹ Much like the Armenian term “Aghed”, or “Catastrophe” to describe the Armenian Genocide, Shoah is translated as “Calamity”.

⁴⁸² Walter White, “The Work of a Mob,” *The Crisis* Vol. 16 (September 1918), 221.

⁴⁸³ Sean Warsch, “A “holocaust” Becomes “the Holocaust”. *Jewish Magazine* (October 2006). Retrieved from: <http://www.jewishmag.com/107mag/holocaustword/holocaustword.htm>. The increase in uses of the word holocaust to describe the mass murder of Jewish people from 1941-1945 is associated with the televised trial of Nazi Adolf Eichmann.

⁴⁸⁴ Michael Rothberg. “Introduction.” In *Multidirectional Memory: Remembering the Holocaust in the Age of Decolonization*. (Stanford, CA: Stanford University Press, 2009), 2-3.

⁴⁸⁵ Michael Rothberg. “The Work of Testimony in the Age of Decolonization.” In *Multidirectional Memory: Remembering the Holocaust in the Age of Decolonization*. (Stanford, CA: Stanford University Press, 2009), 178-179.

⁴⁸⁶ Rasheeda Smith. “Battle Films: Judgment at Nuremberg.” *HistoryNet*. HistoryNet, February 12, 2019. <https://www.historynet.com/battle-films-judgment-at-nuremberg.htm>.

⁴⁸⁷ Andrew Glass. “Civil Rights March Ends as ‘Bloody Sunday,’ March 7, 1965.” *POLITICO*, March 7, 2018. <https://www.politico.com/story/2018/03/07/this-day-in-politics-march-7-1965-437394> ; Joan Walsh. “Scalia’s Ugly Racial Cynicism.” *Salon*. Salon.com, February 28, 2013. https://www.salon.com/2013/02/28/scalia’s_ugly_racial_cynicism/.

culture and popular political movements already had an alternative answer by the end of the 1960s: the events of 1941-1945 matter both in and of themselves, but they also reverberate, making previous catastrophes come more clearly into focus. We should remember that it was the blockbuster success of *Roots*, a television miniseries about slavery, that inspired the popular miniseries *The Holocaust*.⁴⁸⁸

Much has been made of the boomerang effect of racist ideas and bureaucratic structures in the colonies being imported back to Europe by philosophers like Aime Césaire and Achille Mbembe.⁴⁸⁹ Historians too are starting to acknowledge the relationship between the development and evolution of anti-black racism, anti-Semitism, slavery, imperialism, fascism, and colonialism.⁴⁹⁰ In many ways, the National Memorial for Peace and Justice is trying to point out that the problem of the 20th century may not have been the color-line alone; in referencing the Holocaust and colonialism visually through its memorial design, it attempts to speak to the destructive climaxes of 500 years of the ideas that drove and are still driving catastrophe.

CONCLUSION

In David Reiff's book *In Praise of Forgetting*, he criticizes the idea that remembering in and of itself is a moral act. More often than advocates of collective memory admit, Reiff

⁴⁸⁸ Judith E. Doneson. "Television and the Effects of the Holocaust." In *The Holocaust in American Film*, 2nd ed. (Syracuse, NY: Syracuse University Press, 2002), 145.

⁴⁸⁹ Achille Mbembe. "Necropolitics." *Public Culture* 15, no. 1 (January 2003), 11–40. <https://doi.org/10.1215/08992363-15-1-11> ; Aimé Césaire and Joan Pinkham. *Discourse on Colonialism*. (New York: Monthly Review Press, 2001).

⁴⁹⁰ Isabel V. Hull. *Absolute Destruction Military Culture and the Practices of War in Imperial Germany*. (Ithaca: Cornell University Press, 2013); James Q. Whitman. *Hitler's American Model: the United States and the Making of Nazi Race Law*. (Princeton, NJ: Princeton University Press, 2018).

argues, the call to “remember” is not what it seems—it sometimes perpetuates the conflict it purports to prevent or signals the end of penance. He is right. His problem with collective memory is threefold: it is selective and inaccurate, particular over universal, and instrumental, in that it frequently deforms the past in order to serve the present. He makes little distinction between the victors or the victims, the winners or the losers. For Reiff, collective memory deludes human beings into thinking that events can achieve any measure of permanent importance. At the same time, Reiff does concede that we do have a moral obligation to remember atrocities that may have been covered up, ignored or otherwise erased.⁴⁹¹ “At best,” he writes of remembrance, “it is a consolation or an ego boost, while at worst it is a wallowing, no matter whether in past triumphs or past injuries and traumas. In contrast, history is hard, and the better the history, the more demanding and outward-looking it is.”⁴⁹² Yet, why advocate for history against collective memory, when like collective memory, history too relies on fragments, is subject to trends, and deludes itself by aspiring toward permanence? He asks several times a crucial question: what is meant by “collective memory?” Reiff never answers it. He only argues that, while history may be imperfect, collective memory and its narcissism are the bigger obstacle to peace.⁴⁹³

His mistake, like so many other scholars of memory, is to set “collective memory” against history. The National Memorial for Peace and Justice was preceded by an

⁴⁹¹ David Reiff. “The Victory of Memory Over History.” In *In Praise of Forgetting: Historical Memory and Its Ironies*. (New Haven: Yale University Press, 2016), 65.

⁴⁹² David Reiff. “The Memory of Wounds and Other Safe Harbors”. In *In Praise of Forgetting: Historical Memory and Its Ironies*. (New Haven: Yale University Press, 2016), 109.

⁴⁹³ Ibid.

historical report that cataloged racial lynchings in the United States and a plan for a Truth and Reconciliation commission. Reiff praises Truth and Reconciliation commissions, but they require willing parties. So-called collective memory is part and parcel with history—it would never exist but for history’s creation. We choose what events matters, in which ways, because of context, irrespective of the “distinction” between history and memory. Certain events are plucked from oblivion; others, like various everyday random events, are not. They are all events. Some are lifted-up as if they matter, some are not, for whatever arbitrary reason. The reason that made the event important could evaporate and thereby consign the event to oblivion.

In this sense, I go further than Nora and Raiford. I am positing that collective memory is not a threat to history’s existence because it is its opposite, but that it is a threat because it is its *double*, a mirror that exposes its inherent limitations and inadequacies. This applies equally to all memorials, irrespective of who or what they purport to represent politically, racially, ethnically, historically, or ideologically. It should however, be pointed out that whenever the tactics of the powerful begin to be used by the powerless, whenever the powerless begin to demand that they too get to dictate how reality is construed, to participate in democracy, get to fashion and possess their own image, to have a right to citizenship, to receive a piece of the economic pie, as the powerful have, it is construed as crisis, as if the whole system is somehow unsustainable and ought to self-destruct. This is a sign that it was a flawed scheme in the first place. The powerless ought not to be blamed for the “fracture” of an already faulty system. They have not fractured it, rather, their participation has exposed its limits. One only need to look at any inflection point in

history—Reconstruction, Women’s Suffrage, Decolonization, Civil Rights, Immigration from the Global South to the Global North—to grasp this point.

This is why throughout his book, Reiff’s examples of less problematic uses of “collective memory” tend to be from the powerless, the people who cannot shape the historical narrative nor the experience of reality to suit their purposes. The most important distinction is not between the victors and victims, but between those who might shape the master narratives that structure our reality and those who cannot. There is a difference between being a loser and being powerless in the manner that I am pointing out. The acquiescence of much of the United States to the Lost Cause mythology of the South, which denies the importance of slavery to the buildup of the Civil War and extolls the “virtues” and glamour of the antebellum South, which Reiff himself cites as a dangerous use of memory, is a case in point.⁴⁹⁴ It should also be pointed out that some members of groups allowed to share in shaping master narratives—who can be victors (or victims in the case of the Holocaust)—might have more sway than others. In other words, individuals do not have the same experiences, and sometimes more uncomfortable, unassimilable or controversial aspects of their stories are papered over. This does not

⁴⁹⁴ David Reiff. “Footprints in the Sand of Time, and All That”. In *In Praise of Forgetting: Historical Memory and Its Ironies*, 14-16. (New Haven: Yale University Press, 2016). Reiff makes a short argument comparing the Dylan Roof mass shooting to the lack of the well of memory for King Phillip’s War, which slaughtered Native American’s; his thought experiment fails for an important reason. The high visibility of African-Americans as a racial group, which is inextricably tied to the function of African-Americans in anti-black racism and white supremacy, is precisely what produced Roof’s mass shooting and the spectacular racist violence they have been subject to throughout American history. That Racial violence has not produced consistently in the same manner for Native Americans as African-Americans because their function in racist ideology is fundamentally different. In this sense, Reiff’s experiment is faulty. The thought experiment points out what groups choose to “remember” from historical events is arbitrary. But his thought experiment inadvertently points out however, that meaning in general—historical or otherwise, is arbitrary.

however, negate the previous argument. Some uses of collective memory—which, as I stated above is history’s double and not its nemesis—are simply more moral than others, and accepting that is not an invitation for the flood gates of relativism to open. The “demanding” and “outward-looking” histories of Reconstruction written by scholars like W.E.B. Dubois did nothing to stop Lost Cause mythology from lodging in the mind of Americans; these works never received the high praise and attention of those historical tomes about the Civil War that were mere descriptions of generals and battles. Facing “history squarely” in some cases may require that Americans go through memorials like The National Memorial for Peace and Justice first, which is to say that they must go back the way they came.

In 2008, the Emmett Till Memorial Commission installed a memorial on the Tallahatchie River in Mississippi in the place where Till’s body was recovered in 1955. It has since been repeatedly riddled with bullets by vandals; members of white fraternities have posed next to their handiwork for photographs, smiling at the camera with guns in hand.⁴⁹⁵ They are terrifying. A simple text marker with no visual accompaniment was somehow made to stand-in for a body. This is how deep and unyielding the psychology of lynching is in the American psyche and how essential the production of the lynching photograph is to it. Recently, the sign was the first of its kind to be made bullet proof. It became part of the memorial, a stark reminder that, in the case of lynching and the shadow it casts both backwards and forwards in time, African-Americans would like nothing more than the

⁴⁹⁵Debbie Elliott. “‘Why Don’t Y’all Let That Die?’ Telling The Emmett Till Story In Mississippi.” NPR. NPR, August 28, 2019. <https://www.npr.org/2019/08/28/755024458/why-don-t-y-all-let-that-die-telling-the-emmett-till-story-in-mississippi> ; “Vandalized Sign: Emmett Till.” *Emmet Till Interpretive Center*. Accessed February 1, 2020. <https://www.emmett-till.org/emmett-till-challenge>.

privilege of forgetting. The menace of racism, not the narcissistic drive of permanence, refuses to let them.

CONCLUSION

CONFRONTING LYNCHING

“TRUTH AND RECONCILIATION ARE SEQUENTIAL”.

- THE EQUAL JUSTICE INITIATIVE

Over 200 anti-lynching bills were introduced into the United States Congress. None have ever become law. In 2005, the United States Senate officially apologized for failing to pass a law making lynching a federal crime. The apology came 83 years after Southern democrats blocked the Dyer Anti-Lynching Bill in 1922 by filibuster.⁴⁹⁶ A separate bill introduced in 1934 was also defeated in the senate.⁴⁹⁷ It was not the shame of failing to act alone that inspired the 2005 apology, it was in large part a reaction to the existence of lynching photographs.

The senators who sponsored the 2005 bill, Mary Landrieu, a Louisiana Democrat, and George Allen, a Virginia Republican, proposed the bill after viewing James Allen’s text on his collection of lynching photographs *Without Sanctuary: Lynching Photography in America*.⁴⁹⁸ In a very real sense, the apology was a reaction to the shame of the existence of lynching photographs, not merely a reaction to the fact that lynching occurred in the United States with no federal action. It should be noted that although “no lawmaker

⁴⁹⁶ “NAACP History: Dyer Anti-Lynching Bill.” NAACP. Accessed April 23, 2020. <https://www.naACP.org/naACP-history-dyer-anti-lynching-bill/>.

⁴⁹⁷ “NAACP History: Costigan Wagner Bill.” NAACP. Accessed April 23, 2020. <https://www.naACP.org/naACP-history-costigan-wagner-act/>.

⁴⁹⁸ “Senate Apologizes for Inaction on Lynchings.” NBCNews.com. NBCUniversal News Group, June 14, 2005. http://www.nbcnews.com/id/8206697/ns/us_news-life/t/senate-apologizes-inaction-lynchings/.

opposed the measure...20 of the 100 senators had not signed a statement of support of it shortly before a vote was taken on a nearly empty Senate floor.”⁴⁹⁹ Antilynching policy, it seems, is still an anathema to a large swath of elected officials and the voting public in the United States. The bill was perceived as risky enough for 20 senators to decline to publicly support it by giving it their signatures.

Lynching photographs continue to be massively influential in public discourse. While that influence has translated into an official apology, it has not translated into the passing of a bill that makes lynching a federal crime. The Emmett Till Antilynching Act, which seeks to “establish a new criminal civil rights violation for lynching” passed the House in early 2020.⁵⁰⁰ It is awaiting reconciliation with another related antilynching bill that has been passed by the Senate.⁵⁰¹

It has been said that in 2016 we entered the Post-truth era, an era defined by misinformation spread through media and the inability to distinguish between truth and lies. This “Post-truth” era has resulted in increased political polarization and decreased trust in institutions. We are at a moment of extreme fear, isolation, and widespread ignorance in this history of the United States. “White” Americans in particular have become spreaders and consumers of misinformation on cable news networks and online, though the entire nation is drowning in distortions.

⁴⁹⁹ Ibid.

⁵⁰⁰ Bobby L. Rush. “H.R.35 - 116th Congress (2019-2020): Emmett Till Antilynching Act.” Congress.gov, February 27, 2020. <https://www.congress.gov/bills/116/congress/house-bills/35>.

⁵⁰¹ Clare Foran. “House Passes Bill to Make Lynching a Federal Crime in Historic Vote.” CNN. Cable News Network, February 26, 2020. <https://www.cnn.com/2020/02/26/politics/house-vote-antilynching-legislation-federal-crime/index.html>.

As a nation, we must consider how the epistemological construct of race was a kind of dress rehearsal for the Post-truth era. Lynching offers a particularly instructive example because of the ways many “white” Americans attempted to control aspects of the lynching narrative. The networks and nodes of circulation that spread lies and misinformation about the victims of lynching were spread largely through different forms of media. Some forms of media were circulated in clandestine, underground networks, others pushed the racist narrative of “negro guilt” through more “legitimate” sources. From newspaper accounts to the meticulously constructed photographs of perpetrators’ tortured victims that were circulated far beyond the scene of the crime, to the victims they chose not to photograph, to the messages scrawled on the back of postcards and the front of photographs, the attempt to deform reality to suit ideology is not a new phenomenon among Americans.

Perpetrators of lynchings selected what facts suited them and what facts did not. They then disseminated their own narrative without regard to the truth. Racists believed *in* the guilt of African-Americans, not *that* they were guilty. Belief “in” is not falsifiable.⁵⁰² African-American guilt was to perpetrators more like a religious belief system than based on observable facts.⁵⁰³ It was a forgone conclusion that only needed to be confirmed by newspaper accounts, photographs, postcards, and eventual retellings. The logic of the

⁵⁰² H. H. Price. “Belief ‘In’ and Belief ‘That’ 1: Religious Studies.” Cambridge Core. (Cambridge University Press, October 24, 2008). <https://doi.org/10.1017/S0034412500002304>.

⁵⁰³ Orlando Patterson has written extensively on the literal “civil religion” that developed in the New South by merging Lost Cause ideology and Evangelical Christianity, as exemplified by the burning cross. After slavery ended African-Americans, according to Patterson, became viewed as satanic but at the same time “sacrificial lambs” to be lynched for the South’s redemption. See *Rituals of Blood: Consequences Of Slavery In Two Centuries*, page 208.

Post-truth era, if one may call it that, at the very least runs parallel to the dysfunctional logic of racism.

James Cameron, the only known survivor of a lynching attempt, was 91 years old at the time of the official Senate apology for failing to pass an antilynching bill.⁵⁰⁴ Cameron was present on Capitol Hill at the time of the vote, along with a large group of descendants of lynching victims. He was measured in his praise, saying, “[t]he apology is a good idea, but it still won’t bring anyone back. I hope that the next time it won’t take so long to admit to our mistakes.”⁵⁰⁵ What Cameron alludes to here is the difference between apology and atonement.

An apology is associated with admitting wrong in common parlance, but the word apology comes to the English language by way of Latin (*apologia*) and Greek (*ἀπολογία*).⁵⁰⁶ The word was originally conceived of as a speech or defense. Consider this definition from the *Oxford English Dictionary*: “the pleading off from a charge or imputation, whether expressed, implied, or only conceived as possible; defence of a person, or vindication of an institution, etc., from accusation or aspersion.”⁵⁰⁷ In other words, an apology exists as a kind of exchange. For the apologist’s plea, they are free from aspersion—though not necessarily cleared of wrongdoing. Atonement, on the other

⁵⁰⁴ “Senate Apologizes for Inaction on Lynchings.” NBCNews.com. NBCUniversal News Group, June 14, 2005. http://www.nbcnews.com/id/8206697/ns/us_news-life/t/senate-apologizes-inaction-lynchings/.

⁵⁰⁵ “Senate Apologizes for Inaction on Lynchings.” NBCNews.com. NBCUniversal News Group, June 14, 2005. http://www.nbcnews.com/id/8206697/ns/us_news-life/t/senate-apologizes-inaction-lynchings/.

⁵⁰⁶ “apology, n.” OED Online. March 2020. (Oxford University Press).

<https://www.oed.com/view/Entry/9332?rskey=iZ3Uu8&result=1> (accessed April 23, 2020).

⁵⁰⁷ Ibid.

hand, has more to do with being made whole.⁵⁰⁸ Atonement is more concerned with reconciliation and the restoration of a broken relationship. Admitting guilt is one part of atonement, but cleansing oneself of the cause of that guilt is its foundation. That sort of cleansing comes only through truth-telling, and the recognition that what we “see” is deeply affected by the often-unexamined categories we use to understand the world.

Part of this project was motivated by the desire to bridge the gap between the reparative work of atonement and the critical work of historiography. Further, I hope that *Lynching and the Archive: A History* makes clear the ways that these two usually very separate modes of working are intimately connected. Finally, it is my hope that this text has successfully suggested a way forward through a fog of racism, ignorance, and indifference.

⁵⁰⁸ “atonement, n.”. OED Online. March 2020. (Oxford University Press).
<https://www.oed.com/view/Entry/12599?redirectedFrom=atonement> (accessed April 23, 2020).

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