

UNDERSTANDING CONTEMPORARY POLICE KILLINGS THROUGH
LYNCHINGS: A COMPARATIVE ANALYSIS

by

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Certificate of Approval

This is to certify that the accompanying thesis by Holden Ricardo Gaupo has been accepted in partial fulfillment of the requirements for graduation with Honors in Politics.

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Introduction

On February 26, 2012, Trayvon Martin, a black 17-year-old boy, was walking home from a convenience store in Sanford, Florida, talking on the phone and carrying a bag of Skittles and a can of iced tea, when he was shot and killed by George Zimmerman, a neighborhood watch volunteer.¹ Prior to shooting Martin, Zimmerman called the Sanford police department to report Martin; Zimmerman told the dispatcher, "There's a real suspicious guy... This guy looks like he's up to no good or he's on drugs or something...It's raining and he's just walking around looking about." After the dispatcher ascertained there was no crime occurring and assured Zimmerman the police were on their way, Zimmerman complained, "These assholes, they always get away." Zimmerman decided to follow Martin, ignoring the advice of the dispatcher who told him, "We don't need you to do that."² In his pursuit of Martin, a violent confrontation ensued that culminated with Zimmerman firing his weapon at close range, killing Martin. When the police arrived on the scene, Zimmerman claimed Martin attacked him and that he fired in self-defense, which is sanctioned under Florida's Stand Your Ground law. The police took Zimmerman at his word and did not arrest him.³

Trayvon Martin's death and the decision not to arrest or file charges against Zimmerman set off protests across the nation. Zimmerman racially profiled Martin, a black teen simply walking down the street in a white neighborhood, and in unnecessary

¹ "Shooting of Trayvon Martin," United States History, Encyclopedia Britannica. <https://www.britannica.com/event/shooting-of-Trayvon-Martin>.

² The Washington Post, "Audio: Calls from George Zimmerman, Neighbor Capture Last Minutes of Trayvon Martin's Life," <http://www.washingtonpost.com/>.

³ "Shooting of Trayvon Martin," Encyclopedia Britannica.

pursuit shot and killed him. The police accepted Zimmerman’s story and did not file charges against him. Had the victim been white and the shooter black, it’s difficult to imagine the police would be so ready to believe the shooter at his word. In the following weeks, protests over the decision not to charge Zimmerman led the governor of Florida to appoint a special prosecutor to the case who ultimately charged Zimmerman with second degree murder. The case went to trial, but Zimmerman was acquitted.⁴ This ruling led to protests in more than 100 cities across the United States,⁵ and birthed the #BlackLivesMatter slogan and subsequent movement.⁶

Police killings of black men and boys are nothing new in the United States. In his March on Washington speech, Dr. Martin Luther King, Jr. argued, “We can never be satisfied as long as the Negro is the victim of the unspeakable horrors of police brutality.”⁷ In the 1970s and 1980s there were several high-profile police killings of unarmed black men and boys, such as Edward Garner and Dethorne Graham.⁸ In 1999, Amadou Diallo was killed after four police officers shot a combined 41 bullets at him.⁹ On New Year’s Day of 2009, Oscar Grant was racially profiled by public transit officers, detained, and then shot by an officer while restrained and lying face down on the

⁴ “Shooting of Trayvon Martin,” Encyclopedia Britannica.

⁵ *The Guardian*, “Trayvon Martin Protests Being Held in More than 100 US Cities,” July 20, 2013. <http://www.theguardian.com/world/2013/jul/20/trayvon-martin-protests-us-cities>.

⁶ “Herstory,” Black Lives Matter, <https://blacklivesmatter.com/herstory/>.

⁷ “I Have a Dream: Full Text March on Washington Speech,” NAACP, <https://www.naacp.org/i-have-a-dream-speech-full-march-on-washington/>.

⁸ Philip Matthew Stinson, “Understanding Police Violence,” *Criminology Explains Police Violence*, 1st ed., University of California Press (2020), 23. <https://doi.org/10.2307/j.ctvx1htxx.5>.

⁹ Michael Cooper, “Officers in Bronx Fire 41 Shots, And an Unarmed Man Is Killed,” *The New York Times*, February 5, 1999, sec. New York, <https://www.nytimes.com/>.

platform.¹⁰ Law professor Paul Butler argues that “there has never, not for one minute in American history, been peace between black people and the police.”¹¹

Although Trayvon Martin was not killed by police, his killer was acting as a quasi-police-officer in his role as a self-appointed member of the neighborhood watch, “an informal auxiliary to a system that polices black life.”¹² According to Princeton Professor Keeanga-Yamahtta Taylor, Martin’s killing showed “the deadly consequences of racial profiling and of the alternating fear and disgust of Black boys and men that allowed the police to try and sweep the matter under the rug.”¹³ Martin’s killing was not specifically a police killing, but it shares similar elements and illustrates many of the problems with police killings. Additionally, and most importantly, Trayvon Martin’s killing led to the creation of the “Black Lives Matter” slogan and movement. Therefore, in this essay I focus on contemporary police killings of black men and boys, starting with Trayvon Martin and moving forward.

Contemporary police killings of black men and boys are one of the most high-profile racial issues of our time. Some of the most infamous contemporary killings include: Freddie Gray, who died in police custody from injuries caused by the police while being denied medical care; Philando Castille, who was shot during a traffic stop, with his girlfriend livestreaming the immediate aftermath; Walter Scott, who was shot in the back as he ran away from an officer; Tamir Rice, a 12 year-old boy with a toy gun, who was shot and killed within two seconds of officers arriving on scene; Michael

¹⁰ “About Us,” The Official Oscar Grant Foundation, <https://oscargrantfoundation.org/about/>.

¹¹ Paul Butler, *Chokehold: Policing Black Men* (New York: New Press, 2017), 2.

¹² Mumia Abu-Jamal, *Have Black Lives Ever Mattered?*, Open Media Book (San Francisco: City Lights Books, 2017), 89.

¹³ Keeanga-Yamahtta Taylor, *From #BlackLivesMatter to Black Liberation* (Chicago: Haymarket Books, 2016), 148.

Brown, who was shot and killed following a confrontation with an officer for walking in the street; and Eric Garner, who was pinned to the ground by multiple officers and suffocated with an illegal chokehold.¹⁴

The growing pile of bodies from contemporary police killings, and the highly disproportionate rate at which black men and boys are killed, has led to comparisons between contemporary police killings and lynchings. In 2016, NAACP President Cornell Williams Brooks argued that contemporary police killing of black men is a “21st century lynching;”¹⁵ Professor Taylor argues, “It was clear that Martin had been the victim of an extrajudicial killing. Trayvon Martin had been lynched;”¹⁶ and a United Nations Report states: “Contemporary police killings and the trauma that they create are reminiscent of the past racial terror of lynching.”¹⁷ Taken together, these statements point to a powerful connection between contemporary police killings of black men and lynchings.¹⁸

Lynchings are well-established and understood as an act of racial terror and white supremacy,¹⁹ whereas contemporary police killings of black men and boys have generally

¹⁴ CBC News, “14 High-Profile Police-Related Deaths of U.S. Blacks,” CBC News, December 8, 2017, <https://www.cbc.ca/news/world/list-police-related-deaths-usa-1.4438618>.

¹⁵ “NAACP Leader Compares Recent Police Killings to Lynchings.” <https://www.twincities.com/2016/07/10/naACP-leader-compares-recent-police-killings-to-lynchings/>.

¹⁶ Taylor, *From #BlackLivesMatter to Black Liberation*, 148.

¹⁷ “Report of the Working Group of Experts on People of African Descent on Its Mission to the United States of America,” August 18, 2016, 16. <http://digitallibrary.un.org/record/848570>.

¹⁸ These comparisons tend to be rather surface level. In my research I combed through practically all of JSTOR and underwent several pages of google searching for lynching and police killings/executions/murders, searching terms such as 21st Century Lynching, modern lynchings, and new lynchings. It is certainly possible that there are pieces I missed or could not access, but overall, the lack of thorough analysis and scholarly work is clear. The three pieces I did find were: Sierra McCormick, “Brutal Justifications: Media Narratives of Twentieth Century Lynchings and Twenty-First Century Police Executions” 8 (n.d.); Karlos K. Hill, “21st Century Lynchings?.” Cambridge University Press.” <http://www.cambridgeblog.org/2016/02/21st-century-lynchings/>; and Sean King, “Five Ugly and Uncanny Parallels between Lynchings and Police Killings in America” Daily Kos, November 13, 2014. <https://www.dailykos.com/>.

¹⁹ W. Fitzhugh Brundage, *Under Sentence of Death: Lynching in the South*, (Chapel Hill: University of North Carolina Press, 1997) 5 & 17; David G. Embrick “Two Nations, Revisited: The Lynching of Black and Brown Bodies, Police Brutality, and Racial Control in ‘Post-Racial’ Amerikkka.” *Critical Sociology*

not been. I compare key aspects of contemporary police killings of black men and boys with those of lynchings to illuminate what Professor Karlos K. Hill describes as “deep resonances” between these two phenomena.²⁰ They are strikingly similar in that they enact and display lethal violence against black men and boys. They both operate from a position of murky legality wherein the killings occur both inside and outside the law, which blurs the distinction between the two. My comparison provides a better understanding of contemporary police killings of black men and boys as an act of racial terror and white supremacy, and locates them within the long legacy of violence against black bodies in the United States.

I center black men and boys in my analysis because they compose the vast majority of those lynched and are disproportionately killed by police today. Michael Bloomberg illustrated the pervasive targeting of black men and boys when he said, “Ninety-five percent of your murders and murderers and victims fit one M.O. You can just take the description, Xerox it and pass it out to all the cops: They are male, minorities, 16 to 25. That’s true in New York. It’s true in virtually every city... we put all the cops in minority neighborhoods.”²¹ I focus on black men and boys because the criminal justice system focuses on them. However, it is important to note that black

41, no. 6 (September 1, 2015): 837 & 838. <https://doi.org/10.1177/0896920515591950>; Ida B. Wells-Barnett, *On Lynchings: Southern Horrors, A Red Record, Mob Rule in New Orleans*. Reprint ed. American Negro, (His History and Literature: Salem, NH: Ayer Co, 1991); Walter White, *Rope & Faggot: A Biography of Judge Lynch*, Black Thought and Culture (Notre Dame, Ind.: University of Notre Dame Press, 2001); “History of Lynchings,” NAACP, <https://www.naacp.org/history-of-lynchings/>.

²⁰ Hill, “21st Century Lynchings?”

²¹ “Bloomberg Faces New Backlash over 2015 Remarks Defending Police Targeting of Black and Latino Men,” Los Angeles Times, <https://www.latimes.com/>.

women and girls are also the targets of police violence, particularly sexual violence, and are often overlooked.²²

To establish a common understanding of white supremacy for this thesis, I turn to philosopher Charles Mills and his book *The Racial Contract*. Mills lays the foundation for his argument with the premise that “white supremacy is the unnamed political system that has made the modern world what it is today.”²³ Mills establishes white supremacy as a political system, not only a belief in the superiority of whites, allowing for a far greater understanding of white supremacy and its role in American policing. He goes on to argue that “white supremacy can illuminatingly be theorized as based on a ‘contract between whites, a Racial Contract.’”²⁴ This Racial Contract “establishes a racial polity, a racial state, and a racial juridical system, where the status of whites and nonwhites is clearly demarcated, whether by law or custom. And the purpose of this state...[is] specifically to maintain and reproduce this racial order.”²⁵ This racial order has constantly been maintained throughout the history of the United States, through slavery, lynchings, Jim Crow laws, interpersonal discrimination and racism, mass incarceration, and police violence, to name a few.

As the state maintains a racial polity through the Racial Contract, Mill states “Racism and racially structured discrimination have not been *deviations* from the norm; they have *been* the norm.”²⁶ White supremacy continues to be a potent force and practice in the United States. Racism and racist policies are not quirks or lingering products of a

²² The #SayHerName campaign is an attempt to stop the erasure of police violence against black women, girls, and femmes. See “Say Her Name,” AAPF, <https://aapf.org/shn-campaign>.

²³ Charles W. Mills, *The Racial Contract* (Ithaca: Cornell University Press, 1997), 1.

²⁴ *Ibid.*, 7.

²⁵ *Ibid.*, 13-14.

²⁶ *Ibid.*, 93, emphasis in original.

past time, but an intentional and ongoing part of our country. Additionally, as white supremacy and racism are the norm—part of the fabric of our political system—individuals need not be explicitly racist to commit acts that uphold a white supremacist system. Police officers do not need to actively be white supremacists to engage in acts of white supremacy through killing black men and boys.

The Value and Limitations of Comparison

The thesis of this paper centers on comparing lynchings and contemporary police killings, focusing on their striking similarities and differences, as a way to better and properly understand contemporary police killings. Therefore, it is useful to begin by discussing the value and limitations of this comparison as well as to answer the question: are contemporary police killings lynchings? To fully discuss the comparison between the two, a definition of lynching is needed. A commonly accepted definition was produced by a 1940 summit of anti-lynching advocates, which defined lynching based on the following criteria: “There must be legal evidence that a person has been killed, and that he met his death illegally at the hands of a group acting under the pretext of service to justice, race, or tradition.”²⁷

Are contemporary police killings lynchings? At the most basic and literal level, no; contemporary police killings lack some of the key features of lynchings. First, contemporary police killings are not acts of collective violence orchestrated by a mob. In most cases, contemporary police killings are the actions of a single officer, although there are certain mob-like qualities to police unions and their behavior. Second, whereas lynchings were illegal at least formally if not in practice, contemporary police killings are mostly legal. Third, the necessary condition of the “acting under the pretext of service to justice, race, or tradition,” implies a response to a crime or perceived crime, which could be applied to contemporary police killings if the police officer is responding to a threat or

²⁷ Ashraf H. A. Rushdy, *American Lynching*, (New Haven: Yale University Press, 2012), 20.

perceived threat. These descriptions serve to distinguish the premeditated aspect of lynchings, which is mostly absent in contemporary police killings.

However, Professor Karlos Hill argues that “to entirely dismiss lynching as a useful way of framing contemporary police shootings of unarmed blacks is to miss deep resonances between these two phenomena and more importantly to ignore the emotive context (fear and frustration) that is driving black Americans to label police killings as lynchings.”²⁸ This idea of ‘deep resonances’ speaks to how police killings and lynchings enact and display violence, and the cultural/political/emotional experience of the two as an expression of white supremacy that conveys racial terror through violence against black male bodies.

²⁸ Hill, “21st Century Lynchings?”

Contextualizing the Era

While the precise circumstances of each killing are unique, they occur in the same context of policing. Three of the most notable features of modern policing are mass incarceration, “broken windows” policing, and a highly militarized police force. These critical features help create a system that facilitates the persecution of black men and boys, and in many ways makes it a logical outcome of the system. The fact that they occur in the time of the Black Lives Matter Movement helps create a new era of visibility of police treatment of black men and boys.

Modern Policing

Mass incarceration is a critical component of modern policing, brilliantly explained by Michelle Alexander in her book *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. Alexander argues that “mass incarceration in the United States ha[s], in fact, emerged as a stunningly comprehensive and well disguised system of racialized social control that functions in a manner strikingly similar to Jim Crow.”²⁹ Although mass incarceration occurs absent explicitly racist laws, according to Alexander, “the racial dimension of mass incarceration is its most striking feature. No other country in the world imprisons so many of its racial or ethnic minorities. The United States imprisons a larger percentage of its black population than South Africa did at the height

²⁹ Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, revised ed. (New York: New Press, 2011), 4.

of apartheid.”³⁰ Mass incarceration is a redesigned racial caste system that imprisons and controls millions of people, particularly black men and boys.

The second feature of modern policing is the over-policing and hyper-surveillance of black and brown communities through what is called “broken windows policing.” American Studies Professor Christine Heatherton and author Jordan T. Camp explain that “the underlying concept of broken windows policing is deceptively simple: to stop major crimes from occurring, police must first prevent small signs of ‘disorder’ from proliferating, such as graffitiing, litter, panhandling, public urination, the sale of untaxed cigarettes, and so forth.”³¹ The policing of “quality of life” or “nuisance crimes” is central to broken windows policing, which has spread throughout the United States.³²

Broken windows policing is a deeply flawed form of law enforcement. The authors and main proponents of the theory, social scientists George L. Kelling and James Q. Wilson, knew that broken windows policing “had not reduced crime rates.” Rather, its main success was that it made people “feel more secure.”³³ Additionally, Wilson and Kelling recognized the potential for racial profiling in this type of police work. In the essay where they made the case for broken windows policing, they posed the question: “How do we ensure, in short, that the police do not become the agents of neighborhood bigotry?” They answered, “We can offer no wholly satisfactory answer to this important question. We are not confident that there is a satisfactory answer.”³⁴

³⁰ Ibid., 6.

³¹ Jordan T. Camp, and Christina Heatherton, *Policing the Planet: Why the Policing Crisis Led to Black Lives Matter* (London; New York: Verso, 2016), 3.

³² Ibid. 2.

³³ George L. Kelling and James Q. Wilson, “Broken Windows.” *The Atlantic*, March 1, 1982, <https://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465/>.

³⁴ Ibid.

The pervasive targeting of black men and boys is a natural outcome of broken windows policing. Under this practice police are empowered to target people and crimes at their discretion.³⁵ Therefore, when “broken windows theory is carried out, it’s basically the selective police enforcement of regulations against minor offenses—nonviolent offenses—that disproportionately impact particular communities.”³⁶ In a society where “Black and Brown bodies carry from birth the mark of suspicion,”³⁷ and blackness is seen as a mark of criminality,³⁸ it is only natural that discretionary policing focuses on black men and boys. This has created our current state of policing that Steve Martinot, instructor emeritus at San Francisco State University, describes as follows:

...in exercising their power to criminalize at will, with impunity, the police serve as a selection mechanism that separates those whose humanity will be discounted and disrespected (the profiled) from those who will be respected. Through the power to profile, this ability to select constitutes a division between whites (not profiled) and others. In practice, the police become a new color line, an instrumentality that circumscribes a resurrected form of racial segregation.³⁹

Mass incarceration has created a new racial caste system in the United States, and broken windows policing furthers that system through the hyper-policing of black men.

In addition to its role as a core feature of modern law enforcement, broken windows policing is relevant to contemporary police killings because some of the most high-profile killings stemmed from the policing of nuisance crimes. For example, Michael Brown’s interaction with the police that ended with him shot six times, began

³⁵ George L. Kelling and William J. Bratton, “Why We Need Broken Windows Policing,” *City Journal*, December 23, 2015. <https://www.city-journal.org/html/why-we-need-broken-windows-policing-13696.html>.

³⁶ Joo-Hyun Kang, “Ending Broken Windows Policing in New York City,” Interview in *Policing the Planet*, ed. Jordan Camp, Christina Heatherton, 67.

³⁷ Robin D. G. Kelley, “Thug Nation: On State Violence and Disposability,” in *Policing the Planet*, ed. Jordan Camp, Christina Heatherton, 17.

³⁸ Khalil Gibran Muhammad, *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America* (Cambridge, UNITED STATES: Harvard University Press, 2010), 271.

³⁹ Steve Martinot, “On the Epidemic of Police Killings,” *Social Justice* 39, no. 4 (130) (2014): 69.

with a confrontation for jaywalking.⁴⁰ Similarly, the officer who choked Eric Garner to death first confronted him for selling cigarettes.⁴¹ Broken windows policing drastically increases interactions between police and black men, which invariably increases the number of police killings of black men and boys as any one of these interactions can become deadly.

Police militarization is another feature of modern policing, and it has brought an unprecedented level of military grade weapons and tactics to communities. In 1981, President Reagan signed the Military Cooperation with Law Enforcement Act, “which encouraged the military to give local, state, and federal police access to military bases, intelligence, research, [and] weaponry.”⁴² This allowed the Pentagon to transfer “253 aircraft (including six- and seven-passenger airplanes, and UH-60 Blackhawk and UH-1 Huey helicopters), 7,856 M-16 rifles, [and] 181 grenade launchers” to local police departments from 1997-1999.⁴³ This massive transfer of military equipment to local police departments was accompanied by a turn to military-style policing tactics, best exemplified by the increase in SWAT raids. “The number of SWAT team callouts jumped from 3,000 in 1980 to 35,000 in 1996, more than an eleven-fold increase.”⁴⁴

Military equipment and tactics create a military culture around policing, making it increasingly difficult to criticize police officers. Professor of History Robin D. G. Kelly describes how a military culture around policing “places cops and soldiers on pedestals

⁴⁰ “Timeline of Events in Shooting of Michael Brown in Ferguson,” AP NEWS, August 8, 2019, <https://apnews.com/9aa32033692547699a3b61da8fd1fc62>.

⁴¹ Time, “Behind the Video of Eric Garner’s Deadly Confrontation With New York Police,” <https://time.com/3016326/eric-garner-video-police-chokehold-death/>.

⁴² Alexander, *The New Jim Crow*, 77.

⁴³ Megan Twohey, “SWATs under Fire”, National Journal; Washington Vol. 32, Iss. 1, (Jan 1, 2000), <https://search-proquest-com>.

⁴⁴ Ibid.

and frames their actions as ‘security’ or as acts of self-defence.”⁴⁵ The narrative of the hero-cop and warfare is particularly devastating to black men and boys as it creates an “‘us versus them’ mentality, pitting law enforcement against men of color,”⁴⁶ where police “protect ‘citizens’ from out of control (Black and Brown) criminals.”⁴⁷ As lawyer and social justice advocate Robin Steinberg explains, this allows police to “portray themselves as indispensable heroes in a deadly and dangerous war.”⁴⁸ Under this narrative it is “virtually impossible to question police tactics, object to the use of force, or challenge the lack of accountability in law enforcement without receiving massive blowback...merely questioning police behavior is decried as un-American, disloyal, and even dangerous.”⁴⁹ The militarization of police and the narrative of war creates a culture of impunity around law enforcement. Not only does this normalize police killings in general, and specifically of black men and boys, it frames them as acceptable and necessary for the security of society.

Black Lives Matter

In the wake of the jury returning a not-guilty verdict for Zimmerman’s killing of Trayvon Martin and the national protests that followed, “a 31-year-old activist in Oakland named Alicia Garza penned a Facebook status that soon went viral. She called the status ‘a love letter to black people,’ ...’*Black people. I love you. I love us. Our lives*

⁴⁵ Kelley, “Thug Nation:” in *Policing the Planet*, ed. Jordan Camp, Christina Heatherton, 28.

⁴⁶ Ibid.

⁴⁷ Kelley, “Thug Nation:” in *Policing the Planet*, ed. Jordan Camp, Christina Heatherton, 28.

⁴⁸ Robin G. Steinberg, “Police Power and the Scaring of America: A Personal Journey,” *Yale Law & Policy Review* 34, no. 1 (2015): 133.

⁴⁹ Steinberg, “Police Power and the Scaring of America: 134.

matter,’ she concluded. Her friend and fellow activist Patrisse Cullors found poetry in the post, extracting the phrase ‘black lives matter’ and reposting the status.”⁵⁰ The official Black Lives Matter (BLM) website states, “In 2013, three radical Black organizers — Alicia Garza, Patrisse Cullors, and Opal Tometi — created a Black-centered political will and movement building project called #BlackLivesMatter. It was in response to the acquittal of Trayvon Martin’s murderer, George Zimmerman.”⁵¹ The BLM movement has subsequently led the charge against contemporary police killings of black people and the fight for black lives, much as the NAACP and other organizations led a campaign against lynching.

The Black Lives Matter movement is a new civil rights movement that has significantly impacted the conversation around police killings and created a new era of visibility for police killings. BLM is a global movement with over 40 chapters, though it is largely decentralized.⁵² The movement has been described by Professor of Sociology Jerome Karabel as “the most powerful civil rights movement since the 1960s.” He goes on to describe how, “thanks to this movement, the issues of police killings and mass incarceration are now squarely on the public agenda.”⁵³ The Black Lives Matter website describes itself as having “helped propel the conversation around state-sanctioned violence” and its work as an “ongoing fight to end State-sanctioned violence, liberate Black people, and end white supremacy forever.”⁵⁴ Black Lives Matter has been

⁵⁰ Wesley Lowery, “Black Lives Matter: Birth of a Movement,” *The Guardian*. <https://www.theguardian.com/>, emphasis in original.

⁵¹ “Herstory,” Black Lives Matter.

⁵² “Herstory,” Black Lives Matter.

⁵³ Jerome Karabel, “Police Killings Surpass the Worst Years of Lynching, Capital Punishment, and a Movement Responds,” HuffPost, https://www.huffpost.com/entry/police-killings-lynchings-capital-punishment_b_8462778.

⁵⁴ “Herstory,” Black Lives Matter.

instrumental in elevating the killings in public conversation and linking them through the simple yet powerful message: Black Lives Matter.

The Numbers, the Act, and the Public Display

This section examines the numbers, act, and public display of contemporary police killings of black men and boys and compares them to lynchings. Black men and boys were the vast majority of the targets of lynchings, and contemporary police killings target black men and boys at disproportionately high rates. These acts of lethal violence against black men and boys are acts of white supremacy that use the black male body to convey racial terror.

Statistics do not tell the whole story, but they help paint a broad picture when discussing contemporary police killings. However, reliable statistics only can be found going back to 2015. This is because “government efforts to collect, analyze, and disseminate information such as statistical data on the incidence and prevalence of police violence acts have been almost nonexistent.”⁵⁵ There is nominally a federal system to track police killings, but it is based on voluntary reporting of data by local police departments, and only 3% of the nation’s police departments participate.⁵⁶ Due to this lack of data by the federal government, journalistic databases provide the most comprehensive and detailed data on police killings. The Washington Post’s database is particularly detailed and thorough, providing several different metrics regarding police killings.⁵⁷

⁵⁵ Philip Matthew Stinson, “Understanding Police Violence,” 25.

⁵⁶ Aaron C. Davis, and Wesley Lowery, “FBI Director Calls Lack of Data on Police Shootings ‘Ridiculous,’ ‘Embarrassing,’” *Washington Post*, October 7, 2015, sec. National. <https://www.washingtonpost.com/>

⁵⁷ *Washington Post*, “Fatal Force: Police Shootings Database.” <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/>.

I want to specifically note that I am not differentiating between the killing of armed and unarmed black men and boys. Focusing on the killing of unarmed black men and boys and arguing that their killings were unjustified can unintentionally lend support to the idea that the person being armed automatically justifies the police killing them. On a more technical note, people are classified as armed if they have a toy weapon or are driving a car, and a knife is considered a deadly weapon like a gun.⁵⁸ Police killings cannot be neatly broken down into the unarmed and those actively threatening the lives of others with a deadly weapon, but the unarmed vs. armed narrative tries to do exactly that.

From 2015-2019 police have killed around 1,000 people each year, and 2020 is on track to have similar rates.⁵⁹ Black men and boys are many times more likely to be killed by police, but exactly how much more likely is unclear, in large part due to the lack of comprehensive data. One study found black men and boys are about 2.5 times as likely to be killed by police compared their white counterparts,⁶⁰ but an analysis of data by journalists at ProPublica put that number at 21 times as likely.⁶¹ Even using the first, much lower number leads to a situation where about “1 in 1,000 black men and boys in America can expect to die at the hands of police,” and where police killings are the 7th leading cause of death for black men in their twenties.⁶² Eight of the one hundred largest city police departments “kill black men at higher rates than the U.S. murder rate.”⁶³

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Frank Edwards, Hedwig Lee, and Michael Esposito, “Risk of Being Killed by Police Use of Force in the United States by Age, Race–Ethnicity, and Sex,” *Proceedings of the National Academy of Sciences* 116, no. 34 (August 20, 2019), 16794, <https://doi.org/10.1073/pnas.1821204116>.

⁶¹ Ryan Gabrielson, Eric Sagara, and Ryann Grochowski Jones, “Deadly Force, in Black and White,” ProPublica, <https://www.propublica.org/article/deadly-force-in-black-and-white>.

⁶² Edwards, “Risk of Being Killed by Police Use of Force,” 16793.

⁶³ “Mapping Police Violence,” <https://mappingpoliceviolence.org>.

These rates are unparalleled in other industrialized countries. In the first 24 days of 2015, U.S. police killed more people than police in England and Wales have in the past 24 years combined; in the first five months of 2015, U.S. police killed 19 unarmed black men, whereas German police killed 15 people total from 2011-2012.⁶⁴ Furthermore, research has shown that “racial bias in police shooting is not reliably associated with crime rate.”⁶⁵ In other words, the fact that police kill black men and boys at far higher rates is not correlated to crimes committed,⁶⁶ making the racial dimensions of these killings all the more clear.

However, contemporary police killings are not the first time the United States has killed black men and boys at horrific rates. From 1882-1927, 4,951 people were lynched, an average of 107.6 per year; of that number 1,438 were white and 3,513 were people of color, and 92 were women.⁶⁷ Based on this data, about 70% of those lynched were racial minorities and 99.98% were men. Notably, reliable data on lynchings cannot be found prior to 1882 when the Chicago Tribune—a newspaper, not the government—began collecting data on lynchings.⁶⁸

Black men and boys are overwhelming those killed in lynchings and contemporary police killings. On average, police now kill twice as many black men and

⁶⁴ Jamiles Lartey, “By the Numbers: US Police Kill More in Days than Other Countries Do in Years,” *The Guardian*, June 9, 2015, sec. US news, <https://www.theguardian.com/>

⁶⁵ Cody T. Ross, “A Multi-Level Bayesian Analysis of Racial Bias in Police Shootings at the County-Level in the United States, 2011–2014,” *PLOS ONE* 10, no. 11 (November 5, 2015): 8. <https://doi.org/10.1371/journal.pone.0141854>.

⁶⁶ Crime rates, particularly violent crime rates of young black men are sometimes cited as an explanation for their higher rates of death at the hands of police; see Quillette, “Don’t Blame Police Racism for America’s Violence Epidemic,” July 27, 2019. <https://quillette.com/>. Not only is this rhetoric an example of the way white supremacy tries to turn blackness itself into a crime, it is empirically disproven.

⁶⁷ White, *Rope and Faggot*, 227.

⁶⁸ *Ibid.*

boys each year (222),⁶⁹ than the average total number of people of all races lynched each year (107).⁷⁰ To put it another way, police have killed more people from 2015 through March of 2020 (5175),⁷¹ than were lynched during the 46 peak years of lynching (4,951).⁷² From a numerical standpoint, contemporary police killings of black men and boys exceed the numbers of lynchings.⁷³

To further examine the similarities, I will now turn to specific killings. Consider the police killing of Michael Brown, which caused national protests. According to the Associated Press:

On Aug. 9, 2014, Michael Brown and a friend were walking in the middle of Canfield Drive, a two-lane street in the St. Louis suburb of Ferguson, Missouri, when a police officer drove by and told them to use the sidewalk. After words were exchanged, the white officer confronted the 18-year-old [Michael] Brown, who was black. The situation escalated, with the officer and Brown scuffling. The officer shot and killed Brown, who was unarmed...Brown's bloodied body remain[ed] in the street for four hours.⁷⁴

While it is not exactly clear what happened when the officer confronted Brown and what caused the situation to escalate, it is clear that an interaction that began when an officer confronted two black boys who were jaywalking (an example of broken windows policing), led to Michael Brown being “shot at least six times, including twice in the

⁶⁹ *Washington Post*, “Fatal Force: Police Shootings Database.”

⁷⁰ White, *Rope and Faggot*, 267.

⁷¹ *Washington Post*, “Fatal Force: Police Shootings Database.”

⁷² White, *Rope and Faggot*, 267.

⁷³ One argument that tries to downplay the significance of contemporary police killings of black men and boys is that overall these killings remain rare in a nation of over 300 million people, see “Police Violence against Black Men Is Rare,” *National Review*, September 18, 2017. <https://www.nationalreview.com/>. However, the greater numbers of police killings of black men and boys compared to lynchings shows the poor reasoning of this argument as lynchings are well understood as an act of racial terror with great significance.

⁷⁴ “Timeline of Events in Shooting of Michael Brown in Ferguson,” AP NEWS.

head...The bullets did not appear to have been shot from very close range.”⁷⁵ A grand jury later reviewed the incident but did not indict the officer.⁷⁶

Jumping back to 1893, consider the lynching of Daniel Edwards described by prominent anti-lynching activist and investigator Ida B. Wells:

A colored man named Daniel Edwards lived near Selma, Alabama, and worked for a family of a farmer near that place. This resulted in an intimacy between the young man and a daughter of the householder, which finally developed in the disgrace of the girl. After the birth of the child, the mother disclosed the fact that Edwards was its father. The relationship had been sustained for more than a year, and yet this colored man was apprehended, thrown into jail from whence he was taken by a mob of one hundred neighbors and hung to a tree and his body riddled with bullets.⁷⁷

Edwards was lynched by a white mob for his consensual relationship and the child he produced with a white woman.

The cases of Michael Brown and Daniel Edwards are not as disconnected as they might seem at first glance. Brown was confronted by police for the disorderly behavior of walking in the street. Edwards' crime was his relationship with a white woman, which was seen as abhorrent at that time. The white mob wanted to communicate in no uncertain terms that Edwards' behavior violated proper societal order and would not be tolerated. There can be no uncertainty that the lynching of Edwards was meant to send a message as “upon his back was found pinned this morning the following: ‘Warning to all Negroes that are too intimate with white girls. This the work of one hundred best citizens of the South Side.’”⁷⁸ The mob punished Edwards by lynching him, and used him to communicate a message to the rest of society by leaving his bullet-ridden body, accompanied by a written note, hanging from a tree for all to see. This horrific act

⁷⁵ “Autopsy Shows Michael Brown Was Struck at Least 6 Times,” *The New York Times*, <https://www.nytimes.com>

⁷⁶ “Timeline of Events in Shooting of Michael Brown in Ferguson,” AP NEWS.

⁷⁷ Wells, *Red Record*, 65.

⁷⁸ *Ibid.*

functioned as a reminder of the exclusivity of white society and the impunity with which whites could enforce that exclusivity.

Similarly, Michael Brown's killing and the display of his bullet-ridden body on the street for several hours, which was viewed by several hundred people and countless more online, communicated a message. Professor of African-American Studies Tony Bolden succinctly states: "Without uttering a single word, the refusal of Ferguson Police Department to administer Brown's body proclaimed in no uncertain terms: black people have no rights that police must consider."⁷⁹ Brown's body demonstrated the disposability of black life to police and our present society. His death served as a reminder that any interaction with police for black men could lead to their death. Professor Bolden argues that there was a particular message, impossible to "misinterpret or overlook," for black youth in the display of Michael Brown's body: "Since police had criminalized blackness itself, any one of them could've been killed, their lives snuffed out instantly, in the very same manner."⁸⁰

This use of the black male body as a medium of communication is not unique to contemporary police killings or lynchings. As Professor of Sociology David Embrick explains, "The US has long had a fascination with black bodies. From days of slavery to the years of Jim Crow to the post-Civil Rights Era, black and brown bodies have been controlled and put on display as an affirmation of white superiority. This fixation is particularly notable when it comes to black male bodies."⁸¹ The killings and displays of

⁷⁹ Tony Bolden, "The Racial Contract: Ferguson as Metonymy—Why Now?" *CLA Journal* 58, no. 3/4 (2015): 186.

⁸⁰ *Ibid.*

⁸¹ Embrick, "Two Nations, Revisited," 838.

Brown's and Edwards' bodies both served to communicate a message of white supremacy.

Another lynching to consider is that of Bertha, Dedman, and Clarence Lowman in the spring of 1925, three family members in jail awaiting trial for the killing of a sheriff. The whole trial was farcical as a previous trial had been overturned by the Supreme Court of South Carolina, and the deputies of the sheriff, who were with him when he was shot, "swore that none of the negroes [were] in a position to shoot the sheriff." However, none of this mattered to the mob that "overpowered" the jailer and sheriff and took the Lowmans to a camp on the outskirts of town where a few thousand members of the community were waiting. When the Lowmans were brought to the camp, they were given a brief moment of hope as "they were lined up, freed from their bonds and told to run. Off they started—and a volley of bullets was pumped into their backs. The mob laughed loudly at the clever joke."⁸² This was a spectacle lynching.

Spectacle lynchings were a particular type of lynching that were less focused on merely carrying out a punishment in response to a perceived crime. Rather, as described by Professor of Politics Timothy Kaufman-Osborn, spectacle lynchings were "expressive performances aimed at communicating the terms of the racial contract to blacks and whites alike, and the medium of that message was the (sub)human body."⁸³ The point of spectacle lynchings was the performance and message; the lynching of the Lowmans was clearly a spectacle lynching. The Lowmans were in jail, so they could not be reasonably perceived as posing any threat. They were taken by a mob to a waiting crowd of two

⁸² White, *Rope and Faggot*, 30-31.

⁸³ Timothy Kaufman-Osborn, "Capital Punishment as Legal Lynching?" in *From Lynch Mobs to the Killing State: Race and the Death Penalty in America*. Ed. Oglethorpe, Charles J., and Austin Sarat, Charles Hamilton Houston Institute Series on Race and Justice (New York: University Press, 2006) 29.

thousand people, demonstrating the spectacular and premeditated nature of the event.

Then they were released and told to run, only to be shot in the back as they ran away and the crowd laughed, creating the “expressive performance.”

Ninety years later, in 2015, Walter Scott was shot in the back by a police officer as he ran away. Walter Scott was pulled over by an officer, as a result of broken windows policing, in a traffic stop for having a broken taillight. A scuffle ensued in which the officer tased Scott, but did not incapacitate him.⁸⁴ Scott then ran away from the officer, and as he ran the officer shot him eight times, killing him—the incident was captured on video by a bystander.⁸⁵ It is unclear what prompted the officer to shoot Scott, as he was running from the officer, and not towards anyone. The officer claimed Scott had his taser, but the video shows this is not true.⁸⁶

The lynching of the Lowmans and Scott’s shooting are illustrative examples of their respective acts. The Lowmans were taken from jail with the help of jailer, showing how lynchings did not simply occur in response to a lack of a local justice system or in the frenzied heat of a mob reacting in the moment to a crime. The Lowmans were lynched for sport, because the white mob wanted to and could. It demonstrated their total domination over black people, showing they could kill black people as they pleased. Similarly, Scott’s shooting shows how police officers can kill black men and boys for no apparent reason, seemingly as they choose. It reveals the power of the police and the subjugation of black men and boys. Both cases reveal how lynchings and contemporary

⁸⁴ Michael S. Schmidt, and Matt Apuzzo, “South Carolina Officer Is Charged with Murder of Walter Scott,” *The New York Times*, April 7, 2015, sec. U.S. <https://www.nytimes.com>

⁸⁵ “Walter Scott Death: Video Shows Fatal North Charleston Police Shooting,” *The New York Times*. Youtube. <https://www.youtube.com/watch?v=XKQqgVlk0NQ>.

⁸⁶ Schmidt, “South Carolina Officer Is Charged with Murder of Walter Scott,”

police shootings can take black life at any time, killed for any reason or no reason; it is the most lethal expression of white supremacy.

The video of Walter Scott's shooting went viral, one copy of it on Youtube has been viewed more than 2.5 million times.⁸⁷ The video turned Scott's shooting into a spectacle, reminiscent of spectacle lynchings. Spectacle lynchings were premeditated expressive performances, whereas contemporary police killings that are captured on video are turned into spectacles through their recording and dissemination. Many high-profile cases of contemporary police killings have been caught on video, which are then viewed by millions and accessible at any time. Spectacle lynchings were witnessed by hundreds or thousands and although they cannot be rewatched, souvenirs in the form of body parts or photographs were often taken to remember the event and distributed through the community.⁸⁸

Circulating images was a key part of lynching as an act of racial terror and white supremacy as it allowed far more people to see the product of the lynching—the broken black body—than could feasibly witness the lynching itself.⁸⁹ For white Americans, the circulation of images ensured that “absentees could nevertheless participate in a crucial part of lynching—the spectacle—by looking at its representation.”⁹⁰ To black Americans, it was an act of racial dominance.⁹¹ The circulation of “terrifying images of white power

⁸⁷ “Walter Scott Death: Video Shows Fatal North Charleston Police Shooting,” Youtube.

⁸⁸ Kaufman-Osborn, “Capital Punishment as Legal Lynching?” 30.

⁸⁹ For examples of photographs of lynchings and postcards used to distribute them, see James Allen, *Without Sanctuary: Lynching Photography in America*, (Santa Fe, New Mexico: Twin Palms, 2000).

⁹⁰ Courtney R. Baker, “Framed and Shamed: Looking at the Lynched Boy,” in *Humane Insight: Looking at Images of African American Suffering and Death* (University of Illinois Press, 2015) 38.

⁹¹ Roger I Simón, “The Public Rendition of Images Médusées: Exhibiting Souvenir Photographs Taken at Lynchings in America,” in *Presence*, ed. Ranjan Ghosh and Ethan Kleinberg, Philosophy, History, and Cultural Theory for the Twenty-First Century. (Cornell University Press, 2013), 80. <https://www.jstor.org/stable/10.7591/j.ctt32b58z.8>.

and black helplessness refracted not only into black homes and communities but across the American racial landscape,” serving as a reminder of the “‘penalty of death’ hanging over [African Americans] at every waking moment.”⁹²

The circulation of videos of police killings of black men and boys, or their aftermath, functions in much the same way as the circulation of images of lynching. Videos of police killings remind black men and boys of the threat they constantly live under. They show how a black man running from the police can get shot in the back. They show how police can slowly kill a black man—who is exclaiming that he can’t breathe—in front of a crowd of people with no consequences, such as with Eric Garner. These videos permanently record the racial terror of contemporary police killings of black men and boys by making them visible for the whole world to see at any time.

⁹² Amy Louise Wood, *Lynching and Spectacle: Witnessing Racial Violence in America, 1890-1940*. New Directions in Southern Studies, (Chapel Hill: University of North Carolina Press, 2009), 2.

The Law and the State

Officially, lynchings were extralegal violence; that is, violence carried out by mobs beyond the authority of law. However, a closer look reveals that the distance between mobs and the state, extralegal and legal, is not readily apparent. Lynchings were carried out by mobs, and these mobs usually had the moral support of the community.⁹³ Furthermore, “it has long been recognized that those who made up the apparatus of the state—the police, the judiciary, and the political representatives who were apologists for lynchings—were also agents in spectacle lynchings.”⁹⁴ Although not officially acts of the state, lynchings were carried out by groups that oftentimes included the public officials who were charged with upholding the law. For example, in the case of the lynching of the Lowmans, “the sheriff and the jailer had not only not resisted the mob, but had assisted in the lynching, as had members of the South Carolina legislature, then governor, lawyers, farmers, business men, and politicians.”⁹⁵ Lynchings blurred the distinction between extralegal and state-sanctioned violence and mob and state, as officials of the state participated in the extralegal violence.

In contemporary police killings, there is no need to demystify the relationship between public officials and the killing, because police officers commit the killings in their capacity as public officials. However, police unions blur the distinction of collective versus individual violence and mob versus state. Although contemporary police killings are usually individual acts of violence, police unions often support the act, giving it a

⁹³ Rushdy, *American Lynching*, 83.

⁹⁴ *Ibid.* 86

⁹⁵ White, *Rope and Faggot*, 32.

similar protection as an act of collective violence like lynching. Police unions fight to reinstate officers who are fired for serious misbehavior, including police killings. In Oakland, California, a police union successfully reinstated an officer who was fired for his second killing of an unarmed suspect within 7 months.⁹⁶ When the City Manager of San Antonio, Texas proposed reforms to the police union contract “to eliminate a clause that erased prior misconduct complaints from cops' records, [and] increase citizen participation in the complaint process,” the police union responded by targeting her “with a \$1 million advertising campaign...claiming crime rates rose because she refused to fill positions.”⁹⁷ After Ramsey Orta filmed the police killing of Eric Garner, the cops took revenge on him “through a campaign of targeted harassment” and “within a year he [was] in prison and facing constant abuse, his enduring punishment for daring to hold the police accountable.”⁹⁸ Police unions viciously protect police killings by protecting individual officers, fighting efforts to hold police accountable for their actions, and lashing out at those who try.

Returning to lynching, the distinction of legal and extralegal is further obfuscated by the prosecutions of lynchings, or lack thereof. Writing in 1895, Ida B. Wells describes that

during the past thirty years in the South... more than ten thousand Negroes have been killed in cold blood, without the formality of judicial trial and legal execution. And yet, as evidence of the absolute impunity with which the white man dares to kill a Negro, the same record shows that during all these years, and for all these murders only three white men have been tried, convicted, and executed.⁹⁹

⁹⁶ Conor Friedersdorf, “How Police Unions and Arbitrators Keep Abusive Cops on the Street,” *The Atlantic*, December 2, 2014, <https://www.theatlantic.com/>

⁹⁷ Reade Levinson, “Special Report: Police Union Contracts Offer Shield of Protection,” *Reuters*, <http://www.reuters.com/investigates/special-report/usa-police-unions/>.

⁹⁸ Chloé Cooper Jones, “He Filmed the Killing of Eric Garner—and the Police Punished Him for It,” *The Verge*, March 13, 2019, <https://www.theverge.com/>

⁹⁹ Wells, *A Red Record*, 8.

Even though lynchings were illegal, successful trials for the lynchers were basically nonexistent. Walter White helps to explain this phenomenon, stating that “even in the few instances where there were arrests and trials, the accused usually had friends on the jury, if not fellow lynchers; in others he knew that jurors and court officials were in sympathy with him... ‘Nobody around here is ever going to vote for convicting a white man for killing a nigger,’ one of them told me.”¹⁰⁰ Even in the few cases where lynchers were put on trial, juries were unable or unwilling to convict the perpetrators, rendering lynchings free from the punishment of the law.

The law, and specifically the interpretation of the law, is quite protective of contemporary police killings of black men and boys as well. Police departments base their use of force on the Supreme Court Case *Graham v. Connor* (1989).¹⁰¹ Per *Graham v. Connor*, uses of force are “analyzed under the Fourth Amendment’s ‘objective reasonableness’ standard,”¹⁰² which inquires “whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with “the 20/20 vision of hindsight.”¹⁰³ Already it is clear how the law as interpreted by the Supreme Court is quite deferential to police use of force. Use of force only has to be “reasonable,” not necessary or required, and this reasonableness is judged from the perspective of an officer in the moment.

¹⁰⁰ White, *Rope and Faggot*, 8-9.

¹⁰¹ Dawn Penich-Thacker, “The Fallacy of Reason,” In *Reinventing (with) Theory in Rhetoric and Writing Studies*, edited by Andrea Alden, Kendall Gerdes, Judy Holiday, And Ryan Skinnel, Essays in Honor of Sharon Crowley (University Press of Colorado, 2019), 45. <https://www.jstor.org/stable/j.ctvc6hxxw.8>.

¹⁰² *Graham v. Connor*. 490 U.S. 386 (1989).

¹⁰³ *Graham v. Connor*. 490 U.S. 386 (1989).

In practice, the standard set forth in *Graham v. Connor* makes nearly all uses of force by police legal, and in the case of contemporary police killings of black men and boys allows their blackness to be used as justification for their killings. The court describes “reasonableness” in colorblind language, but it is “‘filled in’ as it were by the racialized perceptions of those officers whose perspective is privileged by the Court’s ‘reasonable officer’ test.”¹⁰⁴ Police operate in a world in which racial identity matters,¹⁰⁵ where behavior of black men is more likely to be seen as violent,¹⁰⁶ where race stereotypes about black men make people more likely to think they see a weapon where there is none,¹⁰⁷ where blackness itself stands as a mark of criminality.¹⁰⁸ All of these make it more likely for police to use force on black men, and they are protected under law because “racialized suspicion - an officer’s selection of a target on the basis of his or her race - is irrelevant if the officer can point to nonracial reasons to suspect an infraction.”¹⁰⁹ In other words, police officers are more likely to view the behavior of black men and boys as suspicious, and all that legally matters is that suspicion, not the racialized bias that creates it. With a militarized police force and a social narrative of the hero-cop, the actions of the officer are even harder to question, because they are viewed as fighting a war. Wars, of course, require use of force—and second guessing the decisions of the battlefield is dangerous and unpatriotic.

¹⁰⁴ Leonard C. Feldman, “Police Violence and the Legal Temporalities of Immunity,” *Theory & Event* 20, no. 2 (April 20, 2017): 339.

¹⁰⁵ Alice Ristroph, “The Constitution of Police Violence,” *UCLA Law Review* 64, no. 5 (2017): 1227.

¹⁰⁶ Joshua Correll, Sean M. Hudson, Steffanie Guillermo, and Debbie S. Ma, “The Police Officer’s Dilemma: A Decade of Research on Racial Bias in the Decision to Shoot,” *Social and Personality Psychology Compass* 8, no. 5 (2014): 202. <https://doi.org/10.1111/spc3.12099>.

¹⁰⁷ Keith B. Payne, “Weapon Bias: Split-Second Decisions and Unintended Stereotyping,” *Current Directions in Psychological Science* 15, no. 6 (2006): 287.

¹⁰⁸ Muhammad, *The Condemnation of Blackness*, 271.

¹⁰⁹ Ristroph, “The Constitution of Police Violence,” 1216.

The killing of Tamir Rice, a 12-year-old black boy, is a prime example of how the standards set forth in *Graham v. Connor* plays out. “On November 22, 2014, Tamir Rice was throwing snowballs and playing with a toy pellet gun in a Cleveland park when a police car rolled into the snowy field. Within two seconds of getting out of his squad car, officer Timothy Loehmann shot and killed the 12-year-old.”¹¹⁰ The local prosecutor's office supported the cop by releasing a report “arguing that the officer was right in believing that Rice posed a threat, and therefore right in using deadly force,” and a grand jury later agreed, declining to indict the officer.¹¹¹ All that mattered for the shooting to be legal was that the officer was reasonable in their perceptions, as the court “validates as reasonable *factual misperceptions*.”¹¹² It didn't matter that Tamir Rice was 12, or that his gun was a toy; the perceived threat was sufficient justification. Professor of Sociology Ben Brucato observes that “since all young Black men are coded as threats, and since this code persists beyond police culture and is prominent in American society, simply being young, Black and male is reason enough to justify that the objectively reasonable officer would use violence against such a person.”¹¹³ This is certainly true in the case of Tamir Rice, as the officer stated that Rice “gave him no choice,” when all Rice did was be a 12-year-old black boy playing with a toy gun.¹¹⁴

¹¹⁰ German Lopez, “Cleveland Just Fired the Cop Who Shot and Killed 12-Year-Old Tamir Rice More than 2 Years Ago,” *Vox*, May 30, 2017, <https://www.vox.com/>.

¹¹¹ German Lopez, “Grand Jury Says Police Shooting of Tamir Rice Was Legally Justified. That's the Problem,” *Vox*, October 12, 2015, <https://www.vox.com/>.

¹¹² Feldman, “Police Violence and the Legal Temporalities of Immunity,” 339. Emphasis in original.

¹¹³ Ben Brucato, “Fabricating the Color Line in a White Democracy: From Slave Catchers to Petty Sovereigns,” *Theoria: A Journal of Social and Political Theory* 61, no. 141 (2014): 44.

¹¹⁴ Lopez, “Cleveland Just Fired the Cop Who Shot and Killed 12-Year-Old Tamir Rice More than 2 Years Ago.”

Thus, it is not surprising that prosecutions of police killings are exceedingly rare. According to criminologist Philip M. Stinson, “to charge an officer in a fatal shooting, it takes something so egregious, so over the top that it cannot be explained in any rational way.”¹¹⁵ A 2015 study by the Washington Post found that since 2005, police have killed thousands of people, but only 54 officers have been charged. Furthermore, “of the 54 officers who were charged for fatally shooting someone while on duty over the past decade, 35 have had their cases resolved. Of those, a majority — 21 officers — were acquitted or saw their charges dropped.”¹¹⁶ In contemporary police killings the line between legal and extralegal is blurred because it is not clear at what point the killings become extralegal, based on both the legal standard and prosecutorial practice.

Patrisse Cullors, a founder of the Black Lives Matter movement, argues, “We live in a police state in which the police have become judge, juror, and executioner.”¹¹⁷ As seen, these attributes perfectly apply to lynch mobs as well. With both lynchings and contemporary police killings of black men and boys, charges are rarely brought against the perpetrators and hardly ever result in guilty verdicts. Both are treated as justified by default, creating a state of murky legality where acts that might be technically illegal are not so in practice. Contemporary police killings render the line between extralegal and legal difficult to distinguish, facilitating the taking of black life, and showing the white supremacist nature of police killings.

¹¹⁵ “54 Police Officers Have Faced Criminal Charges for Fatally Shooting Someone While on Duty in the Past Decade,” *Washington Post*, <http://www.washingtonpost.com/>.

¹¹⁶ “54 Police Officers Have Faced Criminal Charges for Fatally Shooting Someone While on Duty in the Past Decade,” *Washington Post*.

¹¹⁷ Patrisse Cullors, “BlackLivesMatter and Global Visions of Abolition,” Interview, in *Policing the Planet*, ed. Jordan Camp, Christina Heatherton, 36.

Conclusion

To borrow (and modify) an analogy from lawyer and social justice advocate Bryan Stevenson, imagine what it would feel like to be living in a world where police in Germany killed hundreds of people each year, especially if they were disproportionately Jewish. It would be unconscionable.¹¹⁸ Yet in the United States, on ground containing the bodies of thousands of lynched black men, police kill black men and boys by the hundreds every year.

This is no accident. As philosopher Charles Mills argues, “to understand the long, bloody history of police brutality against blacks in the United States...one has to recognize it not as excesses by individual racists but as an organic part of this political enterprise.”¹¹⁹ Contemporary policing killings of black men and boys are the natural result of a criminal justice system that reproduces a racial caste structure through mass incarceration and a highly-militarized police force, whose core logic of policing rests on the hyper-surveillance and discretionary enforcement of law against black men and boys.

In 1895, Ida B. Wells charged that “‘Equality before the law,’ must become a fact as well as a theory before America is truly the ‘land of the free and the home of the brave.’”¹²⁰ 121 years later, Professor Keeanga-Yamahtta Taylor argued, “The distance from the end of the Civil War, with the birth of black citizenship and civil rights, to the state-sanctioned beating and torture of Freddie Gray constitute the gap between formal equality before the law and the self-determination and self-possession inherent in actual freedom—the right to be free from oppression, the right to make determinations about

¹¹⁸ Bryan Stevenson, “Transcript of ‘We Need to Talk about an Injustice,’” <https://www.ted.com/>.

¹¹⁹ Mills, *The Racial Contract*, 84-85.

¹²⁰ Wells, *Red Record*, 98.

your life free from duress, coercion, or the threat of harm.”¹²¹ Contemporary police killings of black men and boys are an act of white supremacy that exposes the constant threat to black life and a belief about its expendability. These killings function as a form of racial terror just as lynchings did during their time. As long as contemporary police killings of black men and boys persist, the gap between formal equality and actual freedom for black Americans will endure.

¹²¹ Taylor, *From #BlackLivesMatter to Black Liberation*, 192.

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