



**NAVAL  
POSTGRADUATE  
SCHOOL**

**MONTEREY, CALIFORNIA**

**THESIS**

**LIVED AND REMEMBERED EXPERIENCES:  
POLICING TO IMPROVE RELATIONS WITH  
COMMUNITIES OF COLOR**

by

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December 2019

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<b>REPORT DOCUMENTATION PAGE</b>			<i>Form Approved OMB No. 0704-0188</i>	
Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0188) Washington, DC 20503.				
<b>1. AGENCY USE ONLY (Leave blank)</b>		<b>2. REPORT DATE</b> December 2019	<b>3. REPORT TYPE AND DATES COVERED</b> Master's thesis	
<b>4. TITLE AND SUBTITLE</b> LIVED AND REMEMBERED EXPERIENCES: POLICING TO IMPROVE RELATIONS WITH COMMUNITIES OF COLOR			<b>5. FUNDING NUMBERS</b>	
<b>6. AUTHOR(S)</b> Christine A. Elow				
<b>7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES)</b> Naval Postgraduate School Monterey, CA 93943-5000			<b>8. PERFORMING ORGANIZATION REPORT NUMBER</b>	
<b>9. SPONSORING / MONITORING AGENCY NAME(S) AND ADDRESS(ES)</b> N/A			<b>10. SPONSORING / MONITORING AGENCY REPORT NUMBER</b>	
<b>11. SUPPLEMENTARY NOTES</b> The views expressed in this thesis are those of the author and do not reflect the official policy or position of the Department of Defense or the U.S. Government.				
<b>12a. DISTRIBUTION / AVAILABILITY STATEMENT</b> Approved for public release. Distribution is unlimited.			<b>12b. DISTRIBUTION CODE</b> A	
<b>13. ABSTRACT (maximum 200 words)</b>  Critical race theory (CRT) contends that U.S. structures and institutions have created a society in which White superiority and Black subjugation are widespread. Law enforcement—far from supporting justice—has been a primary source of oppression and marginalization of Black people. Drawing on CRT, this thesis examines the U.S. history of policing and its role in enforcing racism through policing practices. A CRT lens shows how the racialized policing of the past persists in contemporary policing. This perspective suggests that Black individuals experience trauma through encounters with the police, and the history and contemporary reality of racialized policing erode trust between the police and Black people. This thesis argues that if police officers were trained to understand the history of racialized policing and the brutality it has waged against Blacks—and the ways current policing implicitly mimic the explicit racist practices of the past—then policing could change for the better. Following the recommendations of the 21st Century Policing report, this thesis suggests that police officers need to develop “critical empathy,” an educated, empathic awareness of the history of racialized policing and the trauma it produces, if police are to become guardians of individuals and communities of color.				
<b>14. SUBJECT TERMS</b> 21st Century Policing, critical empathy, Critical Race Theory, intergenerational trauma, Jim Crow, lynching, mass incarceration, President's Task Force on 21st Century Policing, police brutality, procedural justice, race, racism, racialized policing, racial profiling, Slave Codes, slave patrol, stop and frisk, the Talk, trauma, unconscious bias, use of force, vagrancy law, white supremacy zero tolerance			<b>15. NUMBER OF PAGES</b> 101	
			<b>16. PRICE CODE</b>	
<b>17. SECURITY CLASSIFICATION OF REPORT</b> Unclassified	<b>18. SECURITY CLASSIFICATION OF THIS PAGE</b> Unclassified	<b>19. SECURITY CLASSIFICATION OF ABSTRACT</b> Unclassified	<b>20. LIMITATION OF ABSTRACT</b> UU	

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**LIVED AND REMEMBERED EXPERIENCES:  
POLICING TO IMPROVE RELATIONS WITH COMMUNITIES OF COLOR**

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Submitted in partial fulfillment of the  
requirements for the degree of

**MASTER OF ARTS IN SECURITY STUDIES  
(HOMELAND SECURITY AND DEFENSE)**

from the

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## **ABSTRACT**

Critical race theory (CRT) contends that U.S. structures and institutions have created a society in which White superiority and Black subjugation are widespread. Law enforcement—far from supporting justice—has been a primary source of oppression and marginalization of Black people. Drawing on CRT, this thesis examines the U.S. history of policing and its role in enforcing racism through policing practices. A CRT lens shows how the racialized policing of the past persists in contemporary policing. This perspective suggests that Black individuals experience trauma through encounters with the police, and the history and contemporary reality of racialized policing erode trust between the police and Black people. This thesis argues that if police officers were trained to understand the history of racialized policing and the brutality it has waged against Blacks—and the ways current policing implicitly mimic the explicit racist practices of the past—then policing could change for the better. Following the recommendations of the 21st Century Policing report, this thesis suggests that police officers need to develop “critical empathy,” an educated, empathic awareness of the history of racialized policing and the trauma it produces, if police are to become guardians of individuals and communities of color.

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## EXECUTIVE SUMMARY

This thesis critically analyzes the history of intense policing of Blacks in the United States and the lived experience of such policing. The aim of this analysis is to speak to police audiences and provide police with an additional tool in their toolbox to defuse tense and traumatic incidents. As a police officer myself, I believe that in most contexts in the United States, the police lack an understanding of the anger, resistance, and fear they encounter during interaction with Blacks. This thesis aims to fill this gap in knowledge. If police officers are educated about how their presence and illegitimate and aggressive police practices trigger trauma in Black individuals, then the police can take affirmative steps to heal and reduce the trauma and frequent violence produced during policing interactions.

Over the decades, violent uprisings between the police and communities of color have led to police reform efforts designed to reduce crime and improve relationships in communities of color. These efforts include community policing programs, fair and impartial police training, diversity training, and crime mapping.<sup>1</sup> Still, police and communities of color are in some ways arguably no better off than they were 50 years ago.<sup>2</sup> Although the idea of community policing is not new, the efforts made to improve community–police relationships have focused more on headlines than content. Policing has remained centered on crime control.

The problems that exist between the police and the Black community stem from a history of racialized policing and the resulting trauma of Black individuals and communities. Furthermore, most police officers and policing practices do not understand how trauma manifests during interactions with Black people, which further traumatizes individuals, not to mention erodes the possibility for genuine community policing and trusting relationships between both parties. For example, stop and frisk, motor vehicle enforcement, and other aggressive policing practices that appear to address crime and

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<sup>1</sup> David J. Thomas, “The State of American Policing,” *Law Enforcement Executive Forum* 17, no. 1 (March 2017): 14–30.

<sup>2</sup> Thomas.

disorder actually perpetuate racism, racial trauma, and the subjugation of Black people. The 21st Century Policing report, produced under the Obama administration, offers recommendations to move policing away from its racist past to heal the relationship and build trust between the police and the Black community. This thesis takes the recommendations of the 21st Century Policing report one step further, suggesting the skill of “critical empathy” must be exercised during engagements with police and communities of color if policing is to enter a new era.

My research is a theoretical and critical analysis situated within the scholarship of critical race theory (CRT), which uses various research methods—such as participatory action research, community-based research, qualitative research, and feminist research—to contribute to research on social justice with a focus on marginalized communities and individuals of color.<sup>3</sup> CRT was developed to give voice to the experiences of people of color and provide a critical analysis of those experiences as they arise in social contexts in which race and racism are pervasive. The intent of CRT is to provide a platform for people whose experiences and voices have been silenced or erased in order to account for the social and alienating conditions of violence, oppression, marginalization, and exclusion.<sup>4</sup> CRT theorists promote a race-conscious approach in the post-civil rights era, arguing that the racial imbalances that existed before the civil rights era are still present because they are woven into the social structures of this country.<sup>5</sup> By drawing on how CRT scholars link race and racism to an individual’s or community’s economic, political, and social status, as well as how such status impacts an individual’s experience of the world, I develop my own critical analysis of racialized policing in contemporary times.

CRT contends that racism exists in the structures and institutions in the United States to maintain White superiority and Black subjugation. The police have historically been a visible and brutal tool in the enforcement of White supremacy through enforcement of racist laws, policies, and procedures. Throughout history, communities of color have

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<sup>3</sup> Donna Mertens and Pauline Ginsberg, *The Handbook of Social Research Ethics* (Thousand Oaks, CA: SAGE Publications, 2009).

<sup>4</sup> Mertens and Ginsberg.

<sup>5</sup> Mertens and Ginsberg.

been subjected to both overt and covert surveillance as well as perceived and actual discriminatory practices by the police.<sup>6</sup> Today, racism and discrimination are subtler and more insidious: heavily patrolled neighborhoods, people followed in stores, residents subjected to stop and frisk, and “driving while Black” traffic stops are common in communities of color, especially poor communities of color.<sup>7</sup> Such policing tactics may seem necessary, effective, or at least harmless, but they constitute what scholars now recognize as “micro-aggressions,” which negatively affect the health and well-being of people of color, especially those living in poverty.<sup>8</sup>

The report on 21st Century Policing provides a comprehensive guide for best practices that will change the landscape of contemporary policing for the better, particularly regarding racial justice. Although the aim of the report is not racial justice per se, the Six Pillars intend to create policing practices that are sensitive and responsive to the reality of the troubling and violent history of racialized policing. The report highlights the need for a paradigm shift in policing, a move from a warrior model to a guardian model—a shift that can help heal the history of racialized policing. A move to community policing that is rooted in procedural justice and legitimacy, which is outlined in the Six Pillars, is an important step in changing the way policing has been racist. While the 21st Century Policing report is an important step, I turn to CRT to enter the lived experience of racialized policing by Black individuals and communities as well as suggest that to realize the recommendations of the report, police officers need to develop and employ in their practices an understanding of the history of racist policing and its harm to Black individuals and communities. This understanding will lead to the skill of critical empathy, which is needed if policing is to serve, rather than harm, people of color.

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<sup>6</sup> William A. Smith, Walter R. Allen, and Lynette L. Danley, “‘Assume the Position . . . You Fit the Description’: Psychosocial Experiences and Racial Battle Fatigue among African American Male College Students,” *American Behavioral Scientist* 51, no. 4 (December 2007): 551–78, <https://doi.org/10.1177/0002764207307742>; Whitney Sewell et al., “Vile Vigilance: An Integrated Theoretical Framework for Understanding the State of Black Surveillance,” *Journal of Human Behavior in the Social Environment* 26, no. 3/4 (April 2016): 287–302, <https://doi.org/10.1080/10911359.2015.1127735>.

<sup>7</sup> Stacy De Coster and Maxine S. Thompson, “Race and General Strain Theory: Microaggressions as Mundane Extreme Environmental Stresses,” *Justice Quarterly* 34, no. 5 (2017): 903–30, <https://doi.org/10.1080/07418825.2016.1236204>.

<sup>8</sup> De Coster and Thompson, “Race and General Strain Theory”; Sewell et al., “Black Surveillance.”

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## ACKNOWLEDGMENTS

First of all, I want to thank the City of Cambridge leadership, City Manager Louis DePasquale, Deputy City Manager Lisa Peterson, and my boss, Commissioner Branville Bard, for supporting me during this journey. Thank you to my advisors, Carolyn Halladay and Lauren Wollman; you both encouraged me to write about a subject that I had a passion for, so I happily did. I want to thank my family, particularly my mom and dad for their endless support and encouragement. I would not have completed this degree without your love and cheerleading. To my amazing sons, Jordan and Justin, I missed a lot over the last 18 months. We will make it up in the next 18 months! I am so proud of you both! To my life partner, Richard Scott, you went through all of the struggle and pain with me, and you kept me going when I wanted to quit: OXOXOX. To my two favorite classmates, Mimi and MC, we stuck together until the end! We are friends for life—I'm so happy we met! To my coach and therapist, Megan, you rock girlfriend!!! I still can't believe I did it. Second to giving birth to my children, this is the hardest thing I have ever done.

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## I. INTRODUCTION

+Throughout history, communities of color have been subjected to both overt and covert surveillance as well as perceived and actual discriminatory practices by the police.<sup>1</sup> Today, racism and discrimination are subtler and more insidious: heavily patrolled neighborhoods, people followed in stores, residents subjected to “stop and frisk,” and “driving while Black” traffic stops are common in communities of color, especially poor communities of color.<sup>2</sup> Such policing tactics may seem necessary, effective, or at least harmless, but they constitute what scholars now recognize as “micro-aggressions,” which negatively affect the health and well-being of people of color, especially those living in poverty.<sup>3</sup> Micro-aggressions contribute to feelings of extreme stress, exhaustion, loss of control, frustration, and injustice.<sup>4</sup>

The detrimental impact of micro-aggressions on relationships between police and people of color were highlighted in a national study of Black male college students attending such historically White universities as Harvard, Michigan State, and Berkeley.<sup>5</sup> These students expressed feelings of being overly surveilled and scrutinized by campus police and the larger community, both on and off campus.<sup>6</sup> They reported being stopped by the police for vague reasons, which they experienced as “walking while Black.”<sup>7</sup> Such

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<sup>1</sup> William A. Smith, Walter R. Allen, and Lynette L. Danley, “‘Assume the Position . . . You Fit the Description’: Psychosocial Experiences and Racial Battle Fatigue among African American Male College Students,” *American Behavioral Scientist* 51, no. 4 (December 2007): 551–78. <https://doi.org/10.1177/0002764207307742>; Whitney Sewell et al., “Vile Vigilance: An Integrated Theoretical Framework for Understanding the State of Black Surveillance,” *Journal of Human Behavior in the Social Environment* 26, no. 3/4 (April 2016): 287–302, <https://doi.org/10.1080/10911359.2015.1127735>.

<sup>2</sup> Stacy De Coster and Maxine S. Thompson, “Race and General Strain Theory: Microaggressions as Mundane Extreme Environmental Stresses,” *Justice Quarterly* 34, no. 5 (2017): 903–30, <https://doi.org/10.1080/07418825.2016.1236204>.

<sup>3</sup> De Coster and Thompson, “Race and General Strain Theory”; Sewell et al., “Black Surveillance.”

<sup>4</sup> Smith, Allen, and Danley, “‘Assume the Position.’”

<sup>5</sup> Smith, Allen, and Danley.

<sup>6</sup> Smith, Allen, and Danley.

<sup>7</sup> Smith, Allen, and Danley.

interactions occurred daily, thus becoming “mundane.”<sup>8</sup> Indeed, the concept of mundane extreme environmental stress (MEES) refers to the effect of subtle actions by police and others against people of color.<sup>9</sup>

Scholars and researchers have identified several conditions and developed several theories to explain and understand the impact of policing on poor, marginalized, mostly African-American communities. Researchers of MEES say that while to an outsider these actions may appear routine or harmless, the long-term impact that hyper-surveillance and micro-aggressions have on people can lead to shorter life spans, health issues, and low confidence.<sup>10</sup> Racial socialization theory and the family stress model provide insight into the combined impact of hyper-surveillance and negative interactions between the police and individuals who live in poor, marginalized communities.<sup>11</sup> Racial socialization theory proposes that people who are subjected to persistent discrimination are less likely to have the social and family support to overcome the social, political, and economic obstacles present in discrimination.<sup>12</sup> Ironically, these barriers increase the likelihood that individuals in these circumstances will commit crime.<sup>13</sup> The family stress model looks at the impact that financial problems have on a family and its ability to cope with this stress.<sup>14</sup> Taken together, these theories provide a basis for understanding the impact of frequent police contact on individuals, families, and communities.<sup>15</sup>

Over the decades, violent uprisings between the police and Black communities have led to police reform efforts designed to reduce crime and improve relationships in communities of color. These efforts include community policing programs, fair and

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<sup>8</sup> Smith, Allen, and Danley.

<sup>9</sup> De Coster and Thompson, “Race and General Strain Theory.”

<sup>10</sup> Smith, Allen, and Danley, “Assume the Position.”

<sup>11</sup> De Coster and Thompson, “Race and General Strain Theory”; Sewell et al., “Black Surveillance.”

<sup>12</sup> Callie H. Burt, Man Kit Lei, and Ronald L. Simons, “Racial Discrimination, Racial Socialization, and Crime: Understanding Mechanisms of Resilience,” *Social Problems* 64, no. 3 (August 2017): 414–38, <https://doi.org/10.1093/socpro/spw036>.

<sup>13</sup> Burt, Lei, and Simons.

<sup>14</sup> Sewell et al., “Vile Vigilance.”

<sup>15</sup> Sewell et al.

impartial police training, diversity training, and crime mapping.<sup>16</sup> Still, police and communities of color are in some ways arguably no better off than they were 50 years ago.<sup>17</sup> Although the idea of community policing is not new, the efforts that have been made to improve community–police relationships have focused more on headlines than content. Ultimately, the idea of community policing has long been attractive, promoting protective rather than punitive policing as a just way forward, but in practice, it has been business as usual. Policing has remained centered on crime control. Fair and impartial policing, which I taught for several years, failed to produce meaningful results, mainly because officers were able to deny or dismiss bias as not applicable to them. Moreover, other measures intended to address the relationship between racism and policing, especially diversity training and crime mapping, have continued to place the blame of crime and disorder on personal choice and not systemic racism for the disparities that exist today.

The problems that exist between the police and the Black community stem from a history of racialized policing and the significant trauma of Black individuals and communities. Furthermore, most police officers and policing practices do not understand how trauma manifests during interactions with the police and Black people, which further traumatizes individuals, not to mention erodes the possibility for genuine community policing and trusting relationships between both parties. For example, stop and frisk, motor vehicle enforcement, and other aggressive police practices that appear to address crime and disorder actually perpetuate racism, racial trauma, and the subjugation of Black people. The 21st Century Policing report, produced under the Obama administration, offers recommendations to move policing away from its racist past to heal the relationship and build trust between the police and the Black community. This thesis takes the recommendations of the 21st Century Policing report one step further, suggesting the skill of “critical empathy” must be exercised during engagements with people and communities of color and the Black community in particular if policing is to enter a new era.

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<sup>16</sup> David J. Thomas, “The State of American Policing,” *Law Enforcement Executive Forum* 17, no. 1 (March 2017): 14–30.

<sup>17</sup> Thomas.

## A. RESEARCH QUESTION

How can having an explicit understanding of the lived and remembered experiences of being policed improve police interactions with communities of color?

## B. LITERATURE REVIEW

This literature review draws attention to the theoretical account of racism advanced by scholars of critical race theory (CRT). I first consider the emergence of CRT at Harvard University, drawing attention to key figures, both professors and students, and main themes of discussion among them. These early developments of CRT build the foundation for CRT's understanding of race, racism, and structural racism. I then discuss these concepts and consider how CRT addresses their impact on communities of color.

Early, formative discussions to the development of CRT began in the late 1960s and early 1970s when prominent sociologists, such as Michael Omi, Howard Winant, Mustafa Emirbayer, and Matthew Desmond, looked beyond individual allegations of racism and discrimination to institutional policies and practices.<sup>18</sup> As a specific field of study, CRT was born out of a student protest at Harvard University in 1981.<sup>19</sup> Students were concerned that Harvard Law School would not hire another faculty member of color after renowned Black legal scholar Derrick Bell left Harvard for a job as dean at the University of Oregon's Law School.<sup>20</sup> Bell, a popular professor among students of color, taught a course on his book, *Race Racism and American Law*, which was one of the few opportunities students had to critically study issues of racism in their academic careers.<sup>21</sup> Students staged a boycott and developed an alternative to Bell's class when it became clear that Harvard would not replace Bell with another professor of color.<sup>22</sup> They invited

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<sup>18</sup> Tanya Golash-Boza, "A Critical and Comprehensive Sociological Theory of Race and Racism," *Sociology of Race and Ethnicity* 2, no. 2 (2016): 129–41, <https://doi.org/10.1177/2332649216632242>.

<sup>19</sup> Mari Matsuda et al., *Words That Wound: Critical Race Theory, Assaultive Speech and the First Amendment* (New York: Routledge, 1993).

<sup>20</sup> Matsuda et al.

<sup>21</sup> Matsuda et al.

<sup>22</sup> Matsuda et al.

important Black professors, such as Professors Richard Delgado and Charles Lawrence, to discuss racism and law.<sup>23</sup> These classes became the foundation of CRT.

There were several key figures in the movement of CRT, including legal scholars Derrick Bell, Richard Delgado, Charles Lawrence, Kimberlé Crenshaw, and Mari Matsuda. As the first generation of professors of color developing CRT, Bell, Delgado, and Lawrence offered ways to understand racism as a normal and persistent reality and insisted on identifying the pervasive injuries of racial injustice at individual, societal, and group levels.<sup>24</sup> Their works argued that racism and discrimination hurt everyone and would persist until America recognized racism's presence in its institutions and dismantled the structures that perpetuated it.<sup>25</sup>

Initially, students of Bell, Crenshaw, and Matsuda expanded the focus of CRT from race and racism to multiple forms of oppression.<sup>26</sup> Crenshaw developed the notion of “intersectionality,” which she used to describe the oppression of Black women in American society as intersecting race and gender.<sup>27</sup> Today, this term is widely used to describe how people can be harmed in more than one way, for example, being Black, female, and gay.<sup>28</sup> Similarly, Matsuda developed the notion of “multiple consciousness” to describe the way

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<sup>23</sup> Matsuda et al.

<sup>24</sup> Derrick A. Bell, “Brown v. Board of Education and the Interest-Convergence Dilemma,” *Harvard Law Review* 93, no. 3 (1980): 518–33, <https://doi:10.2307/1340546>; Derrick A. Bell, *Race, Racism, and American Law* (New York: Little Brown, 1992); Derrick A. Bell, “Racial Realism,” *Connecticut Law Review* 24, no. 2 (Winter 1992): 363–379; Matsuda et al., *Words That Wound*.

<sup>25</sup> Kimberlé Williams Crenshaw, “Twenty Years of Critical Race Theory: Looking Back to Move Forward,” *Connecticut Law Review* 43, no. 5 (2011): 1253–1352.

<sup>26</sup> Kimberlé Williams Crenshaw, “Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color,” *Stanford Law Review* 43, no. 3 (July 1991): 1241–99, <https://doi.org/10.2307/1229039>; Mari Matsuda, “When the First Quail Calls: Multiple Consciousness as Jurisprudential Method,” *Women’s Rights Law Reporter* 11, no. 1 (Spring 1989): 7–12.

<sup>27</sup> Crenshaw, “Mapping the Margins”; Kimberlé Williams Crenshaw, “On Intersectionality, More Than Two Decades Later,” Columbia Law School, June 8, 2017, <https://www.law.columbia.edu/pt-br/news/2017/06/kimberle-crenshaw-intersectionality>.

<sup>28</sup> Devon W. Carbado et al., “Intersectionality: Mapping the Movements of a Theory,” *Du Bois Review* 10, no. 2 (Fall 2013): 303–12, <https://doi.10.1017/S1742058X13000349>; Mariana Valverde, “Identity Politics and the Law in the United States,” *Feminist Studies* 25, no. 2 (Summer 1999): 345–61, <https://doi.org/10.2307/3178683>.

lawyers can adjust their thinking to understand the perspectives of oppressed peoples.<sup>29</sup> A similar kind of thinking and understanding is needed in policing today, an understanding that allows for compassion and empathy regarding the realities of Black people. This understanding and the empathy it generates will fundamentally change policing. Ultimately, Crenshaw's and Matsuda's developments in CRT expanded the discussion, turning CRT into a critical field of inquiry concerned with analyzing the real-life experiences of racism as it intersects with other forms of oppression.<sup>30</sup>

This concern with oppression draws on specific understandings of race and racism. In the context of CRT, race is understood to be a social construct used to create and maintain White supremacy.<sup>31</sup> The social construction of race refers to how the dominant society separates people based on physical appearance and cultural norms, which determine who has power and who does not.<sup>32</sup> One example of the social construction of race relevant to policing is how the disparate focus on crack cocaine in the war on drugs constructed Black people as criminal drug-dealers—but White people, although frequent distributors of powder cocaine, were rarely, if ever, targeted. This racial disparity in the war on drugs constructed Black as “bad” and White as “good,” even when the same drug was used and dealt. This construct reinforced the idea of racial difference, and in relation to moral goodness, no less.<sup>33</sup> Additionally, race and racial identification have changed over time and continue to evolve. For example, a person who identifies as biracial today may

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<sup>29</sup> Matsuda, “When the First Quail Calls.”

<sup>30</sup> Kimberlé Williams Crenshaw et al., *Critical Race Theory: Key Concepts That Formed the Movement* (New York: New Press, 1996).

<sup>31</sup> Eduardo Bonilla-Silva, *White Supremacy and Racism in the Post-Civil Rights Era* (Boulder, CO: Lynne Rienner Publishers, 2001).

<sup>32</sup> Edna Bonacich, “Advanced Capitalism and Black/White Race Relations in the United States: A Split Labor Market Interpretation,” *American Sociological Review* 41, no. 1 (February 1976): 34–51, <https://doi.org/10.2307/2094371>; Ben Brucato, “Fabricating the Color Line in a White Democracy,” *Theoria* 61, no. 141 (December 2014): 30–54, <https://doi.org/10.3167/th.2014.6114103>; Nikita Carney, “All Lives Matter, but So Does Race,” *Humanity & Society* 40, no. 2 (May 2016): 180–99, <https://doi.org/10.1177/0160597616643868>.

<sup>33</sup> Polly F. Radosh, “War on Drugs: Gender and Race Inequities in Crime Control Strategies,” *Criminal Justice Studies* 21, no. 2 (June 2008): 167–78, <https://doi.org/10.1080/14786010802159830>.

have considered themselves Black forty years ago.<sup>34</sup> What has not changed with respect to race are the consequences and privileges of belonging to a socially bestowed racial group in terms of economic, political, and social advantages and disadvantages.<sup>35</sup> In the United States, race is linked to Black inferiority and White superiority.<sup>36</sup> According to CRT, racism in the United States was created by White people as a means to control the social, economic, and legal structures in society, and the outcome of such control has been the unequal distribution of power and resources to non-White minorities.

Michael Omi and Howard Winant offer one of the most important accounts of the relation between race and racism. Their racial formation theory suggests that racial categories originated in White Europeans rationalizing the conquest of the indigenous population in America and the enslavement of African populations.<sup>37</sup> Omi and Winant purport that racism is about separating people based on the color of their skin, and that separation defines the dominant White race who then politically, economically, and socially subjugates the minority races.<sup>38</sup> By their account, racial hierarchies are a product of history and, thus, change and evolve over time such that racism can be eliminated without eliminating race. According to Joe Feagin and Sean Elias, however, Omi and Winant's racial formation does not mention White supremacy and its impact on racial oppression and inequality.<sup>39</sup> Feagin and Elias argue that valid theories about race and racism must address the fact that historically in the United States, White people are in control.<sup>40</sup>

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<sup>34</sup> Angela Onwuachi-Willig, "Race and Racial Identity Are Social Constructs," *New York Times*, September 6, 2016, <https://www.nytimes.com/roomfordebate/2015/06/16/how-fluid-is-racial-identity/race-and-racial-identity-are-social-constructs>.

<sup>35</sup> Bonilla-Silva, *White Supremacy and Racism in a Post-Civil Rights Era*; Sheri Lynn Johnson, "Batson from the Very Bottom of the Well: Critical Race Theory and the Supreme Court's Peremptory Challenge Jurisprudence," *Ohio State Journal of Criminal Law* 12, no. 1 (July 2014): 71–90.

<sup>36</sup> Michael Omi and Howard Winant, *Racial Formation in the United States*, 3rd ed. (New York: Routledge, 2014).

<sup>37</sup> Omi and Winant.

<sup>38</sup> Omi and Winant.

<sup>39</sup> Joe Feagin and Sean Elias, "Rethinking Racial Formation Theory: A Systemic Racism Critique," *Ethnic & Racial Studies* 36, no. 6 (June 2013): 931–60, <https://doi.org/10.1080/01419870.2012.669839>.

<sup>40</sup> Feagin and Elias.

Similar to Feagin and Elias, Eduardo Bonilla-Silva argues that race is a social creation that divides people into races to support White supremacy.<sup>41</sup> In countries where one race was enslaved and generations of this race were born into slavery, “racialized social systems” were created such that race became a means to determine the power and influence a group of people had in a given society.<sup>42</sup> In societies where slavery was determined by race, he argues there can never be racial equality because the population that was enslaved has not and does not control the economic, political, and social institutions.<sup>43</sup> For him, racism looks different depending on the racialized social system: in apartheid, racism is explicit; during slavery, racism is “loosely developed”; and in a post-civil rights United States, racism has moved from explicit to subtle.<sup>44</sup> Because racism is woven into the fabric of America, this “new” racism is difficult to detect given that it is discrete and implicit, and thus, it perpetuates White supremacy in practically invisible ways.<sup>45</sup> Bonilla-Silva contends the answer to this new racism is race-based policies such as affirmative action and majority-minority voting districts. These policies would provide opportunities for the racial minority groups who have been oppressed and discriminated against, leveling the playing field regarding opportunity, which would begin to address racial inequality.<sup>46</sup>

Bonilla-Silva’s work offers a strong starting point for thinking about structural racism. Structural racism explains how racism is embedded in society’s social structures, which are “the organized set of social institutions and institutionalized relationships that make up a society.”<sup>47</sup> According to CRT, these structures were organized and maintained

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<sup>41</sup> Eduardo Bonilla-Silva, “Rethinking Racism: Toward a Structural Interpretation,” *American Sociological Review* 62, no. 3 (June 1997): 465–80, <http://www.jstor.org/stable/2657316>; Bonilla-Silva, *White Supremacy and Racism in a Post-Civil Rights Era*; Eduardo Bonilla-Silva, “More Than Prejudice: Restatement, Reflections, and New Directions in Critical Race Theory,” *Sociology of Race and Ethnicity* 1, no. 1 (January 2015): 73–87, <https://doi.org/10.1177/2332649214557042>.

<sup>42</sup> Bonilla-Silva, “More Than Prejudice.”

<sup>43</sup> Bonilla-Silva, “Rethinking Racism.”

<sup>44</sup> Bonilla-Silva, *White Supremacy and Racism in a Post-Civil Rights Era*.

<sup>45</sup> Bonilla-Silva.

<sup>46</sup> Bonilla-Silva.

<sup>47</sup> Ashley Crossman, “What Is ‘Social Structure’ in the Context of Sociology?,” ThoughtCo, last modified September 22, 2018, <https://www.thoughtco.com/social-structure-defined-3026594>.

to perpetuate White advantage and Black disadvantage.<sup>48</sup> In the United States, the main institutions or social structures are family, religion, education, law, politics, and the economy, and through them, relationships are developed where some people have more power than others. In a racialized society such as the United States, the dominant White race is usually in power, and since racialized relationships are a part of the society's structure, a racialized relation of power becomes institutionalized.<sup>49</sup> Structural racism thus names how a society creates and fosters racial inequality even as historical events change the reality of racism.<sup>50</sup> From the perspective of CRT, as long as the current institutional and social structures are in place, there cannot be racial equality.

Initially, Bell thought that the hope for racial equality was in the courts and justice system, but then he realized these were organized to maintain White superiority.<sup>51</sup> The legal decisions of the Civil Rights era should have liberated Black Americans from an inferior status, but this failed.<sup>52</sup> Blacks continue to live in conditions that were present during Jim Crow—in extreme poverty and with poor education, high rates of unemployment and underemployment, incarceration, addiction, and mental illness.<sup>53</sup> He draws attention to the obvious economic disparities between Blacks and Whites, namely that Blacks are disproportionately below the poverty line, which creates disadvantages.<sup>54</sup> People who are routinely below the poverty level and who have high unemployment rates are disproportionately involved in crime.<sup>55</sup> As other scholars show, these realities often lead to unstable homes, crime, arrests, incarceration, high poverty rates, and lagging

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<sup>48</sup> Ali Meghji, "Critical Race Theory," *Global Social Theory* (blog), accessed June 4, 2019, <https://globalsocialtheory.org/topics/critical-race-theory/>.

<sup>49</sup> Bonilla-Silva, "More Than Prejudice"; Crossman, "What Is 'Social Structure?'"

<sup>50</sup> Bonilla-Silva, "More Than Prejudice."

<sup>51</sup> Bell, "Racial Realism."

<sup>52</sup> Bell, "Brown v. Board of Education"; Bell, *Race, Racism, and American Law*; Bell, "Racial Realism."

<sup>53</sup> Bell, "Racial Realism."

<sup>54</sup> Bell.

<sup>55</sup> Bell, "Political Reality Testing."

schools, all of which affect how a person and a community assess their value in society.<sup>56</sup> Bell also points out how, in urban environments, many Black people feel hopeless and have given up looking for honest work, instead supporting themselves through crime and drugs, which lead to cyclical and generational issues of higher rates of arrest and incarceration.<sup>57</sup>

According to Bell's racialist-realist view, in a post-civil rights America, visible signs of racism and discrimination are gone, which make people feel like racism is an issue of the past and that America is now a race-neutral society. For instance, when people see a Black supreme court judge or other examples of Black success, people believe racism no longer exists in America.<sup>58</sup> Because of the success that some Blacks have achieved, Bell argues people deflect to class or economic status as a way to explain disparities.<sup>59</sup> In such a context that downplays racism, when a Black man gets turned down for a job or promotion, he is left to question why, and he feels uncertain about whether it is because of racism or an issue with his qualifications.<sup>60</sup> The inability to use racism as an explanation in the face of rejections that occur over and over again in Black communities leaves Black people frustrated. As Bell explains it, this frustration leads to anger and affects a person's and community's emotional and psychological well-being, causing feelings of self-hate and anger that then damage individuals and communities.<sup>61</sup> At the same time that people refuse to see race, Bell argues that poor Whites refuse to resent the economic gap between them and elite Whites, instead holding onto their shared whiteness for the sake of racial privilege.<sup>62</sup> Historically, whether in the suppression of revolting slaves or to support Jim

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<sup>56</sup> Bernadette R. Hadden et al., "An Authentic Discourse: Re-centering Race and Racism as Factors That Contribute to Police Violence against Unarmed Black or African American Men," *Journal of Human Behavior in the Social Environment* 26, no. 3/4 (April 2016): 336–49, <https://doi.org/10.1080/10911359.2015.1129252>; Deena Isom, "An Air of Injustice? An Integrated Approach to Understanding the Link between Police Injustices and Neighborhood Rates of Violence," *Journal of Ethnicity in Criminal Justice* 14, no. 4 (October 2016): 371–92, <https://doi.org/10.1080/15377938.2016.1209143>.

<sup>57</sup> Bell, "Political Reality Testing"; Bell, "Racial Realism."

<sup>58</sup> Bell, "Racial Realism."

<sup>59</sup> Bell, "Political Reality Testing."

<sup>60</sup> Bell, "Racial Realism."

<sup>61</sup> Bell.

<sup>62</sup> Bell, "Political Reality Testing."

Crow segregation, elite Whites and poor Whites worked together to enforce racism.<sup>63</sup> Bell claims that Whites who oppose social reform do so because they fear that Blacks will primarily benefit from these reforms, which is a “racial ploy” that elite Whites have used to their advantage in the past.<sup>64</sup> Ultimately, for Bell, as long as race remains the primary way to separate people and people claim America is race neutral, no meaningful reform can occur, and the White elite will be advantaged at the expense of everyone else.

As a result of persistent racism, Bell argues that equality for Black Americans cannot happen in a prejudiced country, and that the more Blacks seek equality in a White America, the more frustrated and angrier they will become.<sup>65</sup> However, Bell wants the Black community to be hopeful that it will one day realize freedom and equality. For him, the answer to racism is with Black people themselves. It must be a new movement where Blacks analyze laws and court decisions through a critical lens that addresses how the criminal justice system maintains the status quo. He calls this new movement “racial realism.”<sup>66</sup> For Bell, a racial-realist perspective gives voice to Black experience because it addresses how real racism is.<sup>67</sup>

What CRT shows is that racism exists in the structures and institutions in the United States, which “reproduce racial inequality” through racist laws, policies, and practices.<sup>68</sup> This critical insight about how race and racism operate in the United States offers an important way to understand and address the historically troubled relationship between policing, race, and racism. Additionally, CRT insists on the importance of paying attention to the lived experience of racism and giving voice to Blacks as a way of understanding and challenging White supremacy.

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<sup>63</sup> Bell.

<sup>64</sup> Bell.

<sup>65</sup> Bell, “Racial Realism.”

<sup>66</sup> Bell.

<sup>67</sup> Bell.

<sup>68</sup> Golash-Boza, “A Critical and Comprehensive Sociological Theory of Race and Racism.”

### C. RESEARCH DESIGN

This thesis is a critical analysis of the history of intense policing of Blacks in the United States and the lived experience of such policing. The aim of this analysis is to speak to police audiences and provide police with an additional tool in their toolbox to defuse tense and traumatic incidents. I call this tool “critical empathy.” As a police officer myself, I believe that in most contexts in the United States, the police lack an understanding of the anger, resistance, and fear they encounter during interactions with Blacks. This thesis aims to fill this gap in knowledge.

My research is a theoretical and critical analysis situated within the scholarship of CRT, which uses various research methods such as participatory action research, community-based research, qualitative research, and feminist research, all of which contribute to research on social justice with a focus on marginalized communities and individuals of color.<sup>69</sup> Importantly, CRT was developed to give voice to the experiences of people of color and provide a critical analysis of those experiences as they arise in social contexts in which race and racism are pervasive. The intent of CRT is to provide a platform for people whose experiences and voices have been silenced or erased to account for the social and alienating conditions of violence, oppression, marginalization, and exclusion.<sup>70</sup> CRT scholars want to examine why there has been little progress in legal, economic, and educational advances for people of color in a post–civil rights era.<sup>71</sup>

CRT theorists promote a race-conscious approach, arguing that the racial imbalances that existed before the civil rights era are still present because they are woven into the social structures of this country.<sup>72</sup> For this reason, CRT can be utilized to highlight the experiences of people of color and offers a framework to situate and assess such

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<sup>69</sup> Donna Mertens and Pauline Ginsberg, *The Handbook of Social Research Ethics* (Thousand Oaks, CA: SAGE Publications, 2009).

<sup>70</sup> Mertens and Ginsberg.

<sup>71</sup> Christopher Brown, “Critical Race Theory,” in *The SAGE Encyclopedia of Communication Research Methods*, ed. Mike Allen (Thousand Oaks, CA: SAGE Publications, 2017), 303–5, <https://doi.org/10.4135/9781483381411.n112>.

<sup>72</sup> Brown.

experiences in a way that highlights the relationship between individual experience and social structure. By drawing on how CRT scholars link race and racism to an individual's or community's economic, political, and social status, as well as how such status affects an individual's experience of the world, I develop my own critical analysis of racialized policing in contemporary times.

Thinking about my research topic through the lens of CRT offers a deep understanding of the evolution of African-American experiences in relation to policing. For instance, CRT research into how Black people experience the police reveals that many Black people feel they are over-policed, stereotyped, subjected to frequent stops and surveillance by police and others in authority, and generally thought of as suspicious and "out of place."<sup>73</sup> These occurrences happen most often in poor, over-policed neighborhoods, as well as in "elite" spaces like academic institutions, exclusive or gated neighborhoods, and department stores.<sup>74</sup> I highlight "lived experience," which refers to the personal perspective, the subjective view of how an individual experiences a situation, social encounter, or social institution, and I pay specific attention to how Black individuals feel about their experiences with policing and the outcomes of such lived experiences.

This use of CRT is thus a qualitative research method that is sensitive to the importance of documenting, through various kinds of research, personal experiences that occur in a variety of social settings.<sup>75</sup> For instance, CRT research conducted through a participatory action research method provides insight that addresses power imbalances interpersonally and in communities by highlighting the knowledge and experience of individuals within a community.<sup>76</sup> Such community-based research desires social justice and uses research to strengthen communities through the engagement of the experiences of

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<sup>73</sup> Smith, Allen, and Danley, "Assume the Position."

<sup>74</sup> Smith, Allen, and Danley.

<sup>75</sup> Maria C. Malagon, Lindsay Perez Huber, and Veronica N Velez, "Our Experiences, Our Methods: Using Grounded Theory to Inform a Critical Race Theory Methodology," *Seattle Journal for Social Justice* 8, no. 1 (November 2009), 21.

<sup>76</sup> Sally Shortall, "Participatory Action Research," in *The SAGE Research Methods: A-Z of Social Research*, ed. Robert L. Miller and John Brewer (Thousand Oaks, CA: SAGE Publications, 2011), 225–27.

diverse populations.<sup>77</sup> Additionally, feminist research methods address the “intersection” of race and gender to account for and highlight the oppression of Black women in America.<sup>78</sup>

In order to account for the lived experiences of Black people in relation to policing in the United States, I draw on a variety of textual sources, including CRT, the claims from social movements like Black Lives Matter, and past and contemporary realities of policing.<sup>79</sup> In relation to these sources, I use discourse analysis to explore how people communicate—not just what a person says but how histories and realities shape what and how they say it.<sup>80</sup> By focusing on how people communicate in both formal and informal settings, researchers can make sense of personal narratives in a larger theoretical context.<sup>81</sup> It is important to look at lived experiences through a CRT lens because these experiences are not addressed in the plethora of research developed by mostly White male scholars.<sup>82</sup> Considering the way Black people experience policing through the theoretical framework and mixed methodologies that form the foundation of CRT offers a racially conscious and critical account of policing that amplifies the voices of marginalized people and contributes to CRT’s goal of dismantling racist social structures.

Moreover, in 2015 President Barak Obama developed the Task Force on 21st Century Policing to inform police officers nationwide about how to improve police–community relations. The Task Force was formed in response to the series of events in

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<sup>77</sup> Shortall.

<sup>78</sup> Crenshaw, “Mapping the Margins.”

<sup>79</sup> Donald F. Tibbs, “From Black Power to Hip Hop: Discussing Race, Policing, and the Fourth Amendment through the ‘War on’ Paradigm,” *Journal of Gender, Race & Justice* 15, no. 1 (Winter 2012): 47–79; Kehinde Andrews, “From the ‘Bad Nigger’ to the ‘Good Nigga’: An Unintended Legacy of the Black Power Movement,” *Race & Class* 55, no. 3 (January 2014): 22–37, <https://doi.org/10.1177/0306396813508268>; Gregory S. Parks and Shayne E. Jones, “‘Nigger’: A Critical Race Realist Analysis of the N-Word within Hate Crimes Law,” *Journal of Criminal Law & Criminology* 98, no. 4 (Summer 2008): 1305–52.

<sup>80</sup> David Byrne, “How Do I Analyze and Interpret Qualitative Data?,” in *Project Planner* (London: SAGE Publications, 2017), <https://doi.org/10.4135/9781526408570>.

<sup>81</sup> Satoko Siegel, “Discourse Analysis,” in *The SAGE Encyclopedia of Educational Research, Measurement, and Evaluation*, ed. Bruce B. Frey (Thousand Oaks, CA: SAGE Publications, 2018), 524–25, <https://doi.org/10.4135/9781506326139.n203>.

<sup>82</sup> Malagon, Huber, and Velez, “Our Experiences, Our Methods.”

Ferguson, Missouri, after the shooting and death of Michael Brown by a police officer. The task force produced a final report that included a set of best practices for policing. I analyze the Six Pillars designed to improve and build trust in communities through the lens of CRT. For example, in areas where people feel that there is over-policing, how does the report's recommendations to bridge the gap between crime control and building trust square with CRT understandings of racism and over-policing and my analysis of the lived experience of people of color?<sup>83</sup> Analyzing the Six Pillars through a CRT framework gives police leaders race-conscious methods to improve relationships in communities of color. Although the 21st Century Policing report offers important and necessary recommendations, I also suggest that a critical and empathetic understanding of the history of racialized policing and the trauma it produces is vital if the recommendations of the report are to be successful. I analyze the cases and deaths of Sandra Bland and Philando Castile—two cases that exemplify racially biased policing and the presence of trauma in police encounters—to highlight what critical empathy can do to improve policing.

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<sup>83</sup> Timothy Roufa, "President Obama's Task Force on 21st Century Policing," The Balance Careers, accessed June 17, 2019, <https://www.thebalancecareers.com/president-s-task-force-on-21st-century-policing-974565>.

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## II. A CONSIDERATION OF RACIST POLICING AND TRAUMA

The United States has a troubling history of racist policing practices that have supported White supremacy and White privilege. Although a difficult view to accept in relation to democratic ideals of liberty and justice for all, the police and criminal justice system have largely operated as a means to control people of color.<sup>84</sup> In fact, the creation of modern policing goes hand in hand with the patrolling and surveillance of slaves.<sup>85</sup> Ultimately, White supremacy—a hierarchical social system in which White individuals are afforded rights, opportunities, freedom, and security that are denied to people of color and which sanctions the subordination and domination of people of color to keep power in the hands of Whites—has relied on racialized policing as a means to perpetuate a “White democracy.”<sup>86</sup> In turn, racialized policing helps establish an America in which social status and access to opportunity are secured and protected for Whites. Accordingly, racialized policing has also supported the reality of White privilege wherein White individuals are not criminalized or subjected to harsh and aggressive policing. That is, White people have the privilege of better, more trusting relationships with the police, which ultimately means that White people do not have to fear harm or death in the face of police encounters. Racialized policing enacts the subjugation of Black people and thus supports White supremacy and White privilege.

Racialized policing is when police officers use a person’s race as an a priori source of suspicion that initiates and justifies a confrontational and illegitimate interaction. One of the most common practices of racialized policing is racial profiling, which the American Civil Liberties Union defines as “the discriminatory practice by law enforcement officials of targeting individual for suspicion of crime based on the individual’s race.”<sup>87</sup> According

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<sup>84</sup> Brucato, “Fabricating the Color Line,” 40.

<sup>85</sup> Brucato.

<sup>86</sup> Brucato, 31.

<sup>87</sup> “Racial Profiling Definition,” American Civil Liberties Union, accessed October 28, 2019, <https://www.aclu.org/other/racial-profiling-definition>.

to CRT, American society has been conditioned to link criminality and threat with Black people, and this conditioning is racist.<sup>88</sup> As individuals in American society, police officers are not off the hook from such racism. But even more than this, as a social institution, the police have long been enforcers of this racist ideology. For example, during the Jim Crow era, White police officers strictly and brutally enforced Jim Crow laws, which severely limited the rights and freedoms of Blacks and intensified the policing of and use of force against Black Americans.<sup>89</sup> This era of racialized policing is not, however, unique. As this chapter discusses, in various ways throughout U.S. history, the police have been a weapon of racism, both to enforce unjust laws and to enforce racist ideology through unjust policing practices. In relation to Black people, racialized policing has functioned as a source of physical harm and psychological trauma. Racialized policing has, thus, devastated and, even worse, destroyed Black individuals and communities. Indeed, it has even been argued that what racialized policing has done to Blacks in the United States is tantamount to genocide.<sup>90</sup>

Drawing on CRT, this chapter examines the history of racist policing practices and shows how the police, far from protecting Black individuals and communities, have long targeted, overpoliced, and used unnecessary force against them. This chapter also shows how these realities are experienced by and negatively affect Black individuals. CRT is a helpful framework with which to think about racism and racialized policing because it underscores that in the United States, White superiority and Black subjugation are not merely interpersonal feelings but are embedded in social structures and institutions.<sup>91</sup> Following these commitments of CRT, I first argue that law enforcement, as a social institution, has been a primary and violent weapon of White supremacy, intended to control and marginalize Black people. Then, I suggest that today's racist policing practices, such

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<sup>88</sup> Brucato, "Fabricating the Color Line," 37.

<sup>89</sup> Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: New Press, 2012), 31.

<sup>90</sup> Alexander, *The New Jim Crow*, 5; Bell, "Political Reality Testing," 1036.

<sup>91</sup> Bernadette R. Hadden et al., "An Authentic Discourse: Recentring Race and Racism as Factors That Contribute to Police Violence against Unarmed Black or African American Men," *Journal of Human Behavior in the Social Environment* 26, no. 3/4 (April 2016): 337.

as the use of force and stop and frisk, intend to harm Black people even if police officers themselves do not have such a conscious intention. After advancing this argument, I consider the enduring trauma of Black individuals and communities in America as a result of racialized policing. I turn to this lived experience of trauma to show the importance of producing new policing practices and policies that will heal and protect Black lives.

## A. RACIALIZED POLICING

In the United States, the police have played an important role in the oppression of Black people through formal social control measures, which have included the over-patrolling of and violent interactions with Black communities.<sup>92</sup> To make sense of this racial dimension of policing, it is necessary to understand that contemporary policing has its roots in the history of slave patrols. Early “slave patrols,” where working-class Whites were hired by the elite, slave-owning Whites to monitor and regulate the movements of free Blacks, ensured Blacks were not congregating, organizing, or escaping.<sup>93</sup> These slave patrols were also used to manage conflicts between Whites and Blacks through brutal force.<sup>94</sup> The “Slave Codes” that were enforced in 1833 viewed Blacks as the equivalent to farm animals or property that had no rights.<sup>95</sup> These codes allowed Whites to punish their slaves, who were regarded as property, for undesirable behavior. Ultimately, the Slave Codes created slave patrols or “paddy rollers,” and these patrols were charged with policing plantations, stopping Black people, searching homes of Black people, and “whipping” Blacks caught walking without a “written pass.”<sup>96</sup> While, in 1864, slave patrols were

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<sup>92</sup> Brucato, “Fabricating the Color Line,” 39.”

<sup>93</sup> Marlese Durr, “What Is the Difference between Slave Patrols and Modern Day Policing? Institutional Violence in a Community of Color,” *Critical Sociology* 41, no. 6 (September 2015): 875, <https://doi.org/10.1177/0896920515594766>.

<sup>94</sup> Durr.

<sup>95</sup> Michael A. Robinson, “Black Bodies on the Ground: Policing Disparities in the African American Community—An Analysis of Newsprint from January 1, 2015, through December 31, 2015,” *Journal of Black Studies* 48, no. 6 (September 2017): 553.

<sup>96</sup> Robinson, 553.

disbanded with the 13th Amendment and the abolition of slavery, they ultimately led to modern policing.<sup>97</sup>

After slavery, the slave patrols were abolished, but White fears over Black gains in social status and fears that Blacks would fight back against the history of White brutality led to an increase in formal and informal methods of social control. As these methods emerged, the means of control became more terrifying and indiscriminate.<sup>98</sup> One of the most significant developments in social control was the establishment of the police. The first formal police department was formed in 1838 in Boston, Massachusetts, consisting of “publicly supported and bureaucratic” police officers who were full-time paid employees with formal policies and procedures.<sup>99</sup> Soon thereafter, other departments emerged and followed a pattern of being controlled locally by “White, property owning males” and were specifically and intentionally modeled after the early slave patrols.<sup>100</sup> The intention of these first police departments was to respond and regulate the “urbanization” in the north due to the migration of Blacks from the south and new immigrants populating American cities. As Blacks migrated from the slave plantations in the south to cities in the north to pursue their new freedom, they found themselves being monitored by the new institution of police in a terrorizing and controlling manner.<sup>101</sup> The mandate for police chiefs was to control crime and civil unrest during the “population boom” in northern cities, an effort to keep the “niggers under control.”<sup>102</sup> Around 1858, police departments across the country began to bear arms and use brutal force to control the “threat.”<sup>103</sup> The creation of modern policing was, thus, for the sake of regulating non-White and non-citizen populations.

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<sup>97</sup> Robinson.

<sup>98</sup> Brucato, “Fabricating the Color Line,” 40.

<sup>99</sup> Brucato, 39.

<sup>100</sup> Gary Potter, “The History of Policing in the United States, Part 1,” Police Studies Online, June 25, 2013, <https://plsonline.eku.edu/insidelook/history-policing-united-states-part-1>.

<sup>101</sup> Homer Hawkins and Richard Thomas, “White Policing of Black Populations: A History of Race and Social Control in America,” in *Out of Order: Policing Black People*, ed. Ernest Cashmore and Eugene McLaughlin (London: Routledge, 1991), 66.

<sup>102</sup> Robinson, “Black Bodies,” 555.

<sup>103</sup> In fact, 1858 marks the first time reported that police shot and killed an unarmed person, an unarmed Irish immigrant running away from the police. Robinson, “Black Bodies,” 555.

In this new policing era, police began to enforce “vagrancy laws” like “mischief and insulting gestures” to keep the racial hierarchy, resulting in tens of thousands of Blacks in jail as they were randomly arrested for nuisance crimes and charged high court fees.<sup>104</sup> With no means to pay for their court fees, Blacks were sold to private contractors to do hard labor.<sup>105</sup> These contractors saw this labor pool as expendable, subjecting the workers to harsh conditions, including frequent whippings, which often resulted in death.<sup>106</sup> Because the police simultaneously enforced and had vested interest in White social power, this new criminality and use of Black people for hard labor perpetuated, though in an entirely new form, the subordination of and violence against Black people.<sup>107</sup> In particular, this use of vagrancy laws to criminalize Blacks was the precursor to a more structured and intense campaign to regulate and criminalize Blacks through the criminal justice system.<sup>108</sup> Over time, “criminal” became synonymous with “Black person,” and incarceration became a primary means to control Blacks in the United States.<sup>109</sup> While this criminality has taken various forms in U.S. history—from the menacing vagrant to the poor laborer, or from the dangerous to the immoral—one thing has remained: the police have supported and enforced the racialization of Black individuals as criminal.<sup>110</sup>

Accordingly, the first police departments and officers were conspirators in racism with White citizens. Many police officers were members of White supremacist hate groups, most notably the Ku Klux Klan, and used their official position to terrorize Black people during the entire 20th century.<sup>111</sup> For decades, White police officers beat, maimed, and

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<sup>104</sup> Alexander, *The New Jim Crow*, 31.

<sup>105</sup> Alexander.

<sup>106</sup> Alexander.

<sup>107</sup> Alexander.

<sup>108</sup> Alexander.

<sup>109</sup> Arthur H. Garrison, “Disproportionate Incarceration of African Americans: What History and the First Decade of Twenty-First Century Have Brought,” *Journal of the Institute of Justice & International Studies* 11 (April 2011): 101.

<sup>110</sup> Alexander, *The New Jim Crow*, 28.

<sup>111</sup> David A. Rembert, Jerry Watson, and Rickey Hill, “A Trilogy of Trepidation: Diverse Perspectives on Police Violence Targeting African American Males,” *Journal of Human Behavior in the Social Environment* 26, no. 2 (February 2016): 230.

even killed Black people. Moreover, because the majority of White people in the United States held explicitly racist views, White police officers allowed White citizens to brutalize Blacks “to keep niggers in their place,” so for decades, the police overtly supported the informal control of Blacks for the sake of White power.<sup>112</sup> During the lynching era between the 1880s and 1960s, thousands of Black people, mostly men, were lynched and brutalized by White people for the smallest of slights, including perceived disrespect or flirting with White women.<sup>113</sup> Blacks in the United States were thus terrified of the police in their official role as police officers but also because, like most White citizens, they were clear and explicit about their own racism.

Similar to the Slave Codes, the Jim Crow era (1880–1965) instituted extreme segregation laws, severely limiting the rights and freedom of Blacks. In what is now understood as legal racism, Jim Crow intensified the policing and police scrutiny of Blacks through strict enforcement of “highly repressive law” that severely restricted Blacks’ rights, including strict vagrancy laws, laws that segregated Blacks and Whites, and laws that required Blacks to address Whites by Mr., Mrs., Miss, Sir, or Ma’am.<sup>114</sup> These laws were enforced by police officers through the hyper-surveillance of Blacks, and those found in violation of laws were met with brutal force.<sup>115</sup> The strict and brutal enforcement of Jim Crow by White police officers was responsible for more than 50 percent of the deaths of Black people at the hands of police.<sup>116</sup>

The brutal use of force exemplified during Jim Crow has been a consistent factor in the ways the Black community is subjected to policing. In post–civil rights America, police would target the so-called ghettos, neighborhoods inhabited predominantly by Black individuals, spiking the arrests of Black people and fostering the growth of the prison

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<sup>112</sup> Hawkins and Thomas, “White Policing,” 65.

<sup>113</sup> Angela Onwuachi-Willig, “The Trauma of the Routine: Lessons on Cultural Trauma from the Emmett Till Verdict,” *Sociological Theory* 34, no. 4 (December 2016): 348, <https://doi.org/10.1177/0735275116679864>.

<sup>114</sup> Robinson, “Black Bodies,” 557.

<sup>115</sup> Robinson, 556.

<sup>116</sup> Sewell et al., “Vile Vigilance.”

system. Since the 1960s, when poverty and discrimination forced many Blacks to petty crime, White police were there to enforce, control, and oppress.<sup>117</sup> Therefore, as was the case in the past, the police continued to regulate and use force against Black Americans.<sup>118</sup> Unfortunately, many of the actions of the police were taken to be justified because of the petty crimes committed.<sup>119</sup> But, given the history of oppression and racism experienced by Blacks, petty crime was often a means of survival.<sup>120</sup> Ultimately, the over-policing of and use of force against Blacks supported the racialization of crime and made the police a central institution of Black oppression.<sup>121</sup>

The connection between racialized policing and the prison system as a way to socially and economically marginalize the Black community cannot be overlooked.<sup>122</sup> As CRT scholar Michelle Alexander points out, racialized policing led to the mass incarceration of Black individuals as the “New Jim Crow.”<sup>123</sup> But, also, the result of the increased formal social control on poor Black ghettos led to the school-to-prison pipeline, where many disadvantaged young people of color living in marginalized communities have been at an increased risk of police contact due to aggressive police practices, such as stop and frisk and zero tolerance policies.<sup>124</sup> Instead of being supported on the path to school, young Blacks are targeted for incarceration and pipelined to prison.<sup>125</sup> The impact of over-policing on Black communities has been an unknown number of deaths of Black people at the hands of police, high numbers of arrests for nonviolent crimes, and a complete breakdown between Black communities and the police that serve them.

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<sup>117</sup> Hawkins and Thomas, “White Policing,” 66.

<sup>118</sup> Hawkins and Thomas, 72.

<sup>119</sup> Hawkins and Thomas, 73.

<sup>120</sup> Hawkins and Thomas, 72.

<sup>121</sup> Hawkins and Thomas, 74.

<sup>122</sup> Desmond Upton Patton et al., “‘Police Took My Homie I Dedicate My Life 2 His Revenge’: Twitter Tensions between Gang-Involved Youth and Police in Chicago,” *Journal of Human Behavior in the Social Environment* 26, no. 3/4 (2016): 311, <https://doi.org/10.1080/10911359.2015.1127738>.

<sup>123</sup> Alexander, *The New Jim Crow*, 200.

<sup>124</sup> Patton et al., “‘Police Took My Homie,’” 311.

<sup>125</sup> Patton et al., 312.

More recently, from 2014 to 2016, the deaths of several unarmed Black men—Michael Brown, Freddie Grey, Eric Garner, Tamir Rice, and Walter Scott—at the hands of police caused outrage and civil disorder. These deaths begged the question about the value of Black lives in the United States and specifically highlighted the persistent problem about the use of deadly force by police against people of color. These deaths all began from relatively minor violations and quickly turned into deadly use-of-force incidents. At the time of their respective deaths, all of the victims were unarmed, including 12-year-old Tamir Rice, who had a toy gun. The Tamir Rice case offers an important example of how aggressive tactics are used against people of color. The callers who saw Rice point the gun said that they believed it was a toy, but when police officers responded, they shot Tamir within two seconds of engaging him, failing to confirm whether it was a toy after all.<sup>126</sup>

There are not, however, any direct statistics on the contemporary use of force by police. Interestingly, no federal mandates require police departments to submit information regarding how force is used or about deaths caused by police.<sup>127</sup> The statistics that are available, though, show that Black males are “21 times more likely” to be shot and killed by police.<sup>128</sup> Nevertheless, since slavery, aggressive police tactics have been used against people of color, and these tactics continue today. In contemporary times, the use of force against people of color is meant to have the same impact: to oppress, control, and marginalize.<sup>129</sup>

## **B. INTENT TO HARM AND UNCONSCIOUS BIAS**

This section argues that the racialization of crime and racist police practices, such as the use of force and stop and frisk, intend to cause harm to Black people to support a White supremacist agenda but without the same conscious racism by police officers from the past. As accounted for in Chapter I, CRT purports that racism in the United States

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<sup>126</sup> “Why Black Lives Matter: 6 High-Profile Killings Enraging America,” RT News, last modified July 7, 2016, <https://www.rt.com/usa/350024-why-black-lives-matter/>.

<sup>127</sup> Sewell et al., “Vile Vigilance,” 289

<sup>128</sup> Sewell et al.

<sup>129</sup> Hawkins and Thomas, “White Policing,” 65.

originated during slavery to support the racial ideology that Whites are superior while non-Whites are less than human, marked as “other,” and thus neither deserving of nor conferred the same rights and treatment as Whites.<sup>130</sup> This racist, “less human” social position has many implications: it dictates how a person is treated and how individuals see themselves, not to mention affects one’s social, economic, and political position in society. Today, this less-than-human status underlies the policing policies and practices that disproportionately target Blacks or are used when police interact with Black individuals and communities. More specifically, the historically and socially produced view of Blacks as threatening criminals is one that continues to show up in and inform the use of force against Blacks during police encounters, the hyper-surveillance of Black communities, and various racialized practices. All of these police practices are, in part, responsible for the disproportionate number of Black people in prison, which supports the maintenance of contemporary White supremacy today. But most of these practices are routinely employed without conscious awareness as racialized practices and thus policing continue to be an arm of White supremacy without, however, the majority of police officers making conscious decisions to be racist. Instead, racialized policing is enacted unconsciously.

Many argue that Blacks commit the majority of crimes and the majority of violent crimes, but these views are inaccurate. Although Blacks are arrested and convicted, receive longer prison sentences, and are sentenced to death disproportionately to Whites, historically, other ethnic groups, including Whites, have been linked to high rates of crime.<sup>131</sup> Historically, crimes committed by White people have been rendered legal or overlooked. For example, the crime of slavery—whereby millions of Africans were forced to work on White plantations in extreme living conditions, without pay, facing regular beatings and rape—was legal and socially acceptable.<sup>132</sup> In the late 19th and early 20th

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<sup>130</sup> Amanda E. Lewis, “‘What Group?’ Studying Whites and Whiteness in the Era of ‘Color-Blindness,’” *Sociological Theory* 22, no. 4 (December 2004): 628, <https://doi.org/10.1111/j.0735-2751.2004.00237.x>.

<sup>131</sup> Richard Delgado, “Rodrigo’s Eight Chronicle: Black Crime, White Fears—On the Social Construction of Threat,” *Virginia Law Review* 80, no. 2 (March 1994): 508.

<sup>132</sup> Delgado, “Rodrigo’s Eight Chronicle,” 526; Thema Bryant-Davis et al., “The Trauma Lens of Police Violence against Racial and Ethnic Minorities,” *Journal of Social Issues* 73, no. 4 (December 2017): 858, <https://doi.org/10.1111/josi.12251>.

centuries, White citizens publicly lynched Blacks without punishment and, at times, with the police present.<sup>133</sup> Additionally, the Irish were connected to Black-market alcohol during prohibition, and Italians were linked to gambling, but these crimes did not receive the same attention that crimes committed by Blacks received.<sup>134</sup> Thus, crimes committed by Whites were viewed and continue to be viewed as victimless and minor. Moreover, in some cases, crime has been used by Whites as a way to become part of the elite White group.<sup>135</sup> “White crimes,” such as “embezzlement, bribery, price fixing and insider trading,” have historically been used by many Whites to elevate social status but are typically prosecuted only in the most egregious cases.<sup>136</sup> So, although White crime or White-collar crime is more harmful and has had a more devastating impact on the United States economy, it is rarely ever prosecuted.<sup>137</sup> That the criminal activity of Whites has rarely registered as criminal, along with the belief that Blacks commit the majority of crime and are dangerous and immoral, reinforces the racialization of crime and threat.<sup>138</sup>

Historically, though, Whites have been violent and have committed a significant percentage of crimes. This reality can be seen today. For instance, in 2011, the U.S. Department of Justice Statistics documented “more cases of Whites killing Whites than there were Blacks killing Blacks.”<sup>139</sup> But the racialization of crime and threat leads the police, society, and the criminal justice system to view Blacks as dangerous and, thus, treat them more harshly. The consequence is that the criminalization of Blacks and the racialized

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<sup>133</sup> Lisa Bloom, “White People Commit the Most Heinous Crimes, So Why Is America Terrified of Black Men?,” AlterNet, May 14, 2014, <https://www.alternet.org/2014/05/White-people-commit-most-heinous-crimes-so-why-america-terrified-Black-men/>.

<sup>134</sup> Bloom, “White People.”

<sup>135</sup> Delgado, “Rodrigo’s Eight Chronicle,” 510.

<sup>136</sup> Delgado, 512.

<sup>137</sup> Delgado.

<sup>138</sup> For instance, Bernard Madoff, who scammed over \$18 billion from investors, and the famous Enron scandal exemplify how the significant criminal activity of Whites regularly fails to register as crime. “The 5 Biggest Wall Street Scams of All Time,” Huffington Post, October 6, 2011, [https://www.huffpost.com/entry/the-5-biggest-wall-street\\_b\\_994147](https://www.huffpost.com/entry/the-5-biggest-wall-street_b_994147).

<sup>139</sup> Kerry Coddett, “White on White Crime: An Unspoken Tragedy?,” Huffington Post, last modified May 2, 2015, [https://www.huffpost.com/entry/white-on-white-crime-an-u\\_b\\_6771878](https://www.huffpost.com/entry/white-on-white-crime-an-u_b_6771878).

innocence of Whites have led to policing practices that are inherently racialized. The question that remains is how these practices persist in a post–civil rights America.

Since the late 20th century and into the 21st century, policing practices that were designed to reduce crime and promote order have been linked to increased crime, disorder, and poor outcomes for many, but Black Americans especially.<sup>140</sup> This irony should be linked to the aggressive police tactics that are central to today’s policing strategies, ones that have inherited the conscious racism of policing’s past. For example, in Baltimore, Maryland, from the 1980s to the 2000s, the Baltimore Police Department, like many police departments across the country, abandoned its community policing principals and began a “zero tolerance” approach to crime and disorder.<sup>141</sup> The zero tolerance approach targets poor Blacks communities and looks for the stereotypical “Black criminal” who is allegedly less controlled and more violent, more prone to crime than Whites, and thus, in need of punitive, formal, social control.<sup>142</sup> Unfortunately, zero tolerance is a strictly punitive method for dealing with sociohistorical inequities that lead to crime and poverty. The widespread use of zero tolerance has created a hostile and violent climate for Black Americans and has translated into mass arrests for minor and even non-existent offences. Zero tolerance ultimately helped produced the phenomenon of mass incarceration of Black individuals and has deprived these communities of the “human and financial capital” necessary to get out of poverty.<sup>143</sup> Over time, the Baltimore Police Department, as was the case in most departments that employed the zero-tolerance policy, became an occupying force in Black communities, not an institution meant to protect and serve.<sup>144</sup>

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<sup>140</sup> Deena Isom, “An Air of Injustice? An Integrated Approach to Understanding the Link between Police Injustices and Neighborhood Rates of Violence,” *Journal of Ethnicity in Criminal Justice* 14, no. 4 (October 2016): 371, <https://doi.org/10.1080/15377938.2016.1209143>.

<sup>141</sup> Erin M. Kerrison, Jennifer Cobbina, and Kimberly Bender, “‘Your Pants Won’t Save You’: Why Black Youth Challenge Race-Based Police Surveillance and the Demands of Black Respectability Politics,” *Race and Justice* 8, no. 1 (2018): 8, <https://doi.org/10.1177/2153368717734291>.

<sup>142</sup> Lewis, “‘What Group?’” 636.

<sup>143</sup> Kerrison, Cobbina, and Bender, “‘Your Pants Won’t Save You,’” 8.

<sup>144</sup> Kerrison, Cobbina, and Bender.

Stop and frisk is as old as slavery, where it was used to control and monitor the movements of Black slaves. After slavery was abolished, stop and frisk was employed to enforce vagrancy laws as a way to harass, monitor, and control the movement of free Blacks.<sup>145</sup> In contemporary times, stop and frisk assumes Black criminality and is a policing strategy and practice that produces outcomes similar to the past. Since the 1970s, the American public has demanded a “get tough on crime” approach, which has translated into a punitive approach to crime in the criminal justice system. Stop and frisk has been one of the primary tactics of this punitive approach. Just as in the past, today’s stop and frisk is an aggressive police practice employed predominantly in poor communities of color.<sup>146</sup> In practice, it is used by police in high-crime areas, where police focus on low-level offenses such as riding a bike on a sidewalk or drinking in public. A person, usually a Black or Brown male, is stopped for a low-level offense, “frisked” for weapons, and identified to monitor and control people of color.<sup>147</sup> While Black individuals are no more likely to be criminals than individuals of other ethnic and racial groups, this tactic is employed and justified through the lens of racialized criminalization. In other words, stop and frisk, as it disproportionately targets people of color, is informed by a racialized suspicion that Blacks are criminals.<sup>148</sup> During stop and frisk, the police focus their enforcement on those viewed in society as dangerous and a threat: non-Whites.<sup>149</sup>

Notably, police officers may not intentionally target Black individuals as criminals. But bias comes from racial stereotypes and prejudices that are widespread in the United States. In post-civil rights America, racism is no longer overt and explicit but unconscious and unintentional. Unconscious bias is due to how the human brain is socially programmed, and in the United States, people, including police officers, have been conditioned to see

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<sup>145</sup> Sewell et al., “Vile Vigilance,” 289.

<sup>146</sup> Sewell et al.

<sup>147</sup> Sewell et al.

<sup>148</sup> Peter Hanink, “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 & International Studies* 13 (January 2013): 102.

<sup>149</sup> Steven Hayle, Scot Wortley, and Julian Tanner, “Race, Street Life, and Policing: Implications for Racial Profiling,” *Canadian Journal of Criminology & Criminal Justice* 58, no. 3 (July 2016): 322–53, <https://doi.org/10/3138/cjccj.2014.E32>.

Black people as dangerous and criminal. As a result, in “ambiguous situations,” officers may create a mental scenario that draws on and confirms an unconscious stereotype.<sup>150</sup> This is “unintentional racism: racism that is usually invisible even and especially to those who perpetrate it,” but it is nevertheless racism.<sup>151</sup>

A prime example of the way unconscious and unintentional racism shapes and informs policing is the police shooting death of Philando Castile, a young Black man who was legally licensed to carry a firearm. He was pulled over by Officer Yanez for a broken tail light, but when Castile told Yanez he had a gun, Yanez shot Castile to death before he could prove he was legally licensed to carry the firearm. While this case is discussed in detail in Chapter IV, here what matters is the way Yanez reacted to Castile. A CRT perspective highlights that Yanez’s reaction to and shooting of Castile was rooted in social conditioning and a history of racialized criminality in which Black males are imagined as dangerous and threatening. What Officer Yanez did was react to Castile through a racialized and racist lens. It may have been unconscious and unintentional, but rather than assess the situation, Yanez immediately treated Castile as a threat. This case is a prime example of how American society and the police as an American institution are conditioned to see blackness, and Black men in particular, as a threat. In the case of policing strategies like stop and frisk and zero tolerance, the kind of treatment Castile endured is far more common and widespread but follow the same logic: because Black individuals are perceived as more dangerous, more threatening, and inherently criminal, they are subjected to over-policing and aggressive, if not deadly, force.

Aggressive police tactics have, at best, minimal impacts on crime and disorder, and at worst, they have exacerbated the marginalization and frustration of Black people, leading to increased anger and frustration that often results in violence that maintains their criminality and marginalization. But police officers today do not learn how to perceive and handle the Black anger and resistance that results from the long history of racialized

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<sup>150</sup> Jean Moule, “Understanding Unconscious Bias and Unintentional Racism,” *Phi Delta Kappan* 90, no. 5 (January 2009): 321, <https://doi.org/10.1177/003172170909000504>.

<sup>151</sup> Moule, 321.

policing. Instead, it is engrained in the mind of a police recruit that policing is a dangerous job and that any moment could be your last if you are not vigilant.<sup>152</sup> Police officers are taught to eliminate threats and make a situation safe in a split second, having very little time to assess a situation. This speed at which officers are encouraged to make decisions causes officers to use “mental shortcuts.”<sup>153</sup> These shortcuts are the way past experiences and common practices shape and determine the level of threat, and so the history of racialized policing is not just in the past but continues to inform policing practices as mental shortcuts.<sup>154</sup> These past experiences can be full, often unknowingly, of racist judgement. Because Black individuals and communities have long been perceived as criminal and threatening, police officers today “shortcut” to these racist views during encounters with Black people, and the outcomes are often tragic.

Ultimately, the more recent deaths of unarmed Black men and women, along with the history of countless negative interactions between the police and poor communities of color, can be connected to the aggressive over-policing of Black communities. This kind of racialized policing has existed since slavery and continues today.<sup>155</sup> But, and this is important here, these practices are no longer enacted with the overt intent to harm Black individuals and communities. Rather, these practices have inherited the racism of policing’s past, so they are carried out by police officers regardless of a particular officer’s own conscious beliefs about racism. This point is further supported by contemporary research on unconscious bias that highlights how racially based policing is present in the United States, but implicit bias is difficult to identify and correct.<sup>156</sup> Although police leaders cannot measure or predict how an officer will respond to a person based on race, what is certain is that a long history of racialized policing continues to inform and shape how policing is done today. Therefore, even if not as intentionally as in the past, policing

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<sup>152</sup> Patrick J. Solar, “Police Culture and the Use of Force,” *Police Forum* 26, no. 3 (December 2016): 13, [https://cdn.ymaws.com/www.acjs.org/resource/resmgr/sections/policeforum\\_Dec2016.pdf](https://cdn.ymaws.com/www.acjs.org/resource/resmgr/sections/policeforum_Dec2016.pdf).

<sup>153</sup> Solar, 14.

<sup>154</sup> Solar.

<sup>155</sup> Sewell et al., “Vile Vigilance,” 289.

<sup>156</sup> Ralph Ioimo et al., “Comparing the Police and Citizen Views on Biased Policing,” *Criminal Justice Studies* 22, no. 2 (June 2009): 125–6, <https://doi.org/10.1080/14786010902975408>.

continues to harm and destroy Black individuals and communities and preserves a racist legacy.

### C. RACIALIZED POLICING AND THE TRAUMA OF BLACKS

The history and ongoing experience of racist police tactics in the United States produce and elicit trauma in Black individuals and communities. Today, Blacks who are in their seventies lived through Jim Crow and the Civil Rights Movement. They carry with them memories of the racism they experienced. Their parents lived through the lynching era and their parents' slavery, and they carried with them the racism they experienced. These memories significantly shape the perception Blacks have about the police today. According to critical race theorists, the history and lived experiences of racism that Black people endure is deeply traumatizing, and they argue that a central way racism and its effects live on is through trauma.<sup>157</sup> In particular, the concept of "intergenerational trauma" offers a helpful framework to understand the harm and pain experienced by Blacks caused by the history and contemporary practices of policing, as well as their anger toward the police. Importantly, it is only through connecting the history of trauma that Blacks have endured at the hands of the police that one can gain a better understanding of how police actions in contemporary times mimic and exacerbate the historical trauma.

While most people think about trauma as a one-time horrific event that causes a shock to the system, trauma can occur in more than one way. Trauma can result from

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<sup>157</sup> Martin Brokenleg, "Transforming Cultural Trauma into Resilience," *Reclaiming Children and Youth* 21, no. 3 (Fall 2012): 9–13, ProQuest; Thema Bryant-Davis et al., "The Trauma Lens of Police Violence"; Grace Carroll, "Mundane Extreme Environmental Stress and African American Families: A Case for Recognizing Different Realities," *Journal of Comparative Family Studies* 29, no. 2 (Summer 1998): 271–84, <https://doi.org/10.3138/jcfs.29.2.271>; W. E. B. Du Bois, *The Souls of Black Folk* (Chicago: Dover Thrift, 1994); Onwuachi-Willig, "The Trauma of the Routine"; Erlanger A. Turner, "Racial Trauma Is Real: Impact of Police Shootings on African Americans," Psychology Benefits Society, July 14, 2016, <https://psychologybenefits.org/2016/07/14/racial-trauma-police-shootings-on-african-americans/>; Kimberly Westcott, "Race, Criminalization, and Historical Trauma in the United States: Making the Case for a New Justice Framework," *Traumatology: An International Journal* 21, no. 4 (December 2015): 273–84, <http://dx.doi.org/10.1037/trm0000048>; Tracy R. Whitaker and Cudore L. Snell, "Parenting While Powerless: Consequences of 'the Talk,'" *Journal of Human Behavior in the Social Environment* 26, no. 3/4 (April 2016): 303–9, <https://doi.org/10.1080/10911359.2015.1127736>; Liliane Cambraia Windsor, Eloise Dunlap, and Marilyn Armour, "Surviving Oppression under the Rock: The Intersection of New York's Drug, Welfare, and Educational Polices in the Lived Experiences of Low-Income African Americans," *Journal of Ethnicity in Substance Abuse* 11, no. 4 (October 2012): 339–61, <https://doi.org/10.1080/15332640.2012.735176>.

routine and prolonged discrimination, oppression, and brutality like slavery.<sup>158</sup> Intergenerational trauma refers to families of cultural groups that have experienced severe trauma, such as war, extreme poverty, dislocation, enslavement, and genocide, for which their descendants continue to suffer the consequences.<sup>159</sup> My claim is that the aggressive over-policing of Black individuals and communities, and the outcomes produced by such policing, traumatizes and operates as intergenerational trauma. According to psychological theories, “trauma occurs when an individual has an experience that threatens his or her life or bodily integrity, which overwhelms his or her ability to cope by creating feelings of hopelessness or intense fear.”<sup>160</sup> For example, police brutality should be understood as traumatizing because it is a “persistent, or repeated, form of violence through unjustified, unnecessary acts of racial profiling, death, bodily injury, harassment, criminality, and political damage.”<sup>161</sup>

Traumatic experiences affect how a person thinks and responds emotionally. In short, trauma causes deep wounds that are passed along to or inherited by new generations even if the new generation does not directly experience the trauma. In other words, the wounds persist historically and socially. These wounds make people question themselves and their value to society. The trauma that occurs to an individual is psychologically and physically impactful, leading to chaotic and disturbed feelings and behavior. But trauma also affects communities. The collective social trauma that results from the history of persistent and devastating police brutality and racism tears the fabric of a community apart so that the “community no longer exists as an effective source of support.”<sup>162</sup> Traumatic experiences cumulate when generations do not or cannot heal, and as a result, the trauma lives on in subsequent generations.<sup>163</sup> Cumulative traumas occur over a lifetime and are

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<sup>158</sup> Bryant-Davis et al., “The Trauma Lens of Police Violence”; Onwuachi-Willig, “The Trauma of the Routine.”

<sup>159</sup> Bryant-Davis et al., “The Trauma Lens of Police Violence,” 857.

<sup>160</sup> Bryant-Davis et al., 854.

<sup>161</sup> Bryant-Davis et al., 861.

<sup>162</sup> Onwuachi-Willig, “The Trauma of the Routine.”

<sup>163</sup> Brokenleg, “Transforming Cultural Trauma into Resilience.”

experienced through the lifetime of an individual. Such trauma is often about memory: “It is not the experience itself that produces traumatic effect, but rather the remembrance of it.”<sup>164</sup> “This cumulative and collective trauma results in ongoing psychological distress, including complex post-traumatic stress disorder, and it can be passed across generations.”<sup>165</sup>

Understanding racism as trauma highlights the harm, pain, and anger that lives on in Blacks in the United States today, particularly in relation to the police. A plethora of research documents the impact of police tactics and abuse on Black people and the trauma that results from over-surveillance of Black communities, from being stopped and questioned, arrested, and brutalized to being killed during police investigations into minor offenses.<sup>166</sup> For example, racial profiling practices that many Black people have endured, such as driving while Black, walking while Black, and shopping while Black, all conjure up painful memories in the Black community about “unjust laws by monitoring and restricting” the freedom of Black people.<sup>167</sup> Moreover, experiences with police misconduct live on not only in “individual memories but also in family stories and group recollections.”<sup>168</sup> The violence that Blacks have experienced at the hand of the police over the centuries has been transferred from generation to generation such that there exists a “constant fear” of the police.<sup>169</sup> The outcome of such historical and collective trauma is the overwhelming experience by Blacks in the United States that their lives do not matter and that they definitely do not matter to the police.

Due to the pervasive trauma endured by African-Americans, many see the police as racist and corrupt agents of the state who act with impunity. The ongoing trauma and

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<sup>164</sup> Onwuachi-Willig, “The Trauma of the Routine,” 339.

<sup>165</sup> Bryant-Davis et al., “The Trauma Lens of Police Violence,” 857.

<sup>166</sup> Rod K. Brunson, “‘Police Don’t Like Black People’: African-American Young Men’s Accumulated Police Experiences,” *Criminology & Public Policy* 6, no. 1 (February 2007): 71–101, <https://doi.org/10.1111/j.1745-9133.2007.00423.x>.

<sup>167</sup> Brunson, “‘Police Don’t Like Black People,’” 75.

<sup>168</sup> Brunson, 76.

<sup>169</sup> Bryant-Davis et al., “The Trauma Lens of Police Violence.”

constant fear of the police force parents to prepare their Black children for racially motivated interactions with the police. While Blacks are often taught how to prepare for and deal with racism in general, Black children learn quickly and regularly about how to survive during racially biased, aggressive, and overly hostile encounters with the police. The heart-wrenching and shame-filled reality for parents of Black children is that parents have to educate their children, as a matter of life and death, that they are going to be viewed as dangerous, threatening, and criminal just because they are Black. “The talk,” as it is commonly referred to among Black individuals, shows how the history of racialized policing negatively affects Blacks and highlights their negative views of the police as a result of racist policing practices. It also underlines the transference of trauma across generations.

Over a century ago in *The Souls of Black Folk*, African-American author W. E. B. Du Bois wrote about the different realities that Black and White Americans face.<sup>170</sup> Du Bois highlights the “problem of the color line,” or the way race carves America into two: a White America and a Black America.<sup>171</sup> For Du Bois, what is most interesting about the color line is that it produces a “double consciousness” in Blacks—they have two different realities, one as Americans with certain inalienable rights and one as Black people who are treated as second-class citizens by the police and society.<sup>172</sup> This reality of a dual consciousness speaks to the emotional struggle to exist in marginalized communities. The talk is a central way this double consciousness is produced, particularly in relation to who the police are. More specifically, the talk produces a double image of the police for Blacks. On the one hand, the police have the job to protect and serve, but in experience, this role of the police does not apply to Black people. Instead, the experience Blacks have is that the police protect and serve White people and White America against Blacks as “menacing criminals.”

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<sup>170</sup> Du Bois, *The Souls of Black Folk*.

<sup>171</sup> Du Bois, 11.

<sup>172</sup> Karen S. Glover, “Citizenship, Hyper-Surveillance, and Double-Consciousness: Racial Profiling as Panoptic Governance,” in *Sociology of Crime Law and Deviance*, ed. Mathieu Deflem and Jeffrey T. Ulmer (Bingley, England: Emerald Group Publishing, 2008), 243.

While a painful lesson about what it means to be Black in America, this double consciousness is necessary in a racist world in which the police have historically enforced racism and White supremacy. The talk is how parents teach their children about how, when, and if they should interact with an officer to keep their children safe and alive.<sup>173</sup> The talk is, then, a form of “racial socialization” wherein Black parents or elders teach Black children about the possibility of unjust encounters and what to do in them.<sup>174</sup> The hope is that such “conversations and practices,” which can include “hypervigilant parenting, excessive discipline and conversations about racial pride and discrimination,” will prepare Black children for a racially hostile world where they “are not always welcomed and seldom cherished.”<sup>175</sup> As a result of the talk, Black children learn to distrust the police while learning how to keep themselves alive.

The specific experiences of the Black community, as well as the role the police have had in Black lives, have a significant impact on the way police are viewed in the community. Black people rely not only on their personal experiences with police and authority figures but also on experiences from other Blacks—witnessed, talked about, or videotaped and, thus, lived vicariously. The anger, resistance, and distrust that many Blacks have toward the police are due to the historical violent role the police have played and continue to play in Black subjugation.<sup>176</sup> It is, therefore, critically important for police officers today to understand that the memories of police brutality and the role of the police in supporting White supremacy are alive and well in the memories of people in the Black community. The cumulative impact of daily major and minor events that Blacks face can explain the anger, pain, and helplessness that many feel during and which manifest in police interactions. Moreover, addressing the history and lived experiences of racialized policing as part of officer training and development may be helpful in repairing the fractured relationship.

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<sup>173</sup> Kerrison, Cobbina, and Bender, ““Your Pants Won’t Save You.””

<sup>174</sup> Whitaker and Snell, “Parenting While Powerless,” 304.

<sup>175</sup> Whitaker and Snell.

<sup>176</sup> Hawkins and Thomas, “White Policing of Black Populations.”

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### III. A WAY FORWARD: COMMENTS ON THE 21ST CENTURY POLICING STRATEGY

The tense relationship between the police and the Black community is well documented, and it mirrors the general status of Blacks in the United States at large. For instance, criminal justice scholars David A. Rembert, Jerry Watson, and Rickey Hill account for the way Black lives have not mattered in the context of policing in particular and show how this lack of regard for Black lives by the police has created serious tensions between police and Blacks in the United States.<sup>177</sup> Around the time of the high-profile deaths of Michael Brown in Ferguson, Missouri, and Eric Garner in Staten Island, New York, these tensions surfaced in a serious way, exposing “a deep-rooted frustration in many communities of color around the need for fair and just law enforcement.”<sup>178</sup> In 2015, President Obama created a task force to address the contemporary manifestation of this tension between Blacks and the police, as well as the persistence of racialized police brutality. The goal was to create a guide book for police departments across the country on best policing practices that “promote effective reduction while building public trust.”<sup>179</sup> As President Obama remarked when organizing the Task Force, “When any part of the American family does not feel like it is being treated fairly, that is a problem for all of us,” and so it became the goal of the Task Force to address the experiences of people of color in relation to fair treatment by the police.<sup>180</sup> In other words, the primary aim was to offer a collaborative solution to the historical tension and the reality of racialized policing. President Obama emphasized the importance of building trust and cooperation between the

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<sup>177</sup> David A. Rembert, Jerry Watson, and Rickey Hill, “A Trilogy of Trepidation: Diverse Perspectives on Police Violence Targeting African American Males,” *Journal of Human Behavior in the Social Environment* 26, no. 2 (February 2016): 227–35, <https://doi.org/10.1080/10911359.2015.1083506>.

<sup>178</sup> Barack Obama, “Remarks by the President after Meeting with Task Force on 21st Century Policing,” White House, March 2, 2015, <https://obamaWhitehouse.archives.gov/the-press-office/2015/03/02/remarks-president-after-meeting-task-force-21st-century-policing>.

<sup>179</sup> President’s Task Force on 21st Century Policing, *Final Report of the President’s Task Force on 21st Century Policing* (Washington, DC: Office of Community Oriented Policing Services, May 2015), iii, [https://cops.usdoj.gov/pdf/taskforce/taskforce\\_finalreport.pdf](https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf).

<sup>180</sup> President’s Task Force on 21st Century Policing, 5.

police and the communities they serve as central to the safety and effectiveness of policing and the safety of communities.<sup>181</sup>

The outcome of the Task Force, which was hand-picked by President Obama and included law enforcement, executives, academics, community leaders, and youth leaders, was the 2015 *Final Report of the President’s Task Force on 21st Century Policing*.<sup>182</sup> The Task Force had 90 days to hold meetings, gather information, and make recommendations. The report made 59 recommendations with 92 action items “anchored in measurable and behavioral change and not in the abstract.”<sup>183</sup> The Task Force offers recommendations for law enforcement professionals “with the goal of strengthening democratic policing in a complex and diverse society.”<sup>184</sup> The Task Force and President Obama then invited police leaders to review the recommendations and develop an implementation plan. This invitation led to the development of a “guidebook” for police rooted in Six Pillars, which represent a “specific aspect of policing and police–community relations.”<sup>185</sup> The following offers a brief overview of the Six Pillars:

Pillar 1: focuses on the fractured trust that exists between the police and communities of color and calls for law enforcement to treat people with respect and dignity

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<sup>181</sup> President’s Task Force on 21st Century Policing.

<sup>182</sup> President’s Task Force on 21st Century Policing. Members of the Task Force included various institutional players: Charles Ramsey, commissioner from the Philadelphia Police Department; Laurie Robinson, professor of criminal justice at George Mason University; Cedric L. Alexander, deputy chief operating officer for public safety in DeKalb County, Georgia; Jose Lopez, lead organizer for Make the Road New York; Tracey L. Meares, Walton Hale Hamilton professor of law at Yale Law School; Brittany N. Packnett, executive director for Tech for America in St. Louis Missouri; Susan Lee Rahr, executive director of the Washington State Criminal Justice Training Commission; Constance Rice, co-director of the Advancement Project; Sean Michael Smoot, director and chief counsel of the Police Benevolent & Protective Association of Illinois; Bryan Stevenson, founder and executive director of the Equal Justice Initiative; and Roberto Villansenor, chief of police for the Tucson Police Department.

<sup>183</sup> Office of Community Oriented Policing Services, *President’s Task Force on 21st Century Policing Implementation Guide: Moving from Recommendations to Action* (Washington, DC: Office of Community Oriented Policing Services, 2015), 38, <https://noblenational.org/wp-content/uploads/2017/02/President-Barack-Obama-Task-Force-on-21st-Century-Policing-Implementation-Guide.pdf>.

<sup>184</sup> “Starting with What Works: Using Evidenced-Based Strategies to Improve Community Relations and Police Relations,” International Association of Chiefs of Police, accessed October 6, 2019, <https://www.theiacp.org/sites/default/files/all/s/StartingwithWhatWorksBrochureWeb.pdf>.

<sup>185</sup> President’s Task Force on 21st Century Policing, *Final Report*, 6.

Pillar 2: focuses on policy and oversight and calls for the police to carry out their duties consistent with policies that reflect community values

Pillar 3: focuses on responsible and transparent use of technology and social media and addresses the responsible and effective use of technology as a tool to engage and inform community members

Pillar 4: focuses on community policing and crime reduction, and places emphasis on the way community policing promotes teamwork and collaboration between the police and the community to generate meaningful results

Pillar 5: addresses training and education of law enforcement officers, and insists on the importance of police being prepared for a variety of challenges and diverse communities

Pillar 6: focuses on officer safety and wellness, and calls for departments to implement officer wellness and safety programs<sup>186</sup>

Overall, this report on 21st Century Policing is a guide for law enforcement professionals on best practices, some of which are proven and evidenced-based while others are innovative best practices for modern policing. As I show in this chapter, this report is a critical move in the development of policing that is attentive to the needs of communities of color. The best practice recommendations in the report stage a crucial shift from enforcement-based policing to community-based policing, which is necessary to ending the history of racist policing practices. In contrast to the community policing of the 1990s, which was ambiguous and rarely implemented, community policing based on the 21st Century Policing recommendations provides officers with specific and actionable tasks that are clear and defined. This chapter describes how the report on 21st Century Policing promotes and implements an innovative form of community policing that moves away from the former warrior paradigm toward a guardian paradigm, which bends toward racial justice. In what follows, I examine each of the Six Pillars, highlighting their main recommendations and action items, to draw attention to what actions police need to take to improve outcomes and relationships with Blacks and communities of color more generally.

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<sup>186</sup> President's Task Force on 21st Century Policing, 1–4.

## A. PILLAR ONE: BUILDING TRUST AND LEGITIMACY

Pillar one introduces one of the most important components of policing in the 21st century, insisting on the significance of the relationship between effective and legitimate policing and trust between the police and the community. As the report details, there has been a steady decline in confidence related to the police among “some populations of color,” a decline that is exacerbated by the fact that “non-whites have always had less confidence in law enforcement” because people of color have been disproportionately arrested and sent to prison.<sup>187</sup> The reality is that for many Blacks, there has been a historical erosion of confidence and trust in the police because of the disproportionately harsh and violent practices often involved. Accordingly, the First Pillar of the report states, “Law enforcement cannot build community trust if it is seen as an occupying force coming in from outside to rule and control the community.”<sup>188</sup>

One of the main components of the First Pillar is an emphasis on procedural justice. Procedural justice refers to the process of a fair interaction and promotes treating people with respect, giving them a voice during a police interaction, and underscores the importance of police making neutral and transparent decisions and displaying trustworthiness. As the report points out, research shows that what matters most to people during an interaction with a police officer is how they are treated.<sup>189</sup> Moreover, it has been shown that procedurally just interactions can improve individual perceptions of the police, which is particularly necessary in terms of how Black Americans perceive law enforcement.<sup>190</sup> In a national survey of 18,000 adults, “half of White respondents said they were very satisfied with the police compared with only 22 percent of Black respondents. Forty percent of Black respondents said they had been treated unfairly by police because

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<sup>187</sup> President’s Task Force on 21st Century Policing, 9.

<sup>188</sup> President’s Task Force on 21st Century Policing, 11.

<sup>189</sup> President’s Task Force on 21st Century Policing, 10.

<sup>190</sup> Cynthia Lum et al., *An Evidence-Assessment of the Recommendations of the President’s Task Force on 21st Century Policing-Implementation and Research Priorities* (Fairfax, VA: Center for Evidence-Based Crime Policy, George Mason University, 2016), 10, <https://cebcp.org/wp-content/evidence-based-policing/IACP-GMU-Evidence-Assessment-Task-Force-FINAL.pdf>.

of race, compared to just two percent of Whites.”<sup>191</sup> While additional research is necessary on best practices in procedural justice, initial evidence shows that increasing the use of procedural justice in reactive and proactive encounters makes a difference in the relationship between the police and the community.<sup>192</sup> Accordingly, police leaders should encourage procedurally just interactions with community members, and police departments should adopt procedural justice practices for both internal and external communications.<sup>193</sup>

Additionally, the First Pillar addresses the importance of legitimacy in policing. Research shows that people are more likely to obey the law if they feel that law enforcement actions are legitimate. As the report puts it, “Decades of research and practice support the premise people are more likely to obey the law when they believe that those who are enforcing it have legitimate authority to tell them what to do. . . . The public confers legitimacy only on those they believe are acting in procedurally just ways.”<sup>194</sup> The report underscores that legitimacy means citizens are treated with respect, that they have an opportunity to tell their story, that officers make neutral and transparent decisions, and that officers are honest and trustworthy.<sup>195</sup> The report urges the importance of a paradigm shift in police mentality as central to the issue of legitimacy: “Law enforcement culture should embrace a guardian mindset.”<sup>196</sup> The guardian mindset promotes public trust and legitimacy. Drawing on ancient Greek philosopher Plato’s notion of state guardians, the report states, “In a republic that honors the core of democracy—the greatest amount of power is given to those called Guardians.”<sup>197</sup> More specifically, the guardian operates as part of the community, demonstrating empathy and employing procedural justice

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<sup>191</sup> Lum et al., 5.

<sup>192</sup> Lum et al,10.

<sup>193</sup> International Association of Chiefs of Police, “Starting with What Works,” 3.

<sup>194</sup> President’s Task Force on 21st Century Policing, *Final Report*, 11.

<sup>195</sup> President’s Task Force on 21st Century Policing.

<sup>196</sup> President’s Task Force on 21st Century Policing.

<sup>197</sup> President’s Task Force on 21st Century Policing.

principals during interactions.<sup>198</sup> Thus, police managers need to shift away from a warrior culture to a guardian culture because this shift will change how police address crime and interact with the public, and this shift will confer legitimacy to the police, which will in turn build trust with the community.

Finally, the First Pillar makes clear that “Law Enforcement agencies should proactively promote public trust by initiating positive nonenforcement activities to engage communities that typically have high rates of investigative and enforcement with government agencies.”<sup>199</sup> In other words, police officers should be given time to interact with and participate in the communities they serve doing non-policing activities for the sake of building relationships with community members. Creating time for officers to interact means allowing them to participate in athletic leagues or community events like “Coffee with a Cop” and establish citizen police academies as part of policing duties. According to the contact hypothesis, which states that positive contact between different groups of people can improve intergroup relationships, this community-based contact will promote positive encounters and mutual respect between officers and communities.<sup>200</sup> Positive contact is incredibly important in relation to the racial divide between White officers serving Black communities insofar as it is often the case that White officers do not live among the people and, thus, lack familiarity with the community.

In addition to these key components of procedural justice, legitimacy, and community involvement, the First Pillar underscores the importance of measuring efficacy. According to Recommendation 1.7, police should track and measure the level of trust a community has in its police force just as they track and measure crime, and this includes getting feedback from the community on the quality of interactions with police officers, safety concerns, and satisfaction with service.<sup>201</sup> This kind of community-based review

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<sup>198</sup> Sue Rahr and Stephen K. Rice, “From Warriors to Guardians: Recommitting American Police Culture to Democratic Ideals,” *New Perspectives in Policing Bulletin* (Washington, DC: Department of Justice, 2015), <https://www.ncjrs.gov/pdffiles1/nij/248654.pdf>.

<sup>199</sup> President’s Task Force on 21st Century Policing, *Final Report*, 14.

<sup>200</sup> “Contact Hypothesis,” *Psychology*, accessed October 9, 2019, <https://psychology.iresearchnet.com/social-psychology/prejudice/contact-hypothesis/>.

<sup>201</sup> President’s Task Force on 21st Century Policing, *Final Report*, 16.

will keep police agencies accountable to their own practices and to the communities. As the report underscores, “Programs involving problem-solving through situational prevention and community collaboration” are more successful than those that focus on aggressive enforcement of low-level activities.<sup>202</sup>

## **B. PILLAR TWO: POLICY AND OVERSIGHT**

Pillar Two underscores the importance of establishing clear policies to guide officer behavior and develop community oversight to ensure the development of trust and secure the legitimacy of policing. According to Pillar Two, policies that hold policing practices accountable for community needs are necessary and must make clear how a police department will serve in a manner consistent with community needs, without creating a disparate impact on any part of the community.<sup>203</sup> Policies should be available to the public and focus on use of force, training, the collection and distribution of crime and policing data, and mass demonstrations. In order to ensure their efficacy, such policies should also correspond with specific practices of oversight, including peer reviews of critical incidents and a Serious Incident Review Board, done in conjunction with or made visible to the public to improve community trust.

As the report details, law enforcement must have clear and specific policies on the use of force, including less-lethal options and better training on such options, and policies on mass demonstrations that employ a layered tactical response. Regarding the use of force, it is most important to have a well-defined policy that includes “training, investigations, prosecutions, data collection, and information sharing.”<sup>204</sup> Action Item 1.5.4 exemplifies the significance of better use-of-force policies:

Use of physical control equipment and techniques against vulnerable populations—including children, elderly persons, pregnant women, people with physical and mental disabilities, limited English proficiency, and others—can undermine public trust and should be used as a last resort. Law

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<sup>202</sup> Lum et al., *An Evidence-Assessment*, 8.

<sup>203</sup> President’s Task Force on 21st Century Policing, *Final Report*, 26.

<sup>204</sup> President’s Task Force on 21st Century Policing, 20.

enforcement agencies should carefully consider and review their policies towards these populations and adopt policies if none are in place.<sup>205</sup>

Thus, the recommendation on establishing policies constrains the use of force, especially in relation to vulnerable communities, to build trust. The specific attention given to policies related to mass demonstrations has much to do with the criticism received in the prominent use of military-grade equipment to gain control of the 2015 demonstrations in Ferguson, Missouri, after the police shooting and death of Michael Brown. As Recommendation 2.7 and Action Item 2.7.2 make clear, law enforcement should create policies and procedures for mass demonstrations that include a “continuum of managed tactical resources that are designed to minimize the appearance of a military operation,” noting that militarized displays of force erode trust and incite anger.<sup>206</sup>

If police departments do not follow such policies, then Action Item 2.7.2 suggests the federal government must be “investigating complaints and issuing sanctions regarding the inappropriate use of equipment and tactics during mass demonstrations.”<sup>207</sup> Importantly, Pillar Two insists that policies related to the use of force and mass demonstrations “must be clear, concise, and openly available for public inspection” and should involve community collaboration in their development.<sup>208</sup>

Creating and enforcing such policies are only one aspect of Pillar Two. The other is collaborative oversight between the police and community members, as well as formal, non-punitive peer review procedures for critical incidents, including the establishment of a Serious Incident Review Board that includes sworn officers and community members in each police department. This feature of civilian involvement in the review process is crucial. Recommendation 2.8 says that building trust between the public and the police, especially in communities where it is fractured, requires community agency. That is, each

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<sup>205</sup> President’s Task Force on 21st Century Policing, 12.

<sup>206</sup> President’s Task Force on 21st Century Policing, 25.

<sup>207</sup> President’s Task Force on 21st Century Policing.

<sup>208</sup> President’s Task Force on 21st Century Policing, 20.

community needs to find out what is the best form and structure to meet its needs.<sup>209</sup> Even though there is a lack of concrete evidence that they work, civilian review boards bring the community in a direct working relationship with the police and so promote a relationship of cooperation. According to this recommendation, civilian review boards should look at other jurisdictions to determine best practices that promote “police and community understanding.”<sup>210</sup> In addition to collaborative reviews, Pillar Two recommends the collection and publication of officer interaction information. It states, “Law enforcement agencies should be encouraged to collect, maintain, and analyze demographic data on all detentions (stops, frisks, searches, summons and arrests).”<sup>211</sup> Given that racial profiling practices have been highlighted as an issue in communities of color, the practice of collecting, analyzing, making public, and taking as-needed corrective action on police interactions will help improve trust in communities of color. In the 2001 study, a police–public contact survey conducted by the Bureau of Justice Statistics, it was shown that “regardless of the reason for the traffic stop, Black (67 percent) and Hispanic (74 percent) drivers were less likely than White drivers (84 percent) to believe the reason for the stop was legitimate.”<sup>212</sup> And, when it came to interactions with police on the street, 37 percent of Blacks compared to 77 percent of Whites believed the stop was legitimate. There were similar findings in the last four police–public contact surveys.<sup>213</sup> Therefore, this aspect of data collection, formal and collaborative reviews, and publicity of police practices can ensure legitimacy through transparent oversight.

Finally, Pillar Two encourages law enforcement agencies to reflect the demographics of the community. As Recommendation 1.8 puts it, “Law enforcement agencies should strive to create a workforce that contains a broad range of diversity including race, gender, language, life experience, and cultural background to improve

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<sup>209</sup> President’s Task Force on 21st Century Policing, 26.

<sup>210</sup> President’s Task Force on 21st Century Policing.

<sup>211</sup> President’s Task Force on 21st Century Policing, 24.

<sup>212</sup> Lum et al., *An Evidence-Assessment*, 14.

<sup>213</sup> Lum et al.

understanding and effectiveness in dealing with all communities.”<sup>214</sup> This recommendation is based on a belief that having a diverse police force will lead to a better understanding of issues in a community, improve communication and relationships, reduce the use of force, and increase police trust and legitimacy.<sup>215</sup> The idea here is that having a diverse police department will change the way officers engage with the community.

### **C. PILLAR THREE: TECHNOLOGY AND SOCIAL MEDIA**

Pillar Three addresses the way policing practices can benefit from the use of technologies as tools designed to improve police services, as long as technology is implemented with clear and concise policies and in consultation with the community. In recent years, law enforcement has taken advantage of developments in technology, such as body-worn cameras (BWCs), license plate readers (LPRs), unmanned aircraft, and certain uses of social media and the internet. These technologies have allowed police officers to do their work in new ways. Pillar Three underscores the successes of such uses of technology and recommends that law enforcement agencies “adopt model policies and best practices for technology-based community engagement that increases community trust and access.”<sup>216</sup> Moreover, because technology evolves rapidly, police departments should invest carefully and remember that technology is a tool to improve the delivery of services.

For the sake of transparency, accountability, and privacy, when implementing new technology, police departments must have conversations with the community. For instance, surveillance and investigative technologies, such as camera systems and LPRs, can infringe on individual privacy rights, so police departments need to be transparent in their use. One study in Virginia on LPRs found that the public supported using them to detect stolen motor vehicles but did not support their use for parking violations. Although additional research

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<sup>214</sup> President’s Task Force on 21st Century Policing, *Final Report*, 16.

<sup>215</sup> Lum et al., *An Evidence-Assessment*, 14.

<sup>216</sup> President’s Task Force on 21st Century Policing, *Final Report*, 36.

is necessary, technology may “slightly” undermine public trust and, thus, must be used cautiously.<sup>217</sup> Police departments also need clear policies on data storage and access.<sup>218</sup>

BWCs are increasingly being used by police departments to collect evidence to improve officer performance and accountability. BWCs can also help resolve citizen complaints about officer conduct. In 2013, approximately one-third of police departments had deployed body cameras, and there is a small but increasing number of studies on their effectiveness. Findings indicate that BWC use “reduces citizen complaints against police” and police use-of-force incidents.<sup>219</sup> The reduction of use-of-force incidents correlated with agency policies that prohibited officers from turning the cameras off. But there are also unintended impacts of BWCs, including citizen satisfaction with police interactions, cooperation with investigations, and citizens’ feelings about being recorded.<sup>220</sup> Additionally, opinions vary about the value of BWCs—some suggest it will “deter problematic conduct,” thus improving transparency and trust, but others raise concerns that the BWCs may cause officers to act differently in the face of being recorded and, thus, may hamper relationship building.<sup>221</sup> There needs to be further research on BWCs in general to understand how they influence officer behavior when issuing tickets, making arrests, or stopping motor vehicles.<sup>222</sup>

The internet and social media can be valuable tools for engaging and building trust with the community. Pillar Three suggests police departments should establish website and social media accounts with explicit policies for use to share information about crime tips, community events, and emergencies with the public, not to mention reach young people.<sup>223</sup> The Boston Police Department offers a good example of effective use of social media on Twitter to inform and update the public after the Boston Marathon bombing in

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<sup>217</sup> Lum et al., *An Evidence-Assessment*, 25.

<sup>218</sup> President’s Task Force on 21st Century Policing, *Final Report*, 36.

<sup>219</sup> Lum et al., *An Evidence-Assessment*, 22.

<sup>220</sup> Lum et al., 32.

<sup>221</sup> President’s Task Force on 21st Century Policing, *Final Report*, 32.

<sup>222</sup> Lum et al., *An Evidence-Assessment*, 21.

<sup>223</sup> Lum et al., 22.

2013.<sup>224</sup> Although the effectiveness of social media is not yet clear, a study by the International Association of Chiefs of Police found that social media helped police solve crimes and improve community relations.<sup>225</sup>

After several highly publicized police shooting deaths of unarmed Black men, conversations about less-lethal procedures increased.<sup>226</sup> Such tools as conductive energy devices (CED) have been successful in “reducing both officer and civilian injuries.”<sup>227</sup> Although statistics that capture how often officers actually deploy less-lethal options are not available, these options are widely available for use. Several studies say the use of pepper spray and CEDs reduces the number and severity of injuries to subjects as well as to officers, while one finding is clear that annual retraining on CED has been associated with fewer shootings.<sup>228</sup>

#### **D. PILLAR FOUR: COMMUNITY POLICING AND CRIME REDUCTION**

Pillar Four stresses the importance of community policing as a “guiding philosophy for all stakeholders” because it reduces crime, improves public safety, and increases community resilience to crime.<sup>229</sup> As Recommendation 4.1 states, “Law enforcement agencies should develop and adopt policies and strategies that reinforce the importance of community engagement in managing public safety.”<sup>230</sup>

While in recent years crime and violence have generally decreased in the United States, poor communities of color continue to be plagued by violence, crime, and drugs, and this reality disproportionately puts police in these areas.<sup>231</sup> Because of the volatile history between the police and the Black community, which I discussed in the previous

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<sup>224</sup> President’s Task Force on 21st Century Policing, *Final Report*, 33.

<sup>225</sup> Lum et al., *An Evidence-Assessment*, 23.

<sup>226</sup> President’s Task Force on 21st Century Policing, *Final Report*, 38.

<sup>227</sup> President’s Task Force on 21st Century Policing.

<sup>228</sup> Lum et al., *An Evidence-Assessment*, 23.

<sup>229</sup> President’s Task Force on 21st Century Policing, *Final Report*, 3.

<sup>230</sup> President’s Task Force on 21st Century Policing, 42.

<sup>231</sup> President’s Task Force on 21st Century Policing, 41.

chapter, this disproportionate presence, combined with the history of the use of force, arouses anger and resentment among Blacks. Accordingly, Pillar Four suggests that policing in communities with this racially fractured relationship with the police must be rooted in a procedural justice approach. In such an approach, police should be respectful, provide an honest explanation for each interaction, and fully identify themselves so that the people stopped for interactions should have a fair opportunity to explain their side. Without the procedural justice approach, interactions between police and community members can easily slide into either allegations of racial profiling or overall resistance to police authority.<sup>232</sup> Ultimately, the procedural justice approach emphasizes community policing that “combines a focus on intervention and prevention through problem solving with building collaborative partnerships” between the police, social service providers, and other stakeholders, which improves public safety, “enhances social connectivity and economic strength,” and builds resilience.<sup>233</sup>

As outlined in the report, key practices for community policing include specific and sustained efforts to build interpersonal relationships with community members and leaders of institutions like churches, business, and schools.<sup>234</sup> Additionally, as Action Item 4.1.1 advises, police should look for “least harm” solutions to minor crime issues, especially when dealing with vulnerable communities, including but not limited to young people, people suffering from mental illness, homeless, and people suffering from addiction.<sup>235</sup> Finally, police need to pay specific attention to and adopt policies that specifically address the “needs of children and youth most at risk for crime of violence and reduce aggressive law enforcement tactics that stigmatize youth.”<sup>236</sup> Because young people in poor, marginalized communities are vulnerable to becoming victims and perpetrators of crime, police departments should work with schools on alternatives to suspension for minor infractions, employ mediation to deal with conflict, minimize or eliminate officer

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<sup>232</sup> President’s Task Force on 21st Century Policing.

<sup>233</sup> President’s Task Force on 21st Century Policing.

<sup>234</sup> President’s Task Force on 21st Century Policing, 43.

<sup>235</sup> President’s Task Force on 21st Century Policing.

<sup>236</sup> President’s Task Force on 21st Century Policing, 47.

interactions when enforcing school discipline, and support efforts to reintegrate students who have been in the juvenile justice system. Recent research on the development of the adolescent brain and “neurological underpinnings of adolescent behavior” have called into question earlier police tactics like zero tolerance, which have “contributed to increasing the school-prison pipeline,” and underscore the significance of adopting new practices and policies to address youth behavior.<sup>237</sup> Recommendation 4.7 also encourages youth involvement in decisions that affect their community and suggests that police departments “facilitate youth led research and problem solving, and develop and fund youth leadership training and life skills through positive youth/police collaboration and interactions.”<sup>238</sup>

Ultimately, the goal of Pillar Four is to develop a “positive culture of policing,” stating that the goal of police should be to “avoid use of force” whenever possible, even when acting in accordance with policy.<sup>239</sup> Too often, officers engage with communities in ways that are demeaning and insulting or that escalate violence or anger. In communities that already feel marginalized, this harsh language or treatment can intensify a routine interaction or contribute to the erosion of trust. Action Item 4.4.1 recognizes that the use of harsh or abusive language can quickly escalate a situation, so departments should enact policies directing officers to speak to people. Talking with people in a respectful manner, and engaging compassionately, in both formal and informal settings, will establish relationships that underscore care and support for a community. In turn, such interactions will help build a stronger, more positive relationship between police and the people they serve.

## **E. PILLAR FIVE: TRAINING AND EDUCATION**

The focus of Pillar Five is the training and educating of police officers. Given that today’s police officers deal with increasingly complex issues like terrorism, mental health, diverse cultures, and changing laws, they need multidimensional and ongoing training. Moreover, given the shift to the guardian culture of community policing recommended

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<sup>237</sup> President’s Task Force on 21st Century Policing.

<sup>238</sup> President’s Task Force on 21st Century Policing, 49.

<sup>239</sup> President’s Task Force on 21st Century Policing, 44.

in the previous pillars, police training academies need to shift their focus to cultivate police guardians rather than police warriors. The aim of the recommendations in Pillar Five, then, discuss the content and significance of new training and education for police officers. This new model of training should be piloted in “certain training academies as federally supported regional training innovation hubs,” which would deliver “rigorous training practices, evaluations, and the development of curricula based on evidence-based practices.”<sup>240</sup>

Accordingly, federal, state, and local agencies must develop “standards for hiring, training and education,” and it is “imperative that agencies place value on both educational achievements and socialization skills when making hiring decisions.”<sup>241</sup> Police officers must also have access to and be required to go through ongoing education and have leadership training throughout their careers.<sup>242</sup> Here, the aim in training and education is that police officers have the expertise needed to legitimately handle the complex realities of contemporary policing. Moreover, since many communities have residents with expertise that could benefit the police department, police departments should identify people in the community who may have special expertise to assist in specialized training.<sup>243</sup> Identifying residents in the community who have expertise in areas that can help build and maintain trusting relationships means that police departments should look to and cooperate with external agents to support and develop legitimate policing.

Nevertheless, the culture of policing will not change without a shift in the educational content in police training academies. Pillar Five describes the importance of a new police curriculum that focuses on “the needs of 21st century policing along with cutting edge delivery modalities.”<sup>244</sup> This new curriculum would move away from the boot camp style to an “adult based learning and scenario-based training” because a focus on

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<sup>240</sup> President’s Task Force on 21st Century Policing, 53.

<sup>241</sup> President’s Task Force on 21st Century Policing, 51.

<sup>242</sup> President’s Task Force on 21st Century Policing, 52.

<sup>243</sup> President’s Task Force on 21st Century Policing, 53.

<sup>244</sup> President’s Task Force on 21st Century Policing.

“critical thinking and decision-making” better develops community-based police officers.<sup>245</sup> The boot camp style training, which focuses on taking orders from supervisors and following directions, “has little to do with the reality of policing.”<sup>246</sup> Thus, future officers need to be trained and become skilled in critical, community-centered decision-making. They also need to learn about and understand the impacts of violence on a community because “exposure to violence can make individuals more prone to violent behavior.”<sup>247</sup> Understanding the reality and impact of violence should also include learning about the history of the police and the Black community.<sup>248</sup>

## **F. PILLAR SIX: OFFICER SAFETY AND WELLNESS**

Pillar Six recognizes that police have a difficult and stressful job, which often takes a toll on officers’ emotional health and well-being. Police officers respond to stressful, traumatic incidents, some of which, like the shooting at Sandy Hook Elementary, are horrific and widely publicized, and officers frequently struggle with resistant and combative subjects, leading to injury or even death.<sup>249</sup> In these instances, and on routine interactions, police officers make split-second decisions and take actions that have consequences, which can ultimately damage an officer’s health, reputation, and family. Therefore, it should not come as a surprise that research shows a large number of officer injuries and deaths are due not to interactions with criminals but to “poor physical health due to poor nutrition, lack of exercise, sleep deprivation and substance abuse.”<sup>250</sup> Consequently, Pillar Six recommends that a well-funded, collaborative, multidisciplinary officer wellness and safety program is critical to support police officers today.<sup>251</sup>

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<sup>245</sup> President’s Task Force on 21st Century Policing.

<sup>246</sup> Rahr and Rice, “From Warriors to Guardians,” 4.

<sup>247</sup> President’s Task Force on 21st Century Policing, *Final Report*, 61.

<sup>248</sup> Roufa, “President Obama’s Task Force on 21st Century Policing.”

<sup>249</sup> President’s Task Force on 21st Century Policing, *Final Report*, 61.

<sup>250</sup> President’s Task Force on 21st Century Policing.

<sup>251</sup> President’s Task Force on 21st Century Policing, 4.

As the recommendations explain, if officers are to be successful guardians of the communities they serve, then they need to be cared for and have access to psychological and physical support services. Just as the community-based model asks officers to care for members of a community, Pillar Six suggests officers need to be cared for, too. This care includes emotional and physical wellness as well as supportive leadership. Police departments need to take this cultural shift in policing to “overturn the tradition of silence on psychological problems” and promote professional assistance without shame or consequences.<sup>252</sup>

Pillar Six’s recommendations and action items to improve the overall health and well-being of officers includes establishing a federal task force to study mental health issues specific to police officers. The task force can make recommendations for best practices in implementing a “Blue Alert” system similar to the Amber alert system that would involve the public in finding people suspected of killing police officers, as well as ensuring pension plans and other financial support programs for officers who are injured, commit suicide as a result of post-traumatic stress disorder, or are killed in the line of duty. Such programs are concrete ways to support the often detrimental and serious work police officers do, as well as acknowledge the emotional and financial toll this work can have on officers and their families.<sup>253</sup> Other recommendations in this pillar emphasize the importance of annual mental health and well-being checks, suggest that officers should carry tactical first aid kits, and encourage policies that require officers to wear seat belts and ballistic vests while on duty.

Pillar Six ultimately insists that officer health and well-being need to be top priorities. A comment by Task Force member Professor Tracey Meares underscores the importance of officer wellness: “Hurt people can hurt people.”<sup>254</sup> That is, officers who are not well will not keep communities well and may pass harm onto others. Pillar Six aims to

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<sup>252</sup> President’s Task Force on 21st Century Policing, 76.

<sup>253</sup> President’s Task Force on 21st Century Policing, 63.

<sup>254</sup> President’s Task Force on 21st Century Policing, 61.

intervene in this cycle so that 21st century police can become guardians and serve and care for communities.

## **G. DISCUSSION AND FINDINGS**

The report on 21st Century Policing provides a comprehensive guide for best practices that will change the landscape of contemporary policing for the better, particularly regarding racial justice. Although the aim of the report is not racial justice per se, the Six Pillars intend to create policing practices that are sensitive and responsive to the reality of the troubling and violent history of racialized policing. While I discussed that history at length in Chapter II, here my aim was to account for what the report on 21st Century Policing recommends to police officers. The importance of this account is to underscore the need for procedural justice to build trust in minority communities, particularly the Black community in the United States, given that the divide between the police and the Black community continues. For instance, one study found that 88 percent of Blacks believe the “police treat minority members of the community more roughly when dealing with crime.”<sup>255</sup>

The report itself is an important step in improving relations between the police and Black Americans. The report offers necessary recommendations, most of which police departments can implement now. Significantly, the report highlights the need for a paradigm shift in policing, a move from a warrior model to a guardian model, which in my view is a shift that can help heal the history of racialized policing. The move to community policing, rooted in procedural justice and legitimacy, is an important step in changing the way policing has been racist. For this reason, the report on 21st Century Policing moves toward racial justice. Moreover, these recommendations and action items are a way to heal the many issues that result from the history of racialized policing. As I explain in the next chapter, the relationship between Blacks and the police is tied to trauma. Although police today are not at fault for the sins of the past, as the report suggests, today’s police do have

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<sup>255</sup> “Law Enforcement and Violence: The Divide between Black and White Americans,” Associated Press–NORC Center for Public Affairs Research, accessed September 19, 2019, <http://www.apnorc.org/projects/Pages/HTML%20Reports/law-enforcement-and-violence-the-divide-between-black-and-white-americans0803-9759.aspx>.

a responsibility to recognize the errors of the past, not to perpetuate them into the future, and to be sensitive to how they affect Blacks today. In my view, it is important to recognize the trauma and powerlessness that many Blacks experience during interactions with the police.

Nevertheless, the report does not address how officers should deal with the anger, resistance, and fear that Blacks commonly experience during police interactions because of a deep history of trauma. It is one thing to make new recommendations for policing, ones that are important, but another to focus on how a history of trauma, as well as the resulting pain and anger, shapes the way police interact with Black individuals and communities. Drawing on CRT, the aim of the last chapter is to provide a picture of common police interactions and the way pain and anger of Black Americans show up in those interactions. I suggest that officers need to develop a practice of critical empathy toward the history and contemporary reality of Black Americans' experience of racialized policing.

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#### **IV. CASE STUDIES TO BUILD CRITICAL EMPATHY**

The report on 21st Century Policing acknowledges biased police practices, calls for community policing rooted in a procedural justice approach, and provides police officers with recommendations to improve outcomes and relationships with Blacks and communities of color. This chapter expands on the purpose of the 21st Century Policing report by considering the way a history of trauma produced by racialized policing shapes the experience Black individuals and communities have of the police. In my view, developing officer awareness of the pain, fear, and anger Black people experience because of trauma produced by past and present police practices offers crucial context for police interactions, context that can save lives. As made explicit in Action Item 1.2, the 21st Century Policing report acknowledges the way past racial injustices produced by the police can impact the development of community trust. A focus on the trauma Black people experience is, then, necessary if police are to understand the resistance and anger that is often present during routine or minor interactions with Black people. Police interactions often escalate because many officers respond to the resistance and anger with compliance tactics, including the use of force and command language, as a way to gain control, but this usually triggers more resistance and can lead to arrest or further use of force. This approach produces a vicious cycle that works against the recommendations of 21st Century Policing.

This chapter examines the cases of Sandra Bland and Philando Castile, which are actual examples of common, minor racialized police interactions that went terribly wrong. I analyze these interactions and evaluate them based on the recommendations from the 21st Century Policing report. I consider what the police could have done for better outcomes, ones that support the recommendations for 21st Century Policing. My discussion of these scenarios takes scenario-based training to new ground and offers recommendations for policing that will undo the racially biased policing that exists in America today. The report on 21st Century Policing acknowledges that it is hard to change unconscious racial bias, which makes it difficult to address the reality of racialized policing today. Nevertheless, “through intense and ongoing scenario-based training, police officers will be more likely

to make decisions based on an individual's behavior rather than race.”<sup>256</sup> This chapter builds on this view by offering police with specific recommendations for racially sensitive policing, with a focus on the skill of critical empathy to undo racially biased policing. Officers should combine recommendations from the 21st Century Policing report with critical empathy. Teaching the practice of critical empathy through scenario-based training will allow officers to recognize the signs of trauma that are present in interactions with Black people, and this recognition will go a long way in the efforts to repair the relationship between police and the Black community.

#### **A. SANDRA BLAND: A DEATH NOT IN VAIN**

Sandra Bland was a 28-year-old African-American woman from Chicago who was outspoken about police brutality and racism.<sup>257</sup> On July 10, 2015, Bland was stopped by Texas State Trooper Brian Encinia for failure to signal while changing lanes. The stop was recorded by Bland, Encinia's dash cam, and a witness, and the stop quickly escalated when Bland challenged Encinia's request for Bland to put out her cigarette. Bland remarked, “I am in my car. Why do I have to put out my cigarette?,” to which Encinia responded, “You can step out now.”<sup>258</sup> When Bland refused to get out of her car, Encinia tried to pull her out of the car, and it was at this point that Bland was placed under arrest. Bland was pulled out of the car, slammed to the ground, told she would be tasered, and taken to jail. Three days later, Bland was “found hanging from a noose made from a plastic bag in her cell” from an apparent suicide.<sup>259</sup> In assessing this case, police audiences often point to the importance of controlling the interaction, thus justifying the use of force. In contrast, Black people often perceive and experience Trooper Encinia as blatantly disrespectful and hostile. So, how should this case be understood?

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<sup>256</sup> Michael Schlosser, “Scenario-Based Training to Reduce Racially Biased Policing: Understanding Implicit Racial Bias,” *Law Enforcement Executive Forum* 18, no. 2 (May 2018): 16.

<sup>257</sup> Ray Sanchez, “Who Was Sandra Bland, Who Died in Police Custody?,” CNN, July 23, 2015, <https://www.cnn.com/2015/07/22/us/sandra-bland/index.html>.

<sup>258</sup> Sanchez.

<sup>259</sup> Sanchez.

## 1. Analysis of the Stop: Questioning Legitimacy through a Trauma Lens

Sandra Bland was stopped for a failure to signal while changing lanes. While many officers may recognize this as a legitimate stop, the legitimacy of the entire case was complicated and undermined by the presence of racialized policing and the trauma it produces for Black people. Bland did talk back to and challenge Trooper Encinia, but she did so because the stop triggered for her the history of racialized policing. On my read, this stop for a minor motor vehicle offense triggered Bland. The stop was another instance of what she had been taught and had witnessed about the police, so she became not only angry and resentful but most likely fearful and defensive of her life. While White individuals may respond to being pulled over for a minor infraction with surprise or frustration, they do so without the fear of brutality and death lingering overhead. Because of the history of racialized policing, Bland, on the other hand, in the moment she is pulled over, remembers what this stop could mean for her life. Ultimately, the stop of Bland mimics the history of the over-policing of Black communities and produces a traumatic response.

Stops for failure to change lanes most often occur in poor communities of color and are referred to as pretext stops, which are when officers act within their legal authority to stop the car although the true reason for the stop is to uncover something criminal like drugs or guns.<sup>260</sup> Pretext stops occur when the officer feels like the person or car looks “suspicious.” Pretext stops are part of the history of racialized policing. In the past, police intensely patrolled neighborhoods of free Blacks to enforce vagrancy laws and make random arrests for nuisance crimes, both methods to control and monitor Blacks.<sup>261</sup> In contemporary times, due to the racialization of crime, the police continue to conduct intense surveillance of poor communities of color and frequently conduct enforcement for minor violations, which often quickly escalate due to racialized policing and trauma.

In pulling Bland out of the car, Encinia acted as conditioned—to act when faced with resistance. Encinia’s actions also resemble the history of normalized violence in

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<sup>260</sup> Kathleen M. O’Day, “Pretextual Traffic Stops: Injustice for Minority Drivers,” University of Dayton School of Law, 1998, <https://academic.udayton.edu/race/03justice/s98oday.htm>.

<sup>261</sup> Michelle Alexander, *The New Jim Crow*, 31.

racialized policing. Historically, the Whites' fear that Black people would fight back against the history of brutality often led to violent interactions with free Blacks as a means of control, but because Blacks were not viewed as equal in the eyes of most White people, such acts went unnoticed.<sup>262</sup>

For Bland, this interaction was extremely stressful, so she lit a cigarette, arguably to alleviate the stress produced by her anticipation of brutal treatment. Encinia saw the lighting of the cigarette as a refusal to comply. While some insist the request for Bland to extinguish her cigarette may be justified under the context of officer safety, it mirrors the long history of police controlling the actions and behaviors of Blacks. In fact, slave patrollers were encouraged to punish Blacks for undesirable behavior. After the pretext stop, itself problematic, the request to put out the cigarette was another blow to Bland's dignity. Finally, the force used by Officer Encinia to pull Bland out of the car and slam her to the ground parallels the brutality historically used against Blacks who exhibited undesirable behavior.

What happened between Bland and Encinia is a matter of the racial trauma produced by the history of racist policing and the absence of police training on that history (see Table 1). The interaction between Bland and Encinia was traumatic for Bland, and that trauma was, arguably, responsible for her suicide.

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<sup>262</sup> Bryant-Davis et al., "The Trauma Lens of Police Violence," 859.

Table 1. CRT Analysis of Routine Police Practices and Recommendations for 21st Century Empathy

	Pretext Stop	Stop and Frisk	Use of Force	Suspicion
Use of Practice	Enforced vagrancy laws, punished petty offences, criminalized loitering. “Suspicion” used to find drugs, weapons. Employs intimidation and use of force against Blacks.	Used to check papers of Blacks to ensure they are “authorized” to be in public. Used to establish “law and order” where there is high crime by stopping individuals who appear “suspicious.” Employs zero-tolerance and aggressive approaches.	Slave patrollers would brutalize slaves arbitrarily. Minor traffic stops escalate when officers respond in aggressive and violent ways. Deaths of unarmed Black people at the hands of the police.	The basis for the majority of police encounters with Blacks after the emancipation of slaves. Triggers trauma and resistance that escalate encounters.
CRT Analysis	Disproportionately targets Blacks, causes Blacks to anticipate aggressive treatment and fear for their lives.	Known as “walking while Black.” Occurs in predominantly Black neighborhoods with high crime. There is little to no reason for the stop other than being in the neighborhood	A consistent factor in how Black people and communities are policed. Rarely necessary and never consistent with how Whites are treated in similar stops or offenses.	The racialization of crime and threat: Blacks are looked at as suspicious or dangerous because of race. Suspicion is synonymous with being Black
21st Century Approach	Does not use force. Treats citizens with respect.	Focuses on legitimacy, building trust with community; ends the use of stop and frisk.	Develops and employs policies that focus on restraint, especially in vulnerable communities to build trust.	Works to build trust and strengthen communities rather than searching primarily for crime and criminals.
Critical Empathy Approach	Understands how pretext stops have functioned to enforce White supremacy. Considers the root of the “suspicion” before making a stop.	Addresses the history of stop and frisk as a practice created to target Black people. Acknowledges the practice is illegitimate and incites anger and resistance.	Understands how the institution of policing was built on violence against Blacks; identifies, discusses the racialized fears of officers; understands, addresses trauma that shows up in police encounters; employs trauma-sensitive practices.	Implicit bias training for officers. Reconsiders legitimacy from a racially conscious view.

## 2. A 21st Century Approach with Critical Empathy

Following the 21st Century Policing report, the police stop and tragic outcome of Bland’s death could have gone differently. As was discussed in Chapter III, the police need to shift away from a warrior culture—in which they believe they are at “war with the people” and emphasize control and the use of force—to a guardian culture where officers are connected to and a part of the community. According to Sue Rahr, who served 33 years with the King County Sheriff’s Office with seven years as an elected sheriff, a leader in the implementation of procedural justice and legitimacy, this shift is difficult. As Rahr remarks, there are two things that police hate: “the way things are, and change.”<sup>263</sup> But even if it is hard to change, the police must shift away from a warrior culture to a guardian culture because this shift will change how police address crime and interact with the public in general and Black communities in particular.<sup>264</sup> Importantly, the community policing in the 21st Century Policing report differs from community policing practices in the 1990s. In the 1990s, there was no common understanding of what community police and partnerships with the community looked like, and research shows that during this community policing era, police functions remained focused on crime control.<sup>265</sup> The 21st Century Policing report focuses on building trust and partnerships with the community, which are necessary to end the history of racist policing practices.

From a CRT perspective, Sandra Bland was treated in a hostile and disrespectful manner because she was Black, and she reacted to Trooper Encinia because of her blackness. Situated within the history of racist policing and the intergenerational trauma of that policing, this encounter between Bland and Encinia was fraught with racial tensions from the get-go. An important component of CRT is that history provides the context for the interaction, so for Bland, this interaction brought up the history of police abuse of power and brutality against Black people. Even if it was not Encinia’s conscious intention to treat

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<sup>263</sup> Rahr and Rice, “From Warriors to Guardians,” 7.

<sup>264</sup> Rahr and Rice, 3.

<sup>265</sup> Jihong Zhao, Ni He, and Nicholas P. Lovrich, “Community Policing: Did It Change the Basic Functions of Policing in the 1990s? A National Follow-up Study,” *Justice Quarterly* 20, no. 4 (December 2003): 697.

Bland differently on the basis of race, racial dynamics were already on the scene during the encounter. This is apparent in Bland's immediate distrust of and resistance to Encinia. A lack of empathy on the part of Encinia and the anger and resistance to his authority quickly escalated the encounter. This is not necessarily Encinia's fault, however. The history of racialized policing and the ways it traumatizes the Black community are not mentioned in police training academies. Current police training covers little to nothing about race, instead highlighting the dangers of the job and how to survive. There are countless videos of officers getting hurt or killed in the line of duty because they let their guard down.<sup>266</sup> Trooper Encinia, like most police officers, was ill-equipped to understand and manage Black anger and distrust. Police training that addresses the way police have produced the historical trauma Blacks experience would have helped in this case.

Although it may be uncomfortable for police to accept, the stop of Sandra Bland for her failure to signal when changing lanes is a matter of this history, too. Unless it is accompanied with another legitimate charge like reckless operations, such a stop is illegitimate. While police have the power to make the stop, they should not. In communities of color, where the police are struggling to build trusting, respectful, and cooperative relationships, hyper-surveillance of Black communities along with strict enforcement of minor violations has contributed to a hostile relationship between the police and the Black community. When these stops are viewed from a lens of historical trauma, they can be seen as illegitimate and understood as a method to monitor and harass the Black community. This trauma-sensitive view is consistent with the 21st Century Policing report's recommendation that police act as guardians who are a part of the community and treat people with respect. Moreover, police should avoid aggressive enforcement of low-level offences.<sup>267</sup> Pulling Bland over for that minor infraction and then treating her in an unjust and brutal way increased the trust divide between the police and the Black community, especially when the case went viral.

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<sup>266</sup> Norman Conti, "Weak Links and Warrior Hearts: A Framework for Judging Self and Others in Police Training," *Police Practice & Research* 12, no. 5 (October 2011): 410–23, <https://doi.org/10.1080/15614263.2010.536726>.

<sup>267</sup> Lum et al., *An Evidence-Assessment*, 8.

The 21st Century Policing approach suggests that when officers take on community-based policing and act as guardians, they “are members of the community that protect from within.”<sup>268</sup> But to do so, they need the skill of critical empathy. To become guardians, police officers need to understand the pain, fear, and anger that continue to be present in police interactions with Blacks. The resistance that officers face is because of the historical trauma; it is not a case of “playing the race card” when resistance or anger emerges. Police officers need to recognize how aggressive police practices in communities of color, particularly for minor violations, trigger trauma and resistance, and this understanding needs to be integrated into how policing is done. Police officers who understand the pain, anger, and fear present in many Black individuals can proceed with respect, dignity, and legitimacy. Thus, it is only with critical empathy that officers can actually become the guardians the 21st Century Policing approach recommends. If Trooper Encinia had been educated about the history of police brutality and the trauma that persists in the Black community, and if he had followed the recommendations of the 21st Century Policing report about not engaging in aggressive enforcement of low-level offenses, instead using “least harm” approaches when addressing minor violations, then the stop would not have occurred.

A lack of knowledge about the history of trauma in the Black community will prevent the shift toward community-based policing recommended by the 21st Century Policing report. While police will continue to make arrests, the majority of effort needs to be redirected and dedicated to healing and building trust. Officers need to understand the trauma and how current police actions perpetuate and exacerbate it. While the Bland case offers one example of how the absence of such understanding leads to aggressive practices and deadly outcomes, there are many others. Another significant case is the stop and death of Philando Castile. Like Bland, Castile was the target of racialized policing, but the events of this stop are distinct and so offer a different way to address problematic police tactics. In particular, the Castile case raises the question of how the history of racialization of threats shows up in police encounters and how it can be addressed.

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<sup>268</sup> President’s Task Force on 21st Century Policing, *Final Report*, 11.

## **B. PHILANDO CASTILE: AN EXAMPLE OF THE RACIALIZATION OF THREAT**

On July 6, 2016, Philando Castile was pulled over for a broken taillight. The stop was captured on Officer Yanez’s dash cam, and Diamond Reynolds, who was a passenger in the car along with their four-year-old daughter, streamed part of the interaction on Facebook Live. When Yanez notified the dispatcher of the stop, he said he was making the stop to check IDs and added that he had reason to do so because the occupants “just look [ed] like” people involved in a robbery.<sup>269</sup> Yanez did not mention the broken taillight to dispatch as the reason for the stop. When Yanez approached Castile, Yanez stated the reason for the stop was the broken taillight and asked Castile for his license and insurance information. First, Castile handed over his insurance information, and then, as he reached for his driver’s license, he told Officer Yanez that he had a firearm. Officer Yanez told Castile not to pull it out. As Castile reached for his license, Yanez shot Castile seven times. A mere 40 seconds after the interaction began, Castile was shot and killed.<sup>270</sup> This case gained widespread media attention due to the live stream on Facebook.

### **1. Analysis of the Stop: Questioning Legitimacy through a Historical Lens**

Although Philando Castile was told he had been stopped for a broken taillight, Officer Yanez really stopped Castile because he and Reynolds looked like robbery suspects. It is difficult to deny that this was a racialized pretext stop—Castile and Reynolds were stopped because they were Black. Due to the history of the racialization of crime and threat, Officer Yanez was conditioned to see Black people as threatening, and this resulted first in the stop and then in Castile’s death. This racialization of crime produces the view that Black men are predators, which is engrained in the social fabric of White America. This stereotype is what framed Castile from the beginning of the encounter (see Table 1).

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<sup>269</sup> Sarah Almukhtar et al., “Black Lives Upended by Policing: The Raw Videos Sparking Outrage,” *New York Times*, July 30, 2015, <https://www.nytimes.com/interactive/2017/08/19/us/police-videos-race.html>.

<sup>270</sup> Almukhtar et al., “Black Lives Upended by Policing.”

Indeed, it is the view that led to the stop in the first place. The bottom line is that Castile and Reynolds looked suspicious because they were Black.

When Yanez approached Castile directly, Yanez expected resistance and hostility. And, then, when Castile told Yanez he had a firearm, Yanez reacted out of fear. Given that Castile was fully cooperative with Yanez's requests—not demonstrating the slightest resistance—and informed Yanez of the firearm, the best way to explain Yanez's fear is through the racialization of threat. Castile was never going to shoot Yanez, but Yanez believed otherwise because he had been socially conditioned to see people like Castile, Black men, as dangerous criminals. As research shows, when faced with a Black man who has a firearm, a police officer may be affected by the neighborhood or a person's clothes, both of which may “exacerbate racial bias and contribute to disparate outcomes for Blacks and African Americans.”<sup>271</sup> For example, in neighborhoods that have high crime or are considered dangerous, an officer may stereotype a Black male wearing a hoodie as dangerous, regardless of other factors that would indicate the absence of a threat.<sup>272</sup>

When questioned immediately after the shooting, Yanez made clear that he pulled his service weapon right out and pointed it at the driver when Castile told him he had a firearm. The quickness of Yanez's actions indicate that he never heard Castile's disclosure of the firearm as anything other than a threat.<sup>273</sup> Once Yanez saw Castile move his hands, Yanez believed Castile was reaching for his firearm, even though he showed no signs that he would do so. The result: Yanez shot Castile seven times. The immediacy of Castile's death adds further reason to believe the racialization of threat structured Yanez's reasoning because he only saw a threat.<sup>274</sup> In fact, Yanez admitted he never saw a gun, but he got

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<sup>271</sup> Kimberly Barsamian Kahn and Paul G. Davies, “What Influences Shooter Bias? The Effects of Suspect Race, Neighborhood, and Clothing on Decisions to Shoot,” *Journal of Social Issues* 73, no. 4 (December 2017): 738, <https://doi.org/10.1111/josi.12245>.

<sup>272</sup> Kahn and Davies, 723.

<sup>273</sup> Almkhtar et al., “Black Lives Upended by Policing.”

<sup>274</sup> Steve Featherstone, “Professor Carnage,” *New Republic* 248, no. 5 (May 2017): 23.

nervous when Castile said he had one; Yanez explicitly stated he feared that Castile would shoot him.<sup>275</sup>

When asked to describe the course of events, Yanez, to justify the shooting, painted a picture of Castile looking straight ahead and not fully complying with his orders.<sup>276</sup> Some may take Yanez's description to indicate that Castile was a threat. But the recording suggests Castile was compliant the entire time. It is important to listen to Castile's compliance not to point the blame at Yanez but to underscore how the racialization of threat shaped Yanez's decision-making and actions. Starting from Castile's perspective gives us a different view from which to understand the case.

Castile knew from the moment he was pulled over that he was in a dangerous situation—a Black man, legally carrying a firearm, being pulled over for a minor motor vehicle infraction. Castile's fear of being in danger is indicated by the fact that he did everything right—he was not confrontational or combative; he was fully cooperative and respectful, even calling Yanez “Sir” during the brief encounter. More to the point, however, he explicitly and calmly reported that he had a firearm: “Sir, I have to tell you, I do have a firearm on me.”<sup>277</sup> Castile's demeanor in the encounter shows that he anticipated a negative interaction with Yanez, did everything possible to put Yanez at ease, but was still shot. Immediately after Yanez shot Castile, Reynolds screamed, “You just killed my boyfriend,” and Castile could be heard crying out, “I wasn't reaching.”<sup>278</sup> Castile never had the opportunity to prove he was legally licensed to carry because Officer Yanez had already marked Castile as dangerous. Arguably, because Yanez had racist preconceptions at work, Castile could have acted in any way with Yanez and the outcome would have been the same.

Importantly, research into the shooting of Castile revealed that Officer Yanez had recently taken a training segment called “Bulletproof Warrior” instructed by Dave

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<sup>275</sup> Almukhtar et al., “Black Lives Upended by Policing.”

<sup>276</sup> Almukhtar et al.

<sup>277</sup> Almukhtar et al.

<sup>278</sup> Almukhtar et al.

Grossman, who “for over two decades has taught tens of thousands of police officers” to help develop the “warrior mindset,” which means being “mentally prepared to kill at any moment.”<sup>279</sup> In this popular training, law enforcement officers learn that they are at war with the communities they serve.<sup>280</sup> This training does not directly address race, but it need not explicitly do so to impart lessons about race, racism, and racialized policing. In the United States, the police have been primed and conditioned to believe that the source of crime and disorder exists in poor communities of color and that it is not race that determines a person’s destiny in life but choices. This warrior mindset and the racialization of crime and threat go hand in hand with the unjustified killings of unarmed Black men like Castile. The warrior mindset, exemplified by Grossman’s narrative that officers need to “be on high alert” and must look for any signs of and eliminate threat immediately, only increases the likelihood that Black people will be preemptively killed insofar as the training in this warrior mindset is predicated on the historical stereotype that Black people and communities are crime-ridden.<sup>281</sup>

The Castile case, like Bland’s, was also about trauma. This interaction traumatized Reynolds and their four-year-old daughter. The live stream of the footage was also traumatic, impacting millions of Black people who witnessed a fully compliant, respectful, and fearful Castile get shot without hesitation by Yanez. The trauma from this scenario in the Black community led to “greater stress, a stronger sense of exclusion, and the immense anxiety associated with the group’s not feeling protected under the law or any other governmental system.”<sup>282</sup> The combination of the racialized view of Blacks as dangerous along with a trauma response from Blacks of anger and resistance continues to endanger Black lives and severs the relationship between police and Black communities.

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<sup>279</sup> Featherstone, “Professor Carnage,” 22.

<sup>280</sup> Featherstone, 19.

<sup>281</sup> Featherstone, 23.

<sup>282</sup> Onwuachi-Willig, “The Trauma of the Routine,” 347.

## 2. A 21st Century Approach with Critical Empathy

The 21st Century Policing report stresses the importance of training in “adult based learning and scenario-based training” because a focus on “critical thinking and decision-making” better develops community-based police officers.<sup>283</sup> The goal of Pillar Four in particular is to develop a “positive culture of policing” and “avoid use of force” whenever possible, even when an officer is acting in accordance with policy.<sup>284</sup> Such a critical thinking-based, positive culture of policing will be possible if officers have an understanding of the racialization of crime and its history. While typically seen to be outside the realm of police training, officer awareness of how racism works to frame suspicion and threat will help realize the shift to the guardian culture. In fact, this awareness is needed if such a shift is to occur at all. Officers need to learn about and understand how they have been conditioned to link crime and threat with Black people. Exposing and learning about racism in police practices will make for legitimate policing and better service to communities.

In addition to training police officers about the racialization of crime and threat, officers need to be trained in unconscious racial bias. Research shows that Black men are stereotyped as being “associated with higher levels of violence and crime,” and people are not consciously aware that they are making such connections.<sup>285</sup> Ultimately, it is a matter of life and death for Black people that police officers identify and overcome racial biases and stereotypes. Otherwise, as occurred in the Castile case, racist beliefs will structure encounters in tragic ways. For officers, implicit bias training, along with real-life scenario-based training, will help them make “decisions based on behavior and not . . . race.”<sup>286</sup> Additionally, a training emphasis on “shoot–don’t shoot” scenarios along with de-escalation strategies will be helpful in unlinking race and threat.<sup>287</sup> It is most important,

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<sup>283</sup> President’s Task Force on 21st Century Policing, *Final Report*, 53.

<sup>284</sup> President’s Task Force on 21st Century Policing, 44.

<sup>285</sup> Schlosser, “Scenario-Based Training,” 17.

<sup>286</sup> Schlosser.

<sup>287</sup> Schlosser.

however, that such tactical trainings are supported by intensive training in racial bias and the racialization of threat and crime. Police officers need to examine racism and how they, like the rest of the American population, have been conditioned to see Black people as dangerous and threatening. It is through this realization that we will build empathy and begin to heal from the shameful history of racism and racialized policing in the United States. While police officers may struggle with the idea that they have biases, it is only by reckoning with the reality of racial bias and the history of racist policing that police officers will become guardians of the communities they serve.

### **C. MOVING FORWARD**

The tragic outcomes of mundane police–citizen interactions, exemplified in the cases of Bland and Castile, went awry due to police ignorance of racial bias and the trauma Blacks carry with them. I propose that police training must focus on educating police officers about racial bias and trauma to cultivate critical empathy if the recommendations of the 21st Century Policing report are to be met.

This proposal is consistent with the recent shifts in policing around trauma related to child abuse and sexual assault. In recent years, police departments have changed how they deal with children who have been exposed to trauma. Moreover, officers are now trained to look for symptoms of trauma in sexual assault victims and witnesses such as “nausea, flashbacks, trembling, memory gaps, fear and anger,” symptoms that otherwise might lead an officer to believe the person is not being cooperative.<sup>288</sup> The effect of this trauma-sensitive training means police officers have better tools to protect and heal communities and individuals, rather than just to punish. Moreover, when officers understand trauma, they can better engage and help victims and witnesses of crime. What I propose is training and education that prepare officers to be guardians who do not repeat the mistakes of policing’s racist past. Officers who know how to think critically and empathetically about policing in communities of color can begin not only to address the

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<sup>288</sup> Altovise Love-Craighead, “Building Trust through Trauma-Informed Policing,” Vera Institute of Justice, March 20, 2015, <https://www.vera.org/blog/police-perspectives/building-trust-through-trauma-informed-policing>.

fear, anger, and resistance that Black people have toward the police but also to end racialized policing. The police today are not responsible for the institutional racism that exists in police practices, but they are responsible for perpetuating the oppression and marginalization of Black people.

Since colonization, the United States was built on and has maintained the false belief of White superiority and Black inferiority. This is evident in the enslavement of Africans and the way the brutal, oppressive, and discriminatory treatment of Blacks evolved over centuries and continues today. Additionally, the brutal, unfair, and oppressive treatment affects the social, economic, and political health of Black people as a whole and has led to a lack of trust and increased resistance to routine police interactions. This resistance has perpetuated the problem of a punitive approach to the widespread societal issue of racism. Many Blacks see the police in their community as an unwelcome, oppressive force that serves no purpose other than to harass. Several studies document that Black youth in particular have a very negative and hostile view of the police.<sup>289</sup> This view is due to the aggressive police tactics that police use to address issues of crime and disorder.

In the United States, Blacks have not been valued or treated with respect and dignity, and the police have long been at the forefront of producing such harm. In contemporary times, when troubling interactions between the police and Blacks are videotaped and spread globally, the scope of the problem becomes visible. But it would be a mistake to think racialized policing is a new phenomenon. Rather, policing has a fraught racial history. The institution of policing—from departments to training, to leaders, to individual officers—needs to learn about, understand, and address the history of the relationship between racism and policing as well as acknowledge that contemporary strategies and policies have allowed this history to continue.

The police need to look deeper at how race and racism inform the realities that police deal with daily—issues of crime, addiction, poverty, mental illness, homelessness, domestic violence—and shape policing itself. The police must become concerned with and change the way they promote further harm for, rather than protection of, people of color.

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<sup>289</sup> Kerrison, Cobbina, and Bender, ““Your Pants Won’t Save You.””

It is possible for police to recognize the trauma that exists in the Black community and the history of police brutality, and this is how we must move forward.

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