

Walter Benjamin's Critique of Violence:

The State, Police Violence, and Black Lives Matter

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Introduction

Police violence is rampant in the United States. Killings of civilians by law enforcement officers literally dwarf the numbers in other industrialized countries. Black Americans in particular have been targeted by police, and leaders of African American social justice organizations, including Black Lives Matter, regard these killings as the betrayal of the promise of the US to treat all of its citizens equally before the law. The premise of the social contract, upon which the country was founded, is discredited. As Charles W. Mills argued, America's social contract is, in fact, a racial contract, which excluded Black people as slaves from the body politic at the country's very inception and still marginalizes them through institutional racism. However, some scholars, both radical and liberal, have argued that the social contract is not beyond redemption.

This article addresses the history of police violence and extra-legal killings of Black people and argues that social contract theory plays an ideological role to legitimate the coercive power of the state over the African American community. It first looks at the alarming numbers of Black Americans killed in the United States over the past few decades and compares police violence to the extra-legal lynchings of the late 19th and early 20th centuries. Using Walter Benjamin's 1921 essay "Critique of Violence," the article then describes the obfuscation of an underlying truth: that, far from being a neutral arbiter between its citizens, the state is the primary inscription of violence in the body politic. The police are the face of that state, both in its law-making violence (*die rechtsetzende Gewalt*) and law-preserving violence (*die rechtserhaltende Gewalt*). In contrast to the mythology of a social contract in which all members are treated equally before the law, the state targets African Americans to legitimate its monopoly on violence, thereby unmasking the social contract as a racial contract, which has excluded

Black people from the country's very inception. The power of the state rests in part on the psychology of police officers who see themselves as its very embodiment and believe that any resistance to their authority is both a personal and symbolic challenge to their monopoly on violence. Yet, this article dissents from the view of many who believe that the country may transcend its history of institutional racism and violence and restore the promise of the social contract. The article concludes that, despite the hopes of modern liberalism, Benjamin's theory leads to the conclusion that there is little possibility for either the redemption of the social contract or the rehabilitation of the state.

Police Violence and Extra-Legal Killings

In 2016, Americans were shocked by the video live-streamed on *Facebook* by Diamond Reynolds, the girlfriend of 32-year-old Philando Castile, shot by St. Paul, Minnesota police in a traffic stop for a broken taillight. They watched in horror with her as he died, chest covered in blood ("Combined Videos Show Fatal Castile Shooting"). The images of such spectacles are indelibly etched in memories: Alton Sterling, 37, wrestled to the ground and shot point-blank in Baton Rouge, Louisiana ("Alton Sterling Shooting Cellphone Video"); Walter Scott, 50, shot down running away from a traffic stop in North Charleston, South Carolina ("Walter Scott death: Video shows fatal North Charleston police shooting"); Tamir Rice, 12, slain for holding a toy gun while sitting on a swing in a public park ("Video shows Cleveland police officer fatally shoot 12-year-old Tamir Rice"); Keith Scott, 43, shot exiting his car with hands up in Charlotte, North Carolina ("Keith Scott's wife's recording of Charlotte shooting"); Eric Garner, 43, strangled by a police officer using an illegal chokehold for selling loose cigarettes on a New York City street, while pleading "I can't breathe" ("I can't breathe': Eric Garner put in chokehold by NYPD officer – video"); and George Floyd, 46, murdered by Officer Derek Chauvin in Minneapolis in the summer of 2020, whose dying words disturbingly echoed Eric Garner's own ("George Floyd police & bystander video synced in real time").

These Black victims of police violence have become a litany of household names to contemporary Americans. The Pew Research Center's Report, *Race in America* 2019, noted that 84% of Black Americans believe that African Americans are treated less fairly by police than white Americans (Horowitz, Brown, and Cox 11). 88% of Black Americans (as opposed to 64% of white Americans) regard police

violence as a serious problem (*Morning Consult Poll on Police Violence*). In 2021, an Axios-IPSOS poll found that, despite the protests sparked by the murder of George Floyd, seven out of ten African Americans believed that police violence had gotten worse between 2020 and 2021 (Nather).

Fear of the police is palpable in the Black community. Based on data gathered by Mapping Police Violence, which has developed a comprehensive open-source database including the identities of all those killed by police, Axios reported that 58% of police killings in 2020 began with police responses to non-violent incidents (Rummler). As the Massachusetts Supreme Judicial Court declared in September, 2016, it is not unreasonable for African Americans to flee when they are approached by police. “[I]n such circumstances, flight is not necessarily probative of a suspect’s state of mind or consciousness of guilt. Rather, the finding that Black males in Boston are disproportionately and repeatedly targeted for FIO [Field Interrogation and Observation] encounters suggests a reason for flight totally unrelated to consciousness of guilt” (Enwemeka).

The number of African Americans killed by police is truly alarming. Mapping Police Violence reported 266 African Americans killed by police in 2021 or one every 33 hours (Mapping Police Violence). The research organization Statista noted that the number of Black Americans killed by police in the United States stands at over twice that of whites, 38 per million versus 15 per million, even though, in the latest census, whites constitute 60.2 % and African Americans only 13.4% of the population (“Number of People Shot to Death by the Police in the United States from 2017 to 2022, by Race”; “Quick Facts United States”). The probability that Black Americans will be killed by police is also concerning. A longitudinal study of *Washington Post* data between 2015 and 2020, published by the *Journal of Epidemiology and Community Health*, indicates that African Americans are killed at 2.62 times the rate of whites overall, and unarmed Blacks at 3.18 times the rate of whites (Lett, Asabor, Corbin, and Boatwright). Researchers at Harvard’s T.H. Chan School of Public Health found that figure too conservative, determining that Black people are 3.23 times more likely to be killed by police than whites (Schwartz and Jahn).

Although these reports substantially agree about the frightening pace of such killings, a recent study published in October 2021 in *The Lancet* had even more distressing news. Using reports compiled from three non-governmental open-source databases, including Mapping Police Violence, The Counted, and Fatal Encounters, covering the years 1980-2018, the *Lancet* study discovered that the United States National Vital Statistics System (NVSS) had consistently under-reported police violence for decades. The study estimated that those killed by

police violence during these years numbered 30,800 or 17,100 more than had been officially reported. The rate of death caused by police violence was highest among non-Hispanic Black Americans at 69 per 100,000, and lowest among whites at 20 per 100,000 (“Fatal police violence in the USA, 1980-2019”). Editors of *The Lancet* concluded that “lack of accurate data” had been “one of the major impediments to adopting a public health approach to deaths caused by police violence” (“Fatal police violence in the USA: a public health issue”).

The consequences of police violence in the Black community are severe. Various studies show that witnesses of such incidents suffer “posttraumatic stress disorder (PTSD), substance abuse, depression, poor self-rated health, attentional impairment, poor school performance, and school suspensions and expulsions” and “declines in elementary math and reading achievement, as well as increases in chronic absences . . .” (Lacoe and Stein). Indeed, the mental health of African Americans nationwide is negatively affected (Green, Williams, and Park).

Extra-legal killings are not new in the United States. As three researchers have concluded, “*Black lives do not matter* in the United States of America because they do not. They have never mattered” (Rembert, Watson, and Hill). Over 3,400 African Americans were lynched by racist whites, largely Southerners, between the 1880s and 1950s, as compiled by historical researchers reviewing urban newspapers. However, it has been estimated that including lynchings in rural areas, unreported in the newspapers of major cities, the figure approximates 4,300. The height of lynching in the United States occurred in the last two decades of the nineteenth century where two African Americans were lynched each week and led to the founding of the NAACP (Hair). Southern whites engaged in the practice of photographing their victims, either strung up from trees or laid out on the ground with a noose around the neck (*Lynching in America*). It was akin to the European tradition of public executions overlaid with a racist ideology, in which most whites in town, including women and children, would bear witness to the murder. In short, lynching became a spectacle. However, as Guy Debord argued in his 1967 *Society of the Spectacle*, the spectacular image itself – here the photographs of lynching—can have a destabilizing effect on the spectacle (Debord). This *détournement* embodied the revulsion of many viewers for the photographs, where the spectacular images themselves “began to sow the seeds of its own collapse” (Wood 179).

Placed in historical perspective, the killing of unarmed African Americans by police in the 2010s more than matched the highest rate of lynching in what is supposed to be a bygone era. To be sure, these victims were not lynched by angry white mobs nor were their deaths memorialized by souvenir photographs of the murdered victims, but their deaths did become spectacles. The advent of smartphones ensured that these killings would not go unnoticed. The observers were not white racists who joined in the “festive” atmosphere surrounding the lynching of African Americans, but rather citizens, frequently Black themselves, armed with their phones, ready to record the encounter between police and unarmed African Americans and willing to share those images through social media with the rest of the world (Cleveland).

Black Lives Matter

In response to the shootings of unarmed African Americans, Black activists created the Black Lives Matter movement. Alice Garza, a community organizer in Oakland, California and an active poster of social media, wrote a Facebook post to her colleague Patrisse Khan-Cullors and fellow African Americans in the wake of the acquittal of George Zimmerman, a self-appointed, armed community vigilante, for killing the Black teenager Trayvon Martin in Sanford, Florida. She stated that “the sad part is, there’s a section of America who is cheering and celebrating right now. and that makes me sick to my stomach” and expressed her surprise at “how little Black lives matter” (Cobb). Her friend Patrisse Khan-Cullors created the hashtag “Black Lives Matter,” and a movement was born (Khan-Cullors and Beandele). Although the movement was small at that time, its vocal protest of police killings caught the attention of American national media, and placed pressure upon the government to do something about the inequity and police violence. Using social media, BLM helped to generate a movement for everything from taking down statues to taking a knee before an American football game. “BLM weaves affective strands of micro personalized narratives, highly charged hashtags (e.g., sayhername) and traditional political campaigns (e.g. ‘Defund the Police’)” (Beech and Jordan). In contrast to the civil rights movement of the 1950s and 1960s with its high-profile clergy and African American national associations, Black Lives Matter operates with semi-autonomous chapters, over 30 across the nation, “decentralized, democratic, and apparently leaderless” (Morris, A.).

Although participation in mass demonstrations against police violence may, in fact, be helpful to the mental health of protestors, crises in Black communities, caused by police killings of African Americans, particularly those unarmed, creates the need for professional assistance. Crisis counseling can help, especially when BLM demonstrators are met by intentionally provocative counter-protests festooned with “Blue Lives Matter” or “All Lives Matter” placards (Green, Williams, and Park).

Nevertheless, by late 2015, police killings of unarmed African Americans became something of an epidemic, and Americans saw them recorded and streamed via social media on phones, laptops, and television screens with frequency. The killings belied the argument that US Americans lived in a post-racial society. President Obama himself spoke from the White House to declare that “all of us as Americans should be troubled by these shootings, because these are not isolated incidents. They’re symptomatic of a broader set of racial disparities that exist in our criminal justice system” (Obama). After the massive BLM protests in the wake of the murder of George Floyd, Breonna Taylor, and others during the summer of 2020, and more recently Daunte Wright and Amir Locke, Americans still remain haunted by the spectacle of racism to which they bear witness, no longer just in the public square but in living rooms and virtual spaces.

Unmasking the Social Contract

The historical foundation of the American experiment rests upon natural law, derived in large part from the Enlightenment theories of the social contract. Although its outlines are found in the work of Thomas Hobbes and Jean-Jacques Rousseau, its American roots lay in the work of the English physician and political philosopher John Locke (Hobbes; Rousseau; Locke). As the editor of Thomas Jefferson’s papers has noted, “[t]he natural rights philosophy of the great preamble of the Declaration of Independence came in considerable part from Locke’s *Second Treatise on Civil Government*” (Peterson 14). Locke argued that in the state of nature, human beings live according to reason, but the introduction of force violates the state of nature and leads to a state of war. Individuals cede their natural rights to a central authority to avoid the state of war and preserve their life, liberty, and property but do so freely to establish a commonwealth by mutual consent. Consequently, “where there is no law, there is no freedom” (Locke 88). Locke, however, legitimated both majoritarianism, which the American Constitutional Convention circumscribed with the Bill of Rights, and slav-

ery, which the Constitution institutionalized (101 and 78-79). The social contract reached its “heyday” between the Revolution and the Civil War but its elements of the state of nature, contractual theory, and divine law were increasingly disregarded in the late nineteenth and twentieth centuries (Hulluung).

Nevertheless, the theory of the social contract remained if only to hallow the foundations of the American experiment. It serves an explanatory function, accounting for the acquiescence of a population to a political order that does not, at least in theory, resort to unmediated coercion. As the political philosopher Bernard Williams has argued, any realization of social contract theory must satisfy the “Basic Legitimation Demand” (BLD) of government (Williams). In other words, the protection gained must outweigh the rights surrendered by individuals in the state of nature. As Christopher Morris explained, “the point is not so much to explain exactly how our political societies came to be, but to explain the conditions for their legitimacy. The social contract is to be understood as hypothetical” (x). Although Williams’s approach roused debate among philosophers as to whether the BLD was predominantly moral or realistic, Williams’ work highlighted the ideological role of social contract theory, which frequently betrayed members of the body politic. That betrayal was never truer than in regard to African Americans.

In the wake of the murder of George Floyd, commentators increasingly questioned the BLD of American society as applied to African Americans. Trevor Noah, the South African comedian, whose *Daily Show* is widely popular on Comedy Central, tweeted, “Black Americans watch time and time again how the contract that they have signed with society is not being honored by the society that has forced them to sign it with them. . . Why should the citizens of a society adhere to the laws when the law-enforcers themselves don’t?” (Noah). In May 2020, *The New Republic* claimed that “[t]he spasms of violence we saw in Minnesota and elsewhere, this collective scream of rage, is what happens when the social contract between citizens and their government is so thoroughly, irredeemably broken” (Spaeth). In the wake of slavery and Jim Crow, “America’s social contract is still built on racial hostility” (Porter). It is not supposed to be that way. In 1985, J.H. Reiman wrote “Social contract & the police use of deadly force,” published in an anthology *Moral Issues and Police Work*, held in the library of the Department of Justice, which asserted that “[a]ny standard that permits the police use of deadly force except to save a life under immediate threat increases the risks and inequities for those already suffering injustices. Because they are not full beneficiaries of the social contract, the oppressed should be treated with special care by those public agencies assigned to protect citizens” (Reiman). Yet, Wesley Low-

ery, the Pulitzer Prize-winning reporter for *The Washington Post*, concluded in the summer of 2020, “the reality is that we live in a society where we allow the police to kill people. You know, we've made that decision. That's the social contract we ventured into. The police are allowed to kill you. If they get scared, they're allowed to kill you” (*All Things Considered*). Accordingly, police violence unmasks the benign appearance of the social contract.

The Racial Contract

The Black philosopher Charles W. Mills sought to reframe the discussion of the social contract in the context of African American experience. As articulated by Locke in his *Second Treatise*, the social contract assumed the theoretical equality of individuals in a hypothesized state of nature, a model fine-tuned by the liberal philosopher John Rawls as the “original position” behind a “veil of ignorance” in which no one knows their particular historical circumstances (Rawls). This philosophical exercise flew in the face of historical realities. “The general purpose of the Contract,” wrote Mills, “is always the differential privileging of the whites as a group with respect to the nonwhites as a group, the exploitation of their bodies, land, and resources, and the denial of socioeconomic opportunities to them . . . It will be obvious, therefore, that the Racial Contract is not a contract to which the nonwhite subset of humans can be a genuinely consenting party” (1997, 11-12). Mills argued that the social contract did not involve all human beings but rather the “white settler state” of “white sociopolitical beings” predicated on the nonpolitical state of nonwhites (1997, 13). As the founding principles of the American experiment, “[r]acism and racially structured discrimination have not been *deviations* from the norm, they have *been* the norm . . .” (1997, 93). Race therefore is not a matter of skin color, as both white liberals and conservatives assume, but actually “a set of power relations” (2011, 606). Socio-political forces inscribe the meaning of blackness on human beings. Deracing the American polity is delusional, a refusal to admit the historical exercise of white power over Black bodies. Mills concluded that “[i]t is not merely that the body politic must be safeguarded from alien bodies who might seek to enter it from without, but that it needs to be policed against those alien bodies already there” (2011, 602).

The racial contract is manifest in the marginalization of African Americans, particularly in the apartheid structures of housing, education, employment, and health. In 19 of the 20 urban areas associated with the Great Migration north from the American South, these cities were at least as segregated in

2010 as in 1940, and 15 of those 20 cities are in fact more segregated than in 1940 (Abramovitz and Smith). Modern residential segregation is not a matter of choice, but rather has “its roots in conscious decisions and public policy” (Kryson and Crowder). Studies have demonstrated that “racial residential segregation is the lynchpin of racial disparities in the United States” (Menendian, Gambhir, and Gales). Residential segregation is intimately tied to poverty, poor educational outcomes, higher infant mortality, shorter life spans, and exposure to environmental hazards (Quillian; Martin and Varner; Mehra, Boyd, and Ickovics; Liu et al.).

Not surprisingly, racial residential segregation is linked to police violence. In one sociological study of Minneapolis, where George Floyd was murdered in 2020, researchers found that in highly segregated, majority Black areas, police conducted 40% more vehicle and stop-and-frisks than elsewhere in the city. Even in white areas of the city, increases in Black integration resulted in parallel increases in police stops (Wright, Gaozhao, and Snow). It is not just that African Americans are more likely to be stopped in residentially segregated areas, but that excessive force complaints against police are also much higher in more racially segregated cities, “indicating that police may subjectively perceive the difficult conditions found in some areas of highly segregated cities as especially threatening” (Holmes, Painter, and Smith).

The racial contract described by Charles Mills is an everyday reality to African Americans, whether it be in terms of joblessness, inferior housing, urban food deserts, lack of proper health care, pollution and lead pipes, or the risk of police violence. Yet, Mills argued that the prospect of Black life in America was not without hope. The language of the social contract is hegemonic in US political discourse, but that does not mean it is beyond redemption. Mills suggested that Black intellectuals and activists should use vocabulary and democratic institutions identified with contractarianism (3). But it is questionable whether this “[r]eformist social contract theory” is viable (Jagmohan 501). Social contract theory is a myth of legitimation which ideologically obfuscates an underlying truth. Reconstituting the myth only reinscribes the illusions surrounding the exercise of power in societal relationships, albeit in a less blatantly offensive manner.

Walter Benjamin's Critique of Violence

It is in this context that Walter Benjamin's essay "The Critique of Violence" proves insightful, over 100 years after its writing. As one of the progenitors of the Frankfurter Schule (along with Max Horkheimer, Theodor W. Adorno, Herbert Marcuse, and Leo Lowenthal among others), the German-Jewish literary critic and philosopher Walter Benjamin is most well-known for his work on art ("The Work of Art in the Age of Mechanical Reproduction"), commodity fetishism in modern capitalism (the Arcades project), and history ("Theses on the Philosophy of History"). An intellectual with an ambiguous relationship to Marxism, Benjamin wrote his "Critique of Violence" in 1920-1921 (first published in German as "Zur Kritik der Gewalt" in the *Archiv für Sozialwissenschaft und Sozialpolitik*) during the *Nachkriegszeit* in Weimar Germany.

Benjamin distinguished between natural law, which focuses on ends, and positive law, which concerns means. In natural law, the legality of violence is determined by whether the ends achieved are just. To Benjamin, positive law is otherwise. It is not concerned with ends but only with the means themselves: are they lawful? Positive law therefore is self-referential and has an abiding interest in a monopoly on violence which "is not explained by the intention of preserving legal ends but, rather, by that of preserving the law itself; that violence, when not in the hands of the law, threatens it not by the ends that it may pursue but by its mere existence outside the law" (280-281). The law's monopoly on violence takes the form of the state as the primary inscription of violence in the body politic. Benjamin suggests that the state's monopoly on violence is most evident in the right of the state to take life, whether in the execution of individuals in the death chamber or on the streets. "For if violence, violence crowned by fate, is the origin of law, then it may be readily supposed that where the highest violence, that over life and death, occurs in the legal system, the origins of law jut manifestly and fearsomely into existence" (285-286). Benjamin differentiated between two types of legal violence: "law-making violence" and "law-preserving violence" (284).

Law-making violence is paradigmatically military violence, a predatory violence which not only is destructive but also constructive, for it establishes the state. Or, as Jacques Derrida noted in his commentary on Benjamin's "Critique of Violence," "In the beginning there will have been force" (935). In his reading of the text, Derrida observed that it is in the nature of law to suspend law, to inter-

rupt one legal regime to found another, and in that revolutionary moment of suspense, law is simultaneously non-law, but that is “the whole history of law” (991). Revolutions therefore mythologize the founding moment of the new state in order to justify its use of law-making violence.

Benjamin suggests that the general populace intuits the nature of the state as violence. That awareness is most evident in the admiration for and popular adulation of great criminals, later personified in Weimar Germany by the character Mack the Knife in *The Three-Penny Opera* (1929), written by Benjamin’s friend Bertolt Brecht, and in North American culture by Vito Corleone in Francis Ford Coppola’s *The Godfather* (1972) and Tony Soprano in David Chase’s *The Sopranos* (1999). Whether it be the image of the gunslinger in the Old West or the gangster in urban America, the defiance of the law is admired even by those who would otherwise laud law enforcement. As Derrida explained, “it is not someone who has committed this or that crime for which one feels a secret admiration: it is someone who, in defying the law, lays bare the violence of the legal system” (987). Yet despite this “secret admiration,” the fantasy of defiant resistance to the law “in important instances horrifies the public as it did in primeval times” (Benjamin 283).

For Benjamin in the *Nachkriegszeit* after World War I, the challenge to the very foundation of the state, caricatured in the great criminal, was most evident in the proletarian general strike. Rather than focus on particular injustices, e.g., the length of the work week, wages, or working conditions, as did unions organizing against particular companies or even industries, Benjamin saw the proletarian general strike as the means to resist institutional state violence. Although Benjamin later flirted with Marxism, particularly after an affair with the Soviet actress Asja Lacis (Lacis), any challenge to the German government was quashed by the rise of the Nazi state and its policy of *Gleichschaltung*.

Law-making violence is complemented by law-preserving violence, for, without the latter, the state itself falls victim to predatory violence that challenges its authority and very existence. Consequently, law-preserving violence can be nothing other than “threatening violence” (Benjamin 285). As the gloved fist of the state, law-preserving violence is first and foremost concerned with its monopoly on violence. Law-preserving violence is literally embodied by the police and symbolized by the baton and the revolver. However, the image of the police as merely enforcing a pre-existing law is illusory. Benjamin suggests that, on the contrary, the police play both functions, law-making and law-preserving. Police on the street are the law and create the law in its application in real-life situations. “The assertion that the ends of police violence are always identical or even connected

to those of general law is entirely untrue. Rather, the 'law' of the police really marks the point at which the state, whether from impotence or because of the immanent connections within any legal system, can no longer guarantee through the legal system the empirical ends that it desires at any price to attain" (Benjamin 286-287). Hence, the viability of the state is based on the power of the police to impose both law-making and law-preserving violence. Yet, the police power is more than the individuals who patrol the streets or occupy police stations. "Its power is formless, like its nowhere tangible, all-pervasive, ghostly presence in the life of civilized states" (Benjamin 287). The police are ubiquitous, "the faceless figure . . . of a *Dasein* coextensive with the *Dasein* of the polis" (Derrida 1009-1011).

Police Violence and the Racial State

Benjamin's "Critique of Violence" suggests that police act as a law unto themselves, both in creating the law by enforcing universally-applicable statutes and ordinances as they see fit in particular circumstances and preserving respect for the law itself, i.e., themselves as the face of the law. On the street, as every African American knows, the police are the law. Whenever a civilian resists a police officer's interpretation of the law in a particular circumstance, the officer most often sees that challenge as disrespect and will charge them with disorderly conduct or resisting arrest. Here police internalize the so-called "force of law," described by Derrida's commentary on Benjamin. That force is evident in the use of lethal violence. In the US, officers refrained from killing a civilian on only 15 days in 2021, and police killings exceed more than those in the next seven industrialized countries combined (Mapping Police Violence; Jones and Sawyer). In contrast to the myth of a contractual state, a predatory state "promote[s] the private interests of dominant groups inside the state (such as politicians, the army and bureaucrats) or influential private groups with effective lobbying powers" (Vahabi). Benjamin's state as the primary inscription of violence in the body politic is by definition a predatory state. "[T]he predatory state," notes one commentator, "is not necessarily always the racial state. The predatory state is different from the racial state in that it applies violence toward various marginalized groups" (Davis 206). In the Weimar era, the predatory state targeted the working class, as evident in Benjamin's sympathy for the proletariat. Today, the predatory state of the Weimar era has evolved into the racial state of the US, targeting Black people through police violence in major urban centers.

Police behavior in US cities is informed by an “honor culture” (Harris 795). As an “unwritten rule of policing” (Helms and Costanza), police demand respect from civilians, so that they can exercise control over any situation, but they offer little respect in return. On the street, the relationship of police to civilians is based on acquiescence to authority. Police interactions with civilians are therefore fraught with the defense of the officer’s reputation. Perceived insults frequently result in elevated testosterone levels among the 82.5% of officers who are male (“Police Officers”). “[P]olice officer’s use of violence is often reflective of informal parameters for behavior, i.e., cultural norms regarding ‘disrespect’” (Pomerantz et al.). These researchers concluded that the endorsement of honor culture by individual police officers “intensify the likelihood of police use of violence” (Pomerantz et al.)

Police are barred from the use of “excessive force,” but the definition of what constitutes excessive force is vague. In the key U.S. Supreme Court case, *Graham v. Connor* (1989), which addressed this issue, Chief Justice William Rehnquist argued that “[t]he ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight” (490 US 386, 396). The Court asked police review boards and courts to put themselves into the shoes of the officer at the moment of confrontation and see themselves from the perspective of a police officer. Hence, the “reasonable man” standard, ubiquitous in American legal opinion, becomes the “reasonable police officer” (Alpert and Smith 487). “Using this ‘reasonable man’ standard, however, still leaves plenty of room for subjectivity in defining what is and is not reasonable” (Johnson and Kuhns 595). Observers have noted that federal courts frequently defer to the use of force documents produced by police departments themselves, “turning them into a substantive legal rule” (Obasogie and Newman 433). In a series of cases, the US Supreme Court has also applied the doctrine of “qualified immunity” to police officers, shielding them from civil damages absent their violation of the “clearly established” rights of an individual (*Harlow v. Fitzgerald*, 457 U.S. 800 (1982); *Malley v. Briggs*, 457 U.S. 335 (1986); *Anderson v. Creighton*, 483 U.S. 635 (1987); *Saucier v. Katz*, 533 U.S. 194 (2001); *Pearson v. Callahan*, 555 U.S. 223 (2009)), a nonetheless vague standard. Rep. Karen Bass (D-CA) introduced H.R.1280 - George Floyd Justice in Policing Act of 2021, which would eliminate qualified immunity for police officers. Although approved by the House, negotiations in the Senate collapsed in October 2021 with no prospect of passage.

As if qualified immunity and federal judicial deference to police standards of excessive force were not enough, police unions, widespread throughout the United States, have created a movement, supported by conservative political organizations, to establish a privileged position for police under the law. These Law Enforcement Officers Bills of Rights (LEOBRs) are either provisions of union contracts with city governments or, in 15 states, statutes passed by state legislatures. LEOBRs list a number of rights, which its advocates claim are available to criminal suspects, but not to police, including, *inter alia*, the right to notification of an investigation, the right to an attorney, the right to be free of harassment during interrogations, the right to engage in political activity, and the right to be free of retaliation. These rights, of course, are those which already exist either under employment or constitutional law. Hence, as one commentator has observed, LEOBRs constitute a type of “double due process” (Place), which is meaningless except for its ideological purpose to buttress the authority of police officers as the embodiment of the state.

Two-thirds of police officers in America are white (“Police Officers”). In the wake of Black Lives Matter demonstrations throughout the country after the killings of Trayvon Martin in 2014, overwhelming numbers of police (93%) are more fearful for their own safety, according to a Pew Research study of some 8,000 officers (Morin et al.). Consequently, as the self-proclaimed law-and-order President Donald Trump claimed, “You have to dominate, if you don't dominate you're wasting your time. They're going to run over you. You're going to look like a bunch of jerks. You have to dominate” (O'Keefe). Whereas only 12% of African Americans and 57% of white Americans agree, 92% of police believe that no more changes are needed to establish equality between Blacks and whites (Morin et al.). Accordingly, in the eyes of police, Black dissatisfaction with the status quo is baseless, and law enforcement officers suffer the consequences of the supposedly unjustified anger of African Americans. In short, police believe themselves to be victims.

In the wake of the Black Lives Matter movement, Blue Lives Matter was founded on December 20, 2014 with the intent to make targeting police a hate crime. Hate crime statutes exist on the books in many states and on the federal level, but they are designed to protect historically oppressed groups which have been subject to systemic discrimination because of race, religion, gender, sexual orientation, or disability. Police do not fit this definition. Nevertheless, attacking police is a hate crime in Texas, Louisiana, and Alabama, and such statutes are being considered in the legislatures of Georgia, Oklahoma, and Illinois. A bill was introduced into Congress in 2018 to make attacking the police a hate crime

and reintroduced in 2021 (Matkin 2018). Blue Lives Matter has its own Twitter account with some 79,000 followers (Blue Lives Matter). There are reported instances where individuals have been charged with a hate crime for defacing or trampling “Blue Lives Matter” signs (Malone; Matkin 2020; Olsen). Ironically, in 2022, Congress passed the Emmett Till Antilynching Act, more than 100 years after Rep. Leonidas Dyer first introduced such legislation in the House. Yet, police violence victimizes more African Americans today than at the height of lynching a century ago.

Conclusion

Whereas Charles Mills’ work argues that America was founded on a racial contract which may, in effect, be rewritten, Benjamin’s “Critique of Violence” suggests a far more radical indictment. For Benjamin, it is the very nature of the state—its life’s blood—to do violence through its embodiment in the police. The police power over life and death reveals “in this very violence something rotten in law” (Benjamin 286). In a macabre fashion, the authority of the state is predicated on the lives of those it victimizes. For Benjamin, the victims were the working class, later to be replaced by the Jews under the Nazi state. But in America, it is the blood of George Floyd and African Americans like him which reinforces the power of the state, instills fear of the police, and assures white elites who benefit from the inequitable distribution of power and wealth.

In the postwar modern liberal political order, the ideology of the social contract veils this fundamental political truth. Many Americans, both white and Black, still harbor the illusion that the racial contract may be transcended and replaced by a just social contract of racial equality for African-Americans. Yet, from the Benjaminian point of view, that is an impossibility, absent either the substitution of a new target population to validate the law-making and law-preserving power of the police or by defunding the police altogether, a prospect that garners only 15% support among the general populace (Parker and Hurst).

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