What Exposes African Americans to Police Violence?

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The tragic deaths of African Americans at the hands of police officers have generated a public debate about race and policing. This is not the first time police violence against African Americans has been the predicate for a nationwide conversation about race. Likely, it won't be the last. Yet, for all the discussions we have had about race and excessive force over the past decade, our understanding of the phenomenon has not much improved. In part, this is because we continue to frame excessive force as a problem that derives from rogue police officers who harbor racial animus against African Americans. That some police officers employ excessive force as a means through which to express their racial animosity is undoubtedly true. But, to lump all or even most police officers in that basket obscures the structural dimensions of police violence and ignores significant findings from the field of social psychology suggesting that conscious racial animosity likely accounts for only a small percentage of racially-inflected police conduct. This Article broadens the analytical frame.

> *More specifically, the Article presents a theoretical model that articulates racialized police violence as a systemic and structural problem that cannot be solved by simply looking for and punishing "bad" police officers.*

INTRODUCTION

The recent, well-publicized tragic deaths of African Americans at the hands of police officers have generated a public debate about race and policing.[1] This is not the first time police violence against African Americans has been the predicate for a nationwide conversation about race.[2] Likely, it won't be the last.

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[1] *See, e.g.*, Julie Hirschfeld Davis, *Calling for Calm in Ferguson, Obama Cites Need for Improved Race Relations*, N.Y. TIMES (Aug. 18, 2014), http://www.nytimes.com/2014/08/19/us/calling-for-calm-in-ferguson-obama-cites-need-for-improved-race-relations.html; Cathleen Decker, *In Michael Brown Case, Race Rears Once Again for President Obama*, L.A. TIMES, Aug. 13, 2014, *available at* at A6, http://www.latimes.com/nation/politics/politicsnow/la-pn-michael-brown-obama-trayvon-martin-20140812-story.html, *archived at* http://perma.cc/F3FA-CR3H; Andrea Gallo, *Racial Divide in Response to Missouri Shooting, Poll Finds: Blacks Twice as Likely as Whites to Say Michael Brown's Death Raises Important Race Issues*, WALL ST. J. (Aug. 18, 2014), http://online.wsj.com/articles/racial-divide-in-response-to-missouri-shooting-poll-finds-1408393169 (giving results of Pew Research Center poll); Neil Irwin et al., *Persistent Inequality: America's Racial Divide, Charted*, N.Y. TIMES (Aug. 19, 2014), http://www.nytimes.com/2014/08/20/upshot/americas-racial-divide-charted.html?abt=0002&abg=1 (offering statistics indicating continuing structural discrimination against African Americans); Ben Kesling & Mark Peters, *Teen's Shooting Highlights Racial Tension — President Obama Calls for 'Reflection and Understanding,'* WALL ST. J., Aug. 13, 2014, at A3, *available at* http://www.wsj.com/articles/police-protect-identity-of-officer-involved-in-missouri-teens-shooting-1407861679 (noting that Obama's statement on the issue helped to turn Brown's shooting "into a national discourse on racial tension"); Cate Matthews, *Heartbreaking Illustrations Document the Last Words of Young, Unarmed Black Men*, HUFFINGTON POST (Aug. 21, 2014, 3:29 PM), http://www.huffingtonpost.com/2014/08/21/last-words-unarmed-black-men-shirin-barghi_n_5697813.html, *archived at* http://perma.cc/5LSH-29ED ("The recent shooting of Missouri teenager Michael Brown has revived a national conversation about race and police brutality . . . ."); Tanzina Vega & Megan Thee-Brenan, *Poll Shows Broad Divisions Amid Missouri Turmoil*, N.Y. TIMES (Aug. 21, 2014), http://www.nytimes.com/2014/08/22/us/on-ferguson-unrest-poll-shows-sharp-racial-divide.html?_r=0 (giving results of a New York Times/CBS News nationwide poll); *Face the Nation Transcripts August 17, 2014: Nixon, Brooks, Rogers*, CBS NEWS (Aug. 17, 2014, 2:01 PM), http://www.cbsnews.com/news/face-the-nation-transcripts-august-17-2014-nixon-brooks-rogers/, *archived at* http://perma.cc/8KKD-R4TU; *Meet the Press Transcript - August 17, 2014*, NBC NEWS (Aug. 17, 2014, 11:52 AM), http://www.nbcnews.com/meet-the-press/meet-press-transcript-august-17-2014-n182641, *archived at* http://perma.cc/P7VJ-QQMF; *Meet the Press Transcript - August 24, 2014*, NBC NEWS (Aug. 24, 2014, 11:35 AM), http://www.nbcnews.com/meet-the-press/meet-press-transcript-august-24-2014-n187871, *archived at* http://perma.cc/TJ6V-J2RU; *'This Week' Transcript: Missouri Gov. Jay Nixon*, ABC NEWS (Aug. 17, 2014), http://abcnews.go.com/ThisWeek/week-transcript-missouri-gov-jay-nixon/story?id=25008455.

[2] *See, e.g.*, Lee Sigelman et al., *Police Brutality and Public Perceptions of Racial Discrimination: A Tale of Two Beatings*, 50 POL. RESEARCH Q. 777, 778–80 (1997) (examining polling data regarding impact on nationwide public opinion about association between police brutality and race from March 1991 Rodney King beating and November 1992 beating death of Malice Green in Detroit); Michael Grunwald, *Immigrant Killed by Police Mourned*, WASH. POST, Feb. 13, 1999, at A3, *available at* http://www.washingtonpost.com/wp-srv/national/daily/feb99/bronx13.htm, *archived at* http://perma.cc/9S74-BAYU (discussing the New York City police shooting of unarmed African immigrant Amadou Diallo); Maria Hinojosa, *NYC*

Yet, for all the discussions we have had about race and excessive force over the past decade, our understanding of the phenomenon has not much improved. In part, this is because we continue to frame excessive force as a problem that derives from rogue police officers who harbor racial animus against African Americans.[3] That some police officers employ excessive force as a means through which to express racial animosity is undoubtedly true.[4] But, to lump all, or even most, police officers in that basket obscures

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Officer Arrested in Alleged Sexual Attack on Suspect, CNN (Aug. 14, 1997, 4:29 AM), http://www.cnn.com/US/9708/14/police.torture/, *archived at* http://perma.cc/5X7H-WY7F (discussing police beating and brutal sodomizing of Haitian immigrant Abner Louima in New York City); Alicia W. Stewart, *5 Ways the Rodney King Beating and LA Riots Changed America*, CNN (Jun. 18, 2012, 4:46 PM), http://inamerica.blogs.cnn.com/2012/06/18/5-ways-the-rod-ney-king-beating-and-la-riots-changed-america/, *archived at* http://perma.cc/UJ8Z-YZ9W. Incidents of police violence against African-American men are of course legion, and many also have risen to the level of national media attention. *See, e.g.*, Jenée Desmond-Harris, *Beyond Trayvon: Black and Unarmed*, THE ROOT (Jun 8, 2013, 5:00 PM), http://www.theroot.com/photos/2013/06/unarmed_black_men_shot_by_police_20_sad_stories.html, *archived at* http://perma.cc/J5DG-KU4Y (a photo gallery of twenty other unarmed African-American men shot and killed by police or security guards prior to the June 2013 murder trial of George Zimmerman for shooting 17-year-old Trayvon Martin).

[3] *See, e.g.*, Sherry F. Colb, *Why Is Torture "Different" and How "Different" Is It?*, 30 CARDOZO L. REV. 1411, 1464 (2009) ("For many Americans, Diallo's death came to symbolize and signify the racism of police officers in New York City and their astonishing willingness to unleash deadly force against a black man who posed no threat to anyone."); Abraham L. Davis, *The Rodney King Incident: Isolated Occurrence or a Continuation of a Brutal Past?*, 10 HARV. BLACKLETTER L.J. 67, 75 (1993) (noting the Christopher Commission's finding of a "significant number" of Los Angeles police officers "who resorted to the use of excessive force that was aggravated by overt racism"); Jesse Jackson, *Reclaiming Our Youth from Violence*, 36 B.C. L. REV. 913, 926 (1995) ("The Rodney King beating, that was a racist act."); Erik Luna, *Transparent Policing*, 85 IOWA L. REV. 1107, 1117, 1119 (2000) ("Modern instances of police racism are seared into the collective memory of minority communities: a beaten Rodney King lying prostrate in the street; the rape of Abner Louima; officers emptying their revolvers into an unarmed Amadou Diallo. . . . This is not to impugn the integrity of law enforcement in general. . . . Yet there are those few 'bad apples' that undermine the integrity of police, prosecutors, and the criminal justice system in general."); Ross D. Petty et al., *Regulating Target Marketing and Other Race-Based Advertising Practices*, 8 MICH. J. RACE & L. 335, 337 (2003) ("Yet we can still see evidence of racism throughout American culture: the police beating of Black motorist Rodney King in 1991, the shooting death of Amadou Diallo by police in New York . . . ."); *Frontline: The Legacy of Rodney King*, PBS, http://www.pbs.org/wgbh/pages/frontline/shows/lapd/race/king.html, *archived at* http://perma.cc/JW93-TV39 (noting that the Rodney King beating and the subsequent L.A. riots "brought to the forefront concerns about racism and police brutality within the L.A.P.D."); Robert Reinhold, *Violence and Racism are Routine In Los Angeles Police, Study Says*, N.Y. TIMES, Jul. 10, 1991, at A14, *available at* http://www.nytimes.com/1991/07/10/us/violence-and-racism-are-routine-in-los-angeles-police-study-says.html.

[4] For example, in his memoir, Rodney King recounted having heard an officer say, "[N-word] run, we're gonna kill you, [N-word] run[.]" *"I Would Have Pulled Over": Rodney King Speaks 20 Years After L.A. Riots*, KTLA NEWS (Apr. 24, 2012), http://health.masstopics.com/topic/i+/i-would-have-pulled-over-rodney-king-speaks-20-years-after.html, *archived at* http://perma.cc/G5NP-LCQ3. Those alleged racial epithets were preceded by the infamous "right out of 'Gorillas in the Mist'" (referring to a movie then screening in theaters) comment made in a police communication regarding an earlier incident that evening involving African Americans that was admitted into evidence at the trial of the officers involved in the King beating. *Judge Says Remarks on 'Gorillas' May Be Cited in Trial on Beating*, N.Y. TIMES, Jun. 12, 1991 at A24, *available at* http://www.nytimes.com/1991/06/12/us/judge-says-remarks-on-gorillas-may-be-cited-in-trial-on-beating.html.   Abner Louima

the structural dimensions of police violence and ignores significant empirical evidence from the field of social psychology suggesting that conscious racial animosity likely only accounts for a small percentage of racially-motivated conduct.[5] This Article draws on that evidence.[6] More specifically, the Article applies a range of findings from social psychology to empirically ground important dimensions of a theoretical model one of us developed to explain the persistence of police violence against African Americans.[7] Six features comprise the model:
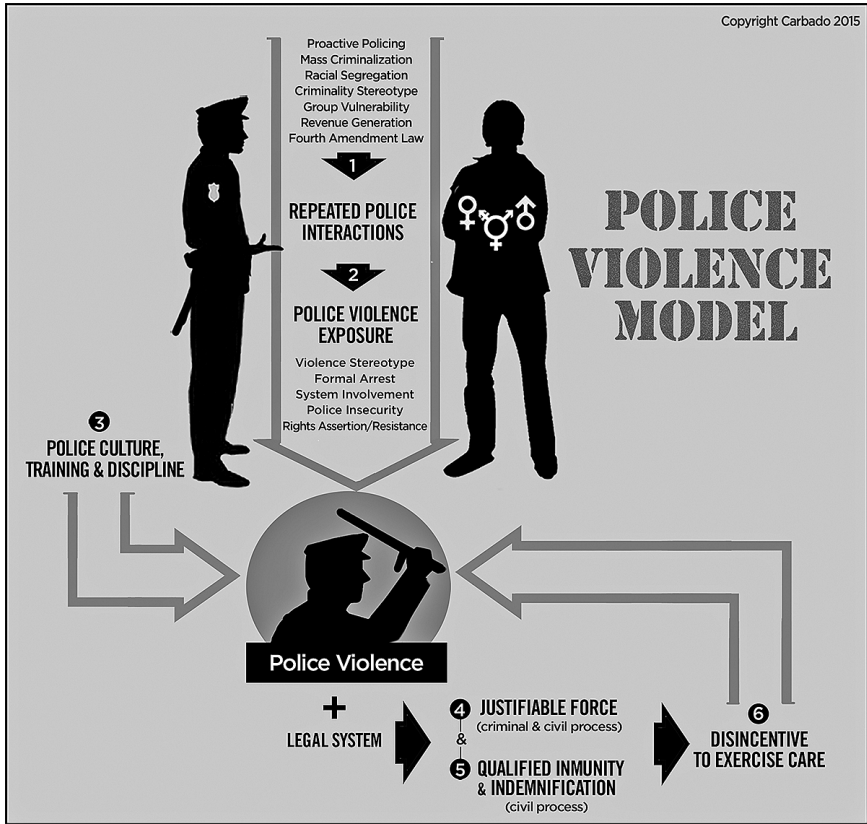
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reported his police attackers saying, "Take this, [N-word]," before he was brutally sodomized with the handle of a toilet plunger in a bathroom at the police station where the officers had taken him. Hinojosa, *supra* note 2.

    [5] *See generally* Anthony G. Greenwald & Linda Hamilton Krieger, *Implicit Bias: Scientific Foundations*, 94 CALIF. L. REV. 945 (2006) (offering an overview of the implicit bias research); Jerry Kang, *Trojan Horses of Race*, 118 HARV. L. REV. 1489 (2005) (describing how implicit racial biases are reinforced by news programming); Jerry Kang et al., *Implicit Bias in the Courtroom*, 59 UCLA L. REV. 1124 (2012) (describing the ways implicit bias impacts perceptions of criminal defendants and employment discrimination plaintiffs); Jerry Kang & Mahzarin R. Banaji, *Fair Measures: A Behavioral Realist Revision of "Affirmative Action,"* 94 CALIF. L. REV. 1063 (2006) (discussing the relevance of implicit bias research to discussions of affirmation action); Jerry Kang & Kristin Lane, *Seeing Through Colorblindness: Implicit Bias and the Law*, 58 UCLA L. REV. 465 (2010) (advocating for legal structures that acknowledge rather than ignore implicit racial biases); Linda Hamilton Krieger & Susan T. Fiske, *Behavioral Realism in Employment Discrimination Law: Implicit Bias and Disparate Treatment*, 94 CALIF. L. REV. 997 (2006) (introducing the concept of behavioral realism); Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987) (discussing the challenges of demonstrating intentionality in expressions of contemporary racial bias); Justin D. Levinson, *Forgotten Racial Equality: Implicit Bias, Decisionmaking, and Misremembering*, 57 DUKE L.J. 345 (2007) (describing original and prior research on the ways in which judge and jury decisions are impacted by implicit racial bias).

    [6] This is not to say there has been no effort. Song Richardson has recently mobilized some of the implicit bias literature in the context of policing. *See* L. Song Richardson, *Cognitive Bias, Police Character, and the Fourth Amendment*, 44 ARIZ. ST. L.J. 267, 279–82 (2012).

    [7] For an articulation of the development of the model, see Devon W. Carbado, *Police-on-Black Violence: A Provisional Model of Some of the Causes*, GEO. L.J. (forthcoming 2016) (manuscript on file with author). As you will see, the model integrates individual (e.g., biases and stereotypes) and institutional (e.g., legal processes) predicates of police violence. It does so in an effort to elucidate how structural factors, like racial segregation or Fourth Amendment Law, serve to reinforce and create incentives for officers to act on personal biases and stereotypes about black Americans. Moreover, the integrated approach the model reflects (combining structural and individual factors) helps to explain how officers' multiple interactions with black Americans in the context of policing serve to reinforce their conviction that racially-disproportionate policing is justified and necessary.

Proactive Policing
Mass Criminalization
Racial Segregation
Criminality Stereotype
Group Vulnerability
Revenue Generation
Fourth Amendment Law

1

**REPEATED POLICE
INTERACTIONS**

2

**POLICE VIOLENCE
EXPOSURE**

Violence Stereotype
Formal Arrest
System Involvement
Police Insecurity
Rights Assertion/Resistance

**POLICE
VIOLENCE
MODEL**

3
**POLICE CULTURE,
TRAINING & DISCIPLINE**

Police Violence

+

LEGAL SYSTEM

4 JUSTIFIABLE FORCE
(criminal & civil process)
&
**5 QUALIFIED INMUNITY
& INDEMNIFICATION**
(civil process)

6
**DISINCENTIVE
TO EXERCISE CARE**

Carbado, *supra* note 7.

- At Point 1, the following variables converge to render African Americans vulnerable to repeated police interactions: (1) Proactive policing, including "broken windows" policing (this directs police officers to focus on "high crime areas" and low-level signs of disorder); (2) Mass criminalization (this criminalizes relatively non-serious activities and facilitates the diffusion of criminal justice actors and practices into other dimensions of the welfare state, including schools and public benefits offices); (3) Racial segregation (this both concentrates African Americans in "high crime areas" in which entire communities are criminally suspect and makes African Americans "out of place" and thus suspicious when they are not in predominantly black areas); (4) Racial stereotypes of African Americans as criminally inclined (these render African Americans hypervisible to the police as presumptively persons of interest); (5) Group vulnerability (this increases the likelihood that the police will target African Americans, particularly those who are marginalized both inside and outside of the black community (for example, LGBTQ peo-

ple), because vulnerable groups are less likely to report instances of police abuse and less likely to be believed or to engender public sympathy when they do); (6) Revenue generation (this encourages the police to arrest or issue citations to members of vulnerable groups as a mechanism to raise revenue for the city or the police department or to effectuate promotions and pay increases); and (7) Fourth Amendment doctrine (this area of law is supposed to protect African Americans from unreasonable searches and seizures but instead enables ongoing contact between African Americans and the police). The convergence of the foregoing factors subjects African Americans to repeated police interactions.

• At Point 2, repeated police interactions create a risk of police violence exposure. There are a number of reasons for this. First, the simple fact of repeated police interactions overexposes African Americans to the possibility of police violence. Second, the fact that African Americans' exposure to the police occurs against the background of stereotypes of African Americans as violent and dangerous increases the likelihood that police officers will interact with African Americans from the perspective that violent force is both necessary and appropriate. Third, the more exposed African Americans are to the police, the greater the probability that they will be arrested. This is important because an arrest — being handcuffed and placed in the back of a patrol car — increases the likelihood that an officer will use force.

Fourth, black peoples' repeated exposure to the police potentially increases their incarceration rates or facilitates some form of system involvement, and the incarceration and system involvement of African Americans likely mediates how police officers interact with black people. Which is to say, police officers who interact with a black person on the assumption that that person has had some prison/jail experience, or is under some form of criminal justice supervision, are less likely to exercise care with respect to how they engage the person, less likely to be rights-respecting in the interaction, and more likely to employ aggressive or violent policing.

Fifth, the more numerous African Americans' contacts with the police are, the more vulnerable African Americans are to a set of violence-producing insecurities or vulnerabilities police officers experience in the context of police encounters.[8] For instance

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[8] *See infra*, Part II.C.2.

"masculinity threat,"[9] is an officer's sense that his masculinity is being undermined or challenged during an interaction.[10] Other things being equal, officers who experience this threat are more likely to employ violence than officers who do not. People who have multiple interactions with the police are more exposed to police insecurities, like "masculinity threat," than people who do not.

Sixth, and finally, African Americans' ongoing experiences with the police may cause them to confront or resist police authority, assert rights, or flee upon seeing or encountering the police, each of which can precipitate police violence.

- At Point 3, police training, culture, and administrative discipline mechanisms potentially contribute to police violence. The point here is that police violence is a likelier outcome when officers are poorly trained, work in cultures that promote violence, and suffer no administrative sanctions for their acts of violence.

- Points 4 and 5 highlight plausible interactions between police violence and the legal system. Point 4 reveals that, in both the civil and the criminal context, police violence can be rendered a justifiable use of force. This outcome potentially fosters police violence by diminishing the risk of legal sanction police officers assume when they employ violent force.

- Point 5 focuses on the civil process, noting first that the doctrine of qualified immunity insulates police officers who engage in violent conduct from civil liability. Point 5 also makes clear that even when police officers are found civilly liable, or when their cases are settled, cities and municipalities almost always indemnify the officers who therefore suffer no financial liability.

- At Point 6, the combined effects of Points 4 and 5 produce a disincentive for police officers to be careful. If police officers know that their violent conduct will be considered justifiable force, or that they will be immune from civil liability or indemnified if they are found civilly liable, they are less likely to exercise care with respect to when and how they employ violent force.

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[9] *See infra*, Part II.C.3.

[10] *See* L. Song Richardson & Phillip Atiba Goff, *Interrogating Racial Violence*, 12 Ohio St. J. Crim. L. 115, 128–31 (2014) (also discussing stereotype threat at pp. 124–28); L. Song Richardson, *Police Racial Violence: Lessons from Social Psychology*, 83 Fordham L. Rev. 2961, 2970 (2015).

This Article focuses on Point 2 of the model, the police violence exposure dynamic. Before we describe the precise contours of this dynamic, we should say a few words about the racial and gender parameters of our analysis. First, though the description of the model we have provided is grounded in police interactions in which the officers are white and the civilians are black, the theoretical reach of our argument transcends this identity configuration. Parts of the model apply to police officers who are not white and to people of color who are not black. Though we do not discuss those dynamics in this Article, we want to be clear that police violence is a problem for other communities of color and that police officers of color are implicated in the problem.[11]

Second, our examples focus specifically on black men's experiences with the police.[12] To make clear that black women are victims of racial profiling and police violence, one of us expressly discusses black women's vulnerability to police violence in another paper.[13] Moreover, and as you may have already noted, the embodiment of blackness in the model — the figure of the black person we visually depict — is intersectionally constructed to signal that black people across gender and sexual identities and indeed other axes of difference experience police violence.[14] Thus, while the examples the Article explicates focus on black men, we want to reiterate that we recognize the multiracial and intersectional dimensions of police violence.

The rest of this Article proceeds as follows. Part I describes the social cognitions — including both explicitly held beliefs and implicitly held associations — that lead to police violence against African Americans.

Part II explicates the remaining dimensions of the police violence exposure phenomenon. Specifically, this Part reveals how frequent police contact potentially leads to arrests, facilitates system involvement, including incarceration, engenders police insecurities, and generates resistance to authority or the assertion of rights. Each of the foregoing effects can precipitate police violence. Part II explains precisely how. We then conclude with a

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[11] These are issues we are taking up elsewhere. *See, e.g.*, Devon W. Carbado & Patrick Rock, *The Black Police* (manuscript on file with authors).

[12] In part, this decision was made based on the fact that most empirical research on racial bias has focused on stereotypes of black men, to the neglect of research on black women. For a notable exception, and a discussion of this issue more broadly, see generally Valerie Purdie-Vaughns & Richard P. Eibach, *Intersectional Invisibility: The Distinctive Advantages and Disadvantages of Multiple Subordinate-group Identities,* 59 Sex Roles 377 (2008).

[13] Devon W. Carbado, The Legalization of Racial Profiling: Setting the Stage for Police Violence (manuscript on file with author). For additional work on black women's vulnerability to police violence, see also Kimberlé Williams Crenshaw & Andrea J. Ritchie, Say Her Name: Resisting Police Brutality Against Black Women (2015), *available at* http://static1.squarespace.com/static/53f20d90e4b0b80451158d8c/t/560c068ee4b0af26f72741df/1443628686535/AAPF_SMN_Brief_Full_singles-min.pdf, *archived at* perma.cc/5374-86YJ.

[14] *See* Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics,* 1989 U. Chi. Legal F. 139 (1989) (defining intersectionality); Devon W. Carbado, *Colorblind Intersectionality,* 38 Signs 811 (2013) (same).

reminder of the importance of moving discussions of police violence beyond the "bad cop" frame to a structural understanding of the problem.

I.   How Racial Biases Produce Police Violence

This Part begins the discussion of how repeated police interactions expose African Americans to police violence. The basic idea is this: To the extent that, under models like broken windows policing and increased police presence in urban schools, African Americans are disproportionately exposed to the police,[15] they are also disproportionately exposed to the possibility of police violence. This is not to say that police interactions inevitably culminate in violence. Obviously, they do not. The point is rather that a group's ongoing exposure to the police puts its members within reach of police violence and makes them highly salient as targets. The flipside is that one's underexposure to police diminishes one's vulnerability to police violence.[16] If one is never stopped by the police, the chance of being killed or physically abused by the police is virtually nil. This Part discusses how perceptions of African Americans as violent and dangerous compound this general exposure problem.

It bears noting, as a preliminary matter, that the perception of African Americans as violent and dangerous relates to, but also departs from, the reasons police officers might stop an African-American man to begin with. Theoretically, if officers were merely acting on a mistaken association (for example, that African-American men are criminally inclined), they might approach African-American men more often, or with heightened suspicion, only to have those associations disproven or disconfirmed. This would effectively terminate the encounter, and the suspect would be free to leave. Yet, data on disparities in frisks and use of force with black men suggests that even when officers approach a black man and find no evidence of wrongdoing, officers often prolong or escalate the encounter rather than terminate it.[17] This Part explains why. To do so, it draws on empirical evidence showing that African-American men are associated not only with criminality but also with violence and dangerousness.

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[15] There is now a broad literature on the degree to which African Americans are under the supervision of the criminal justice system. *See, e.g.*, Paul Butler, *The Evil of American Criminal Justice: A Reply*, 44 UCLA L. Rev. 143, 143–44 (1996); Dorothy E. Roberts, *The Social and Moral Cost of Mass Incarceration in African American Communities*, 56 Stan. L. Rev. 1271, 1272 (2004); Michelle Alexander, The New Jim Crow: Mass Incarceration in the Age of Colorblindness, 124–25 (2010) (noting the frequency with which black youth encounter police). The frequency with which young black men interact with the police — on top of the disparate rates of black incarceration — justifies the "under the supervision of police" language we here employ.

[16] This flipside is another example of what Critical Race Theorists have been arguing for some time — namely, that discrimination produces both advantages and disadvantages. *See generally* Cheryl I. Harris, *Whiteness as Property*, 106 Harv. L. Rev. 1707 (1993).

[17] *See generally* Ronald Weitzer & Steven A. Tuch, *Race and Perceptions of Police Misconduct*, 51 Soc. Probs. 305 (2004).

There is robust empirical evidence in the field of social psychology that white Americans associate African-American men with violence and dangerousness.[18] Consider first "shooter bias." Here, social psychologists measure how quickly participants respond to images of black and white men pictured in one of two scenarios: holding a violent object (for example, a gun) or a non-violent object (for example, a cell phone).[19] More precisely, participants are asked to "shoot" the men holding violent objects and "not shoot" the men holding non-violent objects. Both the "shooting" and the "non-shooting" responses require the participant to press a particular key on the keyboard.[20] The basic finding is that participants are faster to "shoot" blacks with guns than whites with guns, and faster to "not shoot" whites without guns than blacks without guns.[21] One way to read these findings would be to suggest that it easier for participants to perceive that a black person is armed than it is for them to perceive that a white person is armed, and easier for them to perceive that a white person is unarmed than it is for them to perceive that a black person is unarmed. Scholars suggest that stereotypes associating African Americans with violence provide at least a partial explanation for this difference.[22]

There is reason to believe that "shooter bias" might be even more pronounced among police officers. A body of research suggests that people are particularly prone to the kind of error "shooter bias" reflects when they are in mortality-salient circumstances — that is, circumstances in which they are made to think about their death.[23] Because it is reasonable to frame everyday policing as a mortality-salient context, the higher rates of identification error associated with mortality-salient scenarios may be endemic to police officer life.

Another line of research provides complementary evidence of the associations between race and violence/dangerousness. Central to this research is the fact that faces of black men attract more visual attention from white respondents than comparable faces of white men. Specifically, Sophie

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[18] This is not to say that African Americans have "immaculate perceptions." *See* Kang, *Trojan Horses of Race*, *supra* note 5, at 1503–04. They do not. *See, e.g.,* Brian A Nosek et al., *Pervasiveness and Correlates of Implicit Attitudes and Stereotypes,* 18 EUR. REV. SOC. PSYCHOL. 1, 13 (2007) (evidence of implicit bias among blacks); *see also* Sandra Graham & Brian Lowery, *Priming Unconscious Racial Stereotypes about Adolescent Offenders,* 28 LAW & HUM. BEHAV. 483, 486–87 (evidence of self-stereotyping among blacks). But this paper focuses on white police officers' interactions with African-American men. In another paper, we address how black police officers are implicated in the police violence problem. *See* Devon W. Carbado & Patrick Rock, *The Black Police* (draft manuscript on file with authors).

[19] Joshua Correll et al., *The Police Officer's Dilemma: Using Ethnicity to Disambiguate Potentially Threatening Individuals*, 83 J. PERSONALITY & SOC. PSYCHOL. 1314, 1315 (2002).

[20] *Id.* at 1315–16.

[21] *Id.* at 1317.

[22] *See generally* B. Keith Payne, *Prejudice and Perception: The Role of Automatic and Controlled Processes in Misperceiving a Weapon*, 81 J. PERSONALITY & SOC. PSYCHOL. 181, 185–86 (2001).

[23] Kristopher I. Bradley & Shelia M. Kennison, *The Effect of Mortality Salience on Weapon Bias*, 36 INT'L J. INTERCULTURAL REL. 403, 406–07 (2012).

Trawalter and colleagues found that, when both a black face and a white face were simultaneously and very quickly flashed in different positions on the screen, participants' gaze was differentially attracted to the area where the black face had been.[24] This sort of early attention to images is more typically seen in response to biologically threatening stimuli, like images of snakes and spiders.[25] The researchers therefore interpreted their findings as evidence that blacks in America have become so associated with danger that even viewing them has come to trigger the same kind of heightened attention and awareness people manifest in the presence of biologically threatening stimuli. While this hyper-attentiveness has also been demonstrated in response to other social stimuli, such as angry faces,[26] it is notable that black men attract attention even in the absence of any aggressive, angry, or threatening facial content. In other words, a black man who is providing literally no evidence of threat is nonetheless likely to attract the attention of police officers, so ingrained are the stereotypes linking him with threat.[27]

Finally, Rebecca Hetey and Jennifer Eberhardt have shown that receiving confirmation of the association between black men and crime — viewing or hearing about black criminals — has the potential to produce even more punitive policing.[28] Roughly, their study suggests that the higher people's perception of the incarceration rates of African Americans, the more concerned they were about crime, which in turn predicted greater support of policies like stop and frisk policing.[29] In this way, the authors argued, perceptions of prisons as disproportionately black promote support for the very policies that created such disproportionality. The implications of this research for policing are profound: The repeat interactions that police officers have with African-American men could make officers more inclined to engage in, and legitimize, violent (or punitive) policing against them. To put

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[24] Sophie Trawalter et al., *Attending to Threat: Race-based Patterns of Selective Attention*, 44 J. EXPERIMENTAL SOC. PSYCHOL. 1322, 1323 (2008).

[25] For a review of attentional biases in response to biological threats, see generally Arne Ohman & Susan Mineka, *Fears, Phobias, and Preparedness: Toward an Evolved Module of Fear and Fear Learning*, 108 PSYCHOL. REV. 483 (2001).

[26] *See, e.g.*, Robbie M. Cooper & Stephen R. H. Langton, *Attentional Bias to Angry Faces Using the Dot-probe Task? It Depends When You Look for It*, 44 BEHAVIOUR RES. & THERAPY 1321, 1321 (2006).

[27] *See also* Patricia G. Devine, *Stereotypes and Prejudice: Their Automatic and Controlled Components*, 56 J. PERSONALITY & SOC. PSYCHOL. 5, 11–12 (1989); John F. Dovidio et al., *Racial Stereotypes: The Contents of Their Cognitive Representations*, 22 J. EXPERIMENTAL SOC. PSYCHOL. 22, 29–32 (1986). Both offer evidence that seeing words related to African Americans, even without conscious awareness, leads whites to respond faster to stereotype-consistent words and to perceive a racially-ambiguous face as more hostile. *See also generally* Jennifer L. Eberhardt et al., *Seeing Black: Race, Crime, and Visual Processing*, 87 J. PERSONALITY & SOC. PSYCHOL. 876 (2004) (showing that the association of black men and crime is bidirectional: thinking about black men brings to mind thoughts of crime, and, more disturbingly, thinking about crime brings to mind thoughts of black men).

[28] Rebecca C. Hetey & Jennifer L. Eberhardt, *Racial Disparities in Incarceration Increase Acceptance of Punitive Policies*, 25 PSYCHOL. SCI. 1949, 1950–52 (2014).

[29] *See id.*

the point more provocatively, the more racially-disproportionate police inter-actions are, writ large or within a particularly geographic policing domain, the greater the likelihood that police officers will feel justified in employing violence against any particular African-American man.

Whether or not one finds any of the foregoing evidence particularly compelling, we should be careful to note an important limitation: The evi-dence we have thus far described does not come from studies in which po-lice officers were the research subjects. Fortunately, a few such studies do exist. For example, the faster identification of blacks with guns than whites with guns has been replicated with a sample of police officers.[30] As with the earlier studies, researchers interpreted the ease with which participants — this time police officers — shoot black targets as evidence that the partici-pants perceived black men as threatening.[31]

Notwithstanding evidence suggesting that police officers have shooter bias, it is difficult to contextualize police officers' biases without some com-parison to individuals who are not officers. It could be, for instance, that officers actually show less bias than civilians, due to their increased training in shooting scenarios. Or it might be that they show more bias, due to their frequent interactions with ethnic minority men in potentially dangerous situ-ations (resulting in a more intense association of danger and minority man-hood). Correll and colleagues explored this question, comparing Denver police officers to civilians from the same neighborhoods, sampled at the same time, to try to control for the range of neighborhood and temporal factors that could influence racial biases. Interestingly, the researchers found that police officers and civilians showed similar processing delays for counter-stereotypical images (e.g., a black person with a non-violent object) in low time pressure scenarios. The researchers also found that officers in fact inhibited their biased responding, showing no racial bias in actual shoot-ing errors.[32] The authors concluded that training in shooting scenarios is sufficient to overcome racial bias, provided there is sufficient time to inhibit the primed response.[33]

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[30] Melody S. Sadler et al., *The World Is Not Black and White: Racial Bias in the Decision to Shoot in a Multiethnic Context*, 68 J. Soc. Issues 286, 297–98 (2012).

[31] *Id.* The researchers' explanation is that perceiving a black man primes feelings of threat, and aggressive responses to threat from an out-group are common. Because threat and the possibility for an aggressive response are already primed, when the opportunity to "shoot" arrives, the person engages in it more easily (and therefore more quickly). In contrast, when the demand to "not shoot" comes (e.g., when they process a non-violent object), it requires deliberate effort, and extra time, to override the impulse to respond aggressively.

[32] Joshua Correll et al., *Across the Thin Blue Line: Police Officers and Racial Bias in the Decision to Shoot*, 92 J. Personality & Soc. Psychol. 1006, 1012 (2007). In contrast to the officers, civilians did show an anti-black bias, with more shooting errors against blacks with-out guns and more not-shooting errors in response to whites with guns. In other words, while both officers and civilians showed processing delays, indicating an implicit bias, officers were able to overcome that bias in their actual shooting behavior while civilians were not.

[33] *Id.* at 1020–21.

The officers' accurate shooting raises an important issue, which is whether the association of blackness with danger is a real problem, given that white police officers still make the accurate decision in many of these trials, even if it is delayed.[34] Unfortunately, research using the same paradigm, but under stricter time pressure, indicates that errors emerge in these more rushed moments. Participants, including a sample of police officers, responded to time pressure by speeding up decisions at the cost of accuracy. Specifically, individuals tended to make stereotype-congruent mistakes, such that they more often shot black targets with tools and failed to shoot white targets with guns.[35] This suggests that, while officers in the lab were able to overcome their association of minority men and danger to some extent, those same officers may not have the capacity to respond accurately in the context of stressful, split-second policing decisions.

To summarize, a range of empirical studies detail the robust associations between black men on the one hand, and aggression, violence, and criminality on the other. This is important because the more interactions police officers have with black men, the greater the likelihood that any one of those encounters will trigger the foregoing racial stereotypes and precipitate violence.

The problem is potentially even worse. Police interactions may help to entrench the very racial stereotypes on which those interactions are based. While we are aware of no direct empirical support for this feedback dynamic, studies using mug shots partially support our claim. In one study, whites who viewed mug shots of black faces for just five seconds of a ten-minute newscast supported punitive remedies more than participants who did not watch that newscast. The same pattern did not emerge for participants who saw white mug shots, suggesting that exposure to the black mug shots was triggering and reproducing racial stereotypes of black men's criminality, which prompted the support for punishment.[36] Repeated exposure to black men could be having a "mug-shots-like" effect on police officers. Each time they interact with a black man on the basis of the assumption that black men are dangerous, it may further entrench the association between black men and violence.

The fact that police officers may stop many black men who do not exhibit violent behavior would not necessarily displace the association of black men with violence. This is because we tend to exceptionalize counter-stereotypical exemplars ("This black person is an exception to the general

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[34] Sadler et al., *supra* note 30, at 307.

[35] *See* Correll et al., *supra* note 32, at 1019; Correll et al., *supra* note 19, at 1319; *see also* E. Ashby Plant et al., *Eliminating Automatic Racial Bias: Making Race Non-diagnostic for Responses to Criminal Suspects*, 41 J. EXPERIMENTAL SOC. PSYCHOL. 141, 150 (2005) (demonstrating that police officers, before learning takes place, show biases).

[36] Franklin D. Gilliam, Jr. & Shanto Iyengar, *Prime Suspects: The Influence of Local Television News on the Viewing Public*, 44 AM. J. POL. SCI. 560, 567–68 (2000).

rule that black people are violent").[37] Moreover, unlike stereotype-confirming data, stereotype-disconfirming data is not what psychologists might describe as "cognitively sticky."[38] We discard it relatively easily.[39] Finally, a police officer could believe that it is precisely because he engages all or most black men aggressively as a precautionary measure, that many of them will not actually manifest violence in the context of a particular encounter. Under this view, the absence of violence on the part of any black man does not disrupt the stereotype of black men's violence but rather affirms the need to employ aggressive policing as a prophylactic (just in case) strategy.

The role policing potentially plays in entrenching racial stereotypes might be particularly pernicious vis-à-vis African-American boys. Research demonstrates that black children are far more likely than their white peers to be sentenced as adults,[40] and that police officers themselves see black youth as older and more culpable than white youth.[41] Evidence suggests that this age acceleration phenomenon is directly linked to stereotypes in at least three ways.

First, there is a strong correlation between police officers' association of African Americans with apes and their estimations of the age and culpability for serious crimes of black youth. Specifically, the more police officers implicitly dehumanized African Americans as apes, the more likely they were to overestimate both the age and culpability of black youth.[42] Second, the African American/ape association also predicted the degree to which officers employed force against black youth. Once again, the stronger an officer's implicitly held black/ape association, the more likely that officer was to have engaged in violence against black youth.[43]

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[37] For a review of research on this process, termed stereotype "subtyping," see Zoë Richards & Miles Hewstone, *Subtyping and Subgrouping: Processes for the Prevention and Promotion of Stereotype Change,* 5 PERSONALITY & SOC. PSYCHOL. REV. 52, 53–57 (2001). Stereotypes are also upheld by seeing individual actions as exceptional to the target's typical pattern or not intrinsically motivated. *See, e.g.,* Jeffrey W. Sherman et al., *Prejudice and Stereotype Maintenance Processes: Attention, Attribution, and Individuation*, 89 J. PERSONALITY & SOC. PSYCHOL. 607, 613–14 (2005) (showing that prejudiced individuals perceived stereotype-inconsistent behavior of a gay man to be externally, situationally motivated while they perceived stereotype-consistent behavior to be internally, dispositionally motivated).

[38] See Margaret Chon, *Sticky Knowledge in Copyright,* 2011 WIS. L. REV. 177 nn.64–66 (2011) for a discussion of cognitive stickiness and the role of implicit biases in it.

[39] *See generally* Jack Fyock & Charles Stangor, *The Role of Memory Biases in Stereotype Maintenance*, 33 BRIT. J. SOC. PSYCHOL. 331 (1994) (reviewing evidence that people tend to remember stereotype-consistent information provided about real social groups better than stereotype-inconsistent information provided about those groups).

[40] EILEEN POE-YAMAGATA & MICHAEL JONES, NATIONAL COUNCIL ON CRIME AND DELINQUENCY, AND JUSTICE FOR SOME: DIFFERENTIAL TREATMENT OF YOUTH OF COLOR IN THE JUSTICE SYSTEM 28–30 (2000).

[41] Phillip Atiba Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. PERS. & SOC. PSYCHOL. 526, 535 (2014).

[42] *Id.*

[43] *Id.* The study was structured to link the results of the psychological test to individual officers' historical use of force throughout the officers' career. *See id.* at 533.

Third, quite apart from the foregoing findings, it is reasonable to as-
sume that the more interactions black boys have with the police, the more
criminalized these youth will become in the eyes of officers. Recall that we
discussed a version of the feedback dynamic (police interactions entrenching
the stereotypes on which they are based) with respect to black men. Likely,
the effect obtains with respect to black boys as well. To the extent that
police interactions facilitate the criminalization of black boys, they also
render black boys less cognizable as youth.[44] In this way, repeated police
interactions not only trade on but also facilitate the perception of black boys
as what one might call "child-adults" and, more specifically, "child-men."[45]
That is to say, police interactions are part of a broader set of social practices
that reconstitute black boys so that they barely have currency as troubled
teens, let alone children in need of protection. Rather, they are seen as puta-
tive black men — or black men in waiting — who deserve discipline, social
control, and punishment.

The broader point we are making is that racial biases, including but not
limited to stereotypes, are an important mediating factor between police con-
tact and police violence. There are other mediating factors that bear empha-
sizing. We discuss them in Part II. Together, Parts I and II illustrate some of
the ways in which ordinary police interactions expose African-American
men to the possibility of police violence.

II.   How Arrests, System Involvement/Incarceration, Police Insecurity, & Resistance to Authority Produce Police Violence

This Part identifies four additional factors that mediate the relationship
between police contact and police violence: (1) arrests, (2) system involve-
ment/incarceration, (3) police insecurity, and (4) resistance to police author-
ity or assertion of rights.[46] We discuss each factor in turn.

A.   Arrests

There are several reasons to believe that arrests may put black men at
additional risk of violence. First, in the context of executing an arrest, police
officers almost always employ some form of force — handcuffing the per-
son and forcing him into the back of a patrol car. This process can be more
or less violent depending on how the officer manages it. Second, an officer

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[44] This process would compound the existing phenomenon of whites already seeing black
children labeled as felony suspects as older than they are and older than age-matched white
children. *Id.* at 532.

[45] Black girls are vulnerable to similar dynamics and are effectively treated as child-
women.

[46] Because the literatures from which we will draw to explicate these effects are most
developed with respect to African-American men, we will employ them as the exemplars.

may believe that exercising force in the context of an arrest will create a disincentive for the person being arrested to act out in any way en route to the police station. Third, the simple fact of arrest, or the way in which the officer executes it, could engender resistance on the part of the person being arrested. That, in turn, could escalate the officer's use of force. Finally, the fact that arrests of black men occur against the background of stereotypes of black men as violent and dangerous likely compounds each of the preceding dynamics.

B.   System Involvement/Incarceration

Black people's repeated interaction with the police increases their rates of incarceration or system involvement.[47] This is an important factor in the model for two reasons. First, an officer's knowledge of the degree to which black people are incarcerated or otherwise under the supervision of the criminal justice system could shape how that officer interacts with them.[48] That is to say, a police officer might approach African Americans from the perspective that they have had at least some carceral experience. This could lower the officer's level of regard[49] for black people and heighten his level of anxiety about safety,[50] both of which would increase the likelihood that the officer's conduct becomes violent.

Second, knowledge of the degree to which people are incarcerated could have the effect of promoting punitive policing. Here again, Hetey and Eberhardt's study is pertinent. Recall that their research showed that, as between two groups of individuals, where individuals in Group A perceive the incarceration rate of African Americans to be higher than individuals in Group B, members of Group A were subsequently more afraid of crime, which in turn predicted greater support for more aggressive law enforcement practices.[51] The question is whether police officers' awareness of the over-incarceration of African-American men and women could have a similar

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[47] *See* James Forman, Jr., *Racial Critiques of Mass Incarceration: Beyond The New Jim Crow*, 87 N.Y.U. L. Rev. 21, 39 (2012) ("[P]olicing practices are a significant source of racial disparity in incarceration rates.").

[48] This proposition builds directly on the work of Hetey & Eberhardt, *supra* note 28. We propose that the responses they observed in a short term manipulation of civilians' perception of prison populations are likely to play out in profound ways among officers who personally encounter a disproportionate number of incarcerated blacks.

[49] *See generally* Regina Austin, *"The Shame of It All": Stigma and the Political Disenfranchisement of Formerly Convicted and Incarcerated Persons*, 36 Colum. Hum. Rts. L. Rev. 173 (2004).

[50] *Id.* at 178–79 ("Convicts in general are assumed to be 'tough, mean, sneaky, dangerous, aggressive, and untrustworthy' and are labeled as such." (quoting Gerhard Falk, Stigma: How We Treat Outsiders 330 (2001))); Adrienne Lyles-Chockley, *Transitions to Justice: Prisoner Reentry as an Opportunity to Confront and Counteract Racism*, 6 Hastings Race & Poverty L.J. 259, 269 (2009) (describing how formerly incarcerated people, especially black ex-offenders, are viewed by society as "dangerous, aggressive, and unworthy of trust").

[51] Hetey & Eberhardt, *supra* note 28, at 2–4.

effect on endorsement of punitive policing. Researchers have not studied this possibility, but Hetey and Eberhardt's study certainly invites us to think about it.

C.   Police Insecurity

There are a number of insecurities that police have, or multiple ways in which they may feel threatened in the context of police interactions, that may enhance the likelihood of police violence. These insecurities derive from police officers' concerns about (1) social dominance, (2) physical safety, (3) masculinity, and (4) racism. Empirical evidence suggests that police officers who feel threatened or vulnerable along any of the foregoing lines are more likely to engage in acts of violence than officers who do not feel so threatened.

1.   Social Dominance Threat

Social dominance theory refers to the idea that stability in hierarchical societies like the United States is sustained through the normative endorsement of ideologies that reinforce and even promote the status quo.[52] These hierarchy-enhancing ideologies minimize conflict by dictating how resources and social status ought to be distributed. For instance, racial ideologies that presume the inferior effort or ability of a particular racial group stabilize the hierarchy by implying that the uneven distribution of resources to the dominant racial group is just and natural.[53] In contrast, hierarchy-attenuating ideologies work to reduce inequality, and include philosophies that advocate substantive equality for all people.[54]

To measure a person's investment in social dominance, Pratto, Sidanius, and colleagues developed a social dominance orientation (SDO) scale. The theorists considered SDO

> to be a general attitudinal orientation toward intergroup relations, reflecting whether one generally prefers such relations to be equal, versus hierarchical, that is, ordered along a superior-inferior dimension. The theory postulates that people who are more social-dominance oriented will tend to favor hierarchy-enhancing ideologies and policies, whereas those lower on SDO will tend to favor hierarchy-attenuating ideologies and policies. SDO is thus the

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[52] Felicia Pratto et al., *Social Dominance Orientation: A Personality Variable Predicting Social and Political Attitudes*, 67 J. PERSONALITY & SOC. PSYCHOL. 741, 741 (1994) ("The theory postulates that societies minimize group conflict by creating consensus on ideologies that promote the superiority of one group over others. . . . To work smoothly, these ideologies must be widely accepted within a society, appearing as self-apparent truths; hence we call them *hierarchy-legitimizing myths*.").

[53] *See id.* at 742–43.

[54] *See id.* at 741–42.

central individual-difference variable that predicts a person's ac-
ceptance or rejection of numerous ideologies and policies relevant
to group relations.[55]

Although described as an individual difference variable, SDO is partly
determined by one's social position (e.g., social group memberships) in life.
Individuals who benefit more from the current hierarchy (e.g., members of
high-status groups) tend to also more strongly endorse social dominance-
orientated commitments, which include such statements as "This country
would be better off if we worried less about how equal people are" and "It is
really not that big a problem if some people have more of a chance in life
than others."[56] Men, for instance, tend to be more social dominance-ori-
ented than women.[57] Likewise, whites tend to be more social dominance-
oriented than blacks or Latinos.[58] Crucially here, police officers tend to en-
dorse social dominance orientation more strongly than civilians, even after
controlling for gender, social class, age, and educational background.[59]
White police officers show, by far, the highest endorsement of social domi-
nance orientation relative to police officers of other races and civilians of
any racial background.[60]

Individuals who endorse a social dominance orientation tend to also
endorse a range of hierarchy-enhancing attitudes, such as racism, sexism,
cultural elitism, and nationalism.[61] SDO likewise positively predicts support
for chauvinism, aggressive military programs, harsh punitive sanctions gen-
erally, and the death penalty specifically.[62] In contrast, it negatively predicts
support for social welfare programs, ameliorative racial policies, women's
rights, and gay and lesbian rights.[63] These associations persist, even after
controlling for political-economic conservatism and authoritarianism, sug-
gesting that social dominance orientation is not merely redundant with left/
right ideological leanings.

According to social dominance theorists, not only do people with high
social dominance orientation support hierarchy-enhancing policies and ide-
ologies, they embrace them particularly strongly when they sense their posi-

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[55] *Id.* at 742.

[56] *Id.* at 760 (Appendix A).

[57] *Id.* at 747.

[58] Jim Sidanius et al., *Social Dominance Orientation, Hierarchy Attenuators and Hierar-
chy Enhancers: Social Dominance Theory and the Criminal Justice System*, 24 J. APPLIED SOC.
PSYCHOL. 338, 350 (1994).

[59] *Id.* at 350–51.

[60] *Id.* at 351. While comparisons between black officers and white civilians were not
made by the authors, an examination of Figure 2 suggests that the typical black police officer
holds roughly the same level of social dominance orientation as the typical white civilian.

[61] Pratto, *supra* note 52, at 748.

[62] *See, e.g.,* Jim Sidanius et al., *Support for Harsh Criminal Sanctions and Criminal Jus-
tice Beliefs: A Social Dominance Perspective*, 19 SOC. JUST. RES. 433, 440 (2006) (describing
support for punitive measures and the death penalty); Pratto, *supra* note 52, at 750 (describing
support for chauvinism and military programs).

[63] Pratto, *supra* note 52, at 750.

tion in the hierarchy is threatened. For instance, whites high in SDO who felt their status was threatened by blacks tended to embrace a hierarchy-enhancing form of colorblindness more than those high-SDO participants who did not feel threatened.[64]

It is also the case that low-status group members endorse hierarchy-enhancing ideologies to some extent. Indeed, a core tenet of social dominance theory is that, because stable hierarchies create the impression that the world is as it ought to be, such hierarchies also engender a collective endorsement from both high and low status group members.[65] While we do not focus on this element of the theory here, we consider it in the context of a paper that examines how social dominance orientation impacts policing by African-American police officers.[66]

Social dominance theory is potentially relevant in the context of policing for a number of reasons. First, as already mentioned, police officers — particularly white police officers — measure high in social dominance orientation.[67] Undoubtedly, this is a function of police training and culture; both promote hierarchies as normatively desirable, which may function to amplify robust selection effects.[68] Second, the criminal justice system is itself hierarchically ordered, with suspects at the bottom, police officers somewhere in the middle, and judges at the top.[69] Third, historically, race has been the most perniciously enforced hierarchy in the United States.[70] More-

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[64] *See* Eric D. Knowles et al., *On the Malleability of Ideology: Motivated Construals of Color Blindness,* 96 J. PERSONALITY & SOC. PSYCHOL. 857, 859, 863–64 (2009). The researchers contrasted the distributive justice colorblind principle (the belief that one's race should not matter for outcomes in life) with the procedural justice colorblind principle (race should not be a factor in how individuals are treated, even in situations where inequality exists and differential treatment could ameliorate it). While the former has the potential to effect change, the latter tends to entrench inequality. Knowles and colleagues found that whites who perceived more threat from blacks tended to endorse procedural colorblindness more strongly. Moreover, asking whites to identify their ethnicity, which was shown in pretesting to cause whites to think about racial threat, was associated with spontaneous generation of procedural (as opposed to distributive) descriptions of what colorblindness was. The authors interpreted these findings as evidence that whites feeling threatened would selectively endorse ideologies that maintained their high social status.

[65] Pratto, *supra* note 52, at 741.

[66] Carbado & Rock, *supra* note 11 (manuscript on file with authors).

[67] Sidanius, et al., *supra* note 58, at 350–51.

[68] *Id.* at 342 ("If one of the primary functions of the police department is to establish and maintain the hierarchical relationships among largely endogamous social groups, as SD theory assumes, then it seems reasonable to expect this institution will also recruit and socialize personnel who are psychologically and dispositionally in tune with the institution's social role.").

[69] *Id.* at 340 (identifying policing as a hierarchy-enhancing organization insofar as it "contribute[s] to the increase or maintenance of group-based hierarchical relationships within the social systems").

[70] *See* Lani Guinier, *(E)Racing Democracy: The Voting Rights Cases*, 108 HARV. L. REV. 109, 109–13 (1993); Randall Kennedy, *Persuasion and Distrust: A Comment on the Affirmative Action Debate*, 99 HARV. L. REV. 1327, 1337–44 (1986); Charles R. Lawrence III, *Two Views of the River: A Critique of the Liberal Defense of Affirmative Action*, 101 COLUM. L. REV. 928, 940–58 (2001); Susan Sturm & Lani Guinier, *The Future of Affirmative Action: Reclaiming the Innovative Ideal*, 84 CALIF. L. REV. 953, 992–97 (1996); Barbara K. Kopytoff & A. Leon Higginbotham, Jr., *Racial Purity and Interracial Sex in the Law of Colonial and*

over, the criminal justice system and on-the-ground policing have functioned as significant sites in which state actors have enforced this hierarchy.[71]

The foregoing three factors converge to make police officers implicitly or explicitly invested in what we call "social dominance policing" — that is, policing that consciously or unconsciously maintains the officer's sense of authority, control, and power *and* the officer's sense of the suspect's vulnerability, diminished agency, and powerlessness. In other words, social dominance policing is predicated upon police/civilian encounters in which the police and the suspect know who is in charge, know where power and vulnerability reside, and know how to conduct themselves in ways that affirm and re-inscribe this hierarchy.

Black men potentially threaten this arrangement. If, for example, black men assert their rights or question police authority, they breach the hierarchy that social dominance policing seeks to maintain. Moreover, if police officers perceive black men to be armed, that could affect how power (here, the mobilization of violence) is distributed throughout the interaction. It "makes sense," then, for police officers to frisk men to ensure that they are not carrying a weapon. Finally, if black men fail to comply with a police officer's request, an investment in social dominance policing would incentivize that officer to carry out the most symbolic and material expression of police authority — an arrest.[72] Performing an arrest effectuates compliance and instantiates the officer's authority and the suspect's powerlessness and vulnerability.

In framing social dominance policing in this way, we do not mean to suggest that police officers perform social dominance policing consciously.

Antebellum Virginia, 77 GEO. L.J. 1967, 1969–70, 2020–28 (1989); Mari Matsuda, *Affirmative Action and Legal Knowledge: Planting Seeds in Plowed-Up Ground*, 11 HARV. WOMEN'S L.J. 1, 2–4 (1988); Lawrence, *supra* note 5. *See generally,* A. LEON HIGGINBOTHAM, IN THE MATTER OF COLOR: RACE AND THE AMERICAN LEGAL PROCESS (1978).

[71] The idea that policing represents a central domain in which social dominance is enforced has been proposed before. *See* Sidanius et al., *supra* note 58, at 360–61:

> [S]ocial dominance theory, among other models, holds that one of the primary social functions of security forces in general (e.g., police, secret police, death squads) is to help maintain the integrity of the group-based hierarchy system of that society. . . . [E]thnic prejudice and social-dominance norms among the police can then be seen as naturally occurring aspects of social systems in general, and not as an example of social pathology. While most are in agreement that the police function to "uphold the law," and to maintain "law and order," from the perspective of SD and similar theories . . . , an important component of this "law and order" maintenance also includes the maintenance of the hierarchical social order.

As in our conceptualization of profiling, Sidanius and his colleagues see social dominance behaviors in policing as "nothing unusual, pathological or unique," but rather a predictable pattern for a hierarchy-enhancing institution. *Id.*

[72] *See* CHRISTOPHER P. WILSON, COP KNOWLEDGE: POLICE POWER AND CULTURAL NARRATIVE IN TWENTIETH-CENTURY AMERICA 23 (2000); Edwin D. Driver, *Confessions and the Social Psychology of Coercion*, 82 HARV. L. REV. 42, 60 (1968); Douglas A. Smith & Christy A. Visher, *Street-Level Justice: Situational Determinants of Police Arrest Decisions*, 29 SOC. PROBS. 167, 175 (1981) (suggesting that arrests serve as a way to reinforce the power disparity between the police and the public).

Presumably some do; but social dominance policing likely is a function of unconscious cognitive processes as well.[73] The broader point is that whether police officers are aware or unaware of how social dominance is motivating their policing, the end result could be the same — an escalation of police encounters from questioning to the point of violence.

One might interpret what we have said thus far to suggest that white suspects are unaffected by social dominance policing. We do not mean to convey that idea. All of us are vulnerable to social dominance policing all of the time. But some of us are more vulnerable to the phenomenon than others because some identities are more of a threat to the social dominance ordering of police interactions than others. The more police officers perceive a person to be dangerous or criminal, the less space that person has to assert rights, and the more work he has to do to signal compliance.[74] This is why black men and white men are not in equipoise with respect to the social dominance threat they pose. Because black men are far more vulnerable to being stereotyped as criminal, dangerous, and violent than are white men, they are more vulnerable to social dominance policing on two fronts: the danger they are presumed to pose and the relatively low social rank of their identity. To put this point another way, there is a stronger incentive for police officers to exercise dominance over people whom they perceive to be dangerous and/or socially marginalized than over people whom they do not regard in those ways.[75]

2. Physical Safety Threat

A second insecurity or threat that police officers experience in the context of police encounters pertains to their physical safety. Not surprisingly, police officers worry about their lives, even in contexts that might not be intuitive. For example, research demonstrates that police officers perceive the enforcement of traffic infractions as potentially a life-and-death scenario.[76] Research also suggests that officers perceive many of the inner city

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[73] This would simply track the extent to which social dominance itself operates implicitly. *See* Sidanius et al., *supra* note 58, at 340 (defining hierarchy-enhancing organizations in terms of their outcomes (contributing to inequality) rather than in terms of their motives).

[74] *See* Devon W. Carbado, *(E)racing the Fourth Amendment*, 100 Mich. L. Rev. 946, 1020 (2002).

[75] Another way in which black men and white men are not similarly situated with respect to the social dominance threat they pose relates to the social value of our identities. The greater the social value of one's identity, the more space one has to assert rights, and the less work one has to perform to signal compliance. On the flipside, the more devalued one's identity — the lower its social rank — the less respect one will get from police officers and the less "talking back" they will tolerate. The fact that white and black men's identities are differentially valued in society means that these black men and white men are differentially vulnerable to social dominance policing.

[76] *See* Eugene A. Paoline III & William Terrill, *The Impact of Police Culture on Traffic Stop Searches: An Analysis of Attitudes and Behavior*, 28 Policing: Int'l J. Police Strategy & Mgmt. 455, 458 (2005) ("The [police] cultural reaction to [traffic stop] issues of danger and unpredictability is a suspiciousness of citizens and a mandate to 'maintain the edge' during

communities they police as war zones.[77] This is precisely why the metaphor of war figures so prominently in public and political discourses about law enforcement efforts that target black and brown communities.[78] Add to this evidence associating African-American men with violence and danger (which we discuss more fully in Part III) and one begins to appreciate why police officers might fear for their physical safety in the context of even mundane encounters with black men.

None of this is to justify this sense of fear or to legitimize the violence it might produce. The point, instead, is that the physical safety threat or insecurity ought to factor into our analysis of police violence. Those analyses should reflect the understanding that the existence of stereotypes associating black men with danger and violence renders the very presence of black men a potential "threat" to an officer's sense of safety. Any movement or action on the part of black men compounds this problem and renders an officer even less secure.

3.   Masculinity Threat

A third insecurity police officers experience that could explain their use of violence against black men is masculinity threat.[79] Central to understanding this threat is a conceptualization of masculinity as both a status (something one is perceived to have) and a conduct (something one is perceived to perform). Moreover, masculinity is the normatively appropriate way to express a social identity as a man. That is to say, one's currency as a man turns on, among other things, whether one is sufficiently (but not hyper-) masculine. Understanding masculinity in this way suggests not only that one's status as masculine can be lost and must therefore be regularly proven,[80] but also that to lose one's masculinity is to lose some of the benefits that accrue from being a man.[81]

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police-citizen encounters."); Illya D. Lichtenberg & Alisa Smith, *How Dangerous Are Routine Police-Citizen Traffic Stops?: A Research Note*, 29 J. CRIM. JUST. 419, 419–20 (2001).

[77] *See* Peter B. Kraska & Victor E. Kappeler, *Militarizing American Police: The Rise and Normalization of Paramilitary Units*, 44 SOC. PROBS. 1, 9–10 (1997); WILLIAM J. CHAMBLISS, POWER, POLITICS, AND CRIME 163–64 (1999) (describing how the military-based training of police perpetuates "cultural violence and a war zone mentality").

[78] *See* Kenneth B. Nunn, *Race, Crime and the Pool of Surplus Criminality: Or Why the "War on Drugs" Was a "War on Blacks"*, 6 J. GENDER RACE & JUST. 381, 387–88 (2002); Frank Rudy Cooper, *We are Always Already Imprisoned: Hyper-Incarceration and Black Male Identity Performance*, 93 B.U. L. REV. 1185, 1190–94 (2013).

[79] *See generally* Frank Rudy Cooper, *"Who's the Man?": Masculinities Studies,* Terry *Stops, and Police Training*, 18 COLUM. J. GENDER & L. 671 (2008).

[80] *See generally* Joseph A. Vandello et al., *Precarious Manhood*, 95 J. PERSONALITY & SOC. PSYCHOL. 1325 (2008).

[81] Relevant to the discussion of masculinity in the context of policing is the acceptance of violence towards effeminate and/or gay men (e.g., men who are seen to have failed in their masculinity). *See, e.g.*, Howard J. Ehrlich, *The Ecology of Anti-Gay Violence,* 5 J. INTERPERSONAL VIOLENCE 359, 361–62 (1990) ("[A]nti-gay violence persists not solely because of individual psychology but also . . . because it is in keeping with the current social norms. . . . [T]he victim's behavior or potential behavior is defined by the actor as leaving no choice but

The foregoing conceptualization of masculinity might explain data suggesting that men who experience a threat to their masculinity respond with a range of aggressive behaviors.[82] For instance, Vandello, Bosson, and colleagues found that men who had their masculinity threatened subsequently had more aggressive thoughts than those who had not been threatened.[83] Likewise, they found in a different study that men whose masculinity had been threatened engaged in more displays of physical aggression, including punching a pad with greater force and choosing a boxing activity over a non-violent puzzle activity.[84]

Particularly relevant for our purposes is the fact that these findings have been replicated with police officers. Goff and Martin had officers report on their explicit racial attitudes as well as the stress they felt over threats to their masculinity (e.g., how stressful they would find scenarios like "letting a woman take control of the situation").[85] They used actual use-of-force data from one year (2010) of officer records and examined both frequency and severity of use of force employed by the officer.[86] The researchers found that officers with relatively high levels of concern about their masculinity used more severe force with black, but not white, suspects.[87]

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to respond with violence."). Nor can we understand how masculinity is instantiated as a norm within policing without acknowledging the ways in which police culture promotes and legitimizes homophobia and sexism. *See, e.g.*, JAMES W. MESSERSCHMIDT, MASCULINITIES AND CRIME: CRITIQUE AND RECONCEPTUALIZATION OF THEORY 182 (1993) (summarizing evidence from observation and interviews of officers that "policing gay men may actually be central to routine police procedures and practices"). *See generally* Cortney A. Franklin, *Male Peer Support and the Police Culture: Understanding the Resistance and Opposition of Women in Policing,* 16 WOMEN & CRIM. JUST. 1 (2005) (describing resistance to women in policing as evidence of a larger rejection of all things feminine). A police officer could very rationally (and perhaps rightly) fear that, in the absence of his consistent display of masculinity, colleagues who hold his life in their hands might take their obligation to protect him somewhat less seriously. Thus, the interdependent nature of policing places particular pressures on officers to perform masculinity convincingly, as the consequences might literally be the difference between life and death.

[82] Jennifer K. Bosson & Joseph A. Vandello, *Precarious Manhood and Its Links to Action and Aggression,* 35 PERSONALITY & SOC. PSYCHOL. BULL. 623, 632 (2009); *see also* Jonathan R. Weaver et al., *The Proof is in the Punch: Gender Differences in Perceptions of Action and Aggression as Components of Manhood*, 62 SEX ROLES 241, 247–48 (2010); Vandello et al., *supra* note 80, at 1334–35.

[83] *See* Vandello et al., *supra* note 80, at 1334.

[84] *See* Bosson & Vandello, *supra* note 82, at 627.

[85] PHILLIP ATIBA GOFF & KARIN DANIELLE MARTIN, UNITY BREEDS FAIRNESS: THE CONSORTIUM FOR POLICE LEADERSHIP IN EQUITY REPORT ON THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT 20 (2012), *available at* http://www.lvmpd.com/portals/0/pdfs/lvmpdfinalreport_2013cple.pdf, *archived at* http://perma.cc/PDP7-FC6J.

[86] *Id.* at 25.

[87] *Id.* at 26. The researchers additionally studied the relationship of racial bias to use of force and found interestingly mixed results. On the one hand, they found that officers who felt more *animus* towards blacks showed *more* severe use of force towards black suspects. On the other hand, they found that officers who more strongly endorsed *stereotypes* of blacks tended to have *fewer* use of force incidents with black suspects. The researchers contextualized this somewhat incongruous latter finding by suggesting that explicitly racist officers may actually avoid black suspects and thus have fewer negative encounters. This phenomenon — of racists avoiding minorities and thus having fewer negative interactions — has been demonstrated in

The masculinity threat problem is even more complicated if one takes into account a point we made earlier — namely, that black men may themselves experience masculinity threat in the context of police interactions. In a recently published paper, Goff and colleagues explored whether racial discrimination threatened black men's masculinity, and whether this sense of threat caused these men to exhibit aggressive behavior.[88] They conducted a series of experiments in which white men and black men were exposed to racial slurs.[89] They then measured the masculinity threat of both groups of men by noting the number of emasculation-associated words (e.g., "girly" or "pansy") the participants identified in a word search within five minutes.[90] The proxy for aggressive behavior was pushups. The experimenters recorded the number of pushups the men performed before and after being exposed to the racial slurs.[91] They found that black men who were exposed to racial slurs demonstrated masculinity threat, and that this masculinity threat was, in turn, associated with more pushups (i.e., a greater aggressive response). White participants were not impacted in this way.[92]

Combining this study with the evidence we have discussed that police officers see black suspects as physical threats, and that concern over masculinity can motivate violence, we propose that police officers and black suspects exist in what one might call a masculinity-threat dialectic, or, to put it the way Frank Rudy Cooper does, a "masculinity challenge."[93] Because of stereotypes about hyper-black masculinity,[94] the mere presence of a black suspect could trigger some degree of masculinity threat in police officers; and, because of perceptions of white police officers as racist, the mere presence of a white police officer could trigger some degree of masculinity threat on the part of the black suspect. Actual or perceived aggressive conduct by either the police officer or the suspect could compound the problem by heightening either party's masculinity threat and thus the likelihood that either party would exhibit aggressive behavior in response. The broader point is that threats to masculinity are another plausible explanation for why

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non-officer samples. *See, e.g.*, Samuel L. Gaertner & Jack F. Dovidio, *Understanding and Addressing Contemporary Racism: From Aversive Racism to the Common Ingroup Identity Model*, 61 J. Soc. Issues 615, 619 (2005).

[88] Phillip Atiba Goff et al., *Racism Leads to Pushups: How Racial Discrimination Threatens Subordinate Men's Masculinity*, 48 J. Experimental Soc. Psychol. 1111, 1111 (2012).

[89] *Id.* at 1112.

[90] *Id.* at 1113–14. Of note, there was no word bank for this task, and equal numbers of masculinity threat and neutral words were possible to find in the letter grid. Pretesting revealed that the two sets of words were equally often found by control participants. Thus, a tendency to find more masculinity threat words was interpreted as a measure of individuals' specific attention to masculinity-relevant cues, as opposed to merely being a generic measure of word search speed.

[91] *Id.* at 1112.

[92] *Id.* at 1115.

[93] Cooper, *supra* note 79, at 698.

[94] For further discussion of black men and hypermasculinity as it applies to *Terry* stops, see generally Cooper, *supra* note 79.

so many interactions between the police and black men culminate in violence.

4. *Racism Threat*

A final insecurity that police officers experience is what one of us calls "racism stereotype threat."[95] Police officers are "threatened" by the possibility that their interactions with black men might confirm the view that police officers are racist. To understand this threat or sense of insecurity, it is helpful to situate the phenomenon in the context of the broader literature on stereotype threat.

Stereotype threat, initially identified in black college students, is the threat experienced by individuals who believe they are being evaluated in terms of a negative stereotype about their group and feel anxiety over the possibility of confirming that stereotype.[96] The classic work by Claude Steele and Joshua Aronson showed that awareness of a negative stereotype resulted in depressed performance on stereotype-relevant tasks, such as standardized tests for black students.[97]

Importantly, stereotype threat does not require that the individual endorse the stereotype itself. Rather, decrements in performance are thought to be the consequence of the individuals' anxiety about confirming the stereotype.[98] Research since the initial formulation of stereotype threat has supported its core hypotheses[99] and extended them, showing that it is possible to

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[95] Carbado, *supra* note 7.

[96] *See generally* Claude Steele & Joshua Aronson, *Stereotype Threat and the Intellectual Test Performance of African Americans*, 69 J. PERSONALITY & SOC. PSYCHOL. 797 (1995).

[97] *Id.* at 808. Steele and Aronson showed that, among black students, being told that a standardized test was diagnostic of intellectual ability (i.e., making salient the stereotype of blacks as intellectually inferior) or even asking the student to state his or her race (i.e., making salient the student's membership in a group that is stereotyped negatively in academic domains) was sufficient to depress performance on that test relative to students who were not reminded of these stereotypes. *Id.* at 808–09; *see also* Margaret Shih et al., *Stereotype Susceptibility: Identity Salience and Shifts in Quantitative Performance,* 10 PSYCHOL. SCI. 80, 82–83 (1999) (demonstrating that stereotypes can either enhance or depress performance, depending on the content of the stereotype). Research on Asian women suggests that stereotype threat can either enhance or depress performance, depending on what stereotype it triggers. Specifically, Shih and colleagues' work with Asian American women showed that a boost in performance could emerge after having their ethnic identity activated, while a depression in performance emerged after having their gender identity activated. *Id.*

[98] Supporting this claim, Steele & Aronson, *supra* note 96, at 802–05, found that their manipulation impacted performance on a word completion task utilizing stereotype-relevant words and self-doubt words. In a word fragment task, participants are given words with missing letters that could conceivably be completed in either a concept-relevant way or a concept-irrelevant way. For instance, they might see the word __ __ C E and be asked to fill in the letters, with a concept-relevant response being "race" and a concept-irrelevant response being "face." To the extent that participants provide concept-relevant responses, that concept is said to be activated. *Id.*

[99] For a review of the stereotype threat literature, see Toni Schmader et al., *An Integrated Process Model of Stereotype Threat Effects on Performance*, 115 PSYCHOL. REV. 336 (2008).

depress the performance of even a high status group, such as white men, if the context emphasizes comparisons in which they may be seen as lacking.[100]

The part of the stereotype threat literature that is most relevant to the racism stereotype threat concept we discuss here is research exploring the consequences of whites experiencing anxiety over being perceived as racist. Just as blacks feel anxiety about confirming a stereotype of low intellectual ability, whites feel anxiety over confirming a stereotype of racism.[101] And, just as blacks' anxiety has the ironic effect of actually confirming the stereotype through decrements in test performance, so too does whites' anxiety have the ironic effect of actually increasing their racial bias. For instance, when whites fear being perceived as racist, they show greater implicit racial bias and they distance themselves from a black interaction partner more than whites who have not been stereotype-threatened in this way.[102] This occurs, the researchers believe, because anxiety over being seen as racist actually impedes white individuals' ability to engage positively with people of color.[103]

In a powerful demonstration of this phenomenon in the policing domain, Goff and colleagues have shown that white officers report anxiety over being perceived as racist on account of their position in the police force, endorsing statements like "I worry that others may stereotype me as prejudiced because I am a police officer."[104] Alarmingly, the very officers who felt most anxiety about this stereotype were also those who were most racially disproportionate in their use of force in the field.[105] Said differently, police officers who believe they are being evaluated as racist because they are police will actually engage in more racist policing. Note that the racially-disparate behavior here would not necessarily derive from the officer's

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[100] Joshua Aronson et al., *When White Men Can't Do Math: Necessary and Sufficient Factors in Stereotype Threat*, 35 J. EXPERIMENTAL SOC. PSYCHOL. 29, 34–35 (1999) (showing that white men were induced to demonstrate depressed performance after being reminded of the stereotype that Asians are superior in math ability; remarkably, this effect emerged even in a group of white men selected for their high ability in math).

[101] *See* Cynthia Frantz et al., *A Threat in the Computer: The Race Implicit Association Test as a Stereotype Threat Experience*, 30 PERSONALITY & SOC. PSYCHOL. BULL. 1611, 1616 (2004). *See generally* Phillip Atiba Goff et al., *The Space Between Us: Stereotype Threat and Distance in Interracial Contexts*, 94 J. PERSONALITY & SOC. PSYCHOL. 91, 98 (2008) (showing that it is not general social anxiety which causes deficits in performance but rather anxiety specific to the fear of confirming the stereotype).

[102] Goff et al., *supra* note 101, at 96. Fear of being seen as racist was manipulated by having white participants prepare to discuss either a threatening topic (racial profiling) or a non-threatening topic (romantic relationships) with a black interaction partner. The actual interaction did not occur in either condition, and thus findings reflect merely whites' anticipation of tense interracial contact.

[103] *See id.* at 98–99.

[104] PHILLIP ATIBA GOFF ET AL., PROTECTING EQUITY: THE CONSORTIUM FOR POLICE LEADERSHIP IN EQUITY REPORT ON THE SAN JOSE POLICE DEPARTMENT 5 (2013), *available at* http://ca-sanjose.civicplus.com/DocumentCenter/View/11233, *archived at* perma.cc/S85U-D4DX.

[105] *Id.* at 1, 11. Revealingly, neither implicit nor explicit prejudice predicted disproportionate use of force, highlighting that this disparity may arise not from prejudice per se but rather from the stressful experience of policing while aware of that prejudice.

concerns about physical safety. It would derive, albeit ironically, from the officer's sense that the black man with whom the officer is interacting perceives the officer to be racist.

D. Resistance to Police Authority & Assertion of Rights

Black men who find themselves being repeatedly stopped by the police may resist or challenge police authority. There are four explanations for this phenomenon. First, any particular black man in the context of any particular police encounter could enact some version of the political commitment: "We're fired up and ain't going to take it no more."[106] That is to say, even if black men are generally prepared, as a survival or violence avoidance strategy, to compromise their rights and acquiesce to even illegitimate expressions of police authority,[107] their vulnerability to multiple police interactions means that any given interaction could produce a breaking point at which black men push back.

Second, black men's sense that their multiple interactions with the police are part of a broader pattern of police surveillance and social control of African-American men could create a legitimacy problem[108] or "contempt of cop"[109] — a general disrespect or antipathy toward the police — either of which could cause black men to challenge the authority of police officers.[110]

Third, research suggests that black men are also likely to challenge authority when interactions threaten their sense of masculinity.[111] Recall our earlier discussion on this possibility in Part II.C.3. For our purposes here it is enough to understand that the greater the degree to which a police encoun-

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[106] See, e.g., Leon Daniel, *Blacks March to Commemorate 'Bloody Sunday'*, UPI (Mar. 2, 1990), *available at* http://www.upi.com/Archives/1990/03/02/Blacks-march-to-commemorate-Bloody-Sunday/6327636354000/.

[107] For a discussion of the incentives black men have to compromise their rights in the context of police interactions, see generally Carbado, *supra* note 74.

[108] Benjamin Justice & Tracey L. Meares, *How the Criminal Justice System Educates Citizens*, 651 Annals Am. Acad. Pol. & Soc. Sci. 159, 167 (2014).

[109] Frank Rudy Cooper, *Masculinities, Post-racialism, and the Gates Controversy: The False Equivalence Between Officer and Civilian*, 11 Nev. L.J. 1, 27 (2010) (quoting Clarence Page, *Gates-gate: A Clear Case of 'Contempt of Cop'*, Chi. Trib., July 26, 2009, at C27).

[110] *See generally* Tom R. Tyler & Yuen Huo, Trust in the Law: Encouraging Public Cooperation With The Police and Courts (2002) (covering how perceptions of bias in policing, both within and across interactions, generate mistrust and active and passive resistance towards police).

[111] *See* Goff et al., *supra* note 88 at 1115. The researchers explored whether racial discrimination threatened subordinate men's masculinity, and whether this sense of threat caused these men to exhibit aggressive behavior. They conducted a series of experiments in which white men and black men were exposed to racial slurs. They then measured the masculinity threat of both groups of men by noting the number of emasculation-associated words the participants could identify in a word search within five minutes. The proxy for aggressive behavior was pushups. The experimenters recorded the number of pushups the men performed before and after being exposed to the racial slurs. They found that black men who were exposed to racial slurs demonstrated masculinity threat, and that that masculinity threat was, in turn, associated with more pushups. White participants were not impacted in this way.

ter undermines a black man's sense of his masculinity, the more likely that man is to challenge the authority of the police. With respect to police violence, the problem is that the more aggressive or uncooperative a police officer perceives a black man to be, the greater the possibility for violence. Here again, racial stereotypes of black men being violent and dangerous matter. Against the background of these stereotypes, even the legitimate assertion of rights by an African-American man can render him vulnerable to violence if the officer interprets that conduct as noncompliant.

Fourth, black men may resist police authority by fleeing the scene to avoid the encounter altogether. This form of resistance can be violence-producing as well. For one thing, an officer may employ violence after catching up with a fleeing individual as a form of discipline and punishment. For another, fleeing from the police could arouse or confirm the officer's suspicions that the person running is up to no good. Finally, there is at least some evidence suggesting that the adrenaline involved in police chases raises the risks of inappropriate use of force.[112]

E.   Summary

Parts I and II identified a number of factors that explained the specific ways in which repeated police interactions expose African Americans to the possibility of violence. Part I focused on implicit and explicit biases, including stereotypes. Part II focused on arrests, system involvement/incarceration, a number of vulnerabilities or insecurities police officers experience in the context of police encounters, and resistance to authority/assertion of rights. Cumulatively, one might think of these as "front-end" factors that lead to police violence. But, there are "back-end" factors that we ought to consider as well. For example, what legal and institutional consequences flow from police violence? And, to what extent are police officers held accountable? These "back-end" questions have "front-end" implications. Whether police officers are held accountable for their acts of violence shapes whether and to what extent they mobilize violence.[113]

CONCLUSION

Broadly articulated, the goal of this Article was to challenge the framing of excessive force as a problem that derives from rogue police officers

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[112] *See generally* James L. Meyerhoff et al., *Evaluating Performance of Law Enforcement Personnel During a Stressful Training Scenario*, 1032 ANNALS N.Y. ACAD. SCI. 250 (2004) (discussing how stress and anxiety involved in such chases can impact officer performance); *see also* Robert J. Kaminski et al., *The Use of Force Between the Police and Persons with Impaired Judgment*, 7 POLICE Q. 311, 326 (2004) (discussing how chases are associated with greater likelihood of use of force by officers).

[113] One of us engages these "back-end" factors in another paper. Carbado, Police—On-Black Violence, supra note [ ].

who harbor racial animus against African Americans. We did so by present-ing a theoretical model that articulates racialized police violence as a sys-temic and structural problem that cannot be solved simply by looking for and punishing "bad" cops.

This is not to say that the model we have presented is a total account of race and police violence. Undoubtedly, it leaves some things out. Still, our hope is that the model focuses attention on significant but under-examined dimensions of the problem, particularly the relationship between police con-tact and police violence and the various factors that mediate that relationship.