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Toward a Phenomenology of Racialized Police Violence

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Toward a Phenomenology of Racialized Police Violence

DISSERTATION

submitted in partial satisfaction of the requirements
for the degree of

DOCTOR OF PHILOSOPHY

in Criminology, Law and Society

by

Peter Augustine Hanink

Dissertation Committee:
Professor Richard McCleary, Chair
Professor Charis E. Kubrin
Dean L. Song Richardson

2018

DEDICATION

For Sasha, with love and gratitude

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Acknowledgements

Curriculum Vitae

Peter Hanink

EDUCATION

2018   **Ph.D.**, Criminology, Law and Society**,** *University of California, Irvine*
             Dissertation: Toward a Phenomenology of Racialized Police Violence
             Committee: Richard McCleary (chair), Charis Kubrin, L. Song Richardson

2012   **M.P.A.**, Public and Non-Profit Management and Policy**,** *New York University*

2009   **J.D.,** *Brooklyn Law School*

2000   **B.A.**, Political Science with Honors, *Loyola Marymount University*
             Minors in Economics and Asian & Pacific Studies
             Magna Cum Laude

RESEARCH INTERESTS

Race, Poverty, Policing

PUBLICATIONS (PEER REVIEWED)

2018   Ward, G., Verma, A. & **Hanink, P.** "Eating Their Own: Police Responses to
             Excessive Use of Force." (under review)

2013   **Hanink, P.** (2013). Don't Trust the Police: Stop Question Frisk, CompStat,
             and the High Cost of Statistical over-Reliance in the NYPD. *Journal of the
             Institute of Justice and International Studies*, 13, 99.

BOOK CHAPTERS, ENCYCLOPEDIA ENTRIES, ETC.

2017   **Hanink, P.** "Prison Architecture," in Kerley, K. (ed.) (2017) *The Encyclopedia of
             Corrections*, Beverly Hills, CA: Wiley-Blackwell

2017   **Hanink, P.** "Shock Probation," in Kerley, K. (ed.) (2017) *The Encyclopedia of
             Corrections*, Beverly Hills, CA: Wiley-Blackwell

2016   Ward, G. and **Hanink, P**. "Deliberating Racial Justice: Towards Racially
             Democratic Crime Control" in J.P. Jackson & J. Jacobs (Eds.) (2016) *Routledge
             Handbook of Criminal Justice Ethics*, Routledge.

2015   **Hanink, P.** "Urban Uprisings," in Wherry, F. F., Schor, J. B., & Schor, M. J. B.
             (Eds.) (2015). *The SAGE Encyclopedia of Economics and Society*. SAGE
             Publications.

2015   **Hanink, P.** "B Movies," in Wherry, F. F., Schor, J. B., & Schor, M. J. B. (Eds.)
             (2015). *The SAGE Encyclopedia of Economics and Society*. SAGE Publications.

2015   **Hanink, P.** "SAT Preparation," in Wherry, F. F., Schor, J. B., & Schor, M. J. B. (Eds.) (2015). *The SAGE Encyclopedia of Economics and Society*. SAGE Publications.

BOOK REVIEWS

2017   **Hanink, P.** Book Review of Bryan Stevenson, *Just Mercy: A Story of Justice and Redemption*, Spiegel & Grau, 2014 in *Punishment and Society* (2017)

2016   **Hanink, P.** Book Review of Naomi Murakawa, *The First Civil Right: How Liberals Built Prison America*, Oxford University Press, 2014 in *Social Justice* Vol. 43, No. 2 (2016).

2016   **Hanink, P.** Book Review of Naomi Zack, *White Privilege and Black Rights: The Injustice of U.S. Police Racial Profiling and Homicide,* Rowman & Littlefield, 2015 in *Criminal Law and Criminal Justice Books*, September 2016

2016   **Hanink, P.** Book Review of Anthony Stanford, *Copping Out: The Consequences of Police Corruption and Misconduct,* ABC-CLIO, 2015 in *Criminal Law and Criminal Justice Books*, March 2016

PRESENTATIONS

2018   Hanink, P. "The Veil of Darkness Revisited" presented at The American Society of Criminology Conference, Atlanta, GA, November 14 – 17, 2018.

2018   Hanink, P. "A Little Birdy Told Me: An Analysis of Social Media Discourse Following the Death of Michael Brown" presented at UC Irvine Associated Graduate Students Symposium, Irvine, CA, April 20, 2018.

2018   Hanink, P. "An Analysis of Social Media Discourse Around Police Use of Force" presented at The Western Society of Criminology Conference, Long Beach, CA, February 1-3, 2018.

2017   Hanink, P. "The Social Ecology of Over-policing: A Study of Police Stops In A Mid-Sized American City" presented at The American Society of Criminology Conference, Philadelphia, PA, November 15 - 18, 2017.

2017   Hanink, P. "The Meaning of Racialized Police Violence" presented at American Sociological Association Conference, Montreal, QC, August 12-15, 2017.

2017   Hanink, P. "In Search of The Reasonable Officer: Is It Time to Abandon the Objective Reasonableness Standard in Excessive Force Cases?" presented at Society for the Study of Social Problems Conference, Montreal, QC, August 11-13, 2017.

2017   Ward, G., Verma, A. & **Hanink, P**. "Eating Your Own: The Law and Politics of Police Intervention in Police Officer Misconduct" presented at The Law & Society Annual Conference. Mexico City, Mexico, 20-23 June, 2017.

2016   Hanink, P, Ward, G. & Verma, A. "Eating Their Own: Police Responses to Excessive Use of Force" presented at The American Society of Criminology Conference, New Orleans, LA, November 16-19, 2016.

2016   Renner, M. & **Hanink, P**. "Reliability & Validity of Three Measures of Police Homicide" presented at The American Society of Criminology Conference, New Orleans, LA, November 16-19, 2016.

2016   Hanink, P. "Towards a Phenomenology of Police Violence" presented at The Law & Society Association Conference, New Orleans, LA, June 2-5, 2016.

2016   **Hanink, P**. & Renner, M. "Crowd Computing: An Analysis of the Validity and Reliability of Ad Hoc Datasets of Police Killings" poster presented at UCI Social Ecology Graduate Student Poster Session, March 3, 2016.

2016   Renner, M. & **Hanink, P**. "A Study of Police-Involved Homicides Employing Unofficial, Crowd-Sourced Data" presented at The Western Society of Criminology Conference, Vancouver, BC, February 4-6, 2016.

2015   Hanink, P. Invited critic, author-meets-critics session on Naomi Murakawa, *The First Civil Right: How Liberals Built Prison America* at The American Society of Criminology Conference, Washington, DC, November 17-21, 2015.

2015   Renner, M. & **Hanink, P**. "Crowd Computing: An Analysis of the Validity and Reliability of Ad Hoc Datasets of Police Killings" poster presented at The American Society of Criminology Conference, Washington, DC, November 17-21, 2015.

2015   Hanink, P. "Abuse of Power and the Power to Abuse: Do Complaint Processes Reduce Incidents of Police Abuse of Force?" presented at The Society for the Study of Social Problems Conference, Chicago, IL, August 21–23, 2015.

2014   Hanink, P. "Light Rail or Loot Rail? Measuring the Impact of the Los Angeles Metrorail Expansion on Crime in Surrounding Neighborhoods" presented at The American Society of Criminology Conference, San Francisco, CA, November 19–22, 2014.

2014   Hanink, P. "Looking to the Future: A View of Police Practice." Panel presentation at The New Narratives Series: Policing and Race Matters, Irvine, CA, November 13, 2014.

2014 Hanink, P. "A Police Force of Your Peers: The Impact of Minority Representation on Police Mistrust" presented at The Society for the Study of Social Problems Conference, San Francisco, CA, August 15–17, 2014

2014 Hanink, P. "Spare the Rod: Examining the Impact of the Complaint Process on Reducing Police Abuses of Force" presented at The Western Society of Criminology Conference, Honolulu, HI, February 6-8, 2014.

2014 Hanink, P. "Don't Trust the Police: Race, Place, & Legitimacy" presented at a recruitment event showcasing current graduate student research, Irvine, CA, March 3, 2014.

2013 Hanink, P. "Don't Trust the Police: Race, Place, & Legitimacy" presented at The American Society of Criminology Conference, Atlanta, GA, November 20-23, 2013

2013 Hanink, P. "Don't Trust the Police: Race, Place, & the Crisis of Legitimacy in the Criminal Justice System" presented at Police, Prisons, and Power: Interdisciplinary Perspectives on Criminal Justice Conference, New York, NY, April 12, 2013.

TEACHING EXPERIENCE
UCI = University of California, Irvine; CPP = California Polytechnic University, Pomona; CSULB = California State University, Long Beach
* indicates presented at least one lecture during the course

FA 2018 Instructor, **Criminal Justice Research Methods** **CSULB**

FA 2018 Instructor, **Criminal Justice System in Society** **CSULB**

FA 2018 Guest Lecturer, **Criminology: Macro Approaches *** **UCI**
    Supervisor: Charis Kubrin, Ph.D.

FA 2018 Guest Lecturer, **Crime Measurement *** **UCI**
    Supervisor: Richard McCleary, Ph.D.

FA 2018 Teaching Assistant, **Intro to Criminology, Law & Society *** UCI
    Supervisor: Ana Muniz, Ph.D.

SU 2018 Instructor, **Fundamentals of Criminology, Law & Society** UCI
SP 2018 TA, **Intro to Criminology, Law & Society *** **UCI**
    Supervisor: Ana Muniz, Ph.D.

WI 2018 Instructor, **Research Methods in Sociology** **CPP**

FA 2017	Instructor, **Criminology**	**CPP**
FA 2017	TA, **Community Context of Crime** Supervisor: Elliott Currie, Ph.D.	**UCI**
FA 2017	Guest Lecturer, **Criminology: Macro Approaches *** Supervisor: Charis Kubrin, Ph.D.	**UCI**
SU 2017	Instructor, **Intro to Criminology, Law & Society**	**UCI**
SP 2017	TA, **American Law** Supervisor: Hillary Berk, Ph.D., J.D.	**UCI**
SP 2017	Guest Lecturer, **Issues in Policing *** Supervisor: Richard McCleary, Ph.D.	**UCI**
WI 2017	TA, **Family Law *** Supervisor: Hillary Berk, Ph.D., J.D.	**UCI**
FA 2016	Guest Lecturer, **Crime Measurement *** Supervisor: Richard McCleary, Ph.D.	**UCI**
FA 2016	TA, **Naturalistic Field Research *** Supervisor: Jennifer Rinehart, Ph.D.	**UCI**
SU 2016	Instructor, **Intro to Criminology, Law & Society**	**UCI**
SP 2016	Guest Lecturer, **Issues in Policing *** Supervisor: Richard McCleary, Ph.D.	**UCI**
SP 2016	TA, **Ethics and Politics of Justice *** Supervisor: Geoff Ward, Ph.D.	**UCI**
WI 2016	Guest Lecturer, **Social Control of Delinquency *** Supervisor: Geoff Ward, Ph.D.	**UCI**
WI 2016	TA, **Crime & Social Deviance** Supervisor: Henry Pontell, Ph.D.	**UCI**
FA 2015	Guest Lecturer, **Crime Measurement *** Supervisor: Richard McCleary, Ph.D.	**UCI**
FA 2015	TA, **Legal Institutions and Society** Supervisor: William Thompson, Ph.D.	**UCI**
SP 2015	Instructor, **Intro to Criminology, Law & Society**	**UCI**

WI 2015	TA, **Crime & Social Deviance**	**UCI**
	Supervisor: Henry Pontell, Ph.D.	
FA 2014	TA, **Police, Courts, and Corrections**	**UCI**
	Supervisor: Paul Jesilow, Ph.D.	
SU 2014	TA, **Forensic Psychology ***	**UCI**
	Supervisor: Michael Flesock Ph.D.	
WI 2014	TA, **Naturalistic Field Research**	**UCI**
	Supervisor: Mona Lynch, Ph.D.	
FA 2013	Guest Lecturer, **Crime Measurement ***	**UCI**
	Supervisor: Richard McCleary, Ph.D.	
FA 2013	TA, **Social Control of Delinquency ***	**UCI**
	Supervisor: Geoff Ward, Ph.D.	
SU 2013	TA, **Crime Measurement ***	**UCI**
	Supervisor: Richard McCleary, Ph.D.	
SP 2013	TA, **Intro to Criminology, Law & Society**	**UCI**
	Supervisor: Teresa Dalton, Ph.D., JD	
WI 2013	TA, **Prisons, Punishment, & Corrections ***	**UCI**
	Supervisor: Susan Turner, Ph.D.	
FA 2012	TA, **Juvenile Delinquency ***	**UCI**
	Supervisor: Cheryl Maxson, Ph.D.	

RELATED WORK EXPERIENCE

2017 - 18 Subject Matter Expert and Consultant on police training and biased policing
Mississippi ACLU

2015 - 17 Subject Matter Expert and Consultant on issues involving racial profiling
Colorado ACLU

2014 Graduate Student Researcher, *Southern California Regional Progress Report: 2014.*
Metropolitan Futures Initiative. PI: John Hipp, Ph.D.

GRANTS, FELLOWSHIPS, AND AWARDS

2018 Summer Research Grant ($900)
Department of Criminology, Law & Society, *University of California, Irvine*

2018   Departmental Commendation Award ($500)
Department of Criminology, Law & Society, *University of California, Irvine*

2017   Dean's Dissertation Writing Fellowship ($12,614.50)
School of Social Ecology, *University of California, Irvine*

2017   Summer Research Grant ($3,000)
Department of Criminology, Law & Society, *University of California, Irvine*

2017   Graduate Award for Community Engagement ($1,500)
School of Social Ecology, *University of California, Irvine*

2017   Dissertation Data Collection Stipend ($1,000)
School of Social Ecology, *University of California, Irvine*

2017   Certificate of Teaching Excellence
Center for Engaged Instruction, *University of California, Irvine*

2017   CIRTL Associate Level Certification
Center for the Integration of Research, Teaching, and Learning

2016   Travel Grant ($400)
Associated Graduate Students, *University of California, Irvine*

2016   Pedagogical Fellowship ($2,000)
Center for Engaged Instruction, *University of California, Irvine*

2016   Summer Research Grant ($2,000)
Department of Criminology, Law & Society, *University of California, Irvine*

2015   Travel Grant ($400)
Associated Graduate Students, *University of California, Irvine*

2015   Summer Research Grant ($2,000)
Department of Criminology, Law & Society, *University of California, Irvine*

2014   Summer Research Grant ($3,600)
Department of Criminology, Law & Society, *University of California, Irvine*

2013   Summer Research Grant ($3,600)
Department of Criminology, Law & Society, *University of California, Irvine*

2010   The Mary Fran Myers Scholarship, Travel Award
National Hazards Workshop

2009   Public Service Award
Students for the Public Interest, *Brooklyn Law School*

2009   Moot Court Honor Society Graduation Award
Brooklyn Law School

2006   Carswell Scholar
Brooklyn Law School

2006   Lark-Barranco Scholar
Brooklyn Law School

2000   Alpha Sigma Nu
National Jesuit Honor Society, *Loyola Marymount University*

2000   Pi Sigma Alpha
National Political Science Honor Society, *Loyola Marymount University*

2000   Phi Sigma Tau
National Philosophy Honor Society, *Loyola Marymount University*

PROFESSIONAL ASSOCIATIONS
American Sociological Association
Law & Society Association
Society for the Study of Social Problems
The American Society of Criminology
The Western Society of Criminology

DEPARTMENTAL AND SCHOOL SERVICE
2016   Instructor, TA Professional Development Program (TAPDP)
2015   Comprehensive Examinations Committee (co-chair)
2015   Pedagogy Committee
2014, 15, 17 Participant, Graduate Student Recruitment Event
2013 - 16   Graduate Peer Mentor

SERVICE TO THE PROFESSION
2016   Society for the Study of Social Problems, Poverty, Class, & Inequality Division,
Student Paper Competition Award Committee member

OTHER SERVICE
2017 – 19   CC2PHD Community College Mentorship Program
2016 – 17   Board Member, Friends of Bixby Park
2012 –   Volunteer, Clean LB
2009 – 12   Board Member, Disaster Accountability Project

MEDIA APPEARANCES

2018   Damien, C. (June 28, 2018) Jeff Stone recounts Palm Springs cop murders in opposition to bill on police's use of deadly force. *Palm Springs Desert Sun.*

2017   Fry, H. (Oct. 27, 2017) Is Prop. 47, which reduced some sentences, partly to blame for more officer-involved shootings? Experts are wary about making that link. *Los Angeles Times.*

2017   Fry, H. (Sept. 23, 2017) Video shows officer fatally shooting man outside H.B. store; police chief defends actions. *Los Angeles Times.*

2017   Fry, H. (Mar. 21, 2017) Man wounded in 5th Huntington Beach police shooting this year. *Los Angeles Times.*

Abstract of the Dissertation

Toward a Phenomenology of Racialized Police Violence

By

Peter Hanink

Doctor of Philosophy in Criminology, Law and Society

University of California, Irvine, 2018

Professor Richard McCleary, Chair

This dissertation focuses upon how police officers come to perceive Blacks, specifically young Black men, as dangerous and thus justify the use of violence against them. This dissertation addresses this question in three studies employing a variety of methodological approaches. The first study examines how the history of racialized violence by the police has shaped the evolution of modern policing as an institution in the United States. This study employs a path dependent historical analysis of how policing in the United States has associated Blacks with dangerousness and criminality and has developed enduring patterns of racialized police practices as a form of social control. The second study employs a variety of quantitative methods to analyze police stops in a midsized American city to evaluate whether police behavior remains consistent with the patterns of racialized policing outlined in the first study. This study examines the contextual and temporal characteristics present in police stops to understand how certain vehicles and persons come to be labeled "suspicious." The third study examines the discourse used by police officers and other law enforcement officials around racialized police violence. This study employs qualitative discourse analysis of how police officers and other law

enforcement officials employ discursive strategies, structures, and schemes to describe, interpret, and evaluate such violence. This study will analyze textual sources including transcripts from Officer Darren Wilson's grand jury proceeding for the killing of Michael Brown in Ferguson, Missouri. Finally, this dissertation concludes by making recommendations about how police departments and the courts might address racialized police violence.

Introduction

Policing is and always has been an inherently violent profession. As agents of the state tasked with the enforcement of the law and preservation of public order, police officers are frequently called upon to use force in carrying out their duties. This is not unique to the United States. All societies, regardless of their peculiar histories or demographic makeups, grant their police officers broad coercive authority and recognize police violence as a regrettable, but necessary, feature of the job.

Throughout the history of the United States, the police have been tasked with protecting certain groups within society from other groups, often racial and ethnic minorities, who were perceived to be dangerous (Loo, 2008; Spitzer & Scull, 1977). Inextricable from this history is the association of Black Americans[1] with criminality and dangerousness and the use of racialized police violence as a tool of social control. I define racialized police violence as occurring when agents of state control, such as local police officers, target individuals for heightened suspicion and coercive treatment owing on the basis of their assigned race.

There is a wealth of literature on the disparate treatment that racial and ethnic minorities, particularly Blacks, experience during police interactions. Research in this area has traditionally focused upon policing practices such as police stops (Gelman, Fagan, & Kiss, 2007; Fagan et al,

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[1] Of course, other regions of the country that have historically had relatively small Black populations have similar histories of state violence used to control minority populations perceived to be dangerous. During much of the history of the United States, this was especially true of Native Americans.

2009; Hanink, 2013; Hecker, 1996; Langton & Durose, 2013; Laniyonu, 2017) and ameliorative efforts such as community policing (Fielding, 1995; Tilley, 2003; Przeszlowski & Crichlow, 2018; Barlow & Hickman Barlow, 1999), recruitment of traditionally underrepresented minorities, and training (Cox, 1996; Wilson et al, 2013; Maghan, 1993). There has been less attention paid in the policing literature to the emergence, evolution, and endurance of the association of Blacks[2] with criminality and dangerousness (*see* e.g. Waytz, Hoffman, & Trawalter, 2014; Goff et al, 2008) within police institutions and how racialized police violence is rationalized and justified.

This dissertation examines racialized police violence (RPV) as a situated interaction, existing within a dramatic and historical context, in which police officers interpret behaviors, individual characteristics, and environmental factors in order to decide whether a given citizen is a danger and thus whether to use violence. Put simply, of interest is how police officers come to interpret *this person, in this context, given this behavior,* as a *threat* to the officer or to other citizens such that that *violence* is justified?

This dissertation does not necessarily seek to identify the *causes* of RPV, as such, but rather to examine the *meaning* of RPV as an encounter in which police officers come to perceive young Black men as dangerous threats and police-citizen encounters are transformed into justified uses of violence. This dissertation will integrate three bodies of literature: the legitimization of state violence, police culture, and the construction of race in developing a framework for the phenomenology of racialized police violence.

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[2] This dissertation will focus on police violence against Blacks in particular. While clearly, other racial and ethnic groups have similar experiences with police violence, Blacks in the United States have a unique status in this regard as I will explicate in more detail.

The Legitimization of State Violence

Among the earliest discussions of the legitimacy of state violence were those on just war theory, which traces its roots back to the writings of Augustine of Hippo, an early Christian theologian and philosopher. Augustine argued that while killing was immoral, a war could be justified according to the principles of *jus ad bellum* ("right to war") and *jus in bello* ("right in war"). That is, a war can be justified if it is fought for a just *reason* (e.g. self-defense or defense of others) and using just *means* (e.g. the responsive violence is proportional to the aggressive violence) (Walzer, 2015). Millenia later, these two principles – just cause and just means[3] – still provide the foundation of justifications of state violence (Walzer, 2015; Johnson, 2014). Similar principles have been used to justify other forms of state violence, such as capital punishment, with Augustine again permitting capital punishment subject to *just cause* – that is, defense of society – and *just means* – that is, only as a last resort and without causing unneeded suffering (Long, 1999).

In the context of policing, these two principles of cause and means are employed when evaluating use of force and have been enshrined within the laws that govern the use of force. In *Graham v. Connor*[4], the U.S. Supreme Court held that the appropriateness of a use of force, including deadly force, is determined based upon an "objective reasonableness" standard; that is, what an "objective" police officer would consider "reasonable." The Court held that "the 'reasonableness' of a particular seizure [including one involving the use of force] depends not only on *when* it is made, but on *how* it is carried out."[5] That is, whether a use of force is justified

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[3] But, as with war, discussions of state violence are more likely to emphasize cause than means. Disproportionate violence is more likely to be justified if the cause was just.
[4] 109 S. Ct. 1865 (1989)
[5] 109 S. Ct at 1871 (1989) (emphasis in original)

depends upon whether an objectively reasonable officer would conclude that the type and degree of force employed was called for given the circumstances.

These principles may also be found in the police department policies and procedures, which dictate when and how force may be used. For example, the Seattle Police Department Manual states "An officer shall use only the force reasonable, necessary, and proportionate to effectively bring an incident or person under control, while protecting the lives of the officer or others."[6] This linking of *just cause* ("protecting the lives of the officer or others") and *just means* ("the force reasonable, necessary, and proportionate") illustrates the enduring influence of Augustine's original formulation.

What such legalistic discussions of the legitimacy of violence leave unexamined are *who* an "objective" police officer is and *what* they would consider a "reasonable" use of force in a given situation (Richardson & Goff, 2012).

Violence can come in many forms. Violence can range from the *spectacular* to the *slow* (Ward, 2014). As Ward (2014) notes, while incidents of *spectacular violence* ("dramatic" and "isolated") tend to be the ones that gain the most attention, *slow violence* ("attritional, dispersed, and hidden"), as Nixon described when developing the notion, occurs "gradually and out of sight" (Nixon, 2011, p. 2). This sort of "hidden" violence recalls Liazos' notion of covert institutional violence (1972, p. 104).

My analysis of the legitimization of state violence, specifically police violence, then will consider both the spectacular acts of violence typified by police-involved homicides or beatings, and the slow acts of violence typified by patterns of "over-policing."

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[6] http://www.seattle.gov/police-manual/title-8---use-of-force/8200---using-force

Police Culture

      Police culture refers to a set of norms and expectations that officers are introduced to as soon as they enter the academy (Chan, Devery, & Doran, 2003). Research on police culture has found a remarkable durability and ubiquity of certain of these norms and expectations. The concept of police culture includes the beliefs that officers hold about themselves, the society in which they work, and their role as crime controllers (Manning, 1977). Police culture is transmitted via the "stories, legends, [and] jokes… which through metaphor enable conceptions of competent practice to be explored prefiguratively" (Reiner, 2010: 118). Police culture has been understood as being focused upon "the preservation of a valued way of life, and the protection of the weak against the predatory" (Reiner, 2000: 89). Officers tend to view themselves as "new centurions" (Reiner, 1978) and fighters of crime (Cain, 1973; Holdaway, 1983; Smith and Gray, 1985) who are tasked with preserving social order from the dark and dangerous parts of society (Reiner, 1978). Skolnick has identified a pattern of traits associated with police officers that he terms the police officer's "working personality" (2011). This "working personality" is shaped by the danger associated with police work, the authority afforded to police officers owing to their occupation, the demands of efficiency placed upon officers, and the social isolation experienced by police officers (Skolnick, 2011).

      Police culture prizes values such as bravery and acts of heroism (Smith and Gray, 1985) even if they might be more appropriately understood as mere "bravado" (Waddington, 1999). Previous research has noted that police officers regularly share anecdotes of violent interactions with citizens (Punch, 1979; Ericson, 1982) and routinely employ swearing during such encounters to create social distance and emphasize their authority (Crank, 2004).

Police culture tends to encourage a view that members of the public are untrustworthy and dishonest (Manning, 1977; van Maanen, 1978) and that laws that govern police behavior and the judges that interpret them are too lenient on criminals, making it more difficult for police to fight crime (Punch, 1979; Graef 1989).

While police training and written policies, procedures, and codes of conduct may articulate the legal and professional duties of police officers, these official commands often contradict what officers learn "on the job."[7] Thus even when police duties exist in the "on the books," they do not necessary translate into "action."

My analysis of police culture will examine how it influences police attitudes towards RPV and limits efforts to address it.

The Construction of Race

In social scientific research, especially in the literature on policing, race is often left uninterrogated as a construct. In this dissertation, I will engage the social psychological literature on racial formation.

A wealth of studies have recognized the profound role that race plays on factors as diverse as where people live (Charles, 2003), what they do for a living (Bergmann, 1974), where and how they worship (Johnson, Matre, & Armbrecht, 1991), who is within their social networks, what level of education they obtain (Krein & Beller, 1988), how long they can expect to live (Olshansky et al, 2012), and how likely they are to be involved in the criminal justice system (Sampson and Lauritsen, 1997).

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[7] Consider the common admonition: "Once you get on the street, you will need to forget everything you learned at the academy" (Ford, 2003).

While race is often treated as if it is a discrete, biological trait akin to height, weight, or age, there is little scientific basis for such a claim (Smedley and Smedley, 2005). Rather, race is a socially constructed, ascribed identity that cannot be removed from its historical and social context (Howard, 2000). This process of racial construction begins in youth, as children learn to discern racial categories and adopt race-conscious attitudes (Quintana, 1999). A well-established body of literature suggests that all people harbor some degree of implicitly held attitudes based on race (Rudman, Feinber, & Fairchild, 2002; Harris, 2007). However, recent research suggests that such implicit attitudes should be subdivided into implicit evaluations, which operate primarily affectively, and implicit stereotypes, which influence cognitive judgments (Amodio & Devine, 2006).

Despite the growing acknowledgement of race's socially constructed nature, race has traditionally been treated as an immutable characteristic in legal analyses (Johnson et al, 1995) and accepted as a fixed variable in the policing literature (Donohue & Levitt, 2001). In so doing, studies of police violence often consider the *presence* of race in incidents of violence but not the *meaning* of race to those involved in the interaction. In analyzing the social construction of race and its effect upon the development, practice, and meaning-making discourse around policing, I employ the term "racialization." Racialization refers to the process by which people are assigned to races, how societal resources are distributed among racial groups, and how such assignations and distributions are determined by law and policy (Bonilla-Silva, 2017; Oliver & Shapiro, 1995; Omi & Winant, 2014). As a concept, racialization acknowledges that race emerges from social interactions and historical events (Omi & Winant, 2014).

Finally, I employ the term "racism" in reference to a "racial ideology of a racialized social system" rather than to refer to racial discrimination in general or to refer to the internal

thoughts or beliefs of private individuals (Bonilla-Silva, 2014).

The Phenomenology of Violence

Thirty years ago, in a comment in *The Criminologist*, Manning (1989) called upon the field to take up the study of the "phenomenology of violence." Phenomenology is a branch of philosophy that has its roots in the writings of Hegel (2007), Husserl (1970), and Merleau-Ponty (1964) and which takes the structures of consciousness and experience as the objects of its study.

As such, most of the literature on the phenomenology has been philosophical in nature, and not obviously applicable to criminology. A notable exception is Denzin's study of the phenomenology of domestic family violence (1984). Denzin's approach highlights the interaction of *symbols*, *structures*, and *emotions* (1984, p. 488). This dissertation will examine the role these play within the context of RPV to demonstrate how violence against Black men is understood by those police officers who commit it as well as the society that sanctions such violence.

A phenomenological account of RPV takes as its central premise that violence is, at heart, "the attempt to regain, through the use of emotional and physical force, something that has been lost" (Denzin, 1984). So defined, a phenomenological account of RPV begins by naming, in the specific context of the police violence, what has been lost. In creating a narrative context – rife with expectations, roles, and perspectives – such an account examines the contextually derived *meanings* of these acts of violence to those who commit them. In this dissertation, I will suggest that what is lost, and what RPV seeks to regain, is *dominance*.

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Dissertation Outline

This dissertation focuses upon how police officers come to perceive Blacks, specifically young Black men, as dangerous and thus justify the use of violence against them. In addressing this central question, I will examine the following sub-questions in my three analytic studies contained in the subsequent chapters.

In Chapter Two, "A History of Racialized Police Violence," I examine how the history of racialized violence by the police has shaped the evolution of modern policing as an institution in the United States. This study employs a path dependent historical analysis of how policing in the United States has associated Blacks with dangerousness and criminality and has employed violence as a form of social control. This study consists of a review of the historical literature on the development of patterns of racialized policing in the United States. In this chapter, I examine how the institution of policing in the United States has evolved in response to threats to white social dominance.

In Chapter Three, "The Social Ecology of Racialized Policing," I examine whether police behavior, in practice, is consistent with associating Blacks with suspicion of criminality. This study employs quantitative methods to analyze whether police behavior is consistent with associating Blacks with suspicion of criminality. This study examines the contextual and temporal characteristics present in police stops in Colorado Springs, Colorado to understand how certain vehicles and persons come to be labeled "suspicious," thus initiating the police-citizen encounter. In this chapter, I examine how policing continues to serve to assert social control, and thus dominance, over Blacks through the use of racialized police practices.

In Chapter Four, "Discourses of Justification," I examine how police officers and other law enforcement officials come to make meaning of RPV using discourse. This study employs

qualitative discourse analysis of how police officers and other law enforcement officials employ

discursive strategies, structures, and schemes to justify acts of racialized police violence. This

study analyzes transcripts from official proceedings as well as books and interviews to determine

what types of official discourse are employed when confronting acts of racialized police

violence. In this chapter, I examine how police officers and other law enforcement officials

articulate their attempts to regain dominance.

Finally, in Chapter Five, I offer concluding thoughts and possible policy solutions.

Previous efforts to address racialized police violence have focused upon formal factors such as

police policies and practices while paying less attention to the role that history and culture play

in shaping the attitudes of police officers towards racialized police violence. The findings of this

project will advance the literature by exploring the role that these informal factors play in

associating Blackness with criminality and dangerousness and justifying racialized police

violence.

Chapter Two: From *Plessy* to Ferguson, Missouri – A History of Racialized Police Violence

I.   Introduction

This study examines the historic role of the police in efforts to control Black populations (with particular attention paid to suppressing Black rebellion). I examine how the specter of Black dangerousness and criminality (Loo, 2008) has been deployed to link Blackness with dangerousness and thus to justify acts of racialized police violence.

This study employs a path dependent analysis to show how the racialized history of policing in the United States has shaped the evolution of policing and continues to influence police interactions with Blacks today. Specifically, this study will identify a form of racialized policing throughout American history characterized by over- and under-policing of Blacks. By over-policing, I refer to the aggressive and disproportionate use of coercive police practices against Blacks, especially for low-level offenses such as loitering, vagrancy, and non-violent drug offenses. By under-policing, I refer to the denial of equitable police protections to Black victims of crimes. This study will demonstrate that over-policing is associated with racialized views of Blacks and dangerous and criminal and under-policing with the failure to view Blacks as deserving of equal protection under the laws. I conclude that throughout American history, these two aspects of racialized policing have coalesced in the approval, or at least tolerance, of violence by the police against Blacks, which I term racialized police violence.

In this study, I outline how policing in the United States has evolved following both self-reinforcing and reactive path dependent sequences. This analysis will examine the development of American policing through four historical periods that track the four "peculiar institutions" Wacquant identifies as defining, confining, and controlling Black Americans: chattel slavery, the Jim Crow system, the ghetto, and the remnants of the dark ghetto and the carceral apparatus

(Wacquant, 2000). In this dissertation, I will examine how each of Wacquant's peculiar institutions is associated with a corresponding stage of development in policing. While Wacquant's historical framework is not exclusively related to policing, it outlines the history of racialization of Blacks by social institutions and as such is useful in contextualizing the history of racialized policing.

In brief, this study will first examine how slave patrols (Platt, 1982; Reichel, 1992; Genovese, 1976) emerged in the South as a means of reinforcing racial dominance over Blacks and as a reaction to fear of slave uprisings. Second, following Emancipation, police departments and vigilante groups such as the Klan, often operating in conjunction with each other (Ward, 2014; Cunningham, 2009), reinforced the Jim Crow system of segregation through judicial and extra-judicial means (such as lynching) in reaction to white fear of losing social dominance to freed Blacks. Third, in the wake of the Great Migration and desegregation, police departments worked in conjunction with state sovereignty commissions (Katagiri, 2001) to reinforce a racialized social order by policing Black ghettos (themselves largely creations of intentional policies such as red-lining) and in reaction to fear of Black uprisings and riots. Fourth, in the past few decades, as part of the War on Drugs, police departments have engaged in over-policing of Black neighborhoods to reinforce notions of Black criminality and in reaction to changing demographic patterns. Finally, I will consider recent trends in policing and what they suggest about the future of racialized policing and RPV in America.

As this chapter will demonstrate, RPV is not a recent phenomenon. Nor is it created anew, *ex nihilo*, by each generation. Rather, as Marx put it, it arises from and within conditions, informed by history and race, which have been "given and handed down … from … countless dead generations" (1983, p. 287). This study will contribute to the literature on policing and

violence by examining how the use of RPV has been influenced by, and has in turn influenced, the development of policing in the United States.

II.   Methodology

This study employs a path dependent analysis to examine the development of policing in the United States. A path dependent analysis begins with the premise that "the past influences the future" (Rixon & Viola, 2015, p. 301; Sjöstedt, 2015; Mahoney, 2000, p. 507) and analyzes how the choices of actors and development of institutions are informed and constrained by previous events. As Sewell has characterized it, path dependence refers to the idea that "what has happened at an earlier point in time will affect the possible outcomes of a sequence of events occurring at a later point in time" (1996a, p. 262-63).

Mahoney (2000) has described a path dependent analysis as having three defining characteristics. First, path-dependent processes are sensitive to events that occur early in an historical sequence (Mahoney, 2000). This is to say that early stage events can play a significant role in shaping the range of future outcomes. This is reflected in Abbott's insistence that "the order of events makes a difference" (1983, p. 129) and Tilly's insight that "*when* things happen within a sequence affects *how* they happen" (1984, p. 14, emphasis in original).

Second, these early events are contingent rather than necessary (Mahoney, 2000). It is for this reason that Goldstone has, seemingly paradoxically, characterized a path dependent analysis as requiring that "outcomes are related stochastically to initial conditions" (1998, 834). That is, a sequence in which a later outcome could be completely and accurately determined from initial conditions is not amenable to a path dependent analysis. I say that this "seems" paradoxical insofar as path dependence concerns itself with tracing the effects of causes across time. However, a path dependent analysis requires following historical sequences back to a particular

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contingent event. A sequence in which all events follow necessarily from the preceding one is one that encompasses too narrow a range.

Third, following these contingent events, path-dependent sequences possess an "inertia" and thus follow "deterministic causal patterns" (Mahoney, 2000, p. 511). Path dependency suggests that the past influences the present through self-reinforcing and reactive sequences. In self-reinforcing sequences, inertia refers to the reproduction of social patterns forward in time, while in reactive sequences, inertia refers to the "reaction and counterreaction mechanisms" (Mahoney, 2000, p. 511) that causally link events and give them an "inherent logic" (Abbott, 1992, p. 445).

Self-reinforcing Sequences

In self-reinforcing sequences, social patterns, that is particular social arrangements or institutions, reproduce themselves across time. These sequences tend to be governed by "increasing returns," by which a social pattern is reproduced because the "relative benefits of the current activity compared with other possible options," or the relative costs of switching to an alternative, "increase over time" (Pierson, 2000, p. 252). In this way, self-reinforcing patterns possess inertia, in which "steps in a particular direction induce further movement in the same direction" (Pierson, 2000, p. 252). Self-reinforcing path dependent sequences are noted for reproducing institutional patterns even when more efficient (or more just) alternatives are available (Mahoney, 2000).

When examining self-reinforcing sequences, a path dependent analysis distinguishes two types of causes: "the particular circumstances which caused a tradition to be started" and "the general process by which social patterns reproduce themselves" (Stinchcombe, 1968, p. 103).

These two types may be thought of as *initial* causes, those that initiate a sequence, and *propulsive* causes, those that move a sequence forward.

Self-reinforcing sequences begin with a "turning point" (Abbott, 1997) or "critical juncture" (Collier & Collier, 1991), in which multiple possible outcomes to a particular circumstance are possible. Such turning points or critical junctures are significant insofar as once an outcome is chosen, and a self-reinforcing sequence is initiated, it is increasingly difficult to return to the initial state and select an alternative (Levi, 1997). Path dependent analysis makes use of counterfactuals, by which a potential future course of events is imagined based upon the selection of an outcome different from the actual one (Fearon, 1991). As stated about path dependency generally, such turning points or critical junctures are *contingent* events. That is, the actual outcome of a critical juncture is unknowable at the outset.

A significant feature of self-reinforcing sequences is that the social pattern survives the conditions out of which it arose. While the initial causes that create a particular social pattern in response to a critical juncture are unpredicted by theory, the propulsive causes that reproduce it are informed by theory. This again seems to present a paradox; if theory cannot explain what social patterns take hold, how does it explain their subsequent reproduction? This seeming paradox may be understood by recognizing that critical junctures by definition are those conditions in which multiple competing options are available. As Mahoney notes, subsequent to the critical juncture, options become foreclosed as the benefits of social pattern reproduction – or costs to social pattern replacement – increase, subject to increasing returns (2000, p. 516).

As noted, within a path dependent analysis, propulsive causes are explained by theory. Collins has broadly characterized sociological theories as offering four basic types of explanations: utilitarian, functional, power, and legitimation (1994). *Utilitarian* explanations

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posit that social patterns are selected by rational actors in order to maximize benefit and minimize cost. According to a utilitarian explanation, rational actors exhibit a status quo bias due to the mix of "economies of scope, the complementarities, and the network externalities that arise from a given institutional matrix of formal rules, informal constraints, and enforcement characteristics" (North, 1994, p. 192). This bias serves as the inertia which makes switching from one social pattern to another more costly, or alternately, less beneficial.

Functional explanations focus upon the role a particular social pattern serves for the larger social system in which it is located (Mahoney, 2000, p. 519). According to a functional explanation, social patterns will be selected for reproduction based upon their functionality. As long as a social pattern serves its function for the overall system, it will continue to be reproduced[8] even if it is *less functional* in the long term than alternatives (DiMaggio & Powell, 2000). Under a functional explanation, social patterns are reproduced as long as they meet the needs of the system and are resistant to change unless some historical event creates "strains" or "dysfunctions" in a system that change the system's needs (Bock, 1963; 236). Such functional explanations naturally trace their origins to Durkheim's structural-functional theories of interplay between institutions and societies (Bellah, 1959).

Power-based explanations recognize that in societies, costs and benefits are not borne evenly by all within a society, but rather are concentrated. Groups in power concentrate benefits, often at the expense of those groups that are not in power. Empowered groups use their resources to reproduce the social pattern so as to preserve their power. Given the inequality inherent to such a situation, institutional reproduction eventually leads to conflict and the termination of the

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[8] As an illustration, consider the (likely apocryphal) quotation from Oscar Wilde, "the bureaucracy is expanding to meet the needs of the expanding bureaucracy."

self-reinforcing sequence and the creation of a new sequence under a different social pattern (Eisenstadt, 1964). Such power based explanations, with their focus on inequality and conflict, are rooted in Marxian theory (Rees, 2005).

Finally, *legitimation* explanations identify the cause of the reproduction of a social pattern as the consensus acceptance of the institution as morally right. According to legitimation explanations, institutions are not reproduced because of the benefits they create for the society generally or for some group of elites. Nor are they reproduced because of the function they serve within a society. Rather, they are reproduced because society affirms their legitimacy. In a path-dependent analysis, a legitimation based self-reinforcing sequence would be characterized by a "positive feedback cycle" within which an initial determination that a social pattern is legitimate becomes a "precedent" that is carried forward (Mahoney, 2000, p. 523-24). Within such self-reinforcing systems, the basis for social reproduction is grounded in tautology; this pattern should continue because changing it would be wrong because it is legitimate.

Self-reinforcing sequences are characterized by the reproduction of social patterns. Though explanations for their reproduction are predicted by sociological theory, their origins are unpredicted, and thus contingent.

Reactive Sequences

Reactive sequences differ from self-reinforcing sequences in that they are characterized not by reproduction, but by reaction. Reactive path dependent sequences are made up of temporally causal chains of events, in which each state arises in reaction to a previous event (Abbot, 1983). In reactive path-dependent sequences, inertia involves mechanisms of "reaction

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and counterreaction" (Mahoney, 2000, p. 533) in which one event "naturally" leads to the next along a chain of causation (Abbot, 1992).

In reactive sequences, events are "connected by tight causal linkages" (Mahoney, 2000, p. 530) that possess what Griffin and Ragin describe as "inherent sequentiality (1994, p. 13). Such sequences possess what Abbott has characterized as an "inherent logic of events" (1992, p. 445), that is antecedent events create conditions against which subsequent events are reactions.

As with self-reinforcing sequences, reactive sequences arise out of a contingent event, the outcome of which is unpredictable by theory. The initial contingent event that initiates a reactive sequence may itself arise out of the conjuncture of antecedent temporal sequences (Sewell, 1996b).

Mahoney has characterized the inherent sequentiality of reactive sequences as having three features. First, initial events are "often necessary or sufficient conditions for subsequent events" (2000, p. 530). In describing such conditions, Abbott states that sufficient conditions "project forward in time," explaining how causes create effects, while necessary conditions "project backward," identifying which conditions were in fact required for the sequence to proceed as it did (1983, p. 132).

Second, events in a reactive sequence are linked by "causal mechanisms" by which "one variable exerts a causal effect on another" (Mahoney, 2000, p. 531). These causal mechanisms are by necessity informed by traditional theoretical frameworks (Mahoney, 2000). Without such a theoretical grounding, Goldstone suggests that sequences risk taking on the nature of Dr. Seuss-like children's stories reducing historical analysis to the claim that "it just 'happened to happen,' and was not very likely to happen again" (1998, p. 832 *quoting* Geisel and Geisel, 1991, p. 91). Mahoney has suggested that the theoretical frameworks most amenable to path

dependent analysis include utilitarian, functional, power, and legitimation theories previously discussed above (2000, p. 531).

Finally, for a reactive sequence to possess inherent sequentiality, there must be "clear temporal ordering" in its events (Mahoney, 2000, p. 531). Historical sociologists have borrowed the concept of "narrative" from the humanities as a tool of analysis (Aminzade, 1992; Abbott, 1992). To place an event within a temporally ordered narrative is to make that event "understandable in the context of what has happened" and thus to "give it historicity and relationality" (Somers, 1992, p. 602).

One concern when employing a path dependent analysis is defining the scope of the historical sequence. On the one hand, if the sequence is defined too narrowly, that is, if the time period under examination is too brief or the number of events too few, then the sequence can seem entirely deterministic and mechanical and the study risks producing few insights into the sequence's initial causes. On the other hand, if a sequence is defined too broadly, then there is a risk of an "infinite regress," which Mahoney defines as "perpetual regression back in time to locate temporally prior causal events" (2000, p. 527). It is for this reason that determining the contingent "conjunctural events" is necessary. In identifying such an event, the beginning of a sequence is also identified and the scope of the sequence is defined.

This study employs a path dependent analysis to study the development of policing in the United States. The history of policing will be divided into four periods: Chattel Slavery, Jim Crow, The Ghetto, and The Remnants of the Dark Ghetto and the Carceral State. These four periods are borrowed from Wacquant's four "peculiar institutions" (Wacquant, 2000). Within these four periods, I identify four historical sequences. First, an antecedent reactive sequence which I term a *political/economic sequence.* Second, an antecedent reactive sequence which I

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term a *socio-cultural sequence*. Third, an antecedent self-reinforcing sequence which I term a

racialization sequence. And finally, the primary reactive sequence under investigation which I

term a *racialized policing sequence*. These sequences are illustrated in Figure 2.1.
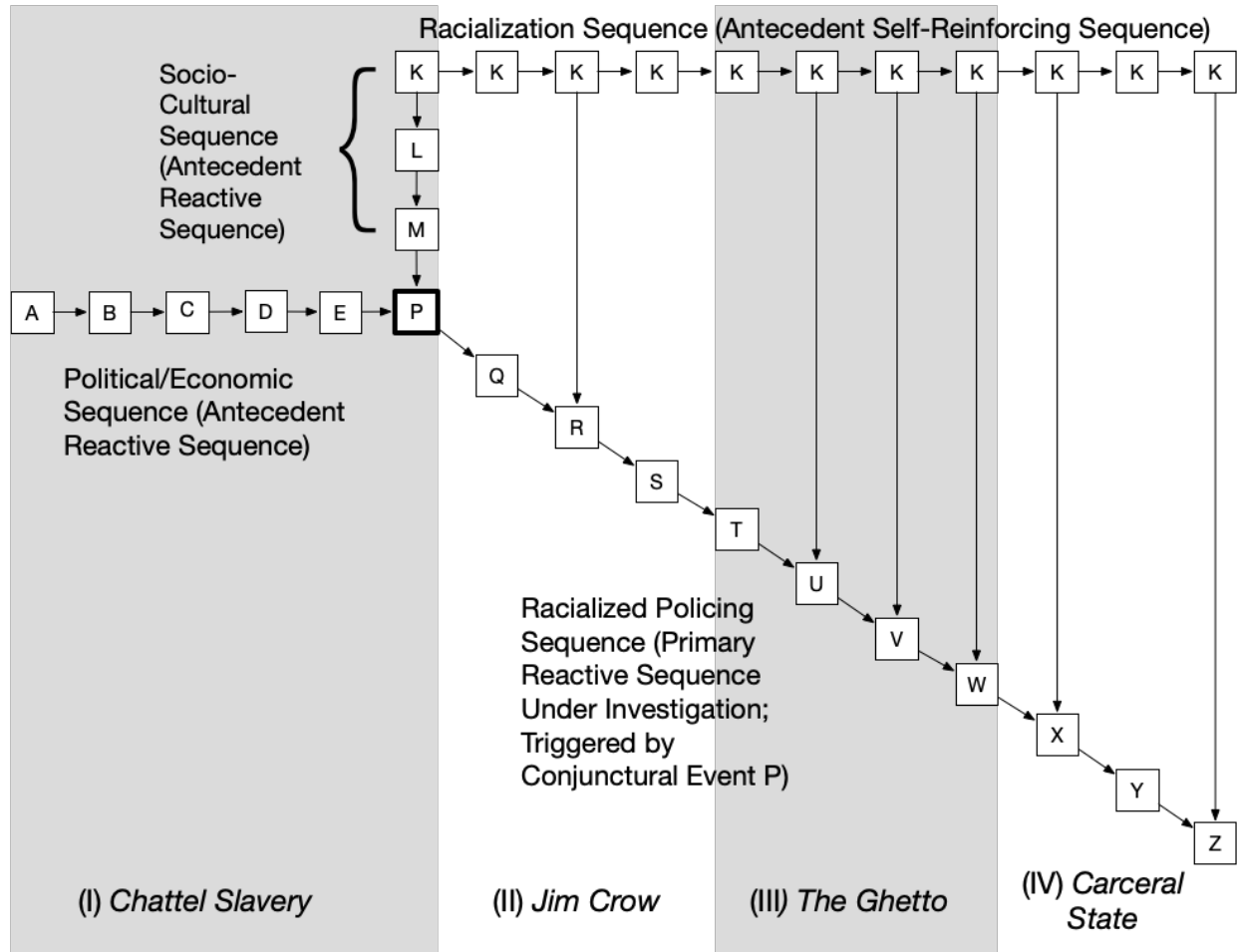
Key:
A: Southern Agricultural Labor Needs
B: Chattel Slavery
C: Slave Codes
D: Rise of Manufacturing in the North
E: Increased Rivalry Between the North and South

K: Association of Blackness with Dangerousness
L: Enlightenment
M: Abolition Movement

P: Civil War/Emancipation
Q: Reconstruction
R: Jim Crow/Segregation
S: Great Migration
T: Desegregation/Civil Rights Movement
U: White Flight
V: Urban Decay
W: Urban Riots/Civil Unrest
X: War on Drugs/Tough on Crime
Y: Urban Renewal/Gentrification
Z : Broken Windows/Proactive Policing

Figure 2.1 – Path Dependent Diagram of Racialized Policing in the United States

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III.   Analysis and Findings

Period One – Chattel Slavery (1600 – 1860s)

Southern Agricultural Labor Needs

The region in the Southern United States that would become known as the Black Belt is one of the most fertile on the planet (Wright, 1970; Wimberley & Morris, 1997). Owing to its unique geological history, the soil is particularly well suited for cultivation of certain types of crops such as cotton and tobacco. Shortly after the founding of Jamestown in 1607, European colonists realized the potential of the region. [Figure 2.1 – Event A] Initially, colonists attempted to meet their labor needs using imported labor, largely poor whites, mostly coming from England, Scotland, Ireland, and Germany (Galenson, 1984). By the beginning of the eighteenth century, Galenson has argued, the labor market in Europe had altered such that the cost to recruit indentured servants was greater than the cost to capture and transport slaves from Africa (1984, p. 12). The shift from indentured servitude to chattel slavery in the American South was hastened by Bacon's Rebellion in 1676, as plantation owners became increasingly worried about a restive, landless white population (Morgan, 1975; Breen, 1973; Allen, 1975).

Chattel Slavery

In reaction to these agricultural labor needs, European countries and American colonists increasingly began to rely upon enslaved Black Africans transported across the Atlantic via the Middle Passage. While Blacks first arrived in British North America in 1619, they were classed as indentured servants, who were freed after their terms of indenture had ended (Franklin, 1974). By 1660 however, the first law regarding slavery was passed in Virginia (Finkelman, 1986) [Figure 2.1 – Event B].

Slave Codes

From its beginnings in the 17th century, slavery was justified and rationalized on the basis that Black Africans were inferior to white Europeans. These negative views were enshrined in a series of laws both before and after the American Revolution that have come to be known as the "Slave Codes" [Figure 2.1 – Event C]. In 1667 the British Parliament passed "An Act to Regulate the Negroes on the British Plantations," which described Black Africans as of a "wild, barbarous, and savage nature, to be controlled only with strict severity" (Franklin, 1974: 51).

This association of Blackness with dangerousness would continue throughout American history. Indeed, it initiated a self-reinforcing sequence which I term a racialization sequence [Figure 2.1 – Event K]. The economic and political incentives in the American South would remain strong enough that the nascent United States would allow chattel slavery to continue, which in turn, would encourage the continued racialization of Blacks as inferior, inhuman, and dangerous.

Slave Patrols and the Formation of Police Departments

Policing in the South traces its origins to the Slave Patrol (Platt, 1982). First established in the Carolinas in 1704, the slave patrol was tasked with returning fugitive slaves, suppressing slave revolts, and disciplining disobedient slaves often through the use of violence and "terror" (Genovese, 1976, p. 618; Reichel, 1992). Prior to the establishment of formal slave patrols, private white citizens were required to police Blacks. For example, in South Carolina, in 1690 white citizens could be fined 40 shillings[9] for failing to "arrest and chastise any slave out of his home plantation without a ticket" (Henry, 1914).

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[9] Approximately $650 in 2018 (Historical Currency Conversions, 2018).

Slave patrols were publicly funded and largely staffed by poor whites (Genovese, 1976). Rather than informal, ad hoc bands of vigilantes, these patrols were often so large and well resourced, that Walker has characterized them as the "first modern police forces in this country" (1992, p. 6).

The development of policing in the South is inextricably linked to its slave patrol origins. As Williams and Murphy note, by 1837, the Charleston, South Carolina Police Department, the primary function of which was to serve as a slave patrol, had 100 officers and was the largest item on the city's budget (1976). Likewise, the primary function of the Texas Rangers, the first police force in that state, was the retrieval of slaves who were attempting to flee to Mexico (Samora, Bermal, and Pena, 1979).

These patrols were granted broad powers. Williams and Murphy characterize their ambit as including the ability

> to enter any plantation and break open Negro houses or other places where slaves were suspected of keeping arms; to punish runaways or slaves found outside their plantations without a pass; to whip any slave who should affront or abuse them in the execution of their duties; and to apprehend and take any slave suspected of stealing or other criminal offense, and bring him to the nearest magistrate (1990, p. 4).

Besides returning the human property of slave-owners, the slave patrol's chief function was the preservation of social order against revolts and uprisings. In passing the Negro Act of 1740, which created the state's slave patrol, the South Carolina legislature noted

> Foreasmuch as many late horrible and barbarous massacres have been actually committed and many more designed, on the white inhabitants of this Province, by negro slaves, who are generally prone to such cruel practices, which makes it highly necessary that constant patrols should be established (Cooper, 1838, p. 568).

South Carolina's Negro Act was a direct response Cato's Rebellion, a large slave revolt in Stono, South Carolina in 1739 in which roughly 20 whites and 40 Blacks were killed (Smith, 2005).

Similarly, Georgia's 1757 slave patrol law was enacted "for the better keeping of Negroes and …

prevention of any Cabals, Insurrections or other Irregularities amongst them" (Candler, 1910, p.

225). The threat to the social dominance of whites in the South that such rebellions posed was

used to justify the formation of slave patrols and the terrifying acts of violence these patrols

inflicted upon Blacks.

Southerners were especially fearful of slave revolts in cities such as Charleston as slaves

could more easily come together in larger groups and associate with free Blacks than they could

on plantations (Takaki, 1993). As Hawkins and Thomas note, whites were apprehensive of free

Blacks in cities "because they suspected them of foul play and conspiracy" (1991, p. 69). This

policing of Blacks' presence in public places is a key feature of the "over-policing" aspect of

racialized policing.

Southern cities thus severely limited the freedoms of even free Blacks. As Berlin

summarizes

> Southern law presumed all Negroes to be slaves, and whites systematically barred free
> Negroes from any of the rights and symbols they equated with freedom. Whites legally
> prohibited Negro freemen from moving freely, participating in politics, testifying against
> whites, keeping guns, or lifting a hand to strike a white person…. In addition they
> burdened free Negroes with special imposts, barred them from certain trades, and often
> tried and punished them like slaves. To enforce their proscriptive codes and constantly
> remind free Negroes of their lowly status, almost every State forced free Negroes to
> register and carry freedom papers, which had to be renewed (1975, p. 316).

The combination of legal restrictions and presumed status presage the conditions that

Blacks would face in the Jim Crow era.

Rise of Manufacturing in the North

The full-scale adoption of chattel slavery in the South to meet agricultural demands was

not matched in the North. The climate and soil conditions were far less amenable to agriculture

on the scale present in the South. One Northern reverend opined that "the winter [in New England] was always unfavourable to the African constitution…. For this reason, white labourers were preferable to blacks; and as whites were more numerous, there was not much encouragement to the importation of blacks, nor were they ever so prolific here as the white" (Belknap, 1795). This is not to suggest that slavery was unknown in the North. Indeed, Northern slave-owners employed African slaves in a variety of industries from agriculture to skilled trades such as woodworking and shipping (Greene, 1942, p. 100-23).

Nevertheless, the peculiar institution never took root in the North to the extent that it had in the South (Litwack, 2009). While many Northern traders participated in the Slave Trade, the primary drivers of the Northern economy were trade and nascent manufacturing [Figure 2.1 – Event D].

Policing in the North traces its origins to The Watch, which was made up of volunteers who operated at night and warned citizens of dangers. By 1700, Boston, Philadelphia, and New York had established night watches, which were supplemented in subsequent decades by day watches (Gaines, Kappeler, and Vaughn, 1999). While it had little formal authority to enforce laws, the Watch laid the foundation for the formal policing systems that followed it outside of the South.

Increased Rivalry Between the North and the South

As Northern manufacturing continued to develop beyond agriculture, the North came to rival the South in terms of economic power [Figure 2.1 – Event E]. This rivalry was not merely an economic one. At the eve of the American Revolution, New England and the Middle States, which would become "the North" had population parity with the states that would make up "the South" (U.S. Bureau of the Census, 1975).

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The Enlightenment, Revolution, and Abolitionism

At the same time, a cultural change was occurring. As the newly independent United States came to seek its ethos, the Founding Fathers adopted the language and ideas of the Enlightenment, incorporating notions such as liberty and equality into the new nation's founding documents [Figure 2.1 – Event L]. This initiated a reactive sequence which I term a socio-cultural sequence which would culminate in abolitionism.

These enlightenment principles conflicted at a basic level with the reality of slavery and the dehumanization of Blacks that supported it. As future Chief Justice of the US Supreme Court and Governor of New York John Jay observed,

> It is much to be wished that slavery may be abolished. The honour of the States, as well as justice and humanity, in my opinion, loudly call upon them to emancipate these unhappy people. To contend for our own liberty, and to deny that blessing to others, involves an inconsistency not to be excused (Jay, 1833, p. 181-2).

Likewise, in 1778, the governor of New Jersey described attempts to maintain slavery while espousing the language of liberty "odious and disgraceful." (Cooley, 1896, p. 23). As de Montesquieu articulated it, "It is impossible for us to suppose these creatures [Black slaves] to be men; because allowing them to be men, a suspicion would follow that we ourselves are not Christians" (1989).

In reaction to the brutal realities of American chattel slavery and frequently inspired by religious teaching[10], an abolition movement developed and grew in strength, particularly in the

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[10] Chief among the religious groups calling for abolition were perhaps the Quakers of Pennsylvania who in 1774 opted to "disown" any church member who owned slaves (Drake, 1950).

North, such that the North had largely outlawed the institution of slavery by 1830[11] [Figure 2.1 – Event M].

Just as the cultural, economic, and geographic conditions that encouraged the development of slavery differed in the North and South, so too did those that might bring about its abolition. Judge Tucker in Virginia in 1795 observed that abolition was unlikely to take root in the South, noting that

> If, in Massachusetts, where the numbers [of Blacks] are comparatively small, this prejudice be discernable, how much stronger may it be imagined in [the South], where every white man felt himself born to tyrannize, where the blacks were regarded as of no more importance than the brute cattle, where the laws rendered even venial offences criminal in them, where every species of degradation towards them was exercised on all occasions, and where even their lives were exposed to the ferocity of the masters (Belknap, 1795).

While Northern states had largely eradicated slavery by the early 19th Century, as Judge Tucker observed it had by no means eradicated anti-Black prejudice. The 1830s witnessed anti-Black riots throughout the North; from Baltimore to Philadelphia to New York to Boston, Northern cities were rocked by dozens of race riots (Williams and Murphy, 1990). These race riots created such disorder, that Williams and Murphy credit them with hastening the creation of municipal police departments in the North (1990, p. 4). This use of municipal police forces to suppress urban race riots would reoccur throughout the 19th, 20th, and 21st Centuries and become a defining role for these departments.

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[11] Slavery was largely extinct within New England by 1830, though there were still small numbers of slaves in New Jersey on the eve of the Civil War. Slavery was eliminated by a number of avenues. The constitutions of Vermont (1777), Ohio (1802), Illinois (1818), and Indiana (1816) abolished slavery in those states. In Massachusetts (1783), slavery was abolished by a judicial decision. In New Hampshire, slavery was abolished by constitutional interpretation. Finally, slavery was gradually abolished through legislation in Pennsylvania (1780), Rhode Island (1784), Connecticut (1784), New York (1799), and New Jersey (1804).

The Civil War and Emancipation

These two antecedent reactive sequences, the political/economic sequence and the socio-cultural sequence, came together in a conjunctural event, the American Civil War and subsequent Emancipation [Figure 2.1 – Event P]. The Emancipation was a contingent event. While the socio-cultural and political/economic historical sequences that preceded it may have made the Civil War inevitable, Emancipation was anything but. A Northern victory was not preordained nor were the precise terms of the South's surrender. As President Lincoln famously said in his letter to Horace Greeley:

> I would save the Union. I would save it the shortest way under the Constitution. The sooner the national authority can be restored; the nearer the Union will be "the Union as it was." If there be those who would not save the Union, unless they could at the same time *save* slavery, I do not agree with them. If there be those who would not save the Union unless they could at the same time *destroy* slavery, I do not agree with them. My paramount object in this struggle *is* to save the Union, and is *not* either to save or to destroy slavery. If I could save the Union without freeing *any* slave I would do it, and if I could save it by freeing *all* the slaves I would do it; and if I could save it by freeing some and leaving others alone I would also do that (Lincoln, 1862).

Thus, while slavery may have been the antecedent cause of the Civil War, the Emancipation was neither the necessary goal nor inevitable outcome. In a path dependent analysis, the relevant question is whether it could have gone another way. As Lincoln suggests, alternative resolutions to the Civil War are imaginable.

While these sorts of historical counterfactuals are imprecise, their utility is in framing whether events are truly contingent. First, the North could have lost the Civil War. At the outset of the war, the South possessed an army that rivaled the North in size and material. Further, European powers could have intervened more directly on the South's behalf. Second, citizens in the North could have turned against the war, prompting the North to negotiate a truce. There could well have been two independent nations existing side by side. Third, the North could have

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secured a Southern surrender while preserving the institution of Slavery. As *Dred Scott v.*
Sandford[12] overturned the Missouri Compromise, which had divided the nation into "slave" and
"free" states, in such an outcome, slavery would exist throughout the reunified country.
Regardless, whether these outcomes were likely, or whether some other outcomes were also
possible, in path dependent analysis, the relevant factor is that the particular resolution to the
Civil War, the Emancipation, was not the only possible one.

Period Two – Jim Crow (1870s – 1940s)

Though Emancipation had secured the legal status of formerly enslaved Blacks, it did not
ensure their social equality. The process of racialization of Blacks as inhuman, inferior, and
dangerous, which developed initially to bolster the institution of slavery against both the
Enlightenment's libertarian critique and the efforts of Christian abolitionists, continued in a self-
reinforcing sequence. While the racialization of Blacks may have its origins in the institution of
chattel slavery, it survived that institution's demise.

Reconstruction (1865-1877)

The Emancipation set the United States on a new historical sequence, a reactive sequence
that I term a racialized policing sequence. Following the Civil War, the "Radical Republicans" in
the US Congress initiated a process for the South to reenter the Union known as Reconstruction
[Figure 2.1 – Event Q]. During this period, which lasted from 1866 to 1877, the North set a
series of requirements upon the South including ratifying the 13th, 14th, and 15th Amendments,

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[12] 60 U.S. 393 (1857)

which outlawed slavery[13], guaranteed equal protection of the laws, and established the right to vote for all citizens[14].

During Reconstruction, Congress also passed a series of pieces of legislation designed to protect the rights of freed Blacks. The Civil Rights Act of 1866 defined former slaves as citizens, guaranteed all citizens "the full and equal benefit of all laws," and stated that all citizens, regardless of race, had the equal right to enter into contracts, file law suits, testify in court, and own property.[15] The Civil Rights Act of 1875 was designed "to protect all citizens in their civil and legal rights" and prohibit discrimination in public accommodations and transportation.[16]

During Reconstruction Black men in the South for the first time were able to participate in civic life (of course Black women continued to face a variety of restrictions on their civic participation). Black men were elected to public office throughout the South, including Oscar Dunn, Caesar Antoine, and P. B. S. Pinchback who were elected Lieutenants Governor of Louisiana (Pinchback would later become Governor) and Alonzo Ransier and Richard Gleaves who were elected Lieutenants Governor of South Carolina.

During Reconstruction federal soldiers occupied the states of the former Confederacy in order to enforce the new constitutional amendments and civil rights acts. However, during this time extra-legal, vigilante groups such as the Ku Klux Klan arose in response to the newly politically ascendant Black populace. These vigilante groups carried out campaigns of systematic violence against Blacks in order to maintain the system of white racial supremacy that had existed prior to the Civil War. As an illustration of the scope of this violence, according to

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[13] With the notable exception of as punishment for crimes. U.S. Const., Amendment 13, §1.
[14] With the notable exception of women, who would not gain the right vote until the 19th Amendment was ratified in 1920.
[15] 14 Stat. 27-30
[16] 18 Stat. 335-337

Freedmen's Bureau Records, in 1868, in Georgia alone, there were 336 murders or attempted murders against former slaves (Bryant, 2002). Likewise, of the four murders of former slaves in Wilkes County, Georgia in November 1868, three were perpetrated by the Klan (Bureau of Refugees, Freedmen and Abandoned Lands, 1869).

However, violence against newly freed Blacks was not limited to Klan members. In 1866, police officers in New Orleans attacked a group of Blacks peacefully assembling for voting rights. As U.S. Army General Sheridan described the attack

> At least nine-tenths of the casualties were perpetrated by the police and citizens by stabbing and smashing in the heads of many who had already been wounded or killed by policemen… it was not just a riot but 'an absolute massacre by the police…' a murder which the mayor and police … perpetrated without the shadow of necessity" (Kerner, 1968, p. 213).

The event, which would become known as the New Orleans Riot, stands as one of the earliest examples of Black peaceful protest being met with police violence after the Emancipation. The specter of freed Blacks organizing to exert political power constituted a real threat to white social and political dominance. And again, the police were called upon to employ violence to reassert and regain that racial dominance.

During Reconstruction, these vigilante groups frequently worked with the tacit approval of local authorities and often counted police officers among their numbers. However, by 1871, the Federal Government enacted legislation specifically to suppress the Klan, and by the end of the 19th Century, the Klan had largely been destroyed.

Reconstruction formally ended in 1877 as a result of the Compromise of 1877, in which Southern Democrats agreed to not block the election of Rutherford B. Hayes in exchange for the removal of federal troops. With the end of federal occupation, Southern states were again free from the oversight imposed during Reconstruction.

Jim Crow / Segregation

Following the end of Reconstruction and the departure of Union troops from the South,

the Southern states began to reassert the previous racialized social order. In constructing a new

social order in which Blacks were free citizens, the South turned to the North for inspiration. The

system of legal segregation that the Southern states erected would become known as Jim Crow[17]

[Figure 2.1 – Event R].

This outcome is predicted by Blalock's (1967) power-threat theory, which holds that as

previously dominated groups become ascendant, the dominant group will come to view them as

threatening to their interests. In response, the dominant group will utilize the state's mechanisms

of social control to maintain their position (Chambliss, 2001).

Free Blacks (either emancipated or those who had never been enslaved in the first place)

had lived in the United States since European colonization began. While many had risen to

places of prominence[18], even in the free states, they never enjoyed full social equality. Even

before the Civil War, Northern cities and states had established or allowed segregation in

schools, theaters, railroad cars, and countless other public spaces (Litwack, 2009, p. 97). In much

of the North, free Blacks were unable to vote, marry whites, testify in court, own land, or enter

into contracts (Williams & Murphy, 1990).

Attempts to desegregate schools in Boston prior to the Civil War failed. It was in Boston,

in fact, that the doctrine of "separate but equal" was first espoused in *Roberts v. Boston[19]*. In

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[17] The name "Jim Crow" refers to a popular minstrel character from the nineteenth century. The character was often portrayed by a white actor in blackface and less often by a Black actor in blackface.

[18] Perhaps the most famous example of a free Black man during this period was Benjamin Banneker, an almanac writer and scientist, who corresponded with Thomas Jefferson..

[19] 59 Mass. (5 Cush.) 198 (1850)

Roberts the Massachusetts Supreme Judicial Court held Boston's establishment of separate

schools for whites and Blacks was permissible. Writing for a unanimous Court, Chief Justice

Shaw noted that as the prejudiced attitudes that militated for segregated institutions were neither

created by nor could be altered by the city of Boston, the city was under no obligation to address

its pernicious effects by desegregating public institutions such as schools. This is perhaps the

earliest American example of the claim that "you can't legislate morals," a refrain which was

frequently deployed during the Civil Rights movement of the 1950s-60s.[20] Indeed, when US

Supreme Court upheld the use of segregated train cars in *Plessy v. Ferguson*[21] it cited *Roberts v.*

Boston as a precedent. Legal segregation of supposedly equal citizens had gone from a regional

to a national regime, enshrined in law, and enforced by the police.

    The post-war South transplanted many of the same practices including the use of separate

facilities and institutions for Blacks and whites that had been pioneered in the North prior to the

war (Woodward, 1955, p. 17). The system of Jim Crow segregation in the South was maintained

for a variety of reasons. While Emancipation changed the legal status of Blacks in the South, it

did not change the underlying economic conditions that had given rise chattel slavery and the

plantation system in the first place. The economy of the South was still dominated by agriculture,

especially the cultivation of cotton, and thus still required a large labor force.

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[20] Dr. King responded to this claim by stating "You can't legislate morals. The job must be done through education and religion. Well, there's half-truth involved here. Certainly, if the problem is to be solved then in the final sense, hearts must be changed. Religion and education must play a great role in changing the heart. But we must go on to say that while it may be true that morality cannot be legislated, behavior can be regulated. It may be true that the law cannot change the heart but it can restrain the heartless. It may be true that the law cannot make a man love me but it can keep him from lynching me and I think that is pretty important, also" (King, 1963).
[21] *Plessy v. Ferguson*, 163 U.S. 537 (1896)

The Jim Crow period thus saw the transformation of the plantation system to the sharecropping system, in which freed Blacks often provided the same labor that they had before the Civil War, often on the same land, to their former masters.

The Southern states quickly imposed legal restrictions on Blacks' ability to participate as equals within society. These ranged from the legalistic to the brutal. States imposed poll taxes and literacy or "citizenship" tests to prevent Blacks from voting, while exempting those whose grandfather had been able to vote, thus "grandfathering in" whites (Key, 1949). As Shapiro (1993) has noted, Southern politicians were often overt in their intent to disenfranchise Black voters, with one Virginia Delegate declaring during a Jim Crow era state constitutional convention: "Discrimination! … that is exactly what this Convention was elected for … with a view to the elimination of every negro voter…."

Policing a Segregated Society

Following Reconstruction, slave patrols continued to be formalized in much of the South into municipal police departments tasked with controlling the now-freed Black population and enforcing the color lines (Barlow & Hickman Barlow, 1999). Here too, Southern states transplanted Northern policing strategies for dealing with a free Black population. Of particular note were the use by Southern states of anti-vagrancy laws, which criminalized unemployment (Cohen, 1991). Freed Blacks were thus presented with the choice of returning to work for their former masters as sharecroppers, or face arrest and imprisonment on charges of "vagrancy." While many of these laws were on face race-neutral, that they were disproportionately enforced against Blacks once provides another early manifestation of the over-policing dimension of racialized polciing.

Southern states created massive prisons modeled after plantations, and indeed often located in the sites of former plantations, to house the growing Black inmate populations (Adamson, 1983). While the 13th Amendment had outlawed slavery, it carved out an exception for "punishment for crime." Some of these, notably the Louisiana State Penitentiary in Angola, still operate as prisons in 2018.

On the other hand, during this era, municipal police departments outside of the South were often clients of local political machines (Fogelson, 1977). Control was decentralized; as they were dependent upon local political leaders for employment and resources, police officers were often more responsive to precinct/ward-level concerns than they were to those from the chief (Kelling & Moore, 1990). However, in areas of the country where Blacks existed in insufficient numbers to influence political machines, their concerns were not heeded (Williams & Murphy, 1990).

In dealing with the free Black population that had lived in the North long before the Civil War and Emancipation, Hawkins and Thomas (1991, p. 71) have characterized Northern police as both under- and over-policing; crimes committed against Blacks were frequently ignored while free Blacks were disproportionately more likely to be arrested for minor offenses such as unlawful assembly or violating curfew ordinances. While originating in the North, this pattern of policing was also imported to the post-War South. Rabinowitz has attributed this pattern of racialized policing to the belief among urban whites in the South that "Negroes comprised a criminal class which jeopardized the peace and security of the city" (1978). This pattern of minimizing crimes against Blacks while disproportionately enforcing minor infractions committed by Blacks, especially those that involve Black presence in public spaces, would be repeated to the present day.

The Great Migration

Between 1916 and 1970, approximately 6 million Blacks moved from the South to cities in the North and West. By the end of this movement, termed "The Great Migration" by historians, the percentage of Blacks living in the South had declined from nearly 90% to 53%, while percentage of Blacks living in the North had grown to 40% and the percentage living in the West to 7% (Gibson & Jung, 2002). Lemann has described the Great Migration as

> one of the largest and most rapid mass internal movements in history—perhaps the greatest not caused by the immediate threat of execution or starvation. In sheer numbers it outranks the migration of any other ethnic group—Italians or Irish or Jews or Poles—to this country. For blacks, the migration meant leaving what had always been their economic and social base in America, and finding a new one (1991, p. 6).

This movement is often attributed to the rise of mechanization in Southern agriculture, especially the cotton picker, as well as the rising need for labor in Northern and Western factories, especially during World War II (Lemann, 1991) as well as escaping the grim realities of Jim Crow [Figure 2.1 – Event S].

Nevertheless, in the cities of the North and West, newly arrived Blacks continued to face residential segregation (Tolnay, Adelman, & Crowder, 2002) and were restricted in terms of where they could live. By the end of the Great Migration, Black America was no longer only Southern and rural. By 1970, 80 percent of Black Americans lived in cities, from Los Angeles to Houston to Chicago to New York (Massey & Denton, 1987). These communities became centers of civil rights activism and mobilization.

The Second Klan

The early 20th Century witnessed a resurgence in Klan activity, this time with a broader geographic reach. While the original Klan had been limited to the Southern states that had made

up the Confederacy, the "Second Klan" became a powerful political force throughout the country, electing governors in Indiana, Oklahoma, Colorado, Oregon, and Texas (Gordon, 2017) and infiltrating law enforcement agencies (Alexander, 2015). Bolstered by a rising nativist, populist, and isolationist mood in the country, the Second Klan broadened its focus from anti-Black terrorism to include anti-immigrant, anti-communist, and anti-Catholic rhetoric and actions (Gordon, 2017).

Nevertheless, as was the case with the first "Invisible Empire" Klan of the Reconstruction era, Blacks remained a primary target of Second Klan (Gordon, 2017). D.W. Griffith's 1915 film *The Birth of a Nation*, based on the novel *The Clansman*, dramatized the founding of the First Klan during Reconstruction. In the film's telling, the Klan arose to protect white Southerners (particularly white women), from predatory and dangerous Black former slaves.

The film had a profound impact on white Americans' view of Blacks and of their own history. After a viewing of the film at the White House, Woodrow Wilson is said to have proclaimed "It's like writing history with lightning. My only regret is that it is all so terribly true"[22] (Benbow, 2010). The film became the first Hollywood "blockbuster," earning $18 Million[23] (Stokes, 2007).

During this period, violence towards Blacks by both members of the Second Klan and law enforcement officers escalated. Klan rallies increased in size and frequency and for the first time Klan members began using cross burnings as a tool of terror (Gordan, 2017).

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[22] As Benbow notes, while the quotation may well be apocryphal, Wilson's historical writing on Reconstruction is generally supportive of the Klan (2010).
[23] Approximately $443 Million in 2018 dollars. (Alioth Finance, 2018).

Period Three - The ghetto (1950s – 1970s)

During the early to mid-20th Century, American society was transformed by two mass

migrations: The Great Migration of Black Americans in the early to mid-20th Century, and White

Flight during the period following World War II. These migrations reshaped American cities and

transformed American policing.

Desegregation / The Civil Rights Movement

The landmark Supreme Court case *Brown v. Board of Education of Topeka*,[24]

desegregated public schools in the United States. While in finding that "separate but equal" was

"inherently unequal" the Court in *Brown* explicitly overturned *Plessy v. Ferguson*, segregation in

housing, public accommodations, and other institutions of public life would continue for decades

[Figure 2.1 – Event T]. Notably, in *Brown*, the Court held that desegregation should proceed

"with all deliberate speed" a qualification which Derrick Bell (2004) characterized as permitting

a Court-sanctioned gradualism.

Nevertheless, the integration of public schools did proceed. Federal troops were sent to

Arkansas and Mississippi to escort Black students to their classes. At the same time, the Civil

Rights movement fought to dismantle other aspects of Jim Crow segregation.

Segregation in public accommodations was so widespread that a nationwide guide called

"The Green Book" was published to inform Black motorists where they could eat, sleep, and

recreate while traveling (Alderman & Inwood, 2014). Campaigns to desegregate public

transportation, restaurants, and lodgings, which began in Southern cities such as Montgomery,

Alabama soon spread around the country. At the same time, civil rights activists from around the

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[24] 347 U.S. 483 (1954)

country traveled to the South to participate in and bring attention to the work of Black leaders. While far from monolithic, the Civil Rights movement of the 1950s and 60s was loosely organized around the strategy and principles of non-violent resistance advocated by the Reverend Dr. Martin Luther King, Jr. These tactics, pioneered by Gandhi during India's struggle for Independence from Britain in the 1930s and 40s, presented a stark contrast with the racialized association of Blackness with dangerousness.

Regardless, the Civil Rights movement of the 1950s and 1960s prompted a violent response. Civil Rights activists, Black and white, were terrorized and killed by members of a once more resurgent Third Klan (Cunningham, 2013), often with impunity (Belknap, 1982). Likewise, police departments throughout the country were mobilized against civil rights activists, who were frequently labeled "outside agitators" by Southern politicians (King, 1992). At the same time, Southern states created "sovereignty commissions." These commissions acted as state-level intelligence agencies, Central Intelligence Agencies writ small. Like the CIA, they were tasked with gathering intelligence on "threats" to state sovereignty, in this case, civil rights activists working to dismantle Jim Crow segregation (Rowe-Sims, 1999; Irons, 2010). Likewise, they worked to garner support for maintaining segregation in states outside of the South (Irons, 2010). Faced with a growing threat by newly empowered Blacks, the white elite in Southern cities and states deployed the police to maintain white racial supremacy by combating anti-segregation efforts.

White Flight

This period was also characterized by a dramatic transformation in the residential structure of American life. The nineteenth and early twentieth century had witnessed mass migration among all Americans from rural to urban areas (Miller & Melvin, 1987). Following

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World War II however, increasingly Americans moved from cities to suburbs aided by the ubiquity of automobiles and easily obtainable home loans (Jackson, 1987).

The ascendance of the automobile as the primary means of transportation, and the subsequent development of highway infrastructure, meant Americans no longer needed to live within the cities in which they worked. At the same time, Federal Housing Administration ("FHA") loans gave many Americans access to affordable home mortgages allowing millions of Americans to move from cities to newly built suburbs. This move, from crowded city to quiet suburb, had been occurring for decades, but accelerated during the post-war years of the 1950s (Jackson, 1987).

This process of movement from city to suburb was highlighted as far back as the 1920s. In studying patterns of residential movement in their study of crime in Chicago, Park & Burgess had observed that crime tended to be concentrated in the poorer center of the city and as residents gained wealth they tended to move outward towards the suburban residential communities (Park, Burgess, & McKenzie, 1984).

This path was not available for all Americans however. Many of these newly built suburban communities in the decades following World War II, contained restrictive covenants prohibiting land sales to racial and ethnic minorities, particularly Blacks (Gotham, 2000a; Jones-Correa, 2000). As Gotham (2000b) has demonstrated, during the Great Migration, cities, housing developers, and groups of homeowners came to fear that increasing numbers of Blacks newly arrived from the South would lower home prices and destabilize neighborhoods. These groups organized around maintaining racialized residential segregation. Figure 2.2[25] is a postcard

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[25] Missouri Historical Society, Collection No. D02323, *available at* *http://collections.mohistory.org/resource/166747*

distributed by the "United Welfare Association," which was created by the St. Louis Real Estate Exchange to support a racially restrictive zoning ballot measure on the 1916 election (Gordan, 2009). Such efforts included explicit references to anti-Black stereotypes and associations and relied upon fear of Black criminality and dangerousness.

LOOK!

LOOK At These Homes NOW!

An entire block ruined by negro invasion. Every house marked "X" now occupied by negroes. **ACTUAL PHOTOGRAPH OF 4300 WEST BELLE PLACE.**

SAVE YOUR HOME! VOTE FOR SEGREGATION!
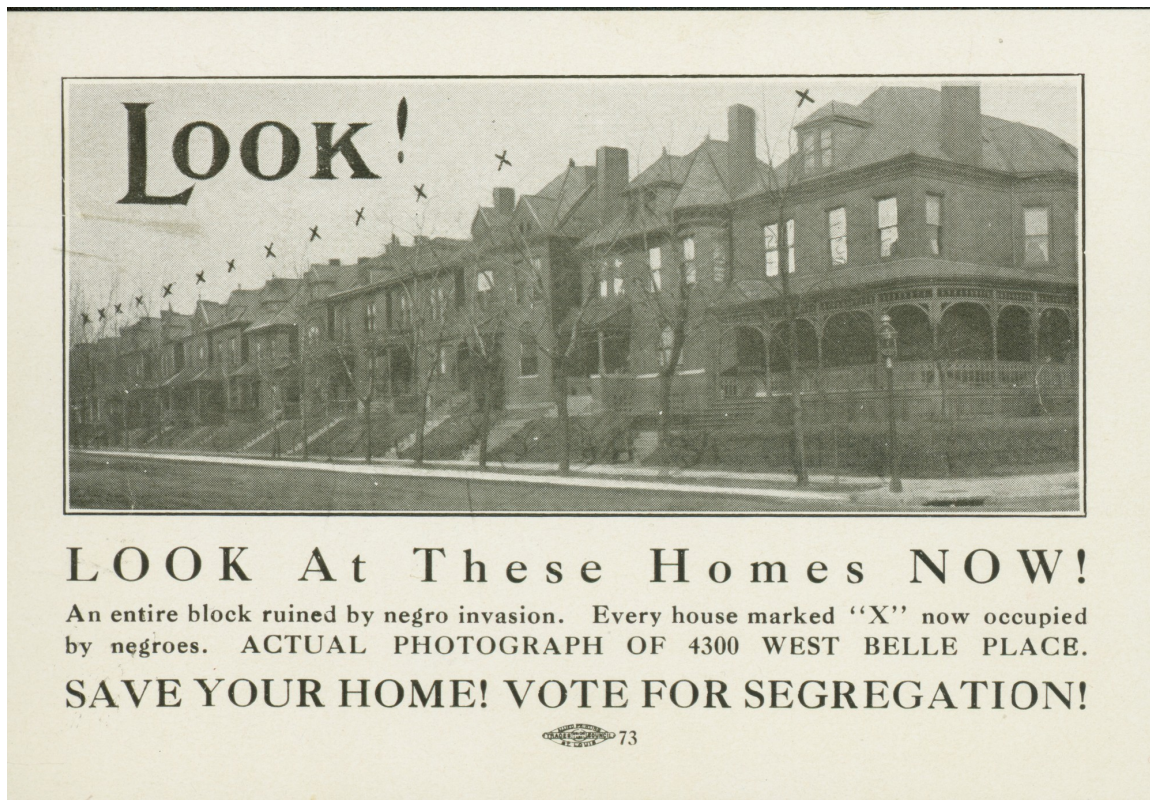
Figure 2.2 – 1915 postcard circulated in St. Louis, Missouri

In *Shelley v. Kraemer* (334 U.S. 1, 1948), the U.S. Supreme Court ruled that while such racially restrictive covenants were not themselves unconstitutional, their enforcement would be. However, by the time of the post-war suburbanization boom, patterns of residential segregation had already been established throughout the country (Darden, 1995).

The FHA was originally established in 1934 during the Great Depression as a means to bolster the ailing housing construction industry, stem the tide of home foreclosures, and stabilize the housing market (Gotham, 2000b). While FHA insured loans were on face race-neutral, in practice, they perpetuated the patterns of residential segregation that had obtained before *Shelley*

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v. Kraemer. During the post-war suburbanization boom, many of the same interest groups who had advocated for racially restrictive covenants, began to cite many of the same concerns – home prices and residential instability – about Blacks moving to the newly built suburbs that they had during the Great Migration. Discrimination in FHA loans, meant that the newly built suburban communities could ostensibly become "whites only" communities (Oliver & Shapiro, 1995).

Responding to home construction industry and local political pressure, the FHA refused to insure home mortgages loans in lower income or ethnically mixed neighborhoods, citing the higher risk of foreclosure (Gotham, 2000b; Gelfand, 1975). This policy, often termed "red-lining," was defended on the grounds that it did not discriminate based upon the borrower's race, rather it discriminated based upon the neighborhood's characteristics. The impact of this facially race-neutral, but in practice racially-discriminatory policy was significant. During the three decades that followed the FHA's creation as part of the New Deal in the 1930s, it is estimated that it insured approximately 3/5 of all home loans in the United States (Gotham, 2000b). In the period following the establishment, as the country was recovering from the Great Depression, the FHA functionally was restricted to whites as virtually the only home loans it insured existed in communities governed by racially restrictive covenants.

In practice, the label "FHA approved" became a signifier that the neighborhood is, or had been, subject to a racially restrictive covenant and thus was "whites only." This can be seen in advertisements from the time. For example, in Figure 2.3, advertisements for two subdivisions in the suburbs of St. Louis note that they are "FHA Financed" and "FHA approved," thus indicating their status as virtually "whites only" communities (Rothstein, 2014).

Figure 2.3 – 1952 Advertisements for housing developments near St. Louis, MO

This period of suburban migration has been characterized by the term "white flight" (Frey, 1979) [Figure 2.1 – Event U]. The role of desegregation in motivating this migration of whites from integrating cities to segregated suburbs is well established in the literature (Rossell, 1975; Boustan, 2010; Armor & Schwarzbach, 1978; Frey, 1979; Clark, 1987). The causes and consequences of white flight are far too numerous and complex to be outlined in completely here. I have nonetheless attempted to identify the factors most relevant to the reproduction of racialized policing.

Urban Decay

As the Great Migration and white flight continued to change the demographic makeup of American cities, the cities themselves began to break down. As middle-class whites moved from

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urban cores to suburban peripheries, so too did their tax dollars. Cities throughout the country soon began to face budget crises as they could no longer afford to fund basic services such as education, hospitals, transportation, sanitation, and parks [Figure 2.1 – Event V]. This budget crisis was dramatically illustrated when in 1975 President Ford announced that he would veto emergency budget assistance to New York City to stave off bankruptcy. The following day, the *New York Daily News* bore the headline: "FORD TO CITY: DROP DEAD" (Van Riper, 1975).

Urban Black America had always been isolated. Even after legal segregation, and the extra-legal practices that reinforced it, were ended, American cities continued to be defined by patterns of residential segregation. When Blacks began to arrive in large numbers in American cities, the areas in which they tended to settle were geographically isolated and frequently cut off from resources such as hospitals, transit, and city services.

The highway building boom following the passage of the Federal-Aid Highway Act of 1956 furthered this isolation and highways frequently created physical barriers by either cutting off Black neighborhoods from the rest of the city or running straight through them. Transportation funding during this time was focused on serving the needs of the growing number of suburban automobile commuters (Darden, 1995). As such the highway projects of the time were more focused on quickly moving automobiles from the suburbs to the cities and back rather than transporting people within cities. This failure to equitably distribute societal resources is one of the defining characteristics of the "under-policing" dimension of racialized polcing.

These patterns of residential segregation were furthered by many programs which sought to benefit Blacks. The massive public housing projects that many cities turned to meet the rising demand for housing were often placed in the periphery of cities, far from the sources of

employment, and once built accelerated the rate of white flight as whites who resided in areas adjacent to the newly built public housing tended to move away (Holloway et al, 1998).

White flight coincided historically with deindustrialization as many of the factories and plants which originally drew Blacks from the South began to close (Fishman, 2000). In a bit of historical irony, as the 20th century ended, American manufacturing began to relocate to the South, attracted by a pro-business climate created by anti-union "right to work" laws and lax environmental protections (Holmes, 1998; Wheat, 1986).

Urban Riots / Civil Unrest

The 1960s and 70s witnessed violent upheavals in American cities. Following decades of disinvestment in Black neighborhoods within cities, a trend worsened by the financial crisis exacerbated by white flight, cities throughout the country were wracked by a wave of riots [Figure 2.1 – Event W].

Beginning with Watts in 1964, and continuing in Detroit, and Newark, Black communities throughout the country were the sites of acts of civil disobedience, unrest, and rebellion. Mobilized by the successors to the civil rights organizations of the 1950s, such as the Student Non-Violent Coordinating Committee, and the nascent Black Power movement, Black demonstrators took to the streets where they were often violently met by local police officers as well as National Guardsmen, providing another example of municipal police forces being deployed to respond to race riots.

In 1968 the National Advisory Commission of Civil Disorders headed by Otto Kerner ("Kerner Commission") released a comprehensive and scathing assessment of the underlying social and economic causes of the unrest. The Kerner Commission in particular highlighted the same pattern of under and over-policing of Black communities first seen in Northern cities

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before the Civil War and throughout the country since. As illustrations of this pattern, the Kerner

Commission (1968) noted in particular

> complaints about physical or verbal abuse of Negro citizens by police officers, the
> lack of adequate channels for complaints against police, discriminatory police
> employment and promotion practices, a general lack of respect for Negroes by
> police officers, and the failure of police departments to provide adequate
> protection for Negroes. (1968, p. 144).

While the Kerner Commission noted continued structural disadvantage and lack of

resources as the major sources of Black dissatisfaction, it identified the proximate causes of each

of the large uprisings as the killing of a Black man, frequently by a police officer. While it

emphasized that the uprisings "did not erupt as a result of a single … incident," the Kerner

Commission nevertheless identified the role that each inciting incident played as the "breaking

point," after which "the tension spilled over into violence" (1968, p. 6).

In summarizing the causes of these uprisings, the Kerner Commission specifically

identified "Black migration and white exodus" and "Black ghettos." Regarding Black migration

and white exodus, the Kerner Commission observed that white flight had resulted in a "greatly

increased burden on the already depleted resources of cities, creating a growing crisis of

deteriorating facilities and services and unmet human needs" (1968, p. 204). The "segregation

and poverty" of the Black ghetto had created an environment of "men and women without jobs,

families without men, and schools where children are processed instead of educated, until they

return to the street-to crime, to narcotics, to tendency on welfare, and to bitterness and

resentment against society in general and white society in particular" (Kerner, 1968, p. 204).

Policing the Ghetto

Another set of causes of the uprisings that the Kerner Commission identified relate to

"The Police." As the Kerner Commission noted, patterns of racialized policing had worked to

convince many Blacks that the

> police have come to symbolize white power, white racism and white repression.
> And the fact is that many police do reflect and express these white attitudes. The
> atmosphere of hostility and cynicism is reinforced by a widespread belief among
> Negroes in the existence of police brutality and corruption, and of a "double
> standard" of justice and protection – one for Negroes and one for whites" (Kerner,
> 1968, p. 206).

The Kerner Commission once again detected the patterns of racialized over and under-policing:

the reliance of coercive police practices against Blacks suspected of committing crimes

combined with the failure to equitably distribute police resources to protect Black victims of

crime.

Images from these dramatic conflicts worked their way onto the evening news and into

the front pages of America's newspapers. The Kerner Commission concluded that these

uprisings had in fact been "far less violent than has been portrayed in the media" and that there

had been "far fewer losses of life and much less property damage than reported" (1968, p. 6).

Nevertheless, these images of angry Black men engaged in protest and rebellion against police

officers reaffirmed in the minds of many Americans the racialized stereotype of Blacks as

lawless and violent. Following these uprisings, the Kerner Commission noted that frequently the

"principal official response has been to train and equip the police with more sophisticated

weapons" (1968, p. 8) rather than to identify and attempt to remedy the underlying conditions

which motivated the uprisings.

Kelling and Moore have termed this era "The Reform Era" as police departments

increasingly centralized, bureaucratized, and formalized their structures (1990). As Williams and

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Murphy note however, this increased rationalization of police department management did little to increase the representation of minority racial and ethnic groups on police forces (1990, p. 10). This period was characterized by an ever-more militarized police force, increasingly in tension with the communities they were tasked with policing. Indeed, at the height of the uprisings of the late 1960s, Blauner characterized America's city police as operating "like an army of occupation" that protects "the interests of outside exploiters" and maintains "the domination over the ghetto by the central metropolitan power structure" (1969, p. 399).

The events of this tumultuous period laid bare the dynamics of racialized police violence that had been playing out since the nation's earliest days. Informed by negative associations and stereotypes about Black criminality and dangerousness, police officers subject Black civilians to heightened scrutiny and coercive police practices. Meanwhile, Black people living in Black neighborhoods receive inadequate police protections and other societal resources. This pattern of racialized policing continues until a dramatic instance of racialized police violence, such as a police-involved homicide sparks protests and uprisings. Driving by fear of Black dangerousness and to maintain social order, police are deployed to suppress the uprising and called upon to use force, including violence. Images of protesting and rioting Blacks further reinforce associations with Blackness with dangerousness and criminality among the majority white populace which in turn supports the use of racialized policing practices.

Period Four - The remnants of the dark ghetto and the carceral apparatus (1980s –)

Following the unrest and upheaval of the 1960s and 70s, American society, and policing, American public sentiment took a more conservative turn. Beginning with Richard Nixon's declaration of the War on Drugs in the 1970s through Ronald Reagan's tough on crime rhetoric, the discourse and policies around crime and policing began to be increasingly aggressive.

Conservatives derided "failed liberal policies" (Parker, 2005) that "coddled" criminals instead of punishing them (Weiss, 2006).

In response, American politicians, of both parties, increasingly embraced the language of "law and order." The dominant images of social disorder during this period – the gangbanger, the drug dealer, the welfare queen – wore Black faces in the minds of most Americans.

War on Drugs / Tough on Crime

In a 1971 report to Congress, Richard Nixon declared illegal drugs "public enemy number one" (Nixon, 1971). In declaring this "war on drugs," Nixon emphasized the human toll of drug addiction on American families and communities. While Nixon's war was presented as race neutral, observers have long noted its disproportionate effect on American Blacks (Nunn, 2002.

Commenting upon the launch of Nixon's war on drugs decades later, John Ehrlichman, one of Nixon's domestic policy advisors, confessed its explicit racial motivations stating

> You want to know what this was really all about? …The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people. You understand what I'm saying? We knew we couldn't make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did (Baum, 2016).

Just as Nixon and politicians that followed him employed negative associations of Blacks with drug crimes for political gain, so too did others with the association of Blacks with violent crime.

During the 1988 U.S. Presidential campaign, President George H.W. Bush aired a television advertisement attacking his opponent, former-Massachusetts Governor Michael

Dukakis, as being "weak on crime." This advertisement gave the account of Willie Horton, a Black man serving a life sentence for murder in Massachusetts, who was given a weekend furlough. Horton failed to return to prison after the furlough and committed a number of crimes including rape and armed robbery. In the advertisement, in grainy black and white images, Horton appears menacing, the icon of Black dangerousness. Speaking of Horton, one of President Bush's chief strategists, Lee Atwater remarked "By the time we're finished, [the public is] going to wonder whether Willie Horton is Dukakis' running mate" (Simon, 1990).

In the Willie Horton advertisement, the Bush campaign had exploited and reinforced the association of Black men as dangerous and criminal and, in undermining the use of rehabilitative programs such as weekend furloughs, reasserted the belief in the carceral apparatus. So successful was the advertisement, that it has been identified as one of the drivers of the so-called "one-way ratchet" of criminal justice in the United States. The metaphor of the "one-way ratchet," first used by Stuntz, is that the "ratchet" only turns one way and thus only gets tighter, never looser; that is, punishments only get longer, more frequent, and more restrictive, never less so (2001). As Hechinger puts it, "Every politician's worst nightmare is being held responsible for another Willie Horton" (2011, p. 432).

Describing the Republican strategy in 1981, Atwater laid bare the party's deployment of race in motivating white voters:

> You start out in 1954 by saying, "Nigger, nigger, nigger." By 1968 you can't say "nigger"—that hurts you, backfires. So you say stuff like, uh, forced busing, states' rights, and all that stuff, and you're getting so abstract. Now, you're talking about cutting taxes, and all these things you're talking about are totally economic things and a byproduct of them is, blacks get hurt worse than whites.… "We want to cut this," is much more abstract than even the busing thing, uh, and a hell of a lot more abstract than "Nigger, nigger" (Perlstein, 2012).

This move towards "tough on crime" policing, was not limited to conservatives. Having learned the electoral liability that being perceived as "soft on crime" carries, Democrats joined Republicans in "getting tough on crime." The Violent Crime Control and Law Enforcement Act of 1994 signed into law by President Clinton directed hundreds of millions of dollars to police departments around the country. Speaking in defense of the Crime Bill in 1996, Hillary Clinton appealed to fear of crime: "They are often the kinds of kids that are called 'super-predators' …. No conscience, no empathy, we can talk about why they ended up that way, but first we have to bring them to heel" (Gearan & Phillip, 2016).

The term "super-predator" was not Clinton's creation. Rather, it had been first used by Dilulio a year before to describe the coming generation of remorseless killers he predicted (1995). While Dilulio insisted that "super-predators" would not just be Black, in his subsequent book, he laid blame for the coming wave in the fact that "most inner-city children grow up surrounded by teenagers and adults who are themselves deviant, delinquent or criminal" (Bennett, Dilulio, & Walters, 1996). The claim that a wave of violent, dangerous youth would pour out from the inner-cities indelibly associated the notion of the super-predator with the young Black men who in the American imagination were the sole inhabitants of the inner-cities. In seeking to defend President Clinton's expansion of policing to address the problem of crime and urban decay by deploying a dehumanizing image of a remorseless, animalistic criminal, Clinton's comments had the effect of reinforcing many of the same negative association of young Black men with criminality and dangerousness that have characterized American racialized policing.

Further, as Murakawa has described, during this period, many reforms that were originally intended to reduce racial disparities in the criminal justice outcomes actually

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compounded them (2014). These liberal reforms, such as replacing indeterminant sentences with determinate sentences, coincided with conservative reforms such as mandatory minimum sentences to reduce judicial discretion at a time when the power and discretion of prosecutors was accreting.

The decades that followed the declaration of the war on drugs came to be defined by mass incarceration [Figure 2.1 – Event X]. During this period, according the Bureau of Justice Statistics, the total population of people in the United States incarcerated in state or federal prisons[26] exploded from 307,276 in 1978 to 1,505,397 in 2016 (Carson, 2017a).

Despite this dramatic expansion of the prison population, by 2016, the incarceration rate had fallen to 450 per 100,000, its lowest rate since 1997 (Carson, 2017b). Nevertheless, despite the reduction in the incarceration rate and what some have heralded as the "end of mass incarceration" (Clear & Frost, 2015), Blacks continue to face disparate criminal justice outcomes. As of 2016, Black 18-19 year old men were nearly 12 times as likely as their white counterparts to be imprisoned (Carson, 2017b).

Policing in the Age of Mass Incarceration

Kelling and Moore have termed this era "The Community Problem Solving Era" as police departments increasingly adopted the language of "community policing" and "problem oriented policing" (1990). This period saw a return to a community focused approach to policing, as police departments attempted to improve relations with neighborhoods they patrolled. This era witnessed the rise of what has become known as "community policing" – a policing philosophy noteworthy as much for its ubiquity as for its ambiguity. Virtually every police department in the

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[26] This number does not include those incarcerated within local jails.

country expresses a commitment to community policing; by 2013, over 90% of large and mid-sized law enforcement agencies reported that they had implemented some form of community policing (Przeszlowski & Crichlow, 2018). And yet, there is yet little consensus as to what community policing actually entails (Weisburd & Eck, 2004).

At the same time, the pattern of racialized policing characterized by over/under-policing of Black communities continued. Two decades after the Kerner Commission Report highlighted the dual reality of over-enforcement of coercive police practices against young Black men and under-deployment of resources for Black crime victims and communities, rappers were reporting that the circumstances for Black communities had not much changed.

One of the most successful rap songs to articulate the reality of over-policing of young Black men was NWA's "Fuck tha Police." The song contained the following lines

> A young nigga got it bad 'cause I'm brown /
> And not the other color, so police think /
> They have the authority to kill a minority …
> Searchin' my car, lookin' for the product /
> Thinkin' every nigga is sellin' narcotics /
> You'd rather see me in the pen /
> Than me and Lorenzo rollin' in a Benz-o (NWA, 1988).

Beyond identifying stereotyping of young Black men as criminals, NWA highlighted both the dramatic racialized police violence of police involved homicides and the slow, accretive violence (Ward, 2014) of routine police stops.

What NWA did to express outrage over patterns of over-policing by the Los Angeles Police Department, two years later, Public Enemy would do to express cynicism about provision of resources in New York City. In "911 is a Joke," Public Enemy's Flava Flav rapped

> Now I dialed 911 a long time ago /
> Don't you see how late they're reacting /
> They only come and they come when they wanna /
> So get the morgue truck and embalm the goner /

They don't care cause they stay paid anyway (Public Enemy, 1990).

Public Enemy gave voice to the frustration that the police were quick to stop, arrest, or use force against young Black men but slow to provide life-saving public resources.

After nearly two decades without a major event of urban uprisings, in April 1992, Los Angeles witnessed days of protests and unrest following the acquittal of Los Angeles Police Department officers for the beating of Black motorist Rodney King. This incident, which has become known as the Rodney King Riots or the L.A. Riots, echoed the uprisings from the 1960s studied by the Kerner Commission.

As with those uprisings, the Rodney King Riots were precipitated by the beating of King and the acquittal of the officers, but it was not caused by it. Following the Rodney King Riots, a commission was created to ascertain once again the causes of the uprisings. As was the case with prior uprisings, the Christopher Commission identified the causes of the riots as aggressive police practices, community disinvestment, and inadequate provision of public resources (Christopher, 1991).

Urban Renewal / Gentrification

After decades of decline, the 1980s and 1990s witnessed a renewed wave of urban development [Figure 2.1 – Event Y]. After decades of expansion, so-called "inner ring suburbs," typically those that had defined the suburbanization of the 1950s-60s, began to shrink (Lucy & Phillips, 2000). At the same time, nationwide crime rates began to dramatically decline (Blumstein & Wallman, 2006). Cities around the country embarked on massive downtown revitalization projects. Buildings in neighborhoods that had long been abandoned or neglected began to be bought up by real estate developers. Throughout the country, this urban renewal,

often described in the literature and popular press as "gentrification," has historically followed a well-defined pattern (Palen & London, 1984).

As the children and grandchildren of the white flight generation came of age, they in increasing numbers began to move from suburbs back to cities. The first wave of this urban *Reconquista* tended to occur within predominantly lower income, white neighborhoods. As gentrification and "urban infill" continued, this meant that later waves would begin displace the residents of the gentrifying Black and Latino neighborhoods (Marcuse, 2013).

During this period, perhaps the most influential policing strategy was "Broken Windows." As first described in an article in the *Atlantic Monthly*, Broken Windows had as its core the premise that serious crimes arise from the toleration of smaller crimes (Wilson & Kelling, 1982) [Figure 2.1 – Event Z].

This principle became an axiom upon which police departments built the dominant policing strategies of the past few decades: zero tolerance policing, aggressive use of stop and frisks, and hot spots policing. Zero tolerance policing refers to the Broken Windows inspired insight that toleration of low-level offenses, or inconsistent enforcement of laws, creates an environment in which punishments cease to have a deterrent effect and lawlessness is accepted.

Examples of zero tolerance policing would be aggressive enforcement of "quality of life" offenses such as prostitution, graffiti, and fare evasion. Stop and frisks refer to the use of investigatory stops of civilians by police founded on a "reasonable suspicion" that a crime has occurred or is about to occur. During these stops, civilians are temporarily detained, questioned about their behavior, and frisked, usually for weapons. Finally, hot spots policing refers to the use by police of statistical information about where high levels of crimes have recently tended to occur in order to guide deployment of officers. In recent decades, hot spots policing has become

associated with New York's CompStat program, which has been replicated in cities throughout the country (Hanink, 2013).

Broken Windows / Proactive Policing

These practices all fall under the umbrella of what has come to be known as "proactive policing" (Kubrin *et al*, 2010). Policing during what Kelling and Moore describe as the "Reform Era" had become primarily reactive (Black, 1971). That is, it relied primarily upon waiting for crime to occur in order to respond to it. In contrast, proactive policing is committed to disrupting the community contexts that allow crime to develop. The ascendance of proactive policing has been driven by, and in turn has driven, patterns of gentrification. This outcome is predicted by Sharp's (2014) postindustrial policing hypothesis, which holds that policing strategies in post-industrial cities are driven by the pressure to attract highly-educated, high-income, mostly white, tourists and new residents. Specifically, the postindustrial policing hypothesis posits that cities employ proactive policing tactics in order to transform their cities so that they are

> (1) amenable to the living, consuming, and social practices of tourists and potential in-movers with high levels of human capital, (2) consistent with their conceptions of proper use of public space, and (3) reflective of their particular racialized and class-based perceptions of crime, safety, and disorder (Laniyonu, 2017).

While Broken Windows had focused upon quality of life offenses due to their contributing to higher crime rates, the postindustrial policing hypothesis holds that police are pressured to address quality of life offenses due to their contributing to fear of crime, perceived social disorder, and use of public spaces (Sharp, 2014).

There is strong anecdotal evidence for this kind of racialized policing, especially in the form of white residents calling the police to report Blacks for either lawful or relatively benign behaviors. *The New York Times* compiled a list of such recent instances, which include napping

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in a dorm lounge, shopping for clothes, leaving a short-term rental, golfing, and waiting for an acquaintance in a coffee shop (Victor, 2018). This kind of racialized policing of Blacks existing in public spaces echoes the Slave Code prohibitions of Blacks congregating in town squares (Berlin, 1975) and is predicted by Boler's concept of "feeling power" that suggests that the emotional needs of whites, especially fear, are valued more highly than those of Blacks and other racial minorities (2004).

What comes next? As urban renewal and gentrification continue, it is likely that cities will increasing become unaffordable for many communities, especially racial and ethnic minorities such as Blacks and Latinos. We may well be witnessing a new racial migration pattern as Blacks and Latinos are displaced from cities and relocate to formerly predominantly-white suburbs. This new pattern may well initiate a response similar what occurred in following the Great Migration.

Ferguson, Missouri: A Case Study

Indeed, this seems to be what has occurred in the St. Louis, Missouri suburb of Ferguson during this period. Since 1950, Ferguson's population has remained roughly unchanged at about 20,000 people[27]. However, as can be seen in Figure 2.4, since 1980, the city has undergone a massive shift in its racial makeup, from being nearly 90% white to two-thirds Black during this period.

After unarmed Black teenager Michael Brown was killed by Ferguson Police Officer Darren Wilson in 2014, the city came under scrutiny by the Department of Justice ("DOJ") for its police practices.

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[27] Source: US Decennial Census

Figure 2.4 – Racial Makeup of Ferguson, Missouri (1980-2010)²⁸
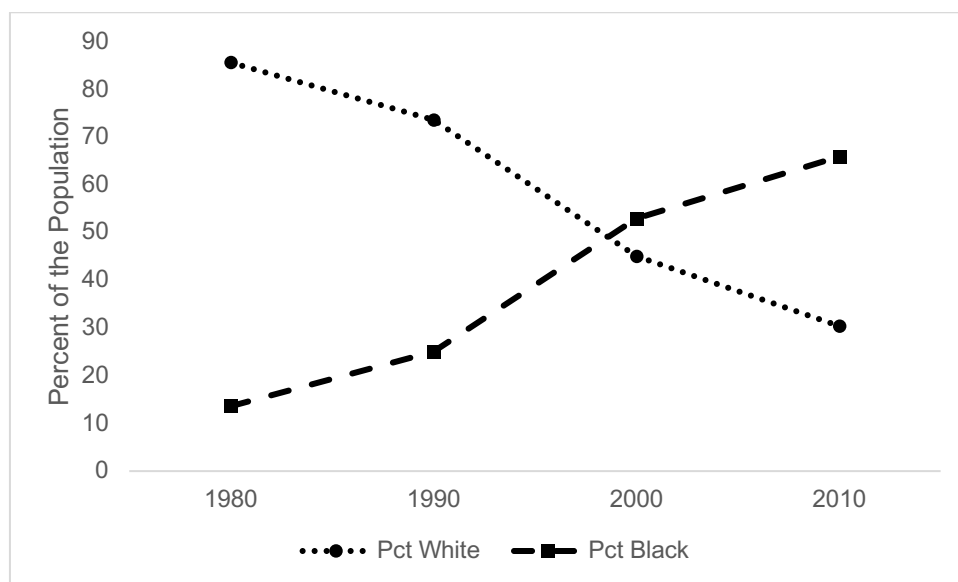
In its examination of the Ferguson Police Department and municipal court system, the

DOJ found that the city's Black residents were subject to 85% of the police vehicle stops, 90% of

the traffic citations, 93% of arrests, 95% of walking in a roadway charges, and 94% of failure to

comply charges, and 90% of the uses of force despite comprising only two-thirds of the city's

residents (Dept. of Justice, 2015, p. 7-8). Moreover, the DOJ concluded that these coercive

police practices were oriented less at public safety than at extracting revenue through the

imposition of fines on the city's Black residents (Dept. of Justice, 2015, p. 3). In pursuing this

pattern of racialized policing, the DOJ found that Ferguson Police Department targeted Black

residents on constitutionally inadequate grounds and interpreted Black resident's complaints as

disobedience or failures to comply (Dept. of Justice, 2015, p. 41).

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²⁸ Source: US Decennial Census

IV.   Conclusion

In summary, the agricultural labor needs of the Southern colonies [Figure 2.1 – Event A] initiated a political/economic reactive sequence antecedent to the primary sequence under investigation. These labor needs were met by the institution of chattel slavery [Figure 2.1 – Event B]. To control the large population of enslaved Blacks, Southern colonies passed slave codes [Figure 2.1 – Event C] and established slave patrols, which are among the earliest precursors to American law enforcement agencies. The rise of manufacturing in the North [Figure 2.1 – Event D] contributed to increased rivalry between the North and the South [Figure 2.1 – Event E].

At the same time, chattel slavery was justified by associating Blacks with dangerousness and criminality [Figure 2.1 – Event K]. This association initiated both a socio-cultural reactive sequence antecedent to the primary sequence under investigation and a racialization self-reinforcing sequence antecedent to the primary sequence under investigation. Enlightenment ideals such as the dignity and equality of man [Figure 2.1 – Event L] came into conflict with these negative associations and drove the spread of abolitionism [Figure 2.1 – Event M].

The political/economic sequence that culminated in the rivalry between the North and South and the socio-cultural sequence that culminated in abolitionism came together in a conjunctural event, the Civil War [Figure 2.1 – Event P]. This event initiated a racialized policing reactive sequence which is the primary sequence under investigation.

Following the Civil War, the North attempted to reshape the South through Reconstruction [Figure 2.1 – Event Q]. However, after Reconstruction ended, the South, driven by associations of Blacks with dangerousness [Figure 2.1 – Event K] passed laws that

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established segregation [Figure 2.1 – Event R]. Fleeing the Jim Crow South, Blacks embarked upon the Great Migration, settling in cities in the North and West [Figure 2.1 – Event S].

Both in these new cities and in the South, Black began to fight for and win legal changes including the end of legal segregation [Figure 2.1 – Event R]. However, the end of segregation and continued association of Blacks with dangerousness and criminality [Figure 2.1 – Event K] contributed to the movement of whites from cities to suburbs [Figure 2.1 – Event U]. This white flight hastened the decay of American cities [Figure 2.1 – Event V] as inner cities became increasing perceived as dangerous, a perception that was driven by negative perceptions of Blacks [Figure 2.1 – Event K]. In response to the urban disinvestment and increasingly racialized police practices, Blacks participated in acts of unrest and uprisings [Figure 2.1 – Event W].

These uprisings contributed to a perception that cities had been lost to crime and poverty and inspired a new period of "tough on crime" policies [Figure 2.1 – Event X], which disproportionately were targeted against Blacks due to their perceived criminality [Figure 2.1 – Event K]. This period which culminated in mass incarceration, was followed by a reemergence of American cities through urban renewal and gentrification [Figure 2.1 – Event Y]. These patterns of urban development contributed to use of proactive policing practices [Figure 2.1 – Event Z], which in turn have accelerated patterns of displacement, as they are frequently targeted against Blacks and other minorities out of fear of criminality [Figure 2.1 – Event K].

Any historical analysis will by necessity be incomplete. In attempting to analyze an area as complex as the development of racialized policing throughout American history, there is a tradeoff between depth of treatment and breadth of topics under consideration. However, by employing a path dependent analysis, this study has identified those factors which most contributed to the patterns of racialized policing present today. Throughout the history of the

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United States, social, economic, political, and indeed racial forces have shaped the development

of American policing. As depicted in Table 2.1, during every era, threats to white social,

economic, and political dominance have been responded to by a reiteration of racialized policing

patterns.

Table 2.1 – Forms of Racialized Policing by Era

Era	Form of Racialized Policing
(1) Chattel Slavery (1600 – 1860s)	The Slave Patrol
(2) Jim Crow (1870s – 1940s)	Enforcing the Color Line
(3) The Ghetto (1950s – 1970s)	Occupying Army
(4) Carceral State (1980s –)	Proactive Policing

Chapter Three: The Social Ecology of Racialized Police Violence

I.   Introduction

In the previous chapter's analysis of the historical evolution of policing in the United

States, two characteristics of racialized policing were identified and highlighted: 1) under–

policing of crimes against Black people in Black neighborhoods and 2) over–policing of crimes

committed by Black people. I place these two patterns within a continuum of racialized police

violence as both *under-* and *over–policing* exhibit a failure to recognize Black people as full

citizens deserving of equal protection of the law.

This chapter will empirically examine whether police practices are consistent with

associating Blacks with a heightened suspicion of criminality. This study studies the

phenomenon of racialized police violence by analyzing the social ecological (Kane, 2002)

contexts within which instances of police stops and uses of force occur. While there has been

much written on police use of force (Skolnick & Fyfe, 1993; Terrill & Mastrofski, 2002) and

perhaps even more on police stops (Warren *et al*, 2006; Epp, Maynard–Moody, Haider–Markel,

2014; Davis, 1996; Fagan *et al*, 2009; Langton & Durose, 2013), few studies have examined

these two types of encounters as co–existing along a continuum. This study focuses specifically

upon exploring the conditions and circumstances under which young Black men are determined

to be suspicious or dangerous and the police act upon those determinations.

In this chapter, I argue that such coercive racialized police practices reassert dominance

over Blacks through regulation of their public presence. Further, placing spectacular and slow

incidents along the same continuum of racialized police violence rather than treating them as

separate phenomena, emphasizes their connection. The individualistic approach to racialized

police violence commonly found in policing literature frequently looks for patterns in dramatic

and isolated instances of explicitly racially motivated police violence. In contrast, racialized police violence is best understood by attending not just to the private intentions of individual actors but to patterns of racialized policing and including within the definition of RPV the kind of slow violence found in police stops.

This study addresses the empirical question of whether there are observable differences in police practice based upon race that are consistent with the patterns of racialized policing outlined in the previous chapter. In answering this, this study employs a quantitative approach to analyze patterns in how police officers use police stops, both traffic and investigatory, in ways that subject Blacks to over-policing. I examine the interactions between police and civilians[29] in the mid–sized city of Colorado Springs, CO over a 3-year period from 2013-2015.

II.   Literature Review

The police stop is the most frequent way in which civilians interact with the police (Berzofsky *et al*, 2017, p. 32; Durose, 2010, p. 1). For most drivers, traffic stops are routine, albeit infrequent, events occurring once or twice a year[30] (Durose, 2010, p. 2). The most frequent reason for traffic stops is that the civilian committed a traffic violation such as speeding (Durose, 2010, p. 4). During these stops, the vast majority of civilians are never arrested, let alone convicted or imprisoned (Langton & Durose, 2013; Durose, 2010, p. 6). These traffic stops are

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[29] I use the word "civilian" throughout to describe private individuals who interact with the police. I use this term instead of "citizen" as the latter term makes a legal claim about an individual's immigration status that is not relevant to this discussion.

[30] As an illustration of an exception that proves the rule, consider that when Chief Justice Roberts asked during oral arguments "Can [an officer during a traffic stop] ask for the registration? Usually, people have told me, when you're stopped, the officer says, License and registration," which seemed to suggest that he had never been pulled over in his life, there was surprised laughter throughout the courtroom at the fact that Chief Justice Roberts had never been pulled over (*Rodriguez v. The United States*, 2015).

thus viewed as a frustrating, but unavoidable side effect of driving. But this is not the case for all Americans. For many racial and ethnic minorities (especially Black and Latino men), the police stop is a much more common, and much more intrusive, fact of life (Epp, Maynard–Moody, Haider–Markel, 2014).

Beyond the frequency, a further factor is the *meaning* of a police stop. Presumably, many Americans view these as merely an inconvenience (albeit sometimes a financially costly one) and go about their days. However, for many racial and ethnic minorities, the police stop is an experience freighted with danger. Cognizant of the real possibility of arrest, injury, or death, people of color report viewing police stops with anxiety[31] (Epp, Maynard–Moody, Haider–Markel, 2014). The consequence they imagine is not merely a monetary one.

Nevertheless, this anxiety is compounded by the economic precarity that many people of color face. A traffic ticket can be the first step along a path towards indebtedness and the beginning of state surveillance (Dept. of Justice, 2015).

Legal Foundation for police stops

The traffic stop is only one of a number of different types of police stops. In the United States, police can stop civilians for a variety of reasons, all of which are limited by the protections guaranteed by the United States Constitution and state constitutions.

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[31] As an illustration, consider an incident in the summer of 2016, in which officers in Halifax, Virginia were pulling over motorists and giving them ice cream cones. During one such stop, which was recorded and widely shared online, a Black woman driver's reaction to the joke was prolonged, nervous laughter. While the joke may have seemed purely innocent to the white officers, and presumably many white viewers, the anxiety, tension, and subsequent relief (manifested through the laughter) was not lost on Black commenters (Mitchum, 2017).

The 4th Amendment ensures that civilians may not be searched or seized without probable cause. In *U.S. v. Mendenhall (*1980), the U.S. Supreme Court interpreted the Constitution as defining a seizure as occurring when a civilian is "not free to leave" (Kessler, 2009).

The U.S. Supreme Court has interpreted seizures as falling along a continuum based upon the burden placed upon the civilian and the degree of liberty encumbered (Kessler, 2009). The most burdensome is the formal arrest, which must be based upon a finding of probable cause that a crime occurred. This finding can either be made by a judge in the form of an arrest warrant or by a police officer observing a crime in progress. Formal arrests are relatively rare. Fewer than 3% of all traffic stops result in arrest, with the majority of those stemming from drunk driving (Durose, 2010).

Less burdensome are custodial interrogations. In these encounters, civilians are not free to leave but are not subject to formal arrest. In *Miranda v. Arizona (*1966), the U.S. Supreme Court defined custodial interrogations as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." In *Thompson v. Keohane (*1995), the U.S. Supreme Court clarified that a custodial interrogation occurs, when "a reasonable person would have felt he or she was not at liberty to terminate the interrogation and leave." In *Yarborough v. Alvarado* (2004), the U.S. Supreme Court further clarified that the test of whether a person is "reasonable" is an objective one, that does not take into account a person's subjective state of mind or personal characteristics.

The least burdensome are investigatory stops. During these stops, a police officer may temporarily detain a person based upon a *reasonable suspicion* that a crime has or is about to occur. The scope of the stop is limited to what the police officer requires to ascertain whether a

crime has or is about to occur. Once that assessment has been made, the police officer must release the civilian.

The two primary types of police stops are traffic stops and investigatory stops, also known as *Terry* stops.

Traffic Stops

The police must base a traffic stop upon a finding that a violation of the traffic code has occurred. Most traffic violations are not considered "crimes"[32], but are still subject to the Constitutional limits on seizures. Such stops must be founded upon an observation by the police that a traffic offense has occurred. During the course of these stops, civilians are detained while the officer usually "runs" the plates to determine whether the car is stolen and verifies that the license and registration are valid. The officer may then give a ticket or release the civilian with a warning.

Investigatory Stops

Investigatory stops are different. These stops are not based upon direct observation of unlawful activity. Rather, they are based upon observations of otherwise legal behavior, which given the totality of the circumstances, create in the mind of the police officer a "reasonable suspicion" that a crime has occurred or is about to occur. The legal basis of these types of searches was laid out in *Terry v. Ohio (*1968). In *Terry* the US Supreme Court held that officers may detain civilians based upon a reasonable suspicion. While this reasonable suspicion may be based upon the officer's experience or training, it must be articulable (*Terry v. Ohio*, 1968, p.

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[32] Although of course, some traffic violations such as driving under the influence are classified as crimes.

21). Examples of suspicious behavior might include passing by a location multiple times (*Terry v. Ohio*, 1968) or running away from the police in a high crime area (*Illinois v. Wardlow*, 2000).

Previous studies on investigatory police stops have consistently found that Blacks are stopped at rates disproportionate to their representation in the population (Gelman, Fagan, & Kiss, 2007; Epp, Maynard–Moody, & Haider–Markel, 2014). Common justifications for this disparity typically invoke differential crime rates in majority Black neighborhoods (Weitzer & Tuch, 2002; Weitzer, 2000). However, a string of recent studies have found that this disparity persists even when controlling for factors such as background crime rate (Fagan, Geller, Davies, & West, 2009; Piquero, 2008; Hanink, 2013).

Pre–textual Stops

Though not a separate legal category, the literature on police stops recognizes a hybrid type of stop that is sometimes referred to as a *pretextual* stop (Withrow, 2007; Harris, 1996; Davis, 1996; Hecker, 1996). This stop uses a valid legal basis to perform what would otherwise be an invalid stop. As an example, a police officer who could not articulate a reasonable suspicion in order to justify a stop might use a minor traffic infraction as a pretext to stop a civilian. The stop is considered valid as a traffic infraction did occur, but the pretextual reason is so minor (e.g. failure to signal a lane change or driving slightly over the speed limit), that it would usually go unenforced. While such stops are not officially recognized, they nevertheless do occur.[33]

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[33] As an illustration of the quasi–official status such stops enjoy, an attorney friend of mine recounted an instance in which a rookie police officer filled out the reason for a stop as "pretextual."

As with many cases of police discretion, the concern here is that such pretexual stops allow racial animus or unconscious racial bias to influence police behavior. That is, the predicate traffic infraction is serving not only as pretext for investigating criminal behavior, but also for detaining racial and ethnic minorities.

In evaluating the Constitutionality of seizures under the Fourth Amendment (specifically the use of force), the Supreme Court has explicitly refused to interrogate the *actual* motives of police officers involved, opting instead to apply "reasonableness" test. That is, in determining whether a seizure is appropriate, the Court asks whether a "reasonable officer" in possession of the same set of facts, in the same situation, would have behaved similarly[34].

Mechanisms for racial disparities in police behavior

Warren *et al* identify four mechanisms that might result in racial disparities or bias (that is systematic, non–random error based upon race): racial animus, unconscious stereotypes, deployment, and racial profiling (Warren *et al*, 2006).

Racial Animus

Racial animus refers to intentional racism. Attempts to determine the prevalence of racial animus within the ranks of police officers have proven difficult. Scholars note that since the Civil Rights movement of the 1950s and 1960s, it has become increasingly unacceptable in American Society to espouse overtly racist positions. (Bonilla–Silva, 2017). Nevertheless, scholars (Chalmers, 1981), the press (see, e.g. Winter, 2014), and the Federal Bureau of Investigation (2006a; 2006b) have noted the historic and continued presence of members of white supremacist organizations such as the Ku Klux Klan within police departments throughout the country. While

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[34] *Graham v. Connor*, 109 S. Ct. 1865 (1989)

police departments in the United States formally disavow racism and forbid racial discrimination by its officers[35], there are numerous instances of documented cases of officers making racist comments, epithets, and jokes (Christopher, 1991).

Unconscious Stereotypes

Unconscious stereotypes refer to associations in the mind of police officers between racial and ethnic minorities and negative characteristics such as dangerousness and criminality (Richardson & Goff, 2012). Significantly, these associations are not consciously held or intentionally espoused, and if questioned about such views, individuals would likely disavow them. This phenomenon, in which individuals harbor unconscious racial biases despite consciously believing that they are unbiased, has been termed *aversive racism (*Son & Yan, 2005). Beyond merely associating Blacks with criminality, unconscious stereotypes include super–humanizing ones such as attributing heightened pain tolerance, strength, and supernatural abilities to Blacks (Waytz, Hoffman, & Trawalter, 2014) and dehumanizing ones such as associating Blacks with animals such as apes (Goff *et al*, 2008). These sorts of associations lie under the surface and as such remain largely undetected and unexamined and in the case of the dehumanizing stereotypes studied by Goff *et al*, historically have been deployed by prosecutors in capital cases (2008).

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[35] The Commission on Accreditation of Law Enforcement Agencies (CALEA) Standards for Law Enforcement Agencies explicitly forbid biased policing, which it defines as "The selection of an individual (s) for enforcement action based in whole or in part on a trait common to a group, without actionable intelligence to support consideration of that trait. This includes, but is not limited to, race, ethnic background, national origin, gender, sexual orientation/identity, religion, economic status, age, cultural group, or any other identifiable characteristics" (CALEA, 2018, Appendix A).

Scholars who have studied unconscious stereotypes refer to the concept of implicit associations, which have been studied using an instrument known as the Implicit Association Test (Greenwald *et al*, 1998; Greenwald *et al*, 2003; Hofmann *et al*, 2005). This instrument purports to measure a person's unconscious biases at a level below conscious thought. In its most well–known form, the IAT asks subjects to pair words (such as "good" or "bad") with images of people (usually Black or white) and measures their speed and accuracy (Greenwald *et al*, 1998). While no study has yet been done explicitly testing law enforcement officers using the IAT, Levinson *et al* (2010) found that study participants, who were all jury–eligible, were significantly more likely to implicitly associate photos of Black people with guilt than they were photos of white people. Within the context of police violence, such implicit associations or unconscious stereotypes may inform a police officer's determination that a civilian is dangerous or likely to be engaged in criminal activity.

Deployment

Deployment refers to the manner in which police officers are distributed throughout a jurisdiction. As police practice is largely reactive (Goldstein, 1977), police are deployed in response to crime. Thus, police officers are more likely to be deployed in larger numbers in areas that have the highest crime rates. In this way, deployment offers an explanation for differences in stops among racial or ethnic groups as police resources generally, and officers conducting investigatory stops specifically, are concentrated in geographic regions with higher crime rates. As racial and ethnic minorities are more likely to be live in such geographic regions, they are more likely to be stopped by the police.

The literature on police stops suggest that police stops are often most common in geographic areas in which crime is most concentrated (Kubrin *et al*, 2010). This particular type of aggressive use of investigatory stops is associated with "Hot Spots" policing.

Observed differences in the numbers of members of racial and ethnic minority groups are thus attributable not to intentionally discriminatory acts on the part of police officers, but an emergent property arising from patterns in patrol.

Racial Profiling

Racial profiling refers to the use of composite profiles of likely criminal behavior, which may include factors such as age, race, and sex as characteristics. Such profiles have long been used and are defended by law enforcement as necessary for crime control. While notions of "criminal types" are as old as criminology, defenders of racial profiles contend that race is simply considered as one of many factors in their construction. Thus, while the use of racial profiling may result in observable differences in the numbers of people stopped among racial and ethnic groups, this results from the use of the profile, rather than merely targeting people based upon their race or ethnicity.

Racial profiles in their modern form came into prominence during the War on Drugs as drug courier profiles (Greene & Wice, 1982; Bernstein, 1990; Becton, 1986). Such profiles were based upon observable, licit characteristics such as behavior (such as buying same day plane tickets with cash between New York City and Miami), age, race, and sex. These profiles were constructed based upon observations of apprehended drug couriers.

While the Supreme Court has held that discrimination based upon race is inherently suspect and thus subject to strict scrutiny, it has upheld the legality of such profiles as long as they are founded upon clearly articulable bases. In this way, suspect classifications such as race

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may be considered within the "totality of the circumstances" in the creation of racial profiles used for law enforcement purposes (*United States v. Mendenhall*, 1980). Thus, even though through the use of such profiles, law enforcement officials may target individuals for increased scrutiny and differential treatment, as long as race is only one of many clearly articulated factors, it does not render such profiles unconstitutional (Davis, 1996; Harris, 1996; Cloud, 1985; Williams, 1991; Johnson, 1983).

Regardless, while the term "racial profiling" has been broadly within the popular press applied to refer to any differential treatment based upon race, it refers in fact to a narrowly defined police practice, which is in fact relatively rare. This might be termed Formal Racial Profiling.

On the other hand, it is far more common for police officers to stop a member of a racial or ethnic minority because something "feels wrong." One of the most common examples of this would be when an officer pulls over a person of color driving through a predominantly white neighborhood (or a white person driving through a predominantly non–white neighborhood) to inquire why the person was there. This rationale has at times been called the "incongruity thesis," "mismatch," or "out of place" (Meehan & Ponder, 2002). Or consider, a police officer might find it suspicious for a young person of color to be driving a new car and as a result pull them over (Epp, Maynard–Moody, Haider–Markel, 2014).

While both of these examples would on face be improper, they may be combined with a pretextual race–blind characteristic or behavior (such as a minor traffic infraction) to justify an investigatory stop in what might be termed Informal Racial Profiling. Unlike Formal Racial Profiling, with its articulable bases, Informal Racial Profiling is more likely to be founded upon intuitions and feelings, which makes it more susceptible to the influence of stereotypes.

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Theoretical Explanations for Racial Disparities in Police Practice

Scholars have frequently observed differences in treatment that different racial groups experience in their interactions with the police. Scholars have offered four primary types of theoretical explanations for these disparities: individual, sociological, ecological, and organizational (Lee, Vaughn, & Lim, 2014). Individual explanations focus upon the characteristics of individual police officers, sociological explanations focus upon the social contexts within which officers and civilians interact, ecological explanations focus upon the community contexts within which officers and civilians interact, and organizational explanations focus upon the characteristics of individual police departments. This study does not include individual officer level variables and only examines one police department. As such, this review focuses upon sociological and ecological theoretical explanations in examining the social ecology of over–policing.

Sociological Theoretical Explanations

Sociological explanations examine the police–civilian encounter within its dynamic social context. This social context is shaped by the social characteristics of the individuals involved: the victim, the accused, and the officer (Black, 2010). Of particular importance to scholars has been the social status granted by these social characteristics (Worden, 2015; Reiss, 1968; Friedrich, 1977). In Black's (2010) accounting, social status is shaped by social characteristics (such as race, class, and age). According to Black, the "quantity of law," that is "the number and scope of prohibitions… to which people are subject" is a function of the social distance between the police and civilians (Black, 2010, p. 3). As Black assumes a greater social distance between police officers and lower social status individuals, he predicts those with lower

social status (such as minorities, the poor, and the young) are more likely to be subject to coercive police practices (2010).

The dominant sociological theories that examine police practices are conflict theories (Quinney, 1973; Chambliss, 1968; Turk, 1969). Drawing from Marxian theory, these types of theoretical explanations posit that the law works to protect the interests of the powerful. Political and legal actors, including police officers, target the poor for coercive police practices as they threaten the interests of the wealthy (Chambliss, 1968; Spitzer, 1975). Scholars have extended conflict theory to apply to racial and ethnic minorities (Hawkins, 1987; Blalock, 1967). In this version of conflict theory, the powerful whose interests are protected by legal and political actors are members of the dominant racial group.

Applied to the context of the United States, conflict theorists have recognized that whites possess higher social status due to their wealth and political power than do Blacks and other racial and ethnic minorities. As such, conflict theory predicts that in the United States, Blacks are disproportionately more likely, and whites less likely, to be subject to coercive police practices, such as investigatory stops. This prediction is supported by extensive research into racial disparities within the American criminal justice system (Grogger & Ridgeway, 2006; Epp, Maynard–Moody, & Haider–Markel, 2014; Liska, Chamlin, & Reed, 1985; Johnson *et al*, 1995; Lee, Vaughn, & Lim, 2014; Hanink, 2013; Holmes, 2000; Jacobs & O'Brien, 1998).

Blalock's (1967) power–threat theory incorporates race and class into its analysis and offers a causal mechanism to explain how racial and ethnic minorities come to be disproportionately subject to coercive police practices. Power–threat theory predicts that as racial and ethnic minority populations rise, the majority group comes to view them as threats to their economic and political interests and thus pressure legal and political actors to employ the

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mechanisms of the criminal justice system in order to maintain social control (Chambliss, 2001).

In their analysis of police department size in suburban communities, Huff & Stahura found that

suburban communities with higher proportions of Black residents had more police employees,

even when controlling for crime rate, a finding consistent with a power–threat theory (1980).

Ecological Theoretical Explanations

Ecological explanations examine the police–civilian encounter within its community

context. Theories that examine community–level contexts grow out of Shaw and McKay's social

disorganization theory (1942), which in turn arose from Park and Burgess's seminal work on

Chicago (Park, Burgess, & McKenzie, 1984). Scholars that have used ecological theories

examine neighborhood–level characteristics such as racial makeup, socioeconomic status,

residential stability, household composition, and crime rates (Smith, 1986). Ecological theories

predict that the characteristics of the communities in which police–civilian encounters occur

influence the quantity and quality of these interactions.

Findings on the precise effect of community characteristics are mixed. Smith found that

police–civilian encounters in neighborhoods with higher rates of poverty were more likely to

result in arrest (1986). Smith further found that the likelihood that coercive police practices

would be used was influenced more by the racial makeup of the neighborhood than by the race

of the civilian, with coercive police practice more likely to occur in neighborhoods with higher

proportions of racial and ethnic minorities (1986). Similarly, Lee *et al* observed that police–

civilian encounters in neighborhoods with higher rates of violent crime were more likely to

involve greater police–coercion, specifically higher levels of force (2014). Further, scholars have

found that police and civilians alike use the racial makeup of a neighborhood as a proxy for

crime, that is, neighborhoods with larger minority populations are perceived to have more crime, regardless of the actual crime rate (Lizotte & Bordua, 1980).

Other scholars, however have found that neighborhood crime rate can actually be negatively associated with the likelihood of coercive police practices. The "overload" hypothesis states that as crime rates rise, police and other criminal justice actors become less able to respond effectively as they face resource constraints (Geerken & Gove, 1977; Pontell, 1978). Klinger found support for the "overload" hypothesis at the neighborhood level, observing that police officers were less likely to "vigorously" enforce the law (e.g., make stops and arrests), in more "deviant" (higher crime), neighborhoods (1997, p. 293). Klinger suggests that in such "overloaded" neighborhoods, police officers are forced to engage in a sort of triage, prioritizing the most serious forms of deviance. This is supported by Smith's observation that police officers were less likely to fill out victimization reports in high crime neighborhoods (1986).

This study employs a social ecological approach to studying police stops of civilians. Such an approach examines social problems at multiple levels attending to the interactions between and among micro (e.g. individual) and meso–level (e.g. community) characteristics. Applied to the study of crime, social ecological perspectives have focused upon individual–level characteristics such as age, race, and sex, and community–level characteristics such as crime rate, poverty rate, and household characteristics (Sobol, 2010; Lauritsen, 2001; Petrocelli, Piquero, & Smith, 2003).

In their study of police stops employing a social ecological approach, Petrocelli, Piquero, & Smith found that while police stops did not occur more frequently in census tracts with higher proportions of Black residents than in other tracts, those that did occur were more likely to result in vehicle searches (2003).

III.   Methodology

Research Site

The research site for this study is the mid–sized American city of Colorado Springs, Colorado. Colorado Springs is a city of approximately half a million people. It is predominantly white. Its two largest minority group populations are Hispanics and Blacks. It also has very small populations of Asians and Native Americans.

While the state of Colorado has in recent decades become increasingly liberal politically and socially, the city of Colorado Springs has been ranked the fourth most politically conservative city with more than 250,000 residents (Tausanovitch and Warshaw, 2014). It is the home to a number of mega churches and conservative groups such as Focus on the Family as well as the Air Force Academy.

Colorado Springs has a lower than average violent crime rate for a city its size. According to the FBI's Uniform Crime Reports, the violent crime rate in 2015 was 439 per 100,000, compared to 708 per 100,000 for all American cities with populations between 250,000 and 499,999 (2015). As of 2015, the Colorado Springs police department had 635 sworn officers (Fed. Bur. of Investigation, 2015).

Colorado Springs was selected as a research site following the case of Ryan and Benjamin Brown. The Brown brothers, young African American men, were stopped by the police a block away from their home in a predominantly white neighborhood. The brothers were removed from their vehicle, handcuffed, searched, and detained at gun–point without being told the reason for the stop. The CSPD's justification for the stop was that the brothers were in a

"high crime area" (Durbin, 2017). The Brown brothers subsequently sued[36] the city alleging

racial profiling and the case was settled for $212,000 (Durbin, 2017).

The National Institute of Justice has determined that this sort of incident, which they term

a "sentinel event," merits study as it "signals underlying weaknesses in the system or process," is

"likely the result of compound errors," and "may provide, if properly analyzed and addressed,

important keys to strengthening the system and preventing future adverse events or outcomes"

(National Institute of Justice, 2017).

Data

Data were obtained from the Colorado Springs Police Department on traffic tickets,

arrests, and investigatory stops. The investigatory stops were recorded via "Field Interview

Reports" ("FIRs") which describe the date, time, and location of the stop as well as whether the

stop was based upon a "suspicious person" or "suspicious vehicle."[37] FIRs also include

biographical information about the stopped civilian including age, sex, and race as well as

information about the make, model, and year of any vehicles involved.

Between 2013–15, CSPD recorded 4,748 FIRs for "suspicious person" and 1,968 FIRs

for "suspicious vehicle." Between 2013–15, CSPD issued 180,548 traffic citations.

The latitude, longitude, and Census tract of the locations of the police civilian

interactions were obtained using the US Census Geocoder service. Addresses that were not found

were matched when possible to the nearest valid street address.

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[36] I served as a consultant to the Colorado American Civil Liberties Union on the case.
[37] Based upon a review of Colorado Springs Police Department procedures and policies, there
appears to be no official definition of "suspicious person" or "suspicious vehicle."

Citywide and tract level demographic data were obtained from the 2010 decennial US Census. The Census breaks down population by Race: White, Black, Asian, American Indian Alaska Native, Native Hawaiian, Other, and Two or More Races. Hispanic population is reported separately.

The issue of how to reconcile the difference between how the US Census and other agencies such as police departments record data on race and ethnicity is a difficult one. While the US Census records "Two or More Races," the CSPD does not. First, following the method proposed by the Office of Management and Budget for using Census racial data (Bennett, 1997), using the Census' 2010 Hispanic or Latino and Not Hispanic or Latino by race for the population age 18 and over, I obtained data on multiple race combinations. Next, I assigned Hispanic Whites, Hispanic other race, and Hispanic multiple race to Hispanic. All other Hispanic combinations were assigned to their respective races (e.g. Hispanic Asian/Pacific Islanders were assigned to Asian/Pacific Islander). This approach was also used by Institute on Metropolitan Opportunity in its analysis of racial profiling in Minnesota (2003). Finally, following the method proposed by the Office of Management and Budget (2000) for reconciling multiple race and single race data, I used fractional assignment to allocate multiple race respondents (e.g. for every Black and Asian/Pacific Islander respondent, 0.5 would be added to Black and 0.5 would be added to Asian/Pacific Islander). Again, this approach was also employed by the Institute of Metropolitan Opportunity (2003).

Methodology

In order to evaluate the number of Blacks stopped by police in Colorado Springs, it is necessary to establish a proper baseline against which to compare it. Within the literature on police stops, this "denominator problem" has proven a difficult one (Walker, 2001).

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Veil of Darkness

A novel solution to the denominator problem is provided by the "veil of darkness" (VOD) approach first proposed by Grogger & Ridgeway (2006). The VOD method limits its focus to stops which occur during what Grogger & Ridgeway (2006) term the "inter–twilight period" ("ITP"), that is, the time frame after the *earliest* time at which twilight occurs but before the *latest* time at which twilight[38] occurs. In much of the continental United States, this period corresponds roughly between 5 p.m. and 9 p.m. As shown in Figure 3.1 the ITP is the area below the solid line, which in Colorado Springs, Colorado corresponds to the period after 5:07 p.m. and before 9 p.m. The two vertical jumps correspond to the beginning and end of Daylight Saving Time.

VOD thus creates a natural experiment in which the null hypothesis is that amount of visible light has no effect on the rates at which civilians are stopped (Ritter & Bael, 2009). The treatment group is drivers after twilight, when it is dark, and the control group is drivers before twilight, when it is light (Ritter & Bael, 2009).

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[38] There is a similar period in the early morning, but most studies that have employed the VOD ignore this period as few to no stops occur during this time.
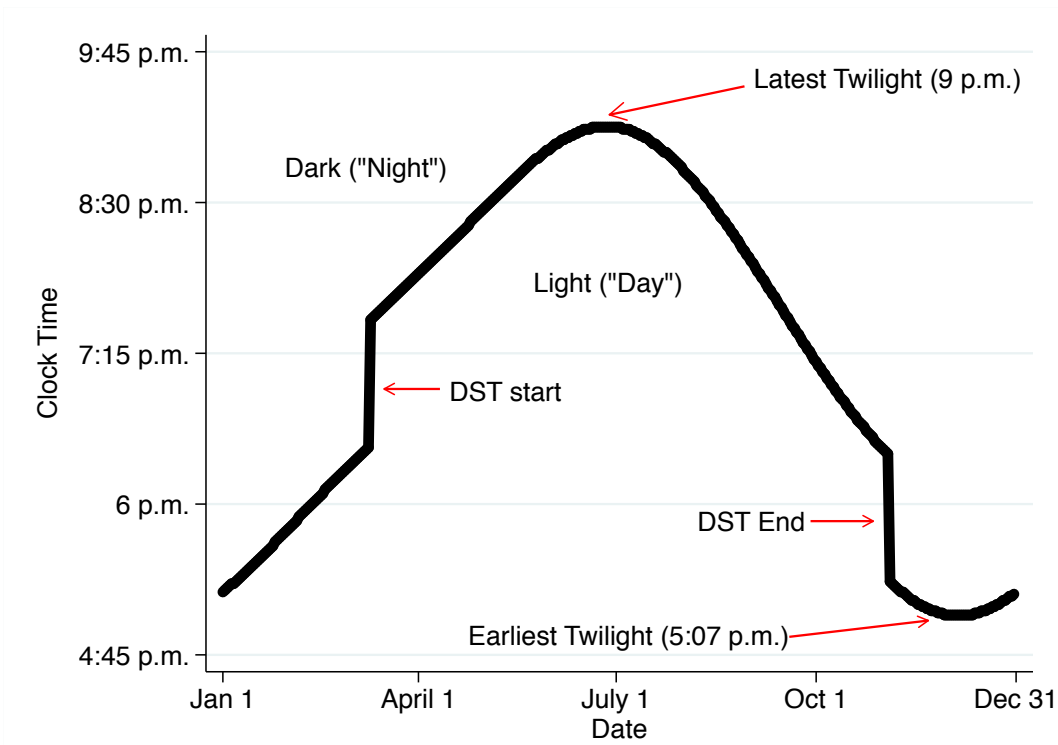
Figure 3.1 – Inter–Twilight Period

The VOD method attempts to get around the denominator problem by making a number of assumptions. First, VOD assumes that driver behavior is a function of clock time rather than brightness, that is, that drivers engage in similar driving patterns at similar clock times throughout the year, regardless of darkness or brightness. That is, VOD assumes that, for instance, a driver at 6 p.m. in January, when it is dark, is engaged in the same sorts of driving patterns as a driver at 6 p.m. in July, when it is light. Second, VOD assumes that for racial profiling to occur, the race of the driver must be visible to the police officer (Grogger & Ridgeway, 2006). Third, VOD assumes that the presence of light has a *race–revealing* effect and that the absence of the light at night has a *race–blinding* effect (Grogger & Ridgeway, 2006). While there have been few empirical tests of whether the presence of light allows police officers

to directly observe the racial identity of the drivers and their findings vary, all such studies support the assumption that the race of the driver is more readily identifiable during the day than at night (Lambert, 2005; Ritter & Bael, 2009; Greenwald, 2001). Importantly, VOD does not compare the relative stop rates of, for instance, Black drivers to white drivers. Rather, it merely compares the stop rate of Black drivers in darkness to Black drivers in daylight, within the ITP.

Previous studies that have employed the VOD method have found mixed results. While some studies have found no evidence of differences in stop rates based on time of day (Grogger & Ridgeway, 2006; Worden, McLean, & Wheeler, 2012), others have found a time of day effect on stop rates of Black motorists (Ritter & Bael, 2009; Horrace & Rohlin, 2016). This study attempts to replicate previous studies by examining traffic stop data and expands upon previous studies by examining investigatory stops for "suspicious vehicles." To my knowledge, this is the first study to examine non–traffic stops using the VOD method.

Of the 156,995 traffic citations, 165 observations were missing time data and were dropped, leaving 156,830. Of these, 20,385 occurred during the ITP.

The data on traffic stops and investigatory stops for "suspicious vehicles" were analyzed using the STATA 14 software package. I created dummy variables for whether the stopped person was Black (*black*), whether the stop occurred during the day portion of the ITP (*day*), and whether the stopped person was male (*male*). I ran four types of logistic regressions. First, I ran a logistic regression with a single predictor variable (Model A) describing the relationship between whether the stop occurred during the day portion of the ITP and the log odds of the stopped person being Black (Equation 1).

Equation 1 – Logistic regression predicting the probability that a stopped person will be Black with day as the independent variable

$$logit(black) = \beta_0 + \beta_1\,(day)$$

Second, I ran a logistic regression with two predictor variables (Model B) describing the relationship between whether the stop occurred during the day portion of the ITP and whether the stopped person was male and the log odds of the stopped person being Black (Equation 2). Equation 2 – Logistic regression predicting the probability that a stopped person will be Black with day and sex as the independent variables

$$logit(black) = \beta_0 + \beta_1(day) + \beta_2\,(male)$$

Finally, to incorporate clock time effects, replicating the method used by Grogger & Ridgeway (2006), I created a six–knot cubic spline. As Ritter & Bael (2009) note, the use of cubic splines allows "a great deal of flexibility in fitting time–of–day effects." In analyzing and interpreting the results of the splined models, I adapted the STATA syntax developed by Carter & Signorino (2010). I ran a logistic regression with six predictor variables (Model C) describing the relationship between whether the stop occurred during the day, the five time splines, and the log odds of the stopped person being Black. Lastly, I ran a logistic regression with seven predictor variables (Model D) describing the relationship between whether a stop occurred during the day, whether the driver was male, the five time splines, and the log odds of the stopped person being Black.

I employ the VOD method to examine stops of Black drivers using both traffic citation data and FIRs for "suspicious vehicles" and answer the following questions.

Research Question 1a – During the ITP, are Black drivers stopped more frequently when it is light than when it is dark for traffic infractions?

Research Question 1b – During the ITP, are Black drivers stopped more frequently when it is light than when it is dark for "suspicious vehicle" stops?

Risk Ratios

A more conventional solution to the denominator problem is to compare the numbers of each group stopped to their proportion of the population (see, e.g. Steward, 2004; Weiss & Grumet–Morris, 2005). This has the advantage of being convenient as population numbers are relatively easy to obtain from the US Census. However, it is widely agreed that it is not sufficient to compare the number of a given group people stopped to that given group's population (Dominitz, 2003; Smith & Alpert, 2002). That is, one cannot simply compare the number of Blacks stopped to the number of Blacks in the population. This is due to the fact that not all members of the population have the same relative exposure to, in this case, being stopped by the police. For example, the very young and the very old are far less likely to be driving a car or walking down the street than the rest of the population. For this reason, I have defined a "Driving Age" of 15–84. This age range was based on the fact that in Colorado a 15-year old may legally drive and that the range 15-84 captures over 98% of all drivers in the US (Federal Highway Administration, 2015). Furthermore, this age range of ages reflects the range of ages in the data as virtually no arrests, traffic tickets, or FIRS involve persons over the age 84 or under the age of 15.

Using "Driving Age" as the baseline comparison group, I then find the ratio of the number of stops of Blacks relative to the number of stops expected given their proportion to the population. This ratio[39] is calculated as follows:

$$ratio = \frac{target\ population\ stops_{observed}}{target\ population\ stops_{expected}}$$

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[39] This ratio is adapted from the Standardized Mortality/Morbidity Ratio, traditionally used in epidemiology to compare the relative frequency of illness or death among a target population with the expected rate of illness or death in the larger population. (Vandenbroucke, 1982).

$$target\ population\ stops_{expected} = \frac{target\ population}{total\ population}(total\ stops)$$

If the actual outcome (the observed number of stops in the target population) matches the expected outcome (the number of stops proportionate to that group's share of the driving age population), the ratio would be 1. Ratios less than 1 indicate that the number of stops was fewer than would be expected based upon proportion of the driving age population. Ratios higher than 1 indicate a greater than expected number of stops.

To determine whether the differential risk is statistically significant, a 95% confidence interval is determined. The differential risk will only be considered statistically significant if the 95% confidence interval falls entirely above or below a ratio of 1.

The 95% confidence interval (Bland, 2015) is obtained using the formula:

$$CI = ratio \pm 1.96\left(\frac{\sqrt{target\ population\ stops_{observed}}}{target\ population\ stops_{expected}}\right)$$

I use these risk ratios to answer the following questions.

Research Question 2a – Are Blacks disproportionately subjected to traffic related stops?

Research Question 2b – Are Blacks disproportionately subjected to investigatory stops?

OLS Regression

Finally, I employed OLS regression using STATA 14 to analyze the relationship between characteristics of geographic units (namely, census tracts) and the concentration of investigatory stops, as measured by the percentage of all stops in the city during 2013 which occurred within a given census tract. The geographic characteristics were percentage of the total city population

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that lived within the census tract in 2013, number of serious violent crimes that occurred in 2013, number of serious property crimes that occurred in 2013, percent Black, percent below the poverty line, residential instability, and female head of household as these variables are traditionally used when analyzing neighborhood-level effects (see, e.g., Lee et al, 2014; Smith, 1986). Serious violent crime and serious property crime were taken from NIBRS (National Incident-Based Reporting System) data at the census-tract level. Percent non-white, percent below the poverty line, residential instability, and female head of household data were obtained from the 2013 American Community Survey conducted by the US Census. Residential instability was defined as the percentage of all residences in the census-tract in which the residents had lived in their home for less than one year.

Finally, I use this data to answer the final research question.

Research Question 3 – Are investigatory stops concentrated in areas with larger Black populations?

IV.   Findings

I now present the findings organized by research question.

Question 1a - During the ITP, are Black drivers stopped more frequently when it is light than when it is dark for traffic infractions?

As seen in Table 3.1, Blacks received 12% of all traffic citations in Colorado Springs between 2013–15, 12% of daylight traffic citations, and 15% of night traffic citations. I divide the day into daylight (the period between dawn and end of twilight) and night (the period after the end of twilight and dawn the following day). Blacks made up a greater percentage of traffic citations during the "night" period, then they did during the "daylight" period. On face, this at

least supports the null hypothesis that the visibility of the driver's race has no effect on the

likelihood that they will receive a traffic citation and at most suggests what Grogger & Ridgeway

have termed a "reverse racial profiling" effect (2006). However, given the wide variability in

driving patterns throughout the day and night, the import of this difference is difficult to assess.

Table 3.1 – Percent Black Among Traffic Citations

	All Traffic Citations	ITP Traffic Citations
Total	12% ($n = 19,406$)	13% ($n = 2,731$
Daylight	12% ($n = 12,994$)	14% ($n = 1,690$)
Night	15% ($n = 6,412$)	13% ($n = 1,041$)

On the other hand, during the ITP, the reverse is observed. As seen in Table 3.1, Black

drivers received 14% of all traffic citations during the daylight portion of the ITP and 13% of the

night portion of the ITP. This finding supports rejecting the null hypothesis as Black drivers

received a greater percentage of traffic citations during the daylight portion of the ITP than they

did during the night portion of the ITP. This suggests that the visibility of the race of the driver

had some effect on the likelihood of receiving a traffic citation.

Table 3.2 – Logistic Regression Predicting Whether a Driver Stopped for a Traffic Violation Will Be Black

Black	Coefficients; *Exponentiated Coefficients* (Standard Error)			
	A	**B**	**C**	**D**
Day	0.063 ; *1.065* (0.042)	**0.148**** ; *1.159* (0.048)	0.068 ; *1.07* (0.042)	**0.146**** ; *1.158* (0.048)
Male			**0.261***** ; *1.298* (0.043)	**0.256***** ; *1.292* (0.043)
Spline 1		0.313 ; *0.731* (0.222)		0.338 ; *0.713* (0.222)
Spline 2		5.559† ; *259.583* (3.272)		5.713† ; *302.778* (3.276)
Spline 3		−14.985† ; *0.000* (8.768)		−15.3† ; *0.000* (8.777)
Spline 4		15.757† ; *6.9*10^6* (9.122)		15.97† ; *8.6*10^6* (9.132)
Spline 5		−10.288† ; *0.000* (5.971)		−10.4† ; *0.000* (5.979)
Constant	−1.905 ; *0.149* (0.033)	3.403 ; *30.049* (3.869)	0.261 ; *1.298* (0.043)	3.681 ; *39.699* (3.874)
Log likelihood	−8027.7111	−8018.0132	−9768.824	−8000.2142
McFadden's pseudo R2	0.0001	0.0013	0.0023	0.0036
Chi–square statistic	2.22	21.62	45.82	57.22
Degrees of freedom	1	6	2	7
N	20,384	20,384	24,437	20,384

† $p < 0.1$; * $p < 0.05$; ** $p < 0.01$; *** $p < 0.001$

A – Logistic Regression with Day
B – Logistic Regression with Cubic Splines (6 knots) Day
C – Logistic Regression with Day & Male
D – Logistic Regression with Cubic Splines (6 knots) Day & Male

As seen in Table 3.2, there was not a statistically significant relationship at the $p < 0.05$ level between being in the daylight portion of the ITP and the probability that a driver given a traffic citation would be Black in the logistic regressions that do not incorporate clock time effects. However, when incorporating time of day effects, the relationship was significant. In Model B, the presence of daylight increased the probability that a driver given a traffic citation would be Black by approximately 15%; this is significant at the $p < 0.01$ level. In Model D, which controls for the sex of the driver, a similar effect was found also at the $p < 0.01$ level.
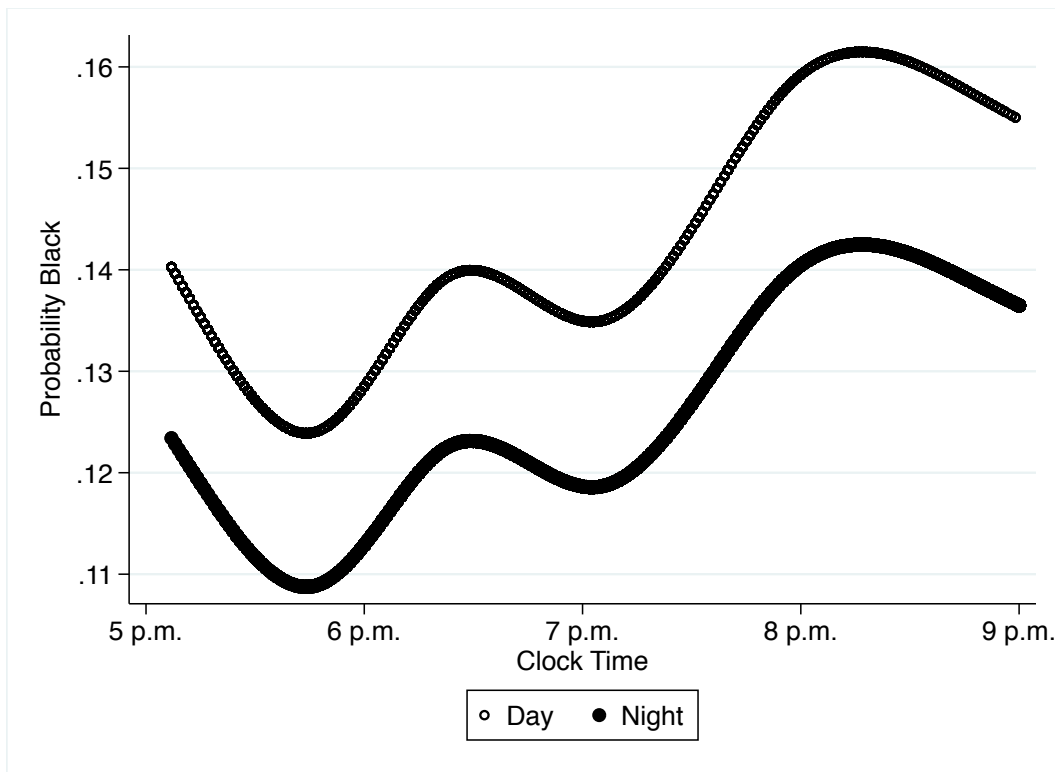
Figure 3.2 – Traffic VOD with cubic splines

This can be seen visually in Figure 3.2, which incorporates the effect of clock time on the probability that a cited driver will be Black. The gap between the two curves illustrates the difference in the probability that a cited drive will be Black during the day portion of the ITP and

during the night portion of the ITP. For instance, in Figure 3.2, at 7 p.m., the probability that a stopped driver will be Black is approximately 13.5% during the part of the year when it is day and 12% when it is night.

This same pattern can be observed when controlling for sex. As can be seen in Figures 3.3 and 3.4, while men are more likely to receive traffic citations than women, both Black men and Black women receive a higher percentage of traffic citations during the daylight portion of the ITP than they do during the night portion.
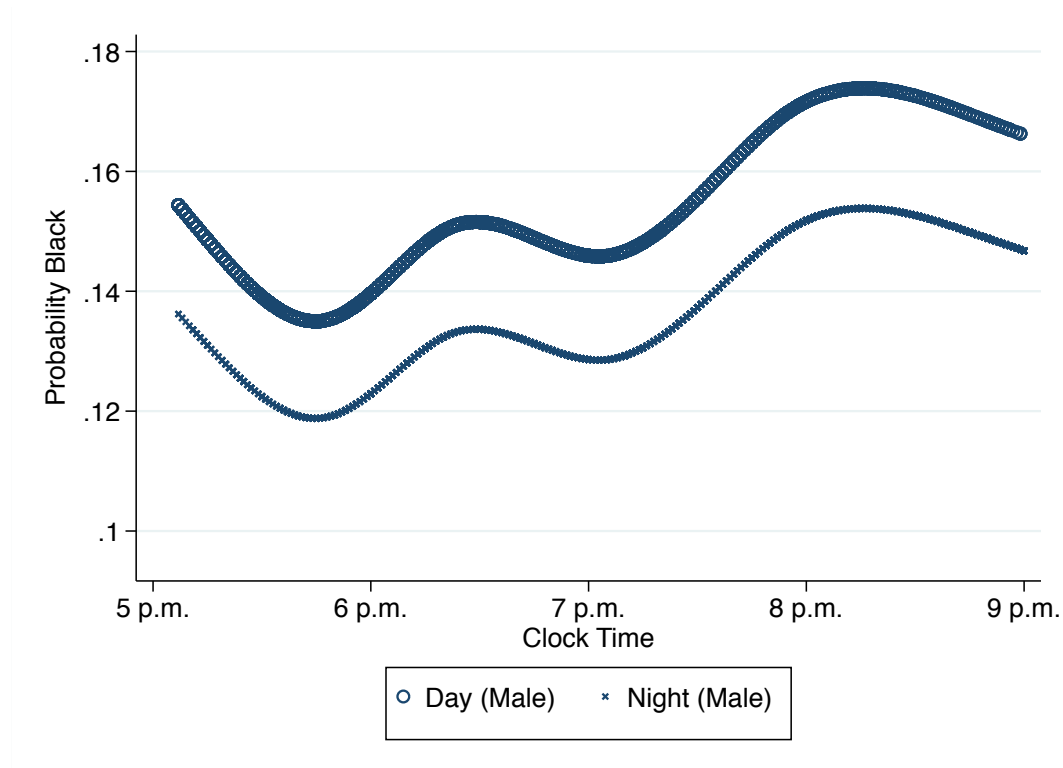
Figure 3.3 – Traffic VOD with cubic splines and Male
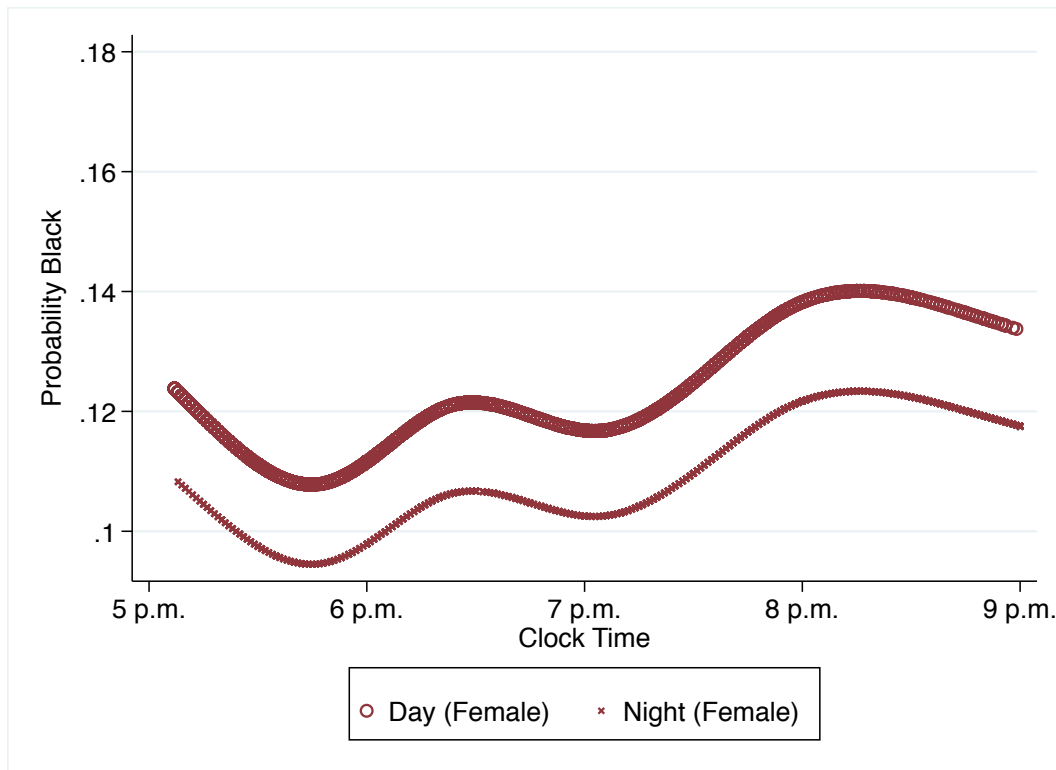
Figure 3.4 – Traffic VOD with cubic splines and Female

Question 1b - During the ITP, are Black drivers stopped more frequently when it is light than when it is dark for "suspicious vehicle" stops?

I now turn to the investigatory stops for "suspicious vehicles." Of the 1,965 FIRs for "suspicious vehicle," 6 observations were missing time data and one was missing sex and race data; both were dropped. Of the remaining 1,958 FIRS, 235 occurred during the ITP.

As seen in Table 3.3, Blacks were subject to 14% of all suspicious vehicle stops in Colorado Springs between 2013–15, 17% of daylight stops, and 14% of night stops. That Blacks make up a greater portion of suspicious vehicle stops when it is daylight than when it is night supports rejecting the null hypothesis that the visibility of the driver has no effect on the decision to stop. This gap is substantially greater during the ITP.

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As seen in Table 3.3, Blacks made up 22% of all suspicious vehicle stops during the daylight portion of the ITP, but only 12% of suspicious vehicle stops during the night portion of the ITP. Of course, it should be noted, that small numbers of such stops encourage caution in interpretation.

Table 3.3 – Percent Black Among "Suspicious Vehicle" Stops

	All SV Stops	**ITP SV Stops**
Total	14% ($n = 283$)	17% ($n = 40$)
Daylight	17% ($n = 107$)	22% ($n = 28$)
Night	14% ($n = 176$)	12% ($n = 12$)

As seen in Table 3.4, the presence of daylight was statistically significantly associated with the probability of a Black person being stopped for a suspicious vehicle in all four models at the $p < 0.05$ level. In Models A and C, which do not incorporate time of day effects, the presence of daylight increased the probability that a person stopped for a suspicious vehicle would be Black by approximately 118%. In models B and D, which incorporate clock time effects, the presence of daylight increased the probability that stopped person would be Black by approximately 160%.

Notably, unlike in the veil of darkness analysis of traffic citations, controlling for sex had little impact on the size of the coefficients on the daylight variable and the relationship between the sex control variable and the likelihood of the stopped person being Black was not statistically significant. As noted earlier, there were small numbers of observations of suspicious vehicle stops during the ITP. The small numbers of observations created very large standard errors in the time splines.

Table 3.4 – Logistic Regression Predicting Whether a Person Stopped for a "Suspicious Vehicle"

Will Be Black

Black	Coefficients ; *Exponentiated Coefficients* (Standard Error)			
	A	**B**	**C**	**D**
Day	**0.775*** ; *2.172* (0.374)	**0.947*** ; *2.578* (0.423)	**0.782*** ; *2.185* (0.375)	**0.962*** ; *2.616* (0.432)
Male			0.676 ; *1.966* (0.448)	0.667 ; *1.949* (0.457)
Spline 1		0.825 ; *2.283* (2.265)		−0.545 ; *0.58* (1.372)
Spline 2		−17.977 ; *0.000* (19.256)		−4.711 ; *0.009* (13.262)
Spline 3		64.248 ; *7.987*10^{27}* (59.276)		17.91 ; *6*10^{7}* (29.859)
Spline 4		−82.187 ; *0.000* (79.077)		−33.471 ; *0.000* (38.588)
Spline 5		27.716 ; *1*10^{12}* (71.402)		11.656 ; *1.15*10^{5}* (119.286)
Constant	−2.058 ; 0.128 (0.307)	−16.433 ; *0.000* (39.709)	−2.582 ; *0.076* (0.48)	6.888 ; *980.112* (24.287)
Log likelihood	−104.92286	−99.92193	−103.66828	−99.13463
McFadden's pseudo R2	0.0214	0.068	0.0331	0.0237
Chi–square statistic	4.58	15.58	7.09	16.16
Degrees of freedom	1	6	2	7
N	235	235	235	235
† $p < 0.1$; * $p < 0.05$; ** $p < 0.01$; *** $p < 0.001$				

A – Logistic Regression with Day
B – Logistic Regression with Cubic Splines (6 knots) Day
C – Logistic Regression with Day & Male
D – Logistic Regression with Cubic Splines (6 knots) Day & Male

The differences in "suspicious vehicle" stop patterns can be seen visually in Figure 3.5, which incorporates the effect of clock time on the probability that a person stopped for a suspicious vehicle will be Black. The gap between the two curves illustrates the difference in the probability that a cited drive will be black during the day portion of the ITP and during the night portion of the ITP.
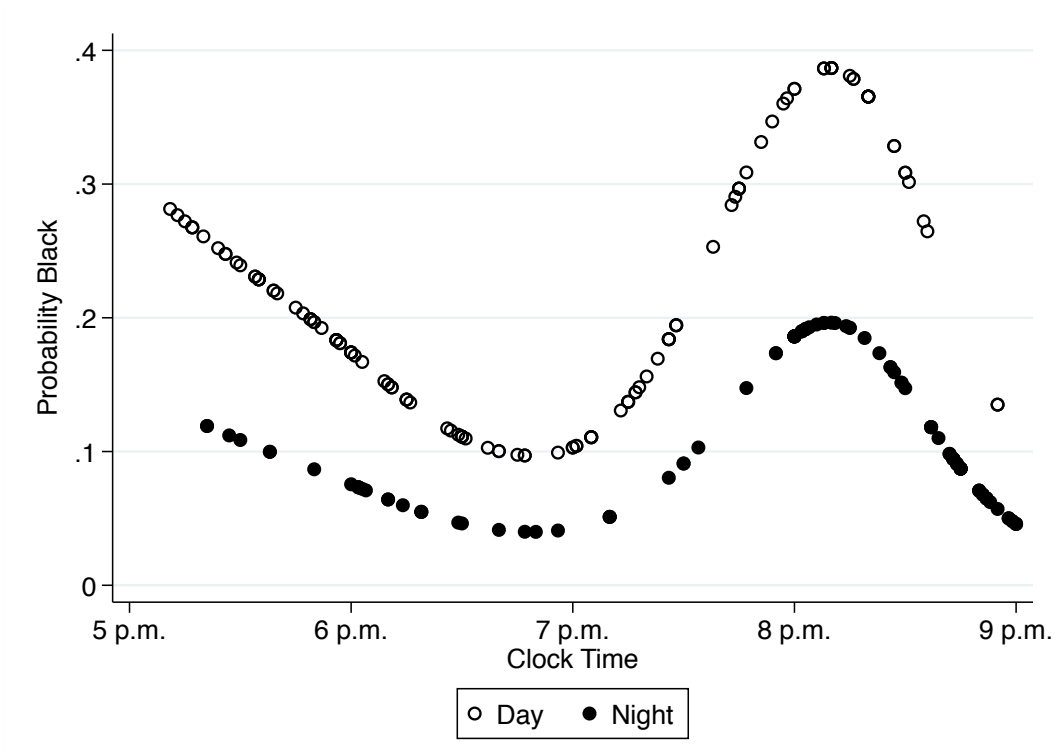
Figure 3.5 – Suspicious Vehicle VOD with cubic splines

Unlike with traffic citations, the gap between day and night stops is not constant throughout the ITP. For instance, in Figure 3.5, at 5:30 p.m., the probability that a person stopped for a suspicious vehicle will be Black is approximately 25% during the part of the year when it is day and 11% when it is night, resulting in a gap of approximately 14%. However, at 7

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p.m. the gap is only approximately 5%. The gap increases again at 8:15 p.m. to approximately

19%, before declining again at the end of the ITP. While it is possible that the wide variability in

the magnitude of the gaps is a function of policing patrol patterns, it is more likely the result of

the large standard errors given the small number of observations.
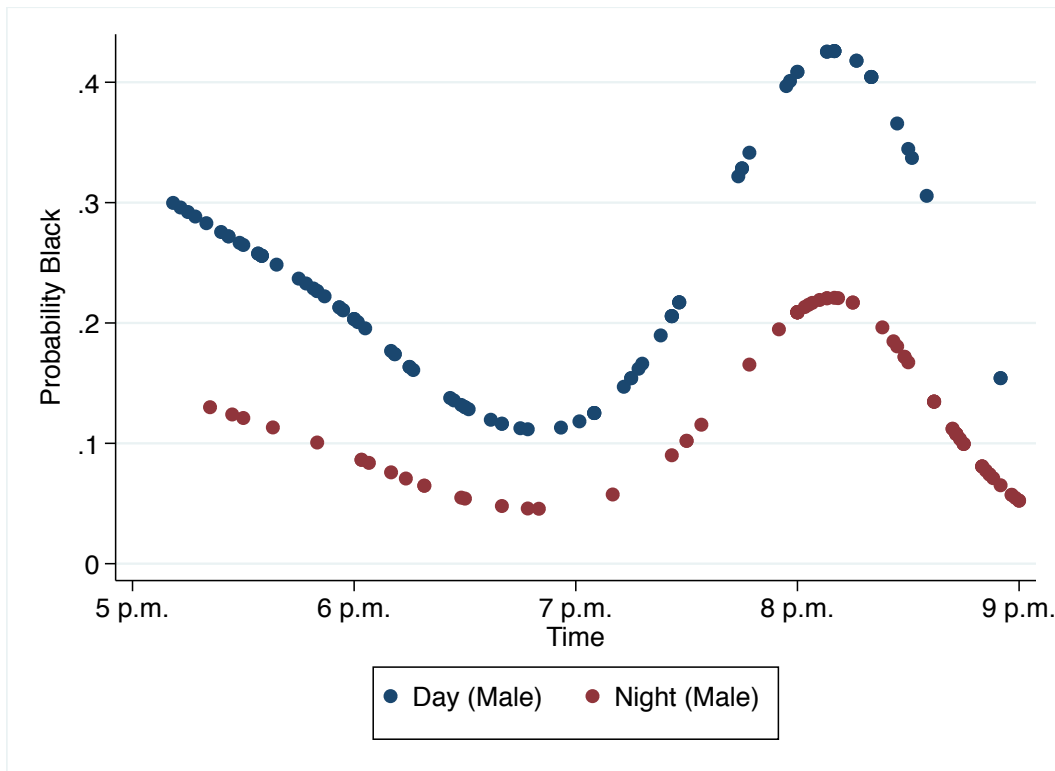
Figure 3.6 – Suspicious Vehicle VOD with cubic splines and Male

     Similar patterns can be observed when controlling for sex. As can be seen in Figures 3.6

and 3.7, while men are more likely to be stopped for suspicious vehicles than women, both Black

men and Black women are more likely to be stopped during the daylight portion of the ITP than

they are during the night portion.
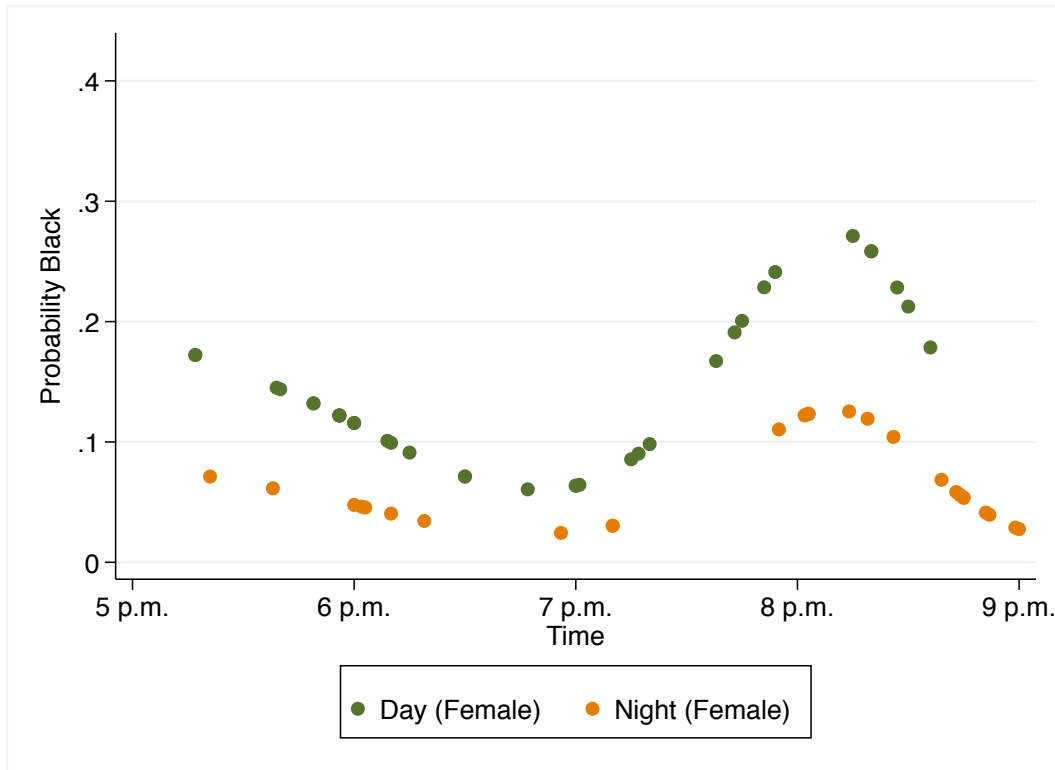
Figure 3.7 – Suspicious Vehicle VOD with cubic splines and Female

Question 2a – Are Blacks disproportionately subjected to traffic related stops?

As can be seen in Table 3.5, in the period between 2013-15, Blacks received 13% of the traffic citations in Colorado Springs though they only made up 7.6% of the total city population, resulting in a ratio of 1.7 (Table 3.6). This means that the rate at which Black drivers received traffic citations was 70% higher than what would be expected if the rate at which they received them was proportionate to their representation in the population. As the 95% confidence interval does not include 1 (Table 6), we may reject the null hypothesis that the ratio does not vary from 1.

Table 3.5 – Summary of Black Traffic Citations by Comparison Group

	Black Citations	% of Total	Black Population	% of Total
Total	23,188	13.0%	37,358	7.6%
DAP	22,501	12.8%	27,326	7.1%
15-24	7,997	14.85%	6,858	9.3%

When restricted to the driving age population ("DAP"), Black drivers received 12.8% of the traffic tickets, while making up 7.1% of the population (Table 3.5). This results in a ratio of 1.79 (Table 3.6), which again allows us to reject the null as the 95% confidence interval does not include 1.

Table 3.6 – Ratio of Black Traffic Citations by Comparison Group

	Ratio	95% CI
Tickets/Pop	1.7	(1.68, 1.73)
Tickets/DAP	1.79	(1.77, 1.82)
Tickets/15-24	1.6	(1.57, 1.64)

All such comparisons assume of course that Black drivers as a group are not substantially different in their non-racial characteristics in such a way that they might be more likely to commit traffic offenses (e.g. more prone to speeding, more likely to own cars that fail to comply with motor vehicle codes, etc.). Age and gender have been found to substantially influence the likelihood of receiving traffic citations; men are more likely to commit traffic violations than woman and young drivers (particularly below the age of 25) are more likely to commit traffic violations than older drivers (Parker *et al*, 1995).

To account for these differential risks, I further restricted my analysis to young drivers and male drivers. Young (aged 15-24) Black drivers received 14.85% of the traffic citations

given to young drivers, while making up 9.3% of the young population (Table 3.5). Comparing

the population numbers, Blacks make up a greater percentage of young people in Colorado

Springs (9.3%) than they do of the total population (7.6%) or the driving age population (7.1%).

Even when taking this into account however, young Black drivers received 60% more tickets

than would be expected based upon their share of the young driver population (Table 3.6).

Table 3.7 – Summary of Black Traffic Citations by Comparison Group (Males Only)

	Black Citations	% of Total	Black Population	% of Total
Total	15,595	14.4%	19,491	8.1%
DAP	15,100	14.2%	14,361	7.7%
15-24	5,503	14.85%	3,484	9.2%

Male Black drivers received 14.4% of the traffic citations given to male drivers, while

making up 8.1% of the male population (Table 3.7). Again, comparing the population numbers,

Blacks make up a greater percentage of men in Colorado Springs than they do the total

population (8.1% compared to 7.6%) and the driving age population (7.7% compared to 7.1%).

This is all the more true for young Black men who make up 9.2% of the young male population.

However, even after restricting the group under analysis to young men only, young Black men

still receive 76% more traffic citations than would be expected based upon their share of the

young male population (Table 3.8).

Table 3.8 – Ratio of Black Traffic Citations by Comparison Group (Males Only)

	Ratio	95% CI
Tickets/Pop	1.78	(1.75, 1.81)
Tickets/DAP	1.91	(1.88, 1.94)
Tickets/15-24	1.76	(1.72, 1.81)

In summary, Blacks receive disproportionately more traffic citations for every comparison group and all ratios are statistically significant at the 0.05 level.

Question 2b – Are Blacks disproportionately subjected to investigatory stops?

CSPD records data on two types of investigatory stops. As discussed previously, one type is for "suspicious vehicles." The other type is for "suspicious persons." These people may be in a vehicle, but need not be.

As can be seen in Tables 3.9 and 3.10, in the period between 2013-15, the rate at which Blacks were subject to "suspicious vehicle" ("SV") stops in Colorado Springs was approximately twice what would be expected based upon their share of the total population or the driving age population.

Table 3.9 – Summary of Black "Suspicious Vehicle" Stops by Comparison Group

	Black SV	% of Total	Black Population	% of Total
Total	284	14.6%	37,358	7.6%
DAP	278	14.5%	27,326	7.1%
15-24	122	14.5%	6,858	9.3%

Table 3.10 – Ratio of Black Suspicious Vehicle Stops by Comparison Group

	Ratio	95% CI
SV/Pop	1.92	(1.69, 2.14)
SV/DAP	2.05	(1.81, 2.28)
SV/15-24	1.57	(1.29, 1.84)

Young Black drivers made up 14.5% of all young people stopped for SV, while making up 9.3% of the young population (Table 3.9), resulting in a ratio of 1.57 (Table 3.10). The fact

that young Black drivers were subject to SV stops at the same rate as Black drivers as a whole

suggests that age is not as significant a factor in SV stops as it was for traffic stops.

Table 3.11 – Summary of Black "Suspicious Vehicle" Stops by Comparison Group (Males Only)

	Black SV	% of Total	Black Population	% of Total
Total	226	16.4%	19,491	8.1%
DAP	225	16.5%	14,361	7.7%
15-24	106	18.1%	3,484	9.2%

Male Black drivers made up 16.5% of the male driving age population SV stops, while

making up 7.7% of the male driving age population (Table 3.11), resulting in a ratio of 2.15

(Table 3.12). Likewise, young Black men made up 18.1% of the young male SV stops while

making up only 9.2% of the population (Table 3.11), resulting in a ratio of 1.96 (Table 3.12).

Table 3.12 – Ratio of Black Suspicious Vehicle Stops by Comparison Group (Males Only)

	Ratio	95% CI
SV/Pop	2.03	(1.76, 2.29)
SV/DAP	2.15	(1.87, 2.43)
SV/15-24	1.96	(1.58, 2.33)

In summary, Blacks were subject to disproportionately more SV stops for every

comparison group and all ratios are statistically significant at the $p < 0.05$ level. This difference

is most pronounced for Black men.

We turn now to "suspicious person" ("SP") stops. As can be seen in Tables 3.13 and

3.14, in the period between 2013-15, the rate at which Blacks were subject to SP stops in

Colorado Springs was 2.5 times what would be expected based upon their share of the total

population or the driving age population[40].

Table 3.13 – Summary of Black "Suspicious Person" Stops by Comparison Group

	Black SP	% of Total	Black Population	% of Total
Total	838	17.8%	37,358	7.6%
DAP	812	17.6	27,326	7.1%
15-24	334	21.4%	6,858	9.3%

Table 3.14 – Ratio of Black Suspicious Person Stops by Comparison Group

	Ratio	95% CI
SP/Pop	**2.34**	(2.18, 2.49)
SP/DAP	**2.50**	(2.33, 2.66)
SP/15-24	**2.31**	(2.06, 2.55)

Blacks aged 15-24 made up 21.4% of all young people stopped for SP, while making up

9.3% of the young population (Table 13), resulting in a ratio of 2.31 (Table 14).

Table 3.15 – Summary of Black "Suspicious Person" Stops by Comparison Group (Males Only)

	Black SP	% of Total	Black Population	% of Total
Total	751	20.1%	19,491	8.1%
DAP	727	19.8%	14,361	7.7%
15-24	303	24.2%	3,484	9.2%

Black men made up 19.8% of all male driving age population SP stops, while making up

7.7% of the male driving age population (Table 15), resulting in a ratio of 2.59 (Table 3.16).

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[40] While driving age is not directly relevant for "suspicious person stops" as a vehicle need not
be involved, the "driving age" of 15-84 captures virtually all such stops and thus is a more useful
comparison group than the entire population, which would include children and the elderly.

Even more pronounced, young Black men made up 24.2% of the young male SP stops while making up only 9.2% of the population (Table 3.15), resulting in a ratio of 2.62 (Table 3.16).

Table 3.16 – Ratio of Black Suspicious Person Stops by Comparison Group (Males Only)

	Ratio	95% CI
SP/Pop	2.48	(2.3, 2.66)
SP/DAP	2.59	(2.4, 2.77)
SP/15-24	2.62	(2.32, 2.91)

In summary, Blacks were subject to disproportionately more SP stops for every comparison group and all ratios are statistically significant at the 0.05 level. This difference is most pronounced for young Black men.

Question 3 – Are investigatory stops concentrated in areas with larger Black populations?

I now turn to the question of whether areas with larger Black populations are "over policed," that is, whether investigatory stops are concentrated within certain census tracts. In answering this question, I analyzed both "suspicious vehicle" investigatory stops and "suspicious person" investigatory stops at the census tract level. In answering this question, the dependent variable was the percentage of all investigatory stops – whether SV or SP – during 2014. The substantive independent variable was percent Black in a census tract. The control variables were what percent of the city's population lived within the census tract during 2013, serious violent crime in the previous year, serious property crime in the previous year, percent below the poverty line, residential instability, and percent of households that are female headed.

Table 3.17 - OLS Regression Predicting Concentration of "Suspicious Vehicle Stops"

Percent of all SV Stops 2014	Coefficient ; (Standard Error)
Percent of Population	-0.5051 (0.4473)
Serious Violent Crimes 2013	0.0607** (0.0192)
Serious Property Crimes 2013	0.01*** (0.0017)
Percent Below Poverty	-0.0299 (0.0284)
Residential Instability	0.0116 (0.0191)
Female Head of Household	0.0468 (0.0312)
Percent Black	-0.0356 (0.0355)
Constant	0.3016 (0.6694)
R^2	0.6937
Number of Observations	110
* $p < 0.05$; ** $p < 0.01$; *** $p < 0.001$	

As can be seen in Table 3.17, for SV stops, serious violent crime and serious property crime were statistically significant at least the $p < 0.01$ level and $p < 0.001$ level respectively. Interpreting the coefficients, an increase of 1 serious violent crime in a census tract was associated with an approximately 0.06 percentage point increase in what percentage of all SV stops occurred in that census tract and an increase of 1 serious property crime was associated with an approximately 0.01 percentage point increase in what percentage of all SV stops occurred in that census tract. No other variables were statistically significant at the $p < 0.05$ level.

Table 3.18 - OLS Regression Predicting Concentration of "Suspicious Person" Stops

Percent of all SP Stops 2014	Coefficient ; (Standard Error)
Percent of Population	-1.1383** (0.3757)
Serious Violent Crimes 2013	0.1595*** (0.0162)
Serious Property Crimes 2013	0.0049* (0.0015)
Percent Below Poverty	-0.0198 (0.0239)
Residential Instability	0.0224 (0.016)
Female Head of Household	-0.0593* (0.0262)
Percent Black	-0.0789* (0.0299)
Constant	1.2937 (0.5622)
R^2	0.8628
Number of Observations	110
† $p < 0.1$; * $p < 0.05$; ** $p < 0.01$; *** $p < 0.001$	

As can be seen in Table 3.18, for SP stops, serious violent crime and serious property crime were statistically significant at least the $p < 0.001$ level and $p < 0.05$ level respectively. Interpreting the coefficients, an increase of 1 serious violent crime in a census tract was associated with an approximately 0.16 percentage point increase in what percentage of all SP stops occurred in that census tract and an increase of 1 serious property crime was associated with an approximately 0.005 percentage point increase in what percentage of all SP stops occurred in that census tract. Percent Black was statistically significant at the $p < 0.05$ level; an increase of 1 percentage point in percentage of the census tract population that is Black *decreases* the number of SP stops by approximately 0.08 percentage points. Percent of the census tract's households that are female headed was statistically significant at the $p < 0.05$ level; an increase of 1 percentage point in percentage of the census tract households that are female

headed *decreases* the number of SP stops by approximately 0.06 percentage points. Finally,

percent of the city's population that lived within the census tract was statistically significant at

the *p* < 0.01 level; an increase of 1 percentage point in percentage of the city's population that

resides within the census tract *decreases* the number of SP stops by approximately 1.14

percentage points. No other variables were statistically significant at the *p* < 0.05 level.

In summary, at the census tract level, higher levels of serious property and serious violent

crimes predict both higher concentration of SV stops and SP stops. On the other hand, percent of

the city's population that lives within the census tract population, percent of the census tract's

households that are female headed, and percent of the census tract's population that is Black

predict lower concentration of SP stops.

V.   Discussion

It is well established in the literature that durable and measurable disparities exist

between the rates at which whites and Blacks are subjected to coercive police practices, such as

investigatory stops. Sociological explanations for this disparity focus upon social status

(Worden, 2015; Reiss, 1968; Friedrich, 1977) of Blacks in American society, the social distance

between police officers and Blacks (Black, 2010), or the perception that Blacks pose a threat to a

white-controlled social order (Hawkins, 1987; Blalock, 1967). Regardless, these theoretical

explanations predict that when assessing the likelihood that a driver will be stopped by the

police, *race matters*. That is, the race of the driver plays a role in the decision by the police

officer to stop them.

Ecological explanations on the other hand focus on neighborhood characteristics such as

racial makeup, socioeconomic status, residential stability, household composition, and crime

rates (Smith, 1986). Such explanations predict that when assessing the likelihood that a driver will be stopped by the police, place matters. That is, the characteristics of the place that the driver is in plays a role in the decision by the police officer to stop them.

A third set of explanations attributes disparities to race-neutral causes such as crime rates or race-conscious but benign causes such as differences in driving patterns or behaviors between whites and non-whites.

The current study explored the relationship between race and police stops in multiple ways based upon sociological theory and social ecological theory. While racial disparities in police stops have been studied extensively, this study makes a number of novel contributions to the literature. Generally, this study is consistent with previous sociological and social ecological theoretical explanations for why Blacks and other non-whites may be more likely to be subject to coercive police practices. In selecting three separate research questions and three distinct methods, this study has attempted to triangulate on the relationship between race and police stops.

Regarding Research Question 1a, this study replicates the findings of Ritter & Bael (2009) and Horrace & Rohlin (2016) that there are statistically significant differences in the rates at which Black motorists are stopped for traffic violations when it is light (and thus their race is more readily identifiable) than when it is dark (and their race is more likely to be obscured).

Regarding Research Question 1b, this study is the first to examine the use of investigatory stops under the Veil of Darkness. The findings support the conclusion that assessments by police officers of whether a vehicle is "suspicious" and thus should be stopped are influenced by the race of the driver. There are two significant limitations to this finding. The first is that the small number of "suspicious vehicle" stops during the ITP meant that there were

large standard errors. Future studies may address this by studying larger departments with more stops or expanding the time period under analysis.

The second, and perhaps more serious, limitation is that the VOD method assumes that the population of drivers on the road and their driving behaviors are a function of clock time, not the presence or absence of light. While this assumption is likely to be true for routine driving behavior, it may not hold for the kinds of behaviors that are associated with a police officer determining a vehicle to be "suspicious." For instance, it is entirely likely that certain types of criminal behavior are more likely when it is dark than when it is light regardless of clock time. And it is also entirely likely that certain types of innocent behavior which nonetheless may be deemed suspicious, such as repeatedly passing the same spot while looking for an address, may be more common when it is dark than when it is light. However, neither of these would be consistent with a stopped person being more likely to be Black when it is light than when it is dark. Regardless, in the context of investigatory stops, this assumption would benefit from empirical support.

Regarding Research Question 2a and 2b, the findings are consistent with the conclusion that young Black men are disproportionately subject to both routine traffic stops and more coercive police practices such as investigatory stops. Blacks were disproportionately stopped regardless of what comparison group was used. Such a finding supports Black's (2010) prediction that Blacks, as a numerical minority with lower social status, will be subject to a greater "quantity of law" than whites. The finding that Blacks are more than twice as likely than whites to be deemed "suspicious" and thus stopped, is consistent with the predictions of conflict theory (Blalock, 1967; Hawkins, 1987; Turk, 1969; Chambliss, 1968; Spitzer, 1975).

As it does for most efforts to analyze disparities in rates, the "denominator problem" poses a limitation for this study. While the numbers of Blacks, whites, and other ethnic groups who are stopped are readily attainable, questions remain as to the most appropriate comparison group. In this study, I compared the numbers of Blacks to their share of the total population, the driving aged population, and the young population. However, this study does not control for annual miles driven, condition of the car, or perhaps most significantly, differences in driving behavior. The denominator problem as always remains an obstacle.

Finally, regarding Research Question 3, the findings are consistent with social ecological explanations for disparities and the conclusion that place matters. Racial disparities in police practices are often explained as mere artifacts of race neutral policies such as deployment around crime "hot spots" (Warren et al, 2006). This study's findings suggest that the concentration of "suspicious vehicle" stops within census tracts is driven by the presence of serious crime. As no statistically significant relationship was found between demographic characteristics and the concentration of SV stops, this study supports that in determining whether a vehicle is "suspicious" and worth pulling over, police officers are influenced by the presence of serious crime in a neighborhood, but not its other characteristics.

However, the story is different for suspicious person stops. When controlling for the effect the previous year's level of serious crime, the concentration of SP stops is negatively associated with demographic characteristics such as population share, female headed household rates, and most notably, percent of the census tract's population that is Black. That is, such neighborhoods are less likely to receive police resources, in terms of SP stops, than other neighborhoods. If SP stop concentration were only based upon crime, as was the case with SV stops, then these independent variables would not have been statistically significant. This

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negative association suggests that while Black individuals may be subjected to "over policing," as shown in the VOD analysis and risk ratios, Black, female headed, and more populous neighborhoods may be "under policed," at least when it comes to concentration of SP stops.

VI.   Conclusion

Discussions of state violence most frequently focus upon events such as police involved homicides or excessive force. These dramatic and extreme examples naturally attract attention and scholar's interest in them need not be explained. The use of force, especially deadly force, by the police against civilians gets headlines and prompts questions about the legitimacy of violence. The literature on police use of force is extensive and has continued to grow in recent decades.

A form of violence that often goes less examined is that of "slow violence" (Ward, 2014) that demonstrates social control. Slow violence refers to violence that is attritional and cumulative, rather than immediate and dramatic. This type of violence might be described as oppressive given its impact upon those who are subjected to it.

Whereas dramatic violence is characterized by the instant infliction of physical injury, slow violence often takes the form of gradual psychic injury. An erosion rather than an avalanche. The term slow violence has been deployed to describe oppressive regimes in which subordinate populations are reminded of their lesser status and vulnerability through routine humiliation and harassment (Ward, 2014).

This study analyzed a particular police practice to determine whether and how it exhibits patterns of racialized policing – namely over-policing of Black faces and under-policing of Black places. To the extent that such racialized policing patterns reinforce the social control through

the disproportionate use of coercive police practices such as investigatory stops of Black people

and the disinclination to police to devote police resources to Black neighborhoods, they

demonstrate a kind of slow racialized police violence.

Chapter Four: Discourses of Justification

I.   Introduction

In this study, I will examine the discourse surrounding racialized police violence. The focus of this study is the actual language used by police officers and other law enforcement officials in describing RPV. While there has been much written about how police uses of force are officially evaluated, past research has tended to focus on how existing systems are not effective at reducing such incidents (Emery & Maazel, 2001; Cheh, 1996). As such we lack insight into how accused police officers themselves come to understand their actions and how these understandings are sanctioned by their departments and other law enforcement officials. This study turns to this question specifically to analyze officers' own discourses of justification, or redemption narratives, to see how they either neutralize (Agnew, 1994; Minor, 1981; Sykes & Matza, 1957) or justify their actions.

In the United States, allegations of excessive force by the police, of which police involved homicides are the most spectacular, are evaluated using a standard of objective reasonableness[41]. That is, whether a particular use of force is lawful is determined based upon whether it was *objectively reasonable* to employ the use of force that the officer used, given the circumstances and officer's knowledge. One of the most common justifications offered by officers is that their actions were necessary in order to protect their own lives or the lives of others (Herbert, 1998).

This study examines a high-profile instance in which force was used to see how these encounters are remembered, described, and justified. Variables of interest include: references to disobedience (challenges to authority), appeals to dangerousness, and racial stereotypicality

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[41] *Graham v. Connor*, 109 S. Ct. 1865 (1989)

(such as references to physicality). In this chapter, I argue that the discourse police officers and law enforcement officials deploy reveals the attempt to regain racial dominance through RPV.

This study contributes to the literature on policing and violence by examining how law enforcement officers come to view police violence against Black men as appropriate and normalized through discourse.

II. Theory

The following section is divided into two parts. In the first part, I locate discourse surrounding police use of force against Blacks within the body of literature on perceptions of Black dangerousness and criminality and policing generally. In the second part, I outline the theoretical foundation of the method of discourse analysis

Theories of Racialized Policing

A common theoretical explanation for racialized differences in police patterns is the minority threat hypothesis. This explanation holds that policing is a "tangible manifestation of authority," and as such, "taps the pool of resentment in those without resources" and thus causes these groups to visualize police officers as "a repressive tool of the dominant group" (Jackson, 1989). When underrepresented minority groups are viewed as threats to the dominant group's interests, the dominant group "overdeploys" the police to control the threat, which in turn creates conflict between minority communities and the police, which reduces police legitimacy and increases hostility, ultimately leading to more coercive policing, which serves to exacerbate the conflict (Jackson, 1989).

Minority threat is bolstered by racial formation theory's insight that race, rather than being a "fixed biological phenomenon," instead "is constructed for a political purpose"

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(Lawrence, 2012, p. 248), such as the maintenance of a social order and protection of property interests of the ruling elite.

Furthermore, ecology of patrol theory adds that the level of deviance to which officers are exposed, as well as their cynicism and workload, directly or indirectly influence department-wide perceptions of "normal crime" and victim deservedness (Klinger, 1997). That is to say, perceptions by police officers, at an aggregate level, of "territorial deviance" within the communities that they patrol, influences how, and how well, police do their jobs. As an explanation for such a process, in the context of capital jurors, Lynch and Haney offer "racial and cultural stereotypes are generally highly accessible to most members of a given culture," including police officers, and as a result "can shape views and perceptions about different groups in a subtle yet pervasive manner" (2011, p. 71).

Within the context of policing, this phenomenon was first described in the 1940s by Whyte, who noted police did not seem to apply the same standards of behavior in all neighborhoods (1943, p. 136). Rather, behaviors that were "excusable," and thus went uncorrected, in one neighborhood were "unjustifiable," and thus punished, in another. Smith has referred to the process by which police apply this context-dependent praise or blame as being based upon "pragmatic induction, in which past experiences guide immediate decisions" (1986, p. 315). That is, police officers' attitudes towards neighborhoods and their residents are inductively "learned" through past experience with them.

The social psychological concept of fundamental attribution error sheds light on this process. Generally, when explaining the behavior of others, individuals tend to overestimate the influence of internal states, such as disposition or personality, and underestimate the influence of situational factors, such as environmental stresses (Ross, 1977). That is to say, an observer is

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more likely to attribute the behavior of others to their characters, as opposed to their environment or upbringing, and thus more likely to view them as blameworthy as a result. The corollary is also true, when viewing their own actions, individuals are more likely to attribute their own failings to forces outside of their control, but credit their successes to their own individual traits, such as fortitude or cleverness (Ross, 1977).

Thus, in an ironic inversion of the fundamental attribution error, the ecology of patrol theory holds that police officers conclude that an action is punishable because the offender is individually blameworthy, but base that conclusion upon inductively derived beliefs about the offender's community.

Bayley and Mendelsohn offer that this pattern of blaming owes in part to the "social distance" between the police and the policed. They suggest that the greater the social distance, that is, the more perceived dissimilarity, between an officer and an offender, the more punitive, aggressive, and coercive police-citizen encounters are likely to be (1969).

This "social distance" has been described in a different context as the phenomenon of "othering," by which difference is emphasized and similarity diminished (Bandura, 1989). When a group has been previously labeled deviant or "other," observers are more readily able to "justify – psychologically as well as legally – the treatment they receive" (Lynch and Haney, 2012, p. 72). And when these "others" are members of "already disfavored groups – here, those who are racially stigmatized," it is easier to believe that they "have done bad things and, therefore, deserve punishment." (Lynch & Haney, 2012, p. 72).

In the related context of white jurors evaluating the blameworthiness of African American defendants, Lynch & Haney note that the existence of prior racial animus enables observers to

exaggerate the seriousness of the things that members of already disfavored groups have been found guilty of doing. That is, it may be easier to believe that whatever crimes these "others" have committed are per se more heinous (whereas if they were committed by members of one's own group, they would be less so). Finally, because it is more difficult to identify with persons perceived as "other," dominant group members can more easily distance themselves from the pains of whatever punishment these "others" receive, notwithstanding the possibility that such punishment may be unjustly administered or excessive in amount. (2012, p. 73).

This articulation suggests a vicious circle that characterizes racialized policing: first, white officers are more likely to view the actions of minority offenders are "worse" than those committed by whites, second, such encounters serve to bolster negative attitudes among white officers towards minority communities, and third, these negative attitudes allow officers to persist in the belief that these communities are "more deserving" of punishment, which in turn justifies harsh treatment when policing.

The process of stereotype formation, reinforcement, and persistence, creates in members of dominant group an attitude that minorities "must have done something" to deserve their treatment.

In explaining the process of the "othering," Linder suggests that individuals are more likely to empathize with those with whom they imagine similarities; to the extent that they perceive difference, especially racial or cultural difference, empathy become less likely (1996).

Sherman suggests that empathy serves as a kind of social intelligence that allows us to understand others, a way of explaining others' behavior and communicating back that understanding, and ultimately acts as a necessary precondition in order to take seriously the claims of others (1998). The capacity for moral judgment – for approval and disapproval, praise and blame – depends upon our ability to empathize with those whom we are judging (Sherman, 1998).

Thus formulated, cross racial evaluations of blame, such as those required in policing, are especially fraught as white officers are *more* likely to view the actions of non-white offenders as *more* blameworthy than they would have been had they been committed by whites, *less* likely to be able to empathize with the environmental factors that may have played a role in influencing the non-white offenders behaviors, and *more* likely to allow stereotypes to influence their judgments.

Again, in the related context of capital juries, Lynch and Haney observe that the very environmental "criminogenic forces and factors" that may have played a role in Black defendants' arrests, are the very sort of factors that "most white jurors have no framework for understanding" and are thus more likely to discount as irrelevant and thus not find exculpatory or mitigating (Lynch & Haney, 2012, 75). In short, Blacks in the criminal justice system are "doubly disadvantaged" in being more likely to be subjected to "criminogenic forces and factors" and by being judged by "persons ill equipped to understand" them (Lynch & Haney, 2012, 75).

In their study of assessments of juvenile offenders by criminal justice professionals, Bridges and Steen found differences between how probation officers assessed Black and white youths consistent with fundamental attribution error (1998). While Blacks' delinquency was attributed to "negative attitudinal and personality traits," whites' delinquency was more frequently attributed to external factors (Bridges & Steen, 1998). These attributions were found to influence sentencing recommendations with Blacks receiving harsher sentences and whites more lenient ones and acted as a "mechanism by which race influences judgments of dangerousness" (Bridges & Steen, 1998).

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None of the theoretical explanations outlined above assume overtly racist bad actors, either among the white police who arrest non-white offenders or the white juries that convict them. Rather, the stereotypes that inform whites' actions when viewing Blacks often operate in "impersonal, dispassionate, and bureaucratic" ways, embodied and institutionalized in "a massive network of implicit assumptions, shared meanings, and standard operating procedures that virtually guarantee disparate racial outcomes in American society" (Haney & Hurtado, 1994, p. 226). Nor do they even require that the officers who serve in police departments all be white.

Despite progress made in recent decades towards increasing diversity in police departments, the vast majority of police departments in the United States fall far short of representing the populations they have jurisdiction over (Maciag, 2015). As Felkenes and Schroedel observe, as with many organizations, when police departments are numerically dominated by a particular group, that numerically dominant group "controls an organization's culture" (1993). This domination of departmental culture by the numerical majority, which Rabe-Hemp (2009) has described as hegemonic in its effects, means that in many departments, norms, values, and attitudes towards civilians of even non-white officers may be shaped by the white numerical majority. These subcultural effects on police officers' attitudes towards Blacks work in tandem with those negative associations of Blacks with dangerousness and criminality that exist more broadly within American society.

In contrast, Zack has articulated a worldview that she describes as the "hunting schema" (2015). Within this *Weltanschauung*, which, according to Zack, is most common among young white male police officers, police are tasked with hunting down targets. Legitimate targets, the prey for such hunts, are often young men of color (particularly young Black men) as they are more likely to dangerous criminals.

Finally, borrowing from Bourdieu's concepts of the "field" and the "habitus," Chan has suggested that police behavior is influenced by the "structural conditions of police work" ("the field" in which police act) and "police cultural knowledge" ("the habitus" that shape their actions) (1997: 73). Within the context of patrol, the *field* is the streets, the patrol vehicle, and the calls, and the *habitus* is what officers have learned formally through training and informally through lore.

Theories of Discourse Analysis

This study is informed by two branches of discourse analysis: critical discourse analysis and discourse historical analysis. Broadly, critical discourse analysis approaches discourse within its social context, attendant to patterns of inequality in power, resources, and access. Discourse historical analysis locates discourse within its historical context

Critical Discourse Analysis

Critical discourse analysis (CDA) uses language to examine power relations between groups within society (Van Dijk, 1993b). In the Weberian sense, power is understood as dominance, specifically, dominance within a hierarchical structure of authority (Weber, 1978). To Van Dijk "social power" relations are dependent upon "privileged access to socially valued resources, such as wealth, income, position, status, force, group membership, education or knowledge" (1993, p. 254). In this way, CDA, like all critical perspectives, arises out of a Marxian tradition of studying conflict. CDA takes as a starting point the Foucauldian notion of critique as "the art of not being governed in this specific way and at this specific price" (Foucault, 1990 cited in Reisigl, 2017, p. 50).

Lukes applied a three-dimensional view to the study of power (1974). In Lukes' framing, power manifests itself in action, inaction, and interests (Lukes, 1974). The first dimension, action, relates to the use of power to shape direct, deliberate behavior and the second, inaction, relates to the use of power to shape the deliberate decision to refrain from action (Lukes, 1974). The third dimension, which is most analogous to the Marxian notion of "false consciousness," relates to the use of power

> to prevent people, to whatever degree, from having grievances by shaping their perceptions, cognitions and preferences in such a way that they accept their role in the existing order of things, either because they can see or imagine no alternative to it, or because they see it as natural and unchangeable, or because they value it as divinely ordained and beneficial (Lukes, 1974, p. 24).

In this way power is about control. Control over a person's actions, inactions, and thoughts. Discourse analysis is thus useful in understanding the ways in which authorities attempt not just to compel compliance through force (Lukes' first dimension), but to win over "hearts and minds" through language and ideas (Clegg, 1989). CDA explicitly identifies how discourse is used to "naturalize" an unequal social order (Fairclough, 1985). In doing so, authorities use discourse to suppress the expression of grievances (Lukes' second dimension) and "manufacture consent" and legitimize abuses of power (Lukes' third dimension) (Herman & Chomsky, 1988). Thus, CDA examines how authorities use discourse to not only achieve dominance but also how the dominated come to freely accept that hegemonic dominance (Gramsci, 1971). In this way, dominance is not merely imposed, but constituted, by both the dominant and the dominated.

CDA further examines the ways in which dominance is condoned within social, political, historical, and cognitive contexts (Reisigl, 2017). CDA defines the power of social groups by their access to and control over means of discourse (Van Dijk, 1993b). As such, special attention

is paid to the "power elites" who sit atop a society's hierarchical power structures such as lawmakers, courts, and heads of media companies (Domhoff, 1978). Within the literature on discourse analysis, police officers are considered power elites insomuch as they enact, reproduce, and reinforce existing structures of inequality and exert authority and control over civilians (Van Dijk, 1993b). While individual police officers themselves may be of modest means, in their official capacities they exercise extraordinary power over other members of society and may command the obedience of virtually anyone within their jurisdictions.

But how does discourse result in hegemonic dominance? For CDA, the theoretical linkage between the two is provided by a branch of social psychology known as social cognition theory (Moscovici, 1988). Importing concepts from gestalt psychology, Lewin's social cognition theory focused upon how individuals perceive their social environment, which he termed the "psychological field" (1951). To social cognition theory, both cognition and motivation are themselves functions of the "person" and the "situation" and both in turn predict behavior – that is, *what* you do is a function of your thoughts/beliefs and your impetus for doing it, which are themselves a function of *who* and *where* you are (Fiske & Taylor, 2013, p. 7). In this way, social cognition theory grounds human behavior in a social context.

Crucially, though cognition itself is inherently an individual act, taking place by necessity within an isolated thinker, to social cognition theory, what makes social cognitions *social* are that they are shared by members of a group, mediate social dynamics, and influence the way societies are organized socially and culturally (Resnick, 1991).

Of particular interest for CDA are "scripts," "models," and "ideologies." First, scripts are shared knowledge structures that shape how we interpret who a person is and what they are doing based upon contextual factors (Schank & Abelson, 2013, p. 60). As scripts are knowledge

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structures, CDA holds that dominant discourse can shape their content and thus how members of society make sense of the world. Second, models are mental representations of a "state of affairs" and as such, their structures "mirror" the world (Johnson-Laird, 1980, p. 98). CDA holds that the production and interpretation of "concrete texts," for instance, newspaper articles or press conferences, are based upon mental models of the topic, which in turn have been based upon prior mental models of related topics (Van Dijk, 1993b). For CDA, models are significant as they provide a means of linking the behavior and discourse of individuals with the social order in which that individual is situated (Van Dijk, 1993b). Finally, for CDA, the "fundamental social cognitions" are ideologies, which "reflect the basic aims, interests and values of groups" (Van Dijk, 1993b, p. 258). For CDA, ideologies constitute the "cognitive 'programmes'" that "that organize and monitor the more specific social attitudes of groups and their members" (Van Dijk, 1993b, p. 258). Ideologies are of particular interest for CDA as they may be used to justify the unequal distribution of social resources in the name of pursuing what is best for society as a whole[42] (Reisigl, 2017).

CDA takes as its fundamental focus the reproduction of dominance through discourse. Social cognitions play a role in both the production of discourse and its reception. The discourse of the dominant arises from their social cognitions and is interpreted by the dominated through their own social cognitions (Van Dijk, 1993b).

CDA takes as its objects of analysis the forms and structures of discourse. At the macro-level, CDA examines the time, place, and manner of discursive events as well as the identity of who gets to participate. As such, CDA examines who is included or excluded in discursive

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[42] e.g. the common defense of capitalism that economic inequality is an unavoidable condition of a functioning market.

events such as legislative hearings, trials, meetings, academic panels, or press conferences as

well as who is empowered to determine when, where, and how these discursive events occur

(Boden & Zimmerman, 1991). At the micro-level, CDA is concerned with how power, or its

absence, is associated with stylistic characteristics of speech, including such non-verbal features

as pauses, hesitations, and nervous laughter (Bradac & Mulac, 1984), as well as polite, or

impolite, interactions, including the use of overly-familiar forms of address or informal pronouns

(Brown & Levinson, 1987; Holmes & Stubbe, 2015). The latter set of speech characteristics has

received extensive attention in recent years within the context of a particular form of group

power assertion termed "micro-aggressions" (Sue, 2010).

Van Dijk (1993b, p. 262) offers a schematic of racially dominant discourse in which two

individuals, a white speaker and a Black addressee, are participants:

(1) The white speaker creates a mental model of the discourse that includes the racial
    identity of both participants
(2) The identification of the addressee as Black "activates" "general attitudes" towards
    Blacks, which being negative, indicate in the mental model that the addressee may be
    "assigned a lower status"
(3) Absent other social/environmental factors, such as fear of attack, the white speaker
    perceives that the Black addressee may be, for example, spoken to impolitely

As Van Dijk notes, this process may be entirely "automatized," that is, the impoliteness need not

be consciously intended in order to be racist (1993b). Not every form of impoliteness by a white

speaker towards a Black addressee need be racist; the discourse in the above example is racist by

dint of its reproducing negative general attitudes (namely that Blacks are "lower status" and less

deserving of politeness) towards a member of a disfavored racial group.

Dominant discourse need not only involve members of a dominant and dominated group.

Members of a dominant group can enact group dominance in their speech with each other by

producing and/or activating mental models of dominated groups that contain negative attitudes

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towards members of those groups. In this way, negative attitudes are confirmed and strengthened in ways that legitimate the violation of normative discourse rules in the future (Van Dijk, 1987).

Up to this point, the discussion of CDA has focused upon what are termed "discourse structures" and has not addressed the content of discourse. We now turn to "strategies" for the legitimation of dominance through discourse. Van Dijk offers two primary, and mutually reinforcing, strategies for "justifying inequality": the positive representation of dominant groups and the negative representation of dominated groups (1993b, p. 263; 1987). Van Dijk suggests that within these dominant discourse strategies common text schemata include: argumentation, "rhetorical figures" (e.g. hyperbole or euphemism), word choice that suggest negative judgements, storytelling (e.g. anecdotal accounts of the dominated group's negative actions), "structural" emphasis of dominated groups negative actions (e.g. highlighting negative actions or traits of dominated group members), and quoting "credible witnesses." (1993b, p. 264).

Within the context of racial domination, a common discourse strategy is to deny or discredit attempts to redress present and past inequality. Dominant groups may reframe competition for social resources such that members of the dominant group are seen as the "real victims" (Van Dijk, 1993b, p. 265). Similarly, attempts to redress inequality are undermined by appealing to notions such as "equality" (Van Dijk, 1993b) or "colorblindness" (Bonilla-Silva, 2017).

Such dominant discourse strategies are deployed complementarily and within dominant discourse structures. As an example, Van Dijk offers the common example of the presence of a member of a dominated group (e.g. a Black woman) who serves as a token representative of that group and who denies the presence of inequality or attempts to undermine the claims of the dominated (1993b, p. 265). In this example, the power elites who control access to media

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discourse select a speaker who purports to represent the views of the dominated group and given the lack of representation of members of dominated groups in the media, frequently takes the place of a speaker whose views might be more representative of that group (i.e. the "Black panelist" or the "female panelist"). Selection of such a speaker serves a dual purpose: first, to serve as a "credible witness" by dint of her racial identity and second, to inoculate against claims that members of the dominated group are not granted media access. While a variety of opinions on issues can certainly be found within any group, the presence of a such a "token" spokesperson engaged in discourse defending the dominant group from criticism from the dominated group is suggestive of this sort of strategy.

Discourse Historical Analysis

Discourse Historical Analysis (DHA) is a branch of CDA that emphasizes the role of history and anchors its analysis in a historical context (Reisigl, 2017). While DHA shares many of CDA's concerns and methodologies, it places a greater focus on the role of rhetoric, particularly argumentation, in discourse (Reisigl, 2017).

In analyzing and critiquing discourse, DHA borrows Habermas' four validity claims: truth, truthfulness, comprehensibility, appropriateness (Habermas, 2015). Truth relates to the propositional truth of a statement; truthfulness to the speaker's intention; comprehensibility to the degree to which a statement is understandable to a listener; and appropriateness to a statement's normative rightness, that is, its adherence to shared moral principles (Holub, 2013; Morrow & Torres, 2002). To Habermas, each of the three pragmatic validity claims correspond to a mode of communication: truthfulness with *expressive* communication, truth with *cognitive* communication, and appropriateness with *interactive* communication (Holub, 2013).

DHA is particularly concerned with the three pragmatic validity claims (Reisigl, 2017). Truthfulness matters given the historical use of lying as a form of political manipulation. Truth matters as speakers, often unintentionally, offer inaccurate or ahistorical claims when justifying present inequalities. Finally, appropriateness matters as speakers may attempt to legitimizing inequalities by appealing to a sense of shared morality (e.g. the above example of the appeal to "equality" to discredit attempts to redress inequality).

DHA analyzes discourse itself as having a number of features (Reisigl, 2017). Discourse "represents, creates, reproduces and changes social reality," especially through the use of meaningful signifiers. Discourse emerges from the interaction of individual texts ("tokens"), which "serve specific purposes in social contexts" and should be analyzed according to who produces them, who spreads them, and who receives them (Reisigl, 2017, p. 51). Discourse occurs within "fields of action" that are "intertextually linked by a macro-topic" (Reisigl, 2017, p. 52). Discourse acts a *dispotif* (Foucault, 1980), or apparatus of social order, that organizes people, ideas, and beliefs within a field of action. Finally, discourse emerges to dispute and address social problems; these problem-oriented arguments involve truth and appropriateness claims (Reisigl, 2017). Finally, discourse changes along with society; as social problems are solved/denied, discourse evolves to address the resultant social patterns (Reisigl, 2017).

DHA proceeds by asking five questions of the discourse under analysis: what names are assigned to people, places, and things? (*nomination*); what attributes/characteristics are assigned to people places and things? (*predication*); what arguments are used? (*argumentation*); from whose perspective are these nominations, predications, and argumentations? (*perspectivization*); and whether the force of the statements is "mitigated" or "intensified," epistemically or

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deontically, that is regarding their validity or obligatoriness (*mitigation & intensification*) (Reisigl & Wodak, 2016, p. 42-3).

DHA shares CDA's focus upon the social, political, historical and cognitive context within which discourse occurs, paying special attention to the historical contexts. That is, when analyzing a "token," DHA examines it not just according to its present context, but places it in conversation with its historical context so that the present may be related to the past (Reisigl, 2017).

CDA and DHA predict that police discourse regarding racialized police violence will tend to reinforce the dominant racial power structures by means of rhetorical strategy and through the deployment of schemes, scripts, models, and ideologies. These serve to cast the dominant group in a positive light, minimize or neutralize the criticisms of the dominated group, and cast the dominated group in a negative light. Further, within the context of RPV, CDA suggests that the police exist in a dual capacity as both enforcers of a racialized social order and as power elites seeking to protect their own status. That is, CDA suggests that police officers will engage in discourse to neutralize accusations of racism and to justify the decision to use violence.

III.   Methods

This study employs critical discourse analysis and discourse historical analysis to examine the language used specifically to describe the death of Michael Brown and the events that followed and generally to discuss police use of force involving Black civilians.

Background

On August 9, 2014, Michael Brown, an 18-year-old Black man was shot and killed by Ferguson, Missouri Police Officer Darren Wilson, a 28-year-old white man. The following summary of the events is taken from Wilson's grand jury testimony, that is, it is a summary of the events as he perceived them.

Around 11:30 a.m., Officer Wilson was driving in his patrol vehicle when he heard a radio call about a theft of a box of cigarillos from a convenience store by a man wearing a black t-shirt. As Wilson was driving, he saw Brown and Dorian Johnson walking in the middle of the street near the Canfield Green Apartments. Wilson said to Johnson "why don't you guys walk on the sidewalk" (*Missouri v. Wilson*, 2014, Volume V p. 208). Johnson replied, "we are almost to our destination" and gestured towards Canfield Green Apartments (*Missouri v. Wilson*, 2014, Volume V p. 208). Wilson replied, "well, what's wrong with the sidewalk" (*Missouri v. Wilson*, 2014, Volume V p. 208). Brown then responded, "fuck what you have to say" (*Missouri v. Wilson*, 2014, Volume V p. 208).

At this point, Wilson states that he looked at Brown and observed that he was carrying cigarillos and wearing a black t-shirt. Wilson states that he requested on the radio for another car to be sent, reversed his vehicle, and parked at an angle to block Brown and Johnson. Wilson then began to open his door and said to Brown, "hey, come here for a minute" (*Missouri v. Wilson*, 2014, Volume V p. 209). Brown "slammed" the door shut and said "what the fuck are you going to do about it" (*Missouri v. Wilson*, 2014, Volume V p. 209). Wilson, pushed the door back open and commanded Brown to ""get the fuck back" (*Missouri v. Wilson*, 2014, Volume V p. 210).

Brown pushed the door shut again and reached through the open window, punching Wilson in the face. Brown turns to Johnson, hands him the cigarillos saying "hey man, hold

these" (*Missouri v. Wilson*, 2014, Volume V p. 212). Fearing for his safety and convinced that Brown could kill or knock him unconscious, Wilson reaches for his gun and tells Brown "get back or I'm going to shoot you" (*Missouri v. Wilson*, 2014, Volume V p. 214). Brown replies "you are too much of a pussy to shoot me" and grabs for Wilson's gun (*Missouri v. Wilson*, 2014, Volume V p. 214). During the struggle for the gun, Wilson pulls the trigger three times. The first two pulls do nothing, but the third pull fires the gun, shooting through the door and shattering the door window. While continuing to struggle with Brown for his gun, Wilson fires once more while inside the car. Brown then runs away towards Canfield Green Apartments and Wilson calls on his radio, "shots fired, send me more cars" (*Missouri v. Wilson*, 2014, Volume V p. 226).

Wilson chases Brown for some distance until Brown stops running. Wilson commands Brown to "get on the ground, get on the ground" (*Missouri v. Wilson*, 2014, Volume V p. 227). Brown turns to face Wilson, grabs at his waist, and then starts running towards Wilson. Wilson continues to tell Brown to get on the ground. Wilson, focused on Brown's hand at his waist and convinced Brown is reaching for a weapon, begins firing again at Brown. Brown collapses 8 to 10 feet in front of Wilson. Wilson then radios "send me a supervisor and every car you got" (*Missouri v. Wilson*, 2014, Volume V p. 230).

Within hours, a large crowd had gathered the scene near the Canfield Green Apartments. Michael Brown's body lay in the street for hours as Ferguson Police Chief Thomas Jackson called in the St. Louis County Police to take control of the scene. In the subsequent hours and days, the city of Ferguson was the scene of protests, dramatic clashes between protesters and the police, and acts of vandalism and property destruction. Brown's subsequent autopsy revealed gunshot wounds in Brown's right arm, torso, and head (*Missouri v. Wilson*, 2014, Volume III).

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Over the course of a three-month period, a grand jury was presented with testimony from 60 witnesses and heard over 5,000 pages of testimony. On November 24, 2014, Robert McCulloch, the Prosecuting Attorney for St. Louis County, announced that the jury had failed to indict Wilson for Brown's death.

Data

This study examines language employed in statements about the 2014 death of Michael Brown at the hands of Police Officer Darren Wilson in Ferguson, Missouri. I examine both formal and what I term quasi-formal statements. The formal statements examined come from the transcript of Darren Wilson's grand jury proceedings for the death of Michael Brown. The quasi-formal statements examined were taken from two sources. First, a *New Yorker* profile of Darren Wilson which was based upon hours of interviews between the author and Darren Wilson. Second, a book written by former Ferguson Police Chief Thomas Jackson, which contains his account of the aftermath of Michael Brown's death. I term these quasi-formal statements as they are made by former police officers and public officials who are no longer speaking in their official capacity.

Methodology

This study employs a qualitative analysis of textual sources. The grand jury transcripts and article were analyzed using the atlas.ti software package. The book was coded by hand. This study employs Critical Discourse Analysis and Discourse Historical Analysis methods to analyze the formal and informal discourse from law enforcement officers concerning Michael Brown's death.

Limitations

As in all studies, the following findings are subject to a number of methodological limitations. First, the examples of discourse that follow are based from thousands of pages of testimony and hundreds of pages of print publications. To the best of my knowledge they include every instance of discourse in print. However, this study does not examine examples of discourse from television or radio interviews or press conferences.

Second, the discourse examples come from different settings with different contexts. The texts from the grand jury transcripts were based upon testimony given in an official proceeding and were offered in response to questions from prosecuting attorneys. Their meaning cannot be divorced from this fact-finding context. The texts from the *New Yorker* article are not based upon a complete transcript of the interview between the author and Darren Wilson. Rather they have been selected, edited, and placed within a work of journalism. As such, Darren Wilson's words are nevertheless, by necessity, removed from the initial context in which they were originally uttered.

Finally, Thomas Jackson's book is wide-ranging in scope and written two years after the events it describes. As such, it is less an example of contemporaneous (or near-contemporaneous) discourse than the other sources. Further, unlike the other two sources, in it, Jackson speaks directly to the reader, rather than in response to questions posed by a prosecuting attorney or interviewer.

Analysis

As an analysis of discourse, this study focuses upon "the major argumentative and semantic moves and rhetorical ploys within an overall persuasive framework" (Van Dijk, 1993a, p. 71). Specifically, I analyze the descriptions, claims, characterizations, and arguments

contained in the textual sources according to the themes suggested by the discourse analysis

literature on racial discourse and those that emerged within the analysis. I coded the textual

sources in light of the themes suggested by CDA, DHA, and the policing literature.

IV.   Data Analysis and Findings

In this section I present the formal and quasi-formal statements made by former Officer

Darren Wilson and other law enforcement officers

Denial of Racism

One of most common themes in racial discourse identified by Van Dijk is the *denial of*

racism (1993a, p. 76). In this type of discourse, members of the dominant group affirmatively

disavow that race is relevant to the issue being discussed or that racial animus was present. In the

textual sources analyzed in this study, speakers denied that racism motivated either Darren

Wilson's decision to shoot Michael Brown or influenced the treatment of members of the Black

community in Ferguson by the Ferguson Police Department.

In a wide-ranging interview published in the *New Yorker* the year after Michael Brown's

death, Darren Wilson stated

> Everyone is so quick to jump on race. It's not a race issue. … There are people
> who feel that police have too much power, and they don't like it. There are people
> who feel police don't have enough power, and they don't like it (Halpern, 2015).

In describing the outrage and unrest that followed Michael Brown's death and the

subsequent failure to indict Wilson himself as merely a race-neutral disagreement about how

much power the police should have, Wilson denies the relevance of race and racism. By

characterizing the protests that followed Michael Brown's death as being either really a policy-

oriented disagreement about police power, or at most an expression of race-neutral anti-police

sentiment, such denials of racism serve to silence the complaints of the Black community in

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Ferguson and elsewhere as well as deny the pattern of policing in Ferguson in 2014, a city in

which 67% of the residents were Black but 94% of the police officers were white (Firozi, 2014).

Wilson's statement is echoed by former Ferguson Police Chief Thomas Jackson in his

book *Policing Ferguson, Policing America*. Writing about tensions between the Black

community in the city and the almost entirely white police department, Jackson observed

> I urged my officers to be a presence in the neighborhood, getting to know people,
> off duty as well as on the job. I can't even count the number of ball games, church
> picnics, block parties, and fairs that I or one of my officers attended. … The city
> had undertaken these efforts on its own initiative to improve trust and quality of
> life, but there is a high changeover in public housing, and new people would come
> in unfamiliar with us and our efforts. We were working constantly to improve
> trust, but the police can gain only so much traction in the face of poverty,
> government mismanagement, and cultural predisposition (Jackson, 2017, p. 4).

Like Wilson, Jackson denies that the mistrust of the police by the city's Black residents is

in response to police racism, either real or perceived, and by extension the substance of the claim

that Michael Brown's death was an example of racialized police violence. Jackson takes pains to

detail the color-blind efforts that the police department had undertaken ("ball games, church

picnics, block parties, and fairs") and locates the source of the Black community's grievances in

"poverty, government mismanagement, and cultural predisposition." In so doing, Jackson denies

not only that racialized policing may have contributed to Black community's mistrust but that

remedial efforts need address race at all. Such a denial is directly contradicted by the claims

made by members Ferguson's Black community who in the days and weeks after Michael

Brown's death raised criticized the Ferguson Police Department's patterns of racialized policing.

Such a denial is further directly contradicted by the findings of the Department of Justice's report

on the city of Ferguson and the operation of its police department, which highlighted troubling

findings about racialized treatment of the city's residents.

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Jackson argues that the focus on "bad policing" merely creates a "convenient, high-profile scapegoat as a way of avoiding the more catastrophic problems facing poor people, of all races, but especially poor people of color" (Jackson, 2017, p. 178). Jackson goes so far as to say "You can replace or retrain every police officer in America until you have a perfect, spotless police force, but that wouldn't do a thing to alleviate poverty and inequality" (Jackson, 2017, p. 178).

Jackson denies the role that race and racism play in police patterns and behavior, claiming instead that the "real" problems are color-blind phenomena such as poverty and lack of opportunity. Regardless of the truth of such statement, its assertion participates in a discursive pattern of neutralization of claims of racism (Van Dijk, 1993a).

The closest that Jackson comes to acknowledging the relevance of race for community attitudes is the oblique reference to "cultural predisposition" (Jackson, 2017, p. 4). Jackson expands on this "cultural predisposition" in his explanation for the lack of Black officers on Ferguson's police department:

> [I]t seems pretty obvious to me that if you grow up thinking police are the enemy, if your parents and grandparents experience police as the enforcers of Jim Crow laws and countless other indignities, you're not likely to be drawn to law enforcement as your ticket to the American Dream (Jackson, 2017, p. 85).

Jackson claims that the cause of mistrust of the police among Black residents of Ferguson is not in response to their present treatment by the Ferguson Police Department but rather emerges from a "cultural" anti-police bias or historical "indignities" long past. Jackson acknowledges that Blacks in America have been subject to racist laws enforced by police officers. But by describing the brutalities of slavery and Jim Crow as "indignities," Jackson minimizes the brutality and violence that sustained those institutions and the complicity and culpability of American police departments. Moreover, by limiting the subjects of such violence to "your parents and

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grandparents," Jackson suggests that they are relegated to a benighted past and no longer occur. Such an evocation of the "bad old days," acts to acknowledge past harms while denying both the present responsibility to redress them and their persistence today. Such an ahistorical denial reflects either historical ignorance or a lack of concern for truth in the Habermasian sense (Reisigl, 2017).

Furthermore, in locating the cause for the lack of Black officers in the disinclination of Blacks not to become police officers, Jackson invokes the common claim that "we can't find any good candidates." Such "victim-blaming" explanations for the inability of organizations to attract historically under-represented groups have been well-documented in other fields (Franklin, Boyd-Franklin, & Kelly, 2006; Curry, 1994) as a rhetorical move that serves to alleviate the organization of the responsibility to actively recruit such candidates. While police departments surely do face difficulties recruiting and retaining minority officers, this problem is not limited to Ferguson or, as Jackson suggests, to smaller municipalities. Police departments throughout the country continue to make strides to ensure that their officers reflect the communities they serve (Wilson et al, 2013).

Positive Self-Presentation

A second common theme in racial discourse identified by Van Dijk is *positive self-presentation* (1993a, p. 72; 1993b, p. 263; 1987). In this type of discourse, members of the dominant group emphasize the group's positive traits so as to inoculate against criticisms, including, but not limited to racial prejudice.

This theme can be seen both in assessments of Darren Wilson's character as well as in assessments of police professionalism generally. First, regarding Darren Wilson, during the

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Grand Jury proceedings, a Sergeant (name redacted) from the Ferguson Police Department observed

> I've worked with Officer Wilson for two and a half years. He's been under my supervision that long. Darren is a very easy going individual, always has a smile on his face. Doesn't go trying to start trouble or look for trouble, does a good job. I have very little supervisory hours dedicated to Darren Wilson. He knows his job very well and he does it very well. … So, I mean, Darren did not just all of the sudden go from trying to chase this guy down and take him into custody to deciding just to shoot him because. So, I mean, Darren is a good officer. (Missouri v. Wilson, 2014, Volume V p. 74).

Generally, American courts tend to look askance at "character propensity evidence," that is, evidence of an individual's character *in general* offered to shed light on the individual's behavior *in a particular instance*. This concern is enshrined in Federal Rule of Evidence 404(a), which prohibits character evidence from being introduced out of concern that the prejudicial effect of such evidence will outweigh its probative value. Of course, exceptions are made for criminal defendants (Fed. R. Evid. 404(a)(2)(A)) and during grand jury proceedings (Fed. R. Evid. 1101(d)(2)).

The legal propriety of the Sergeant testifying positively about Darren Wilson is not at issue here. Rather, the relevant issue for this analysis is the function that such testimony has and the purpose for which it was offered. Separate from the grand jury's function of determining whether there is sufficient evidence to indict Darren Wilson, is the question of how his actions are evaluated by other officers.

The Sergeant makes a number of claims about Darren Wilson's personal and professional character. Wilson is described as "very easy going" and as always having "a smile on his face" (*Missouri v. Wilson*, 2014, Volume V p. 74). Wilson is further described as an officer who does not "start trouble or look for trouble" (*Missouri v. Wilson*, 2014, Volume V p. 74).

As the Sergeant was not present at the shooting, statements about Darren Wilson's character shed no light on the events which transpired except insofar as they establish that it would be out of character for Wilson to act in an aggressive manner, that is, to "start trouble" (*Missouri v. Wilson*, 2014, Volume V p. 74). The Sergeant explicitly rejects the notion that Wilson would have escalated the situation in stating "Darren did not just all of the sudden go from trying to chase this guy down and take him into custody to deciding just to shoot him" (Missouri v. Wilson, 2014, Volume V p. 74).

Moreover, implicit in the Sergeant's statement is the assumption that Darren Wilson is a "good officer" and that "good officers" do not shoot innocent, unarmed teenagers without provocation (*Missouri v. Wilson*, 2014, Volume V p. 74). Thus, as Michael Brown was shot, and Darren Wilson is a "good officer," Brown must have instigated and escalated the conflict.

But more fundamentally, the Sergeant's statements emphasize Wilson's decency and humanity. Aside from legal determinations of criminal guilt, they are offered to persuade the grand jury that he does not deserve to be punished.

This theme of positive self-presentation can also be seen in Jackson's descriptions of the other police officers who responded to the uprising in Ferguson following Michael Brown's death.

In describing his own assistant chief, Al Eickhoff, Jackson writes "Al and I knew each other throughout our careers, having been awarded the Medal of Valor together years before when we were members of the St. Louis County SWAT unit" (Jackson, 2017, p. 10). While this may be taken as merely establishing the relationship between individuals involved, it serves to emphasize that both Jackson and his assistant were decorated police officers. This reference to their shared commendation is offered as evidence that they too are "good officers."

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Further, in describing St. Louis County Chief Jon Belmar, who had been brought in to take command of the scene, Jackson writes "Jon and I had worked together for years, and I had complete confidence that he would do his job and do it well. He … would make a fair report of all that had happened – for me, for the town of Ferguson, and for the public" (Jackson, 2017, p. 5). Belmar's officers and investigators are described as "doing a painstakingly thorough job in a crime scene that certainly had been contaminated" (Jackson, 2017, p. 10).

In reference to the concerns expressed by Ferguson community members about the propriety of having Belmar leading the investigation, Jackson writes

> Jon Belmar assured me he had the situation covered, I took it to mean nothing more than that he would do his job. He's a smart experienced, and well-trained professional, and I could depend on the people under him to take their work seriously ad deliver a fair report to me and to the community. He also had been a friend and colleague for many years. I was one of his mentors when we served on the SWAT team, and I had retried as a captain from the police department he now headed. It never crossed my mind that others would view Belmar's participation suspiciously: police investigating other police, perhaps a simple case of good friends watching each other's backs" (Jackson, 2017, p. 12).

Once again, the officers involved are described as "good officers" and are transformed into "credible witnesses" (Van Dijk, 1993b, p. 264) so that they form a mutually reinforcing structure of legitimacy, in which each "good officer" lends their credibility to the next, while in turn being supported by the credibility of the other "good" officers.

Jackson frequently invokes the terms "fair report" (Jackson, 2017, p. 5, 12) and emphasized his "confidence" (Jackson, 2017, p. 5) in and his ability to "depend" upon Belmar and his officers (Jackson, 2017, p. 12). We are to place our confidence in the officers because Jackson deems them "good officers," and we are to trust Jackson's account because he is surrounded and supported by such "good officers."

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Writing of police generally, Jackson observes "People get into police work and public service because they want to part of the solution, not part of the problem, and in my five years in Ferguson, I believe that's exactly how we all tried to operate" (Jackson, 2017, p. 178).

Through such discourse, Jackson shifts from the specific (Michael Brown's killing and the aftermath) to the general (the good intentions and motivations of Ferguson police officers). Such a shift partakes in a kind of ecological fallacy of making inferences about the specific actions of specific officers in specific situations based upon generalizations about "people who get into police work." As Van Dijk has noted, the affirmations of benevolence, fairness, and decency contained in such positive self-presentations are frequently used as a "natural self-defense tactic" by dominant groups whose "civic virtues" are questioned (1993a, p. 72).

Negative Other-Presentation

Another theme commonly found in racial discourse is *negative other-presentation* (Van Dijk, 1993a, p. 84; 1993b, p. 263; 1987). In this type of discourse, members of the dominant group invoke negative characterizations of the subordinate racial group so as to cast whatever hardships the subordinate group experiences as being deserved.

One of the most common strategies employed within this type of discourse is the use of particular words to describe the subordinate group in order to create negative judgements.

Michael Brown's Physicality and Dangerousness

Throughout the grand jury proceedings Darren Wilson himself, and other officers repeating what they had been told by Wilson repeatedly describe Michael Brown in ways that emphasize his size, dangerousness, and inhumanity. It is beyond the scope of this analysis to attempt to ascertain Darren Wilson's actual subjective assessment of the danger Michael Brown

posed or the accuracy of Darren Wilson's assertion that Michael Brown would "overpower" him. Rather, the issue is how Wilson and other law enforcement officers describe Brown, what images such descriptions invoke, and what negative associations about Brown's racial group such invocations conjure in the minds of the grand jury, the residents of the town of Ferguson, and members of American society generally.

At the time of Michael Brown's death, Darren Wilson was 28 years old, 6'4" and weighed 210 pounds. Michael Brown was 18 years old, 6'5" and 289 pounds. Despite, their relative similarity in heights, throughout the grand jury proceedings, Michael Brown's relative size and strength are repeatedly referenced regarding Darren Wilson's fear and evaluation of Michael Brown's dangerousness.

The Sergeant recounts Wilson stating that "I know this man was bigger than me, I wasn't going to be able to fight him" (Missouri v. Wilson, 2014, Volume V p. 33-4). Likewise, an FBI Agent (name redacted) recounts Wilson stating that he "was not going to try to arrest or even question either one of them [Michael Brown and Dorian Johnson] because he was out numbered and incredibly outsized by Michael Brown. In fact, he quoted [sic] as saying, he would overpower me" (*Missouri v. Wilson*, 2014, Volume V p. 155). And again, as a Ferguson Detective (name redacted) recounted "He then continues and states that he knew if the subject were to reach him, that he would, and he quotes, 'he would be done' Meaning that Officer Wilson would be done. He knew, he immediately stated he knew he was overpowered and assaulted already one time in the vehicle" (*Missouri v. Wilson*, 2014, Volume V p. 110). Finally, Darren Wilson himself testified that he felt "like a five-year-old holding onto Hulk Hogan[43] ….

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[43] A former professional wrestler and actor known for his size and strength.

that's just how big he felt and how small I felt just from grasping his arm (*Missouri v. Wilson*, 2014, Volume V p. 212)."

Beyond Michael Brown's size however, during the grand jury proceedings Darren Wilson claimed that Michael Brown, though unarmed, posed a lethal threat to Wilson. During Darren Wilson's testimony, the following exchange occurred

Darren Wilson: I felt that another one of those punches in my face could knock me out or worse. I mean it was, he's obviously bigger than I was and stronger and the, I've already taken two to the face and I didn't think I would, the third one could be fatal if he hit me right.

Prosecutor: You thought he could hit you and it would be a fatal injury?

Darren Wilson: Or at least unconscious and then who knows what would happen to me after that. (*Missouri v. Wilson*, 2014, Volume V p.216-17).

Finally, Darren Wilson characterized Michael Brown in terms that emphasized his inhumanity. Darren Wilson stated that after he fired his gun the first time while he was still inside his patrol vehicle, "he [Michael Brown] looked up at me and had the most intense aggressive face. The only way I can describe it, it looks like a demon, that's how angry he looked" (*Missouri v. Wilson*, 2014, Volume V p. 224-25). The descriptor "demon" was repeated by the FBI Agent in his testimony (*Missouri v. Wilson*, 2014, Volume V p. 160). Moreover, the Sergeant testified that Wilson had told him that Michael Brown had "an intense and psychotic look on his face" (*Missouri v. Wilson*, 2014, Volume V p. 109-110).

Descriptions of Brown as demonic or psychotic have the effect of emphasizing Brown's inhumanity and evoking in the listeners' minds social cognitions about Black male dangerousness, brutishness, and criminality.

Furthermore, Darren Wilson recounts Michael Brown possessing seemingly superhuman ability to withstand bullet wounds. For clarity's sake, it is worth quoting Darren Wilson at length.

> As he is coming towards me, I tell, keep telling him to get on the ground, he doesn't. I shoot a series of shots. I don't know how many I shot, I just know I shot it. I know I missed a couple, I don't know how many, but I know I hit him at least once because I saw his body kind of jerk or flinched [sic]. I remember having tunnel vision on his right hand, that's all, I'm just focusing on that hand when I was shooting. Well, after the last shot my tunnel vision kind of opened up. I remember seeing the smoke from the gun and I kind of looked at him and he's still coming at me, he hadn't slowed down. At this point I start backpedaling and again, I tell him get on the ground, get on the ground, he doesn't. I shoot another round of shots. Again, I don't recall how many it was or if I hit him every time. I know at least once because he flinched again. At this point it looked like he was almost bulking up to run through the shots, like it was making him mad that I'm shooting at him. And the face that he had was looking straight through me, like I wasn't even there, I wasn't even anything in his way. Well, he keeps coming at me after that again, during the pause I tell him to get on the ground, get on the ground, he still keeps coming at me, gets about 8 to 10 feet away. At this point I'm backing up pretty rapidly, I'm backpedaling pretty good because I know if he reaches me, he'll kill me. And he had started to lean forward as he got that close, like he was going to just tackle me, just go right through me. (*Missouri v. Wilson*, 2014, Volume V p. 227-29)

In Darren Wilson's compelling and evocative recounting of the shooting, Michael Brown is presented as an invulnerable, unreasonable force. Brown does not respond to verbal warnings ("I, tell, keep telling him to get on the ground, he doesn't"), shrugs off bullet wounds with a "flinch," and possesses the ability to "run through the shots, like it was making him mad that I was shooting at him." Wilson repeats his claims that Michael Brown refused to comply with Wilson's command to "get on the ground" and his belief that, though Brown had been shot several times at this point, "if he reaches me, he'll kill me."

The notion that Black men are possessed of super human strength, abilities, and tolerance for pain is not merely the creation of one individual's mind. Rather, it has a long history and it

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has been demonstrated empirically that whites are more likely to attribute such fantastic abilities to Black men (Waytz, Hoffman, & Trawalter, 2014).

This point is of central concern when analyzing the discourse of police officers and other elites regarding Black men. It is unnecessary to demonstrate that Wilson, or other officers, consciously and voluntarily harbor pernicious racist attitudes towards Blacks, especially young Black men. Nor is it necessary to demonstrate that the discourse employed by Wilson was deployed intentionally to present Brown in a negative light.

Rather, by reproducing negative characterizations of a disfavored racial group, Wilson's discourse, and the mental models that inform it, participates in racist discourse. It is entirely possible that Wilson truly did fear for his life and safety and that he truly believed that Michael Brown could run through a hail of bullets. But this subjective belief is itself informed by previous negative characterizations and social cognitions regarding Blacks.

Furthermore, Wilson focuses throughout on Brown's right hand reaching for his waist. As the FBI Agent stated,

> Wilson said [Brown] put his right hand in his waistband. At the time Officer Wilson didn't know whether or not he was armed. He thought that perhaps Michael Brown was armed and that's what he was going for. He couldn't tell because Brown's shirt had hung over his waistband. He said Brown's left arm, left hand was clenched in a fist at his side. Wilson shouted stop, get on the ground, and Wilson explained at this point during the interview that Brown was just not listening to any of his commands. Wilson started shooting as Brown ran towards him. Wilson shot more than once, but was unsure how many times. And he realized he had tunnel vision, so he shot more than one time and realized that all he was looking at was that right hand. (Missouri v. Wilson, 2014, Volume V p. 164-5).

Though up to this point Wilson had no evidence that Michael Brown was armed, Wilson focused, to the point of having "tunnel vision," upon that possibility. By referencing the possibility that Brown was armed, the decision to fire repeatedly is legally justified. And in so

doing, Michael Brown joins the long list of unarmed Black men who have been killed by police who erroneously believed that they might be reaching for a concealed weapon.

Once again, to be clear, it is entirely likely that Wilson truly believed that Brown was armed and was reaching for a weapon. Wilson interpreted Brown's act of moving his right arm to his waist as reaching for a weapon, as opposed to cradling a wounded arm or hand. While Wilson's preoccupation with Brown's right hand and his concern that Brown might be reaching for a weapon may well have been sincere, such an interpretation is consistent with Fyfe's finding that police officers are more likely to shoot unarmed Black men, erroneously believing them to be armed (1982; Takagi, 1974; Goldkamp, 1976; *contra* James, Vila, & Daratha, 2013) and evokes Takagi's observation that "police have one trigger finger for whites and another for Blacks" (1974, p. 30).

Once again, the issue is not whether Wilson sincerely perceived Brown to be dangerous, but rather, what scripts, schemes, and social cognitions may have been active in that perception.

Darren Wilson's grand jury testimony concludes by stating

And when he gets about that 8 to 10 feet away, I look down, I remember looking at my sites and firing, all I see is his head and that's what I shot. I don't know how many, I know at least once because I saw the last one go into him. And then when it went into him, the demeanor on his face went blank, the aggression was gone, it was gone, I mean, I knew he stopped, the threat was stopped. When he fell, he fell on his face. (Missouri v. Wilson, 2014, Volume V p. 229)

Once Michael Brown had died, Wilson no longer considered him a threat. No longer did he perceive in Brown's facial expressions "aggression," no longer did he interpret Brown as an unreasonable deadly threat.

Up until that point however, Brown had been reduced in Wilson's eyes to nothing more than such a threat. The discourse employed by Wilson and other law enforcement officials

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demonstrate that this reduction of Michael Brown was not a process peculiar to Wilson, rather, it was a direct result of his training.

Consider the following.

When asked about whether Wilson's statement that he had experienced "tunnel vision" was unusual, the Sergeant replied, "No, it is not unusual. You get kind of like tunnel vision. You only see, like you said, the threat" (*Missouri v. Wilson*, 2014, Volume V p. 37). When asked whether Wilson's use of force training might have prepared him to "in a situation, maybe similar to this, to shoot to injure instead of shooting to kill?" the Sergeant replied, "You shoot to neutralize the threat" (*Missouri v. Wilson*, 2014, Volume V p. 73).

The Sergeant was not alone in his positive assessment of Wilson's decision to use lethal force against Brown. The FBI Agent stated, "Wilson said he thought Brown could beat him to death. He knew from his training because for just that reason, he was allowed to use deadly force." (*Missouri v. Wilson*, 2014, Volume V p. 157).

The FBI Agent further explains the process by which Brown was transformed in Wilson's eyes into a threat

> Michael Brown became an immediate threat to Wilson's safety when Michael Brown came into the car, when Michael Brown hit Officer Wilson. Michael Brown went for Officer Wilson's firearm and Michael Brown charged towards Officer Wilson after Brown had already run away. Michael Brown was a threat to the safety of others as he ran away from Officer Wilson. (*Missouri v. Wilson*, 2014, Volume V p. 175).

In explaining Wilson's decision to give chase and still consider Brown a threat after he had fled, the FBI Agent states

> FBI Agent: So Officer Wilson got out of the car to chase Mr. Brown because … Michael Brown was a fleeing felon. And [Wilson] was just doing his job, those were his words. He said Brown had just assaulted and attempted to kill him with his own … duty weapon. Officer Wilson did not want Michael Brown to cause injury or death to anyone else.

He knew Brown would assault another responding officer or witness as Brown had just assaulted him. And Officer Wilson wanted to know, he wanted to give chase, he wanted to know where Brown was going. And in an attempt to apprehend Michael Brown once other officers got there.

Prosecutor: So let me stop you here. So this part you are testifying about he is basically explaining why he thought he was justified in pursuing the subject, correct?

FBI Agent: Yes, ma'am. (*Missouri v. Wilson*, 2014, Volume V p. 164-5).

Michael Brown's Disrespect

Another technique within the theme negative other-presentation is the focus upon Michael Brown's behaviors which cast him in a negative light. In the grand-jury testimony, these tended to focus on statements made by Michael Brown that demonstrate his lack of respect for Darren Wilson.

The Sergeant (*Missouri v. Wilson*, 2014, Volume V p. 31), Detective (*Missouri v. Wilson*, 2014, Volume V p. 101-2), FBI Agent (*Missouri v. Wilson*, 2014, Volume V p. 155), and Darren Wilson himself (*Missouri v. Wilson*, 2014, Volume V p. 214) explicitly reference that Brown cursed at Wilson - either "Fuck off" or "the fuck with what you have to say" – and used the phrase "you're too much a of a pussy to shoot me."

The Sergeant further elaborates

Sergeant: Well, no police officer likes being told [too fuck off]. I don't think he was angered as much as he was just taken aback by it for no reason whatsoever.
Prosecutor: Is that like a sign of disrespect, I would feel disrespected if somebody told me to fuck off?
Sergeant: You know, respect toward the police nowadays is not like it used to be. Most of the time it is under their breath or just barely within earshot, but evidently at this point in time it was told quite directly at him. (*Missouri v. Wilson*, 2014, Volume V p. 53).

Wilson himself explained that it was at the point that Brown uttered the word "fuck" that he started paying attention to him. Wilson states that it was at this point that he more closely

scrutinized Brown, recalled the description of the individual involved in the cigarillo theft, and decided to detain Brown on suspicion of the cigarillo theft. (*Missouri v. Wilson*, 2014, Volume V p. 209).

By presenting Brown in a negative light, this technique suggests that Brown deserved the outcome, that is his death, not merely due to his actions but also due to his speech, demeanor, and lack of respect. This is consistent with Zack's hunting schema in which police officers determine young Black men to be appropriate targets of coercive police practices (2015) and Denzin's insight that violence is often justified by characterizing it as provoked, that is, the locus of responsibility is relocated from the enactor of the violence to the recipient of the violence (1984, p. 491).

This pattern of targeting Black residents for heightened suspicion and coercive police practices cannot be examined in isolation from its context. As the Department of Justice observed in its report on the Ferguson Police Department, Ferguson's police officers frequently use their authority to target individuals who use disrespectful language for arrest (Dept. of Justice, 2015, p. 42). These so-called "contempt of cop" cases echo the circumstances which preceded Darren Wilson's initial decision to detain Michael Brown.

This focus on Brown's culpability and the deservedness of what happened to him was not limited to law enforcement officers in St. Louis. In December of 2014, a retired Los Angeles Police Department officer sang a parody of Jim Croce's "Bad, Bad Leroy Brown" at a charity event attended by dozens of current and former LAPD officers (Parker, 2014). The song parody included the following lyrics

Michael Brown learned a lesson / about a messin' with a bad ass police man
And he's, bad, bad Michael Brown / Baddest thug in the whole darn town
Badder than an ol' King Kong / Meaner than a junkyard dog
Two men took to fightin' / And Michael punched in through the door
and Michael looked like some old Swiss cheese
His brain was splatter on the floor
And he's dead, dead Michael Brown /Deadest man in the whole damn town
His whole life's long gone / Deader than a roadkill dog

After video, in which the laughter of audience members can be heard, of the performance was published by TMZ, then-LAPD Chief Charlie Beck condemned it as "offensive and absurd" and promised an internal investigation (Parker, 2014).

There is a popular type of video spread widely on video sharing sites such as Youtube.com labeled "instant karma." In these videos, an individual commits some infraction and is immediately stopped, cited, or arrested by the police. While most of these videos depict law violations such as traffic infractions, a common sub-type focuses on individuals who show disrespect to the police and are subsequently subject to coercive sanctions such as detention or arrest.

Perceptions of the Black Community

When asked about his personal relationship with the mostly Black residents of Canfield Green Apartments, the location of the Michael Brown's killing, Wilson described it as "an antipolice area for sure" and that "[t]here's a lot of gangs that reside or associate with that area. There's a lot of violence in that area, there's a lot of gun activity, drug activity, it is just not a very well-liked community. That community doesn't like the police. (*Missouri v. Wilson*, 2014, Volume V p. 238).

This description of the residents of Canfield Green Apartments is at odds with the one given by the Sergeant, who, citing his 38 years working with the community, described the

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relationship as, if not friendly, then at least a "business relationship" (*Missouri v. Wilson*, 2014, Volume V p. 50). When asked directly whether there was an "understanding that the residents just hated the police," the Sergeant replied "No, ma'am, no" (*Missouri v. Wilson*, 2014, Volume V p. 51).

For the purposes of this analysis, it is not necessary to determine which description – the "anti-police" relationship described by Wilson or the "business" relationship described by the Sergeant – is the more accurate. Rather, what is relevant is examining Wilson's discourse for its semantic content and schematic structure. Explicit in Wilson's description of the Canfield Green Apartments community is his belief that the community is "anti-police" and characterized by high-levels of criminal activity, including gun activity.

Elite discourse following Michael Brown's killing was characterized by negative-other-presentation. Recall Jackson's claim that anti-police sentiment among Ferguson's Black residents was a function of a "cultural predisposition" to dislike or mistrust the police (Jackson, 2017, p. 4). The claim that members of the Black community mistrust the police because of some cultural defect/trait further echoes historic negative stereotypes about Black untrustworthiness or criminality.

Second Guessing and Loyalty

A novel theme that emerged in analyzing the formal and quasi-formal discourse surrounding Darren Wilson's killing of Michael Brown is deference to Wilson's decisions in the moment and suspicion of attempts to second guess them after the fact. This argumentative theme, like positive self-presentation, presents the officer-in-the-moment as deserving of deference due to their special status and thus attempts to inoculate the officer from post hoc criticism. Like negative other-presentation, this argumentative theme casts those who would second guess the

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officer as insufficiently loyal to their law enforcement fellows and thus preemptively dismissing their criticisms.

Consider the following interaction between the Sergeant and the Prosecutor during the grand jury proceedings.

Prosecutor: In your recorded statement you said that you are required to ask officers stupid questions like how could this incident be prevented?
Sergeant: That's on the injury report.
Prosecutor: You feel that's a stupid question because you feel your officers don't have any other choice?
Sergeant: Correct.
Prosecutor: When you are in that kind of situation?
Sergeant: When you are physically attacked unprovoked, I believe how could he prevent this is a stupid question. (*Missouri v. Wilson*, 2014, Volume V p. 166-67).

In labeling the question "how could this incident be prevented" a "stupid question" the Sergeant denigrates the process of after-action investigation and re-affirms the appropriateness of Wilson's actions. This aversion to "second guessing" has been noted as a defining characteristic of police culture, in which police officers look askance at judges or legislators who are perceived as too lenient on criminals and overly critical of officers (Punch, 1979; Graef 1989).

This focus upon deference to the officer-in-the-moment recalls *Graham's* reasonable officer standard. Consider the Sergeant's claim "My opinion, put in this circumstances [sic], I don't know what I would have done. I probably would have done the same thing." (*Missouri v. Wilson*, 2014, Volume V p. 74). The Sergeant's comments reiterate the deference given to the officer in the moment in their assessment of the decision and what level of force to use.

Jackson echoes the Sergeant's criticism of post-hoc "second guessing" in discussing the Department of Justice ("DOJ") investigation of the Ferguson Police Department. Jackson writes, "[t]he DOJ investigation started with the premise that Ferguson was a swamp of injustice, then

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sought out and published anything that looked like it supported that position" (Jackson, 2017, p. xiv).

Jackson takes pains to present himself as apolitical in how he performed his duties as Police Chief. He states that "none of this was about national politics for me" and that he "had no predisposition against the Obama administration prior to the trouble in Ferguson" (Jackson, 2017, p. 34). Nevertheless, Jackson maintains that the DOJ's investigation was politically motivated and implies that it was racially motivated as well.

Then U.S. Attorney General Eric Holder comes under special criticism in Jackson's accounting. Jackson states that Holder made "a huge show of coming to this center of unrest, but his display had nothing to do with supporting law enforcement" (Jackson, 2017, p. 35). Jackson criticizes Holder for visiting Michael Brown's mother and Ron Johnson, "the African American Missouri highway patrol captain assigned to Ferguson," but not visiting the Ferguson police command post, and for speaking about "seeking 'justice for Michael Brown'" instead of "equal and impartial" justice (Jackson, 2017, p. 35).

Jackson states that Holder and the DOJ engaged in a "rush to judgement" by calling for a "wholesale change" in the Ferguson Police Department (Jackson, 2017, p. 36). Jackson further describes the DOJ investigation of the Ferguson Police Department as an "invasion by Eric Holder's DOJ" (Jackson, 2017, p. 104).

Consider Jackson's statement, "I assume that Mr. Holder had the best of intentions, but he came to the Ferguson situation with a bone to pick" (Jackson, 2017, p. 140). While this statement begins with a benign statement affirming Jackson's fairmindedness and willingness to extend the benefit of the doubt to Holder, the second half of the sentence serves to negate the first. In so doing, the first clause employs positive self-presentation to inoculate Jackson from

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criticism that he was merely biased against Holder. The second clause, in juxtaposition with the

first, employs negative other-presentation as Holder, unlike Jackson, is portrayed as biased,

unfair, and "rushing to judgment."

Jackson's descriptions of "Holder's DOJ" invading Ferguson, rushing to judgement, and

meeting with members of Ferguson's Black community and Missouri Highway Patrol Captain

Johnson while declining to meet with members of the Ferguson Police Department cast Holder

as a partisan who is unable or unwilling to fairly investigate or evaluate the state of policing in

Ferguson. Regarding the final DOJ report on Ferguson, Jackson states that

> [T]he Ferguson portrayed in that report was an invention, a backwards, angry
> place that the Justice Department created to make a show of tearing it down"
> (Jackson, 2017, p. xiv).

In this way, Jackson's discourse participates in what Van Dijk describes as portraying the

dominant group as "the real victims" (Van Dijk, 1993b, p. 265). Jackson casts Holder's

and the DOJ's efforts to identify and remedy histories of racially discriminatory policies

in Ferguson's municipal policies and police practices as evincing prejudice and bias.

But perhaps most significantly, Jackson casts Holder as a race-partisan. Jackson

specifically criticizes Holder for stating that "he might be the attorney general, but he was

'also a black man'" (Jackson, 2017, p. 134). Jackson characterizes Holder's statement as

signifying that he had "made his presence more about his cultural identity [as a Black

man] than about his position as the top law enforcement person in the country" (Jackson,

2017, p. 134). Jackson's characterization of Holder's phrase "also a black man" elides the

word "also" and in so doing suggests that Holder's mere acknowledgement of his race,

by necessity, elevates his race to primacy.

Such a characterization recalls Du Bois' insight into Black Americans' double consciousness (1994). In Holder's description of his "double" status as Attorney General and as a Black man can be heard the echoes of the desire to "make it possible for a man to be both a Negro and an American without being cursed and spit upon by his fellows, without having the doors of opportunity closed roughly in his face" (Du Bois, 1994). So too, in Jackson's characterizations of Holder as more concerned with "his cultural identity" than his position as Attorney General, can be glimpsed how Holder appears "through the eyes of others" (Du Bois, 1994).

VI.   Conclusion

The social reproduction of racism occurs at every level of society through events momentous and momentary. The discourse of elites, whether intentioned or not, often serves to manufacture the consent of the dominated and justify violence against dominated groups. As I have emphasized throughout this chapter, such discourse need not be intentionally racist or employed for the explicit purpose of reproducing racial hierarchies. Rather, to be considered racist discourse, it need only evoke racist social cognitions by deploying scripts and schemes that uphold existing racial hierarchies. Avowed non-racists can sincerely assert that they are fair-minded and harbor no ill will towards dominated groups and yet still employ racist discourse.

Further, it is worth noting that the law enforcement officials whose discourse was analyzed in this chapter would be unlikely to consider themselves "elites." Darren Wilson, the Sergeant, the Detective, the FBI Agent, and even Chief Jackson would be far more likely to see themselves as ordinary public servants who "work for a living" than the kind of elites envisioned by CDA. However, as law enforcement officials, each were placed in positions of authority over others and granted broad coercive power. As such, they are treated as elites within discourse

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analysis (Van Dijk, 1993b). The question of who counts as an "elite" is certainly complicated by the conflicts observed during and following Michael Brown's killing. Officials who would be more traditionally considered "elites," such as President Obama and Attorney General Holder, explicitly or indirectly, found themselves aligned with a traditionally dominated group, in this case Ferguson's Black community.

By not including examples of discourse from Obama or Holder, or the countless other public officials and figures who criticized the actions of Darren Wilson and the Ferguson Police Department, this analysis is necessarily limited. Examining the discourse of such figures would certainly be fruitful in developing a greater understanding of how racialized police violence is understood, condemned, or justified.

Chapter Five: Conclusion

Thirty years ago, Williams and Murphy observed that police departments are "barometers of the society in which they operate" (1990). Police departments and the officers that work within them do not create the conditions present in American towns and cities, but they do indicate them.

As I have reiterated throughout this dissertation, while intentional, malignant racists driven by deeply felt animus towards Blacks clearly exist, none of the findings or analysis in the preceding chapters requires that America's police departments be dominated by or filled with them. To paraphrase Bonilla-Silva, racism does not require racists (2014).

Rather, I have used racism to refer to the "racial ideology of a racialized social system" (Bonilla-Silva, 2014). In so far as police departments have evolved to support a racialized social and have been influenced by racialized associations of Blacks with criminality and dangerousness, then they have been racist institutions. In so far as police departments continue to exhibit patterns of racialized policing that subject Blacks to over-policing while failing to provide protective resources to Black communities, they continue to be racist institutions. In so far as police departments, and the officers that work within them, continue to employ racist discourse to make meaning out of violence against young Black men, they will continue to be racist institutions.

It is here that the argument for more representation for underrepresented groups gains its purchase. Police departments need more Black police officers, as they have access to a "unique vantage point," unavailable to white officers, "of having the lived experience of being Black in America along with the professional knowledge and experience that comes with being police officers" (Barlow & Hickman Barlow, 2002, p. 350).

Despite decades of calls for more recruitment of police officers from diverse backgrounds, local police departments continue to underrepresent these groups. In 1990, the percentage of officers serving in local police departments was 30% less than their share of the population (Maciag, 2015). By 2013, little had changed, with the percentage of officers serving in local police departments now 27% less than their share of the population (Maciag, 2015).

To the extent that the minority threat hypothesis predicts conflicts and tensions, increased minority representation may reduce that perceived threat and reduce tensions (Weitzer, 2000). To the extent that members of non-White offenders are viewed as "other" by the police – and concomitantly, to the extent that a majority white police force is viewed as "other" by the non-white community – this may be remedied by having the two groups "look" more like each other (National Crime Prevention Council, 1995). Indeed, the very presence of more Black officers within police ranks, and especially within those precincts that patrol non-White communities such as Ferguson, "legitimizes the apparatus of social control" in the eyes of community members, especially among other African Americans (Barlow & Barlow, 2000, p. 246).

Furthermore, to the extent that that "over-policing" and other types of aggressive policing provokes tension between the police and the non-White community, a more representative police force will be more likely to be able to recognize how these practices will be perceived by the community and either curtail their use or at least mediate their harshest implementations (Shusta et al, 1995). Non-white police officers may be able to beneficently influence the attitudes, beliefs, and discourse of their white colleagues, and ultimately have a salutary effect on police habitus (Maghan, 1993; Smith & Holmes, 2003). Of course, such efforts to increase the diversity of police departments cannot be limited to mere token representation (Felkenes & Schroedel, 1993). As long as the culture of individual departments is defined by a non-representative

numerical majority, it is unlikely that significant changes in patterns of racialized policing are likely to occur.

Moreover, reckoning with the racist nature of policing in America could go far to address police violence. In *Graham v. Connor* (490 U.S. 386 (1989)), the United States Supreme Court held that whether an officer used excessive force in the course of a stop or arrest is to be determined based upon a standard of *objective reasonableness*. That is, whether, based upon the information known at the time and the circumstances of the interaction, the amount of force used is objectively reasonable.

Since the *Graham* decision, the question of "reasonable to whom?" has stubbornly remained unanswered. Alpert & Smith (1994) delineated the differences between "the reasonable police officer" and "the reasonable man." As Alpert & Smith noted, while the Court may have envisioned that a police officer's actions would be judged by a reasonable officer, in practice, if the case makes it to trial, they will be evaluated by a civilian jury.

This suggests a second question: "reasonable against whom?" We must ask whether a use of force may be considered acceptable by an "objectively reasonable" police officer, and yet remain motivated by racial bias. While the Court in *Graham*, explicitly abandoned the examination of an officer's subjective mental state, it has thus far left unaddressed questions about the role of implicit biases and cognitive stereotypes about Black criminality and dangerousness in shaping an officer's interpretation of whether the use of force, including deadly force, is reasonable. I offer that in moving away from an evaluation of subjective mental state, the Court has allowed private bias to remain uncovered.

In *Graham*, the Court chose to defer to police officers rather than substitute its own judgment for theirs. Instead of telling officers what level of force is acceptable and what is

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excessive, the Court enlisted other officers to do so. Given the racist past and present of policing in America, the *Graham* standard creates a dilemma. Police officers must make decisions about whether civilians are suspicious or dangerous. If it is objectively unreasonable for that decision to be influenced by negative associations between Blackness and criminality, then the Court risks labeling a significant percentage of law enforcement officers (and indeed Americans) as objectively unreasonable as well. If such a split-second decision is not objectively unreasonable, then the Court must admit that the standard declares that racially discriminatory beliefs are proper foundations for police use of force.

The "reasonable man" standard has always been criticized for its amorphousness and lack of specific content. This of course is also its strength. However, in the context of excessive force, the danger that reasonableness may become conflated with racial bias is too grave to stand. If the officers who serve in America's law enforcement agencies were to better reflect the communities that they serve, one might assume that they would be less likely to be motivated by these sorts of negative racial associations.

This of course is an assumption. The evidence in support of it is mixed.

Some studies of the behavior of Black and minority police officers, have found that they are more likely to use force in their interactions with non-White citizens that White officers (Cohen & Chaiken, 1972; Sun & Payne, 2004). More surprisingly, other studies have found that interactions between non-White officers and members of their own racial or ethnic background are *more* likely to involve the use force than interactions between officers and citizens of different backgrounds (Alpert & Dunham, 1999).

However, other studies of non-White officers have found that race does not play a significant role in predicting whether force will be used (Lawton, 2007; McCluskey & Terrill,

2005; McElvain & Kposowa, 2004; Paoline & Terrill, 2007).

In their study of the Cincinnati Police Department, Brown & Frank observed that the race of officers does matter, as White officers are more likely to make arrests than African American officers (2006, p. 116). More recently however, Brandl & Stroshine have observed when controlling for other factors, race was no longer a statistically significant predictor of use of force; instead, sex of the officer, the total number of an officer's past arrests, and the time of day that an encounter occurred were the only significant predictors of whether force would be used (2012). They note that minority officers are more likely to be women and older, both of which are associated with lower rates of use of force (Brandl & Stroshine, 2012).

Regardless, mere increases in minority representation are not likely to be sufficient to change policy and attitudes within police departments without acknowledging the racialized history of policing in America, the continued association of Blackness with dangerousness and criminality, and the patterns of racialized policing that emerge from this association. Otherwise, as America continues to grow more diverse and its residential patterns continue to evolve, the particular forms that racialized policing takes may well change, but the fact of its existence will not.

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