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## *Interrogating Racial Violence*

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## INTRODUCTION

This special symposium volume examines how critical race theory has and will contribute to the understanding of criminal justice issues.<sup>1</sup> Critical race

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<sup>1</sup> For an introduction to Critical Race Theory, see CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT (Kimberlé Crenshaw et al. eds., 1995); Richard Delgado & Jean Stefancic, *Critical Race Theory: An Annotated Bibliography 1993, A Year of Transition*, 66 U. COLO. L. REV. 159 (1995) (outlining ten themes of critical race theory); CROSSROADS, DIRECTIONS

theorists have examined, critiqued, and offered new insights to the field of criminal law and procedure.<sup>2</sup> In this Essay, we build on this important work and combine critical race theory with the social psychology of contemporary bias, an approach that has been coined behavioral realism,<sup>3</sup> to construct a more robust theory of police racial violence and to suggest doctrine and praxis to address it.

We are not the first critical race theorists to utilize psychology to support many of the theory's central themes, including that race is a social construction,<sup>4</sup> "race (almost always) matters"<sup>5</sup> and "the power of race is invisible."<sup>6</sup> For instance, both Charles Lawrence and Jerry Kang wrote groundbreaking articles relying upon psychological insights to explore unconscious racism.<sup>7</sup> While the use of social science has not been uncontroversial, critical race theorists are increasingly incorporating insights from various fields into their work, with the theory providing the normative framework for the empirical evidence.<sup>8</sup>

AND A NEW CRITICAL RACE THEORY (Francisco Valdes, Jerome McCristal Culp & Angela P. Harris eds., 2002).

<sup>2</sup> See, e.g., PAUL BUTLER, LET'S GET FREE: A HIP-HOP THEORY OF JUSTICE (2009); Paul Butler, *Racially Based Jury Nullification: Black Power in the Criminal Justice System*, 105 YALE L.J. 677 (1995); I. Bennett Capers, *Rethinking the Fourth Amendment: Race, Citizenship, and the Equality Principle*, 46 HARV. C.R.-C.L. L. REV. 1 (2011); I. Bennett Capers, *Policing, Race & Place*, 44 HARV. C.R.-C.L. L. REV. 43 (2009); CYNTHIA LEE, MURDER AND THE REASONABLE MAN: PASSION AND FEAR IN THE CRIMINAL COURTROOM (2003); Jody D. Armour, *Race Ipsa Loquitur: Of Reasonable Racists, Intelligent Bayesians, and Involuntary Negrophobes*, 46 STAN. L. REV. 781 (1994); Devon W. Carbado, *(E)Racing the Fourth Amendment*, 100 MICH. L. REV. 946 (2002); Devon W. Carbado & Cheryl I. Harris, *Undocumented Criminal Procedure*, 58 UCLA L. REV. 1543 (2011); Kevin R. Johnson, *How Racial Profiling in America Became the Law of the Land: U.S. v. Brignoni-Ponce and Whren v. U.S. and the Need for Truly Rebellious Lawyering*, 98 GEO. L.J. 1005 (2010).

<sup>3</sup> See, e.g., Linda Hamilton Krieger & Susan T. Fiske, *Behavioral Realism in Employment Discrimination Law: Implicit Bias and Disparate Treatment*, 94 CALIF. L. REV. 997, 1002 (2006); Jerry Kang & Mahzarin R. Banaji, *Fair Measures: A Behavioral Realist Revision of "Affirmative Action"*, 94 CALIF. L. REV. 1063, 1064 (2006).

<sup>4</sup> See, e.g., Ian F. Haney López, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 HARV. C.R.-C.L. L. REV. 1, 7 (1994).

<sup>5</sup> Jerry Kang, *Trojan Horses of Race*, 118 HARV. L. REV. 1489, 1501-02 (2005).

<sup>6</sup> *Id.* at 1506.

<sup>7</sup> Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987) (relying upon psychoanalytic theory); Kang, *supra* note 5 (relying upon implicit social cognition).

<sup>8</sup> See, e.g., Symposium, *Critical Race Theory and Empirical Methods*, 3 U.C. IRVINE L. REV. 183 (2013); CRITICAL RACE REALISM: INTERSECTIONS OF PSYCHOLOGY, RACE, AND LAW (Gregory S. Parks, Shayne Jones, and W. Jonathan Cardi eds., 2008). However, some have noted the need to proceed with caution. Kang, *supra* note 5, at 1496-97 (noting the "limits of the scientific method and of the ignominious history of pseudoscience's complicity in brutally subordinating entire peoples"); Glenn Adams & Phia S. Salter, *A Critical Race Psychology is Not Yet Born*, 43 CONN. L. REV. 1355 (2011); Osagie K. Obasogie, *Forward: Critical Race Theory and Empirical Methods*, 3 U.C. IRVINE L. REV. 183, 184 (2013); Devon Carbado, *Afterword: Critical What What?*, 43 CONN. L. REV. 1593, 1622, 1638-39 (2010) (noting that CRT scholars should think about the costs and benefits of CRTs).

Since Jerry Kang introduced the science of implicit social cognition to the legal field, scholars have utilized its lessons to examine law and policy.<sup>9</sup> This science reveals that racial animus is not a necessary prerequisite for racial harms. Instead, discrimination is pervasive and inevitable because it has become embedded not only within institutions and society, but also within our minds, such that it is often practiced unconsciously and consequently, without malice. This science demonstrates that unconscious negative racial stereotypes and attitudes about subordinated groups can affect the behaviors and judgments of even the most egalitarian individuals.

However, while unconscious racial biases can produce pernicious racial disparities, little attention has been paid to how problematic racial outcomes can also result from the self-directed insecurities of dominant group members. To illustrate, consider a scene between the slave master “Epps” and his slave Solomon Northup from the Academy Award winning film *12 Years a Slave*.<sup>10</sup> Epps is depicted both in the movie and in Northup’s original memoir as a man whose insecurity is even more dangerous to those over whom he has power than are his prejudices.<sup>11</sup> This dangerous self-loathing is epitomized in the scene where Epps nearly kills Northup in a jealous rage. Concerned that Patsey, an enslaved black woman for whom he has conflicting feelings of ownership and intimacy, is involved with another white man, Epps externalizes his insecurity by attacking Northup.<sup>12</sup> Here, it is not only Epps’ hatred of black people that endangers Northup, but also that hatred mixed with self-doubt, jealousy, and insecurity. If this scene simply represented an isolated incident, then it might serve as a cautionary parable of human ugliness and longing. However, Epps’ tale is not isolated. Rather, these self-directed insecurities, which social psychologists refer to as self-threats, can also cause racially disparate outcomes without the existence of conscious racial animus or unconscious racial bias.

Thus far, critical race theorists have not directed much attention to how unconscious racial biases and self-threats help to sustain racial subordination in the criminal justice system.<sup>13</sup> In this Essay, we begin to fill that void by examining

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empirical turn and arguing that “the time is ripe for . . . critical race empiricism”); Jerome M. Culp Jr., Angela P. Harris & Francisco Valdes, *Subject Unrest*, 55 STAN. L. REV. 2435, 2449 (2003) (noting that CRT and social science “work best in tandem”).

<sup>9</sup> See, e.g., Symposium, *Symposium on Behavioral Realism*, 94 CALIF. L. REV. 945 (2006).

<sup>10</sup> Regency Enterprises 2013.

<sup>11</sup> See *id.*; SOLOMON NORTHUP, 12 YEARS A SLAVE (1853).

<sup>12</sup> See 12 YEARS A SLAVE (Regency Enterprises 2013).

<sup>13</sup> But see Cynthia Lee, *Making Race Salient: Trayvon Martin and Implicit Bias in a Not Yet Post-Racial Society*, 91 N.C. L. REV. 1555 (2013); L. Song Richardson, *Arrest Efficiency and the Fourth Amendment*, 95 MINN. L. REV. 2035 (2011); L. Song Richardson & Phillip Atiba Goff, *Implicit Racial Bias in Public Defender Triage*, 122 YALE L.J. 2626 (2012); Angela P. Harris, *Gender, Violence, Race, and Criminal Justice*, 52 STAN. L. REV. 777 (2000); Frank Rudy Cooper, “Who’s the Man?”: *Masculinities Studies, Terry Stops, and Police Training*, 18 COLUM. J. GENDER & L. 671 (2009).

how both unconscious racial biases and self-threats contribute to hegemonic racial violence, a term we use to define the violence perpetrated by dominant group members, such as white individuals and the police, against racially subordinated individuals. Although we attend to state violence, our observations are equally relevant to private violence.<sup>14</sup> Furthermore, we focus on violence against blacks because data on the rates of violence perpetrated against Asians and Latinos are not as clear<sup>15</sup> and because social psychological research tends to focus on the effects of subordination on blacks, although this is changing.<sup>16</sup>

Recent reports demonstrate that black suspects die at the hands of the police at a rate five times greater than white suspects.<sup>17</sup> While it is often tempting to suggest that differential rates of violence are due either to racial animus on the part of the police or, alternatively, to greater displays and acts of aggression by blacks,<sup>18</sup> the social science highlight other possibilities. Both unconscious racial bias and self-threats can explain why racial disparities in police violence persist, with no signs of abating, despite the overall gentling of negative racial attitudes and beliefs.<sup>19</sup> In fact, the scientific study of human aggression suggests that it is

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<sup>14</sup> For instance, our analysis is useful to understanding the recent shooting deaths of black teens, such as Trayvon Martin and Jordan Davis, at the hands of white male perpetrators.

<sup>15</sup> 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, 287 (2012) (making the point that Latinos are often characterized as white and Asians as “other”).

<sup>16</sup> *Id.* at 310 (noting that “Most social psychological work on racial biases in the United States has focused on African Americans and how they are discriminated against in the context of a society dominated by Whites.”).

<sup>17</sup> JODI M. BROWN & PATRICK A. LANGAN, BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, POLICING AND HOMICIDE, 1976–98: JUSTIFIABLE HOMICIDE BY POLICE, POLICE OFFICERS MURDERED BY FELONS, (2001) available at <http://www.bjs.gov/content/pub/pdf/ph98.pdf> (studying killings between the years 1976 and 1998). See also CHRISTINE EITH & MATHEW R. DUROSE, U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, SPECIAL REPORT: CONTACTS BETWEEN POLICE AND THE PUBLIC, 2008, 12 (2011), available at <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=2229> (noting that “Blacks were more likely than whites or Hispanics to experience use or threat of force in 2008. In 2002 and 2005, blacks and Hispanics were more likely than whites to experience the use or threat of force during contact with police”). See also SAMUEL WALKER, CASSIA SPOHN & MIRIAM DELONE, *THE COLOR OF JUSTICE: RACE, ETHNICITY, AND CRIME IN AMERICA* (5th ed. 2011).

<sup>18</sup> Explanations that assume racial disparities are the result of the actions of subordinated group members start from the premise that justice and equality exist unless proven otherwise, a premise that critical race scholars reject. In other words, explanations that place the onus on subordinated groups to “prove” the existence of discrimination begin from the false premise that justice and equality are the appropriate starting point. Culp, Harris & Valdes *supra* note 8, at 2443–44. However, the luxury of taking this point of view is only available to those who do not have to face “subject unrest,” the position of being able to demonstrate systemic inequalities but never being able to prove discrimination in a particular case. In other words, taking this position is a sign of privilege and supremacy. *Id.*

<sup>19</sup> Phillip Atiba Goff, Paul G. Davies & Claude M. Steele, *The Space Between Us: Stereotype Threat and Distance in Interracial Contexts*, 94 J. PERSONALITY & SOC. PSYCHOL. 91 (2008).

self-threats, such as threats to status, perceived disrespect,<sup>20</sup> and chronic stress or self-loathing,<sup>21</sup> rather than racial hatred or unconscious racial bias, that best predicts racial violence.<sup>22</sup>

Our examination of hegemonic racial violence through the lens of the mind sciences reveals that this violence is an inevitable and foreseeable consequence of current policing strategies, even in the absence of institutional and individual racial animus. These practices, such as the stop and frisk tactics engaged in by the NYPD,<sup>23</sup> create an environment that nurtures the unconscious racial biases and self-threats that can lead even consciously egalitarian officers to be more likely to use force disproportionately against black suspects relative to suspects of other races. In this Essay, we argue that if the state is to take seriously the project of protecting citizens equally from violence, then it must contend with the role of both unconscious racial biases and self-threats in producing racially disparate violence. Although one way to achieve this is to change existing legal doctrines to account for the pernicious effects of these psychological processes, our focus here is on examining ways to transform current policing strategies to better protect citizens from hegemonic racial violence. In sum, the goal of this Essay is to translate the mind sciences' understanding of the routes to racially disparate violence in order to inform police praxis.

This Essay proceeds in four parts. The first three parts highlight how hegemonic racial violence can occur in the absence of conscious racial animus. In Part I, we discuss unconscious racial biases and more specifically, implicit dehumanization. Part II begins our exploration of self-threats. It introduces stereotype threat and provides evidence that, counter-intuitively, egalitarian police officers are more likely than consciously and unconsciously biased officers to use force against blacks. Part III reveals how masculinity threat, which refers to insecurities many men have concerning their masculine identity, renders black men more vulnerable to hegemonic violence. This part also shares the results of a groundbreaking new study we conducted specifically for this special issue, which demonstrates that masculinity threat can lead dominant individuals to be more

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<sup>20</sup> RICHARD E. NISBETT & DOV COHEN, *CULTURE OF HONOR: THE PSYCHOLOGY OF VIOLENCE IN THE SOUTH* (1996).

<sup>21</sup> Geraldine Downey & Scott I. Feldman, *Implications of Rejection Sensitivity for Intimate Relationships*, 70 *J. PERSONALITY & SOC. PSYCHOL.* 1327 (1996); Eli J. Finkel, *Impelling and Inhibiting Forces in the Perpetration of Intimate Partner Violence*, 11 *REV. GEN. PSYCHOL.* 193 (2007); Rachel Jewkes, *Preventing Domestic Violence*, 324 *BRIT. MED. J.* 253, 254 (2002); Rachel Jewkes, *Intimate Partner Violence: Causes and Prevention*, 359 *LANCET* 1423 (2002).

<sup>22</sup> PHILLIP ATIBA GOFF, KARIN DANIELLE MARTIN & MEREDITH GAMSON SMIEDT, *THE CONSORTIUM FOR POLICE LEADERSHIP IN EQUITY, PROTECTING EQUITY: THE CONSORTIUM FOR POLICE LEADERSHIP IN EQUITY REPORT ON THE SAN JOSE POLICE DEPARTMENT 1*, 17 (2012) [hereinafter "San Jose Report"]; Norman Miller et al., *A Theoretical Model of Triggered Displaced Aggression*, 7 *PERSONALITY & SOC. PSYCHOL. REV.* 75 (2003).

<sup>23</sup> A federal district court judge found the NYPD's stop and frisk practices to be unconstitutional. *Floyd v. The City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013).

likely to justify hegemonic racial violence. Finally, Part IV examines ways to reduce hegemonic racial violence by transforming current policing practices.

### I. IMPLICIT RACIAL BIAS

In this Part, we explore how implicit racial biases can lead to hegemonic racial violence.<sup>24</sup> Subpart A discusses implicit biases in general. Subpart B then examines one particular form of implicit bias, implicit dehumanization, and demonstrates how it can explain the disparate use of police violence against blacks.

#### A. In General

Throughout our nation's history, blacks have been variously construed as violent, hypermasculine, animal-like, criminal, and unintelligent, to name a few of the racial stereotypes that exist.<sup>25</sup> These stereotypes help justify racial subordination and hyperincarceration.<sup>26</sup> However, the science of implicit social cognition reveals that individuals do not have to consciously endorse these stereotypes in order for them to negatively affect behaviors towards and judgments of blacks. Rather, these racial constructions are now deeply embedded in our history and culture and are easily called to mind, even unbidden.<sup>27</sup> Social psychologists have demonstrated that because these stereotypes are so well rehearsed, they can influence perceptions and behaviors below the level of conscious awareness, even when people are motivated to be racially egalitarian.<sup>28</sup>

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<sup>24</sup> For an in-depth discussion of implicit racial biases and their relevance to criminal law and procedure, see Richardson & Goff, *Implicit Racial Bias*, *supra* note 13; L. Song Richardson, *Police Efficiency and the Fourth Amendment*, 87 IND. L. J. 1143 (2012).

<sup>25</sup> Phillip Atiba Goff et al., *Not Yet Human: Implicit Knowledge, Historical Dehumanization, and Contemporary Consequences*, 94 J. PERSONALITY & SOC. PSYCHOL. 292 (2008); Patricia G. Devine, *Stereotypes and Prejudice: Their Automatic and Controlled Components*, 56 J. PERSONALITY & SOC. PSYCHOL. 5 (1989); Patricia G. Devine & Andrew J. Elliot, *Are Racial Stereotypes Really Fading? The Princeton Trilogy Revisited*, 21 PERSONALITY & SOC. PSYCHOL. BULL. 1139 (1995); John F. Dovidio & Samuel L. Gaertner, *Reducing Prejudice: Combating Intergroup Biases*, 8 CURRENT DIRECTIONS PSYCHOL. SCI. 101, 105 (1999); Charles M. Judd et al., *Stereotypes and Ethnocentrism: Diverging Interethnic Perceptions of African American and White American Youth*, 69 J. PERSONALITY & SOC. PSYCHOL. 460 (1995); Lorella Lepore & Rupert Brown, *Category and Stereotype Activation: Is Prejudice Inevitable?*, 72 J. PERSONALITY & SOC. PSYCHOL. 275 (1997); Sheri R. Levy, Steven J. Stroessner & Carol S. Dweck, *Stereotype Formation and Endorsement: The Role of Implicit Theories*, 74 J. PERSONALITY & SOC. PSYCHOL. 1421 (1998).

<sup>26</sup> Frank Rudy Cooper, *Against Bipolar Black Masculinity: Intersectionality, Assimilation, Identity Performance, and Hierarchy*, 39 U.C. DAVIS L. REV. 853, 858–60, 875 (2006).

<sup>27</sup> Lawrence III, *supra* note 7, at 322 (noting that “Americans share a common historical and cultural heritage in which racism has played and still plays a dominant role. Because of this shared experience, we also inevitably share many ideas, attitudes, and beliefs that attach significance to an individual's race and induce negative feelings and opinions about non-whites”).

<sup>28</sup> See Joshua Correll et al., *The Police Officer's Dilemma: Using Ethnicity to Disambiguate Potentially Threatening Individuals*, 83 J. PERSONALITY & SOC. PSYCHOL. 1314 (2002); Devine,

Implicit racial biases can have a number of pernicious effects. Research demonstrates that they can cause individuals to interpret identical facial expressions as more hostile on black faces than on white faces,<sup>29</sup> and to perceive identical ambiguous behaviors as more aggressive when engaged in by blacks as opposed to whites.<sup>30</sup> Further, implicit biases explain the tendency to unconsciously associate blacks with danger and criminality. For example, researchers have found that thoughts of crime or criminals prompt individuals to look for black male faces and to ignore white male faces.<sup>31</sup> This unconscious racial profiling is automatic and unrelated to individuals' explicit racial attitudes.<sup>32</sup> These are just a few of the effects of implicit racial bias relevant to the criminal justice context.<sup>33</sup>

Next, we explore implicit dehumanization, a particularly virulent form of implicit racial bias. Not only is implicit dehumanization associated with hegemonic racial violence, but it also causes individuals to be more tolerant of it.

### B. *Implicit Dehumanization*

Implicit dehumanization, a term coined by Phillip Atiba Goff, refers to the tendency to unconsciously associate blacks with beasts, particularly apes.<sup>34</sup> The stereotype of black men as bestial can be traced back for centuries.<sup>35</sup> Legal scholar N. Jeremi Duru observes that “the very existence of blacks as slaves reinforced the perception of their bestiality: ‘the slave is outside of culture and therefore is

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*Stereotypes and Prejudice*, *supra* note 25; John F. Dovidio et al., *Racial Stereotypes: The Contents of Their Cognitive Representations*, 22 J. EXPERIMENTAL SOC. PSYCHOL. 22 (1986); John F. Dovidio & Samuel L. Gaertner, *Aversive Racism and Selection Decisions: 1989 and 1999*, 11 PSYCHOL. SCI. 315 (2000); Jennifer L. Eberhardt et al., *Seeing Black: Race, Crime, and Visual Processing*, 87 J. PERSONALITY & SOC. PSYCHOL. 876 (2004); Samuel L. Gaertner & John P. McLaughlin, *Racial Stereotypes: Associations and Ascriptions of Positive and Negative Characteristics*, 46 SOC. PSYCHOL. Q. 23 (1983); Bernd Wittenbrink et al., *Evidence for Racial Prejudice at the Implicit Level and Its Relationship With Questionnaire Measures*, 72 J. PERSONALITY & SOC. PSYCHOL. 262 (1997).

<sup>29</sup> Kurt Hugenberg & Galen V. Bodenhausen, *Facing Prejudice: Implicit Prejudice and the Perception of Facial Threat*, 14 PSYCHOL. SCI. 640 (2003).

<sup>30</sup> Birt L. Duncan, *Differential Social Perception and Attribution of Intergroup Violence: Testing the Lower Limits of Stereotyping of Blacks*, 34 J. PERSONALITY & SOC. PSYCHOL. 590 (1976); Jennifer L. Eberhardt et al., *Race in Motion: Body Movement Cues Racial Identity and Threat* 31 (unpublished manuscript) (on file with author).

<sup>31</sup> Eberhardt et al., *supra* note 28.

<sup>32</sup> *Id.*

<sup>33</sup> For more information, see Richardson & Goff, *supra* note 13.

<sup>34</sup> Phillip Atiba Goff et al., *Not Yet Human: Implicit Knowledge, Historical Dehumanization, and Contemporary Consequences*, 94 J. PERSONALITY & SOC. PSYCHOL. 292, 293 (2008); see also Susan Opatow, *Moral Exclusion and Injustice: An Introduction*, 46 J. SOC. ISSUES 1, 10 (1990).

<sup>35</sup> N. Jeremi Duru, *The Central Park Five, the Scottsboro Boys, and the Myth of the Bestial Black Man*, 25 CARDOZO L. REV. 1315, 1321 (2004).

nonhuman; is deprived of freedom and therefore is a beast.”<sup>36</sup> Since their earliest interactions, many whites “believed that the line between blacks and animals was minimally existent if existent at all. Some believed that blacks were the offspring of apes, while others suggested that blacks produced apes through conception with a breed of unknown African animals.”<sup>37</sup>

Even today, the association between blacks and animals is often made explicit. In the early 1990s, state police officers in California referred to cases involving young black men as N.H.I.—No Humans Involved.<sup>38</sup> An officer who took part in the beating of Rodney King in 1991 famously referred to a dispute between a black couple as “something right out of *Gorillas in the Mist*.”<sup>39</sup>

Although people today may not be consciously aware of the association between blacks and apes that shaped much of our nation’s early history, the association persists below conscious awareness. Goff and colleagues discovered this in a series of studies designed to test the unconscious association between social groups and non-human primates. Participants denied knowledge of the dehumanizing stereotype of blacks,<sup>40</sup> yet readily admitted knowledge of other equally negative racial stereotypes, suggesting that they were not simply bending to social desirability concerns.<sup>41</sup> Despite their lack of conscious awareness, however, they unconsciously associated blacks with apes.<sup>42</sup> Furthermore, this unconscious association was unrelated to explicit or implicit prejudice.<sup>43</sup>

Disturbingly, in two recent studies, Goff and colleagues found that implicit dehumanization not only facilitates hegemonic racial violence, but also helps people feel more comfortable with it. In the one study, they examined the effects of implicit dehumanization on police use of force by comparing officers’ actual use of force history against juveniles with their implicit dehumanization score.<sup>44</sup> What they found was that officers who held the association more strongly were also more likely to have used force on the street against black as opposed to white youth.<sup>45</sup> Importantly, this finding was not influenced by an officer’s explicit racial bias.

In another study, Goff and colleagues had participants watch a video of a

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<sup>36</sup> *Id.* at 1322–23, citing D. Marvin Jones, *Darkness Made Visible: Law, Metaphor, and the Racial Self*, 82 GEO. L.J. 437, 462 (1993).

<sup>37</sup> *Id.* at 1321.

<sup>38</sup> Goff et al., *supra* note 34, at 292.

<sup>39</sup> RANDALL KENNEDY, *RACE, CRIME AND THE LAW*, 120 (1998).

<sup>40</sup> Goff et al., *supra* note 34, at 294.

<sup>41</sup> *Id.* at 301.

<sup>42</sup> *Id.* at 296.

<sup>43</sup> *Id.* at 304.

<sup>44</sup> Phillip Atiba Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. PERSONALITY & SOC. PSYCHOL. 526 (2014).

<sup>45</sup> *Id.* at 533–35.

brutal police beating of a suspect and asked them to rate whether or not the use of force was justified.<sup>46</sup> The researchers found that implicit knowledge of the black-ape association led to markedly different judgments.<sup>47</sup> Subjects who held the association more strongly were more likely to find the beating of a black suspect more acceptable than the use of identical force against a white suspect.<sup>48</sup> Recall that this effect occurred even in the absence of conscious awareness of the black-ape association.

Neuroscience research supports these findings. This research demonstrates that when people think about social groups that are the most reviled in our society, they fail to recruit regions of the brain that are primarily implicated in empathy and social decision making.<sup>49</sup> In other words, some social groups (e.g., the homeless, drug users, certain criminals) are not perceived in the brain as human agents at all.

The implications of implicit dehumanization for policing are disturbing, to say the least. Regardless of officers' conscious racial attitudes, their unconscious association between black suspects and apes can lead them to be more likely to use brutal force against blacks. Equally important, it can lead them to believe that their use of force is justified. This is not to say that the use of force is necessarily unjustifiable from a doctrinal standpoint. The law allows officers to use force when they reasonably believe that it is necessary, even if their beliefs are mistaken.<sup>50</sup> Rather, what is problematic is that black suspects are more likely to be brutalized than white suspects despite engaging in identical behaviors. In other words, officers are more likely to believe that the use of force against a black suspect is both reasonable and necessary, even if they would not make the same judgment with a white suspect acting identically.

Recent research suggests that it is possible to counteract implicit dehumanization and restore some humanity to social targets.<sup>51</sup> For instance, imagining what another person's life looks like makes it easier to imagine their human responses.<sup>52</sup> Thus, as we will discuss in more detail in Part IV, rethinking policing practices in order to foster closer relationships between the police and the communities they serve holds some promise of reducing implicit dehumanization and the racial violence that results.

Thus far, our discussion has focused on how implicit racial biases can result in hegemonic racial violence in the absence of racial animus. However, this

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<sup>46</sup> Goff et al., *supra* note 34, at 302.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> Lasana T. Harris & Susan T. Fiske, *Social Groups that Elicit Disgust are Differentially Processed in mPFC*, 2 SOC. COGNITIVE AFFECTIVE NEUROSCIENCE 45, 45 (2007).

<sup>50</sup> *Graham v. Connor*, 490 U.S. 386, 388 (1989).

<sup>51</sup> Antonio T. Fernando III & Nathan S. Consedine, *Beyond Compassion Fatigue: The Transactional Model of Physician Compassion*, J. PAIN & SYMPTOM MGMT. 289 (2014).

<sup>52</sup> Nicholas Epley et al., *On Seeing Human: A Three-Factor Theory of Anthropomorphism*, 114 PSYCHOL. REV. 864, 880 (2007).

violence can also arise in response to an officer's own insecurities. Part II discusses one such insecurity—stereotype threat.

## II. STEREOTYPE THREAT

### A. In General

Stereotype threat refers to the concern with confirming or being evaluated in terms of a negative stereotype about one's group.<sup>53</sup> For instance, a woman professor may worry about being stereotyped as intellectually inferior and a Muslim civilian may fear being perceived as a terrorist. The concern with being negatively stereotyped often provokes anxiety, leading to physical and mental reactions that are difficult, if not impossible to volitionally control such as increased heart rate, fidgeting, sweating, averting eye gaze, and cognitive depletion—often leading to a reported inability to think clearly.<sup>54</sup> Unlike implicit racial bias, people often have conscious access to their feelings of stereotype threat.<sup>55</sup>

Individuals need not endorse the negative stereotypes about their group in order to be affected by stereotype threat. Stereotype threat is not a self-fulfilling prophecy. Rather, it arises in those who care highly about the domain in which they believe they are being evaluated; simply being aware of the stereotype is often sufficient to provoke it.<sup>56</sup> Thus, stereotype threat can affect academic performance when one cares about being academically successful. Similarly, the fear of being

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<sup>53</sup> Claude M. Steele, *A Threat in the Air: How Stereotypes Shape Intellectual Identity and Performance*, 52 AM. PSYCHOL. 613, 614 (1997); Claude M. Steele & Joshua Aronson, *Stereotype Threat and the Intellectual Test Performance of African Americans*, 69 J. PERSONALITY & SOC. PSYCHOL. 797, 797 (1995).

<sup>54</sup> Jennifer K. Bosson et al., *When Saying and Doing Diverge: The Effects of Stereotype Threat on Self-Reported Versus Non-Verbal Anxiety*, 40 J. EXPERIMENTAL SOC. PSYCHOL. 247 (2004); Laurie T. O'Brien & Christian S. Crandall, *Stereotype Threat and Arousal: Effects on Women's Math Performance*, 29 PERSONALITY & SOC. PSYCHOL. BULL. 782 (2003); Sian L. Beilock et al., *On the Causal Mechanisms of Stereotype Threat: Can Skills That Don't Rely Heavily on Working Memory Still Be Threatened?*, 32 PERSONALITY & SOC. PSYCHOL. BULL. 1059 (2006); Jim Blascovich et al., *African Americans and High Blood Pressure: The Role of Stereotype Threat*, 12 PSYCHOL. SCI. 225 (2001); Philip Atiba Goff et al., *supra* note 19; Brenda Major & Laurie T. O'Brien, *The Social Psychology of Stigma*, 56 ANN. REV. PSYCHOL. 393 (2005); Wendy Berry Mendes et al., *Challenge and Threat During Social Interactions With White and Black Men*, 28 PERSONALITY & SOC. PSYCHOL. BULL. 939 (2002); Wendy Berry Mendes et al., *How Attributional Ambiguity Shapes Physiological and Emotional Responses to Social Rejection and Acceptance*, 94 J. PERSONALITY & SOC. PSYCHOL. 278 (2008); Toni Schmader & Michael Johns, *Converging Evidence That Stereotype Threat Reduces Working Memory Capacity*, 85 J. PERSONALITY & SOC. PSYCHOL. 440 (2003).

<sup>55</sup> Goff et al., *supra* note 19, at 101–04.

<sup>56</sup> Steele & Aronson, *supra* note 53, at 797.

stereotyped as athletically deficient can result in a poor performance if one cares about athletic prowess.<sup>57</sup>

Stereotype threat can affect anyone when a negative stereotype about his or her group is salient. It can happen to women and men, queer-identified and straight individuals, Latinos and whites, poor and rich, and any other social group. In situations where their group membership is salient, these threats can be paralyzing or provoke behaviors that have the ironic effect of causing the very underperformance they fear. Thus, fear of conforming to, or being evaluated in terms of a stereotype may play a significant role in the ironic production of racial inequality.

While stereotype threat is most frequently used to explain racial and gender disparities in academic performance,<sup>58</sup> it has more recently been applied to a broader set of domains including athletic performance,<sup>59</sup> the professional aspirations of women,<sup>60</sup> and interracial interactions.<sup>61</sup> However, its effects on police behaviors have not received any attention in the legal arena. This is, at least in part, because stereotype threat was originally understood as a phenomenon that only affected women and non-whites in academic testing contexts.

However, recent innovations demonstrate that majority group members and powerful individuals often experience concerns with being negatively stereotyped in terms of their advantageous group position.<sup>62</sup> In the context of intergroup contact, this can translate into whites being concerned with being stereotyped as racist, leading them to avoid interracial contact.<sup>63</sup> The concern of dominant group members with appearing racist can cause negative outcomes for minority group members.<sup>64</sup> This is because the anxiety felt about being stereotyped as racist ironically produces behaviors—such as physical distancing, avoiding eye contact, cognitive depletion, and general nervous behaviors—that foster negative interactions. Next we demonstrate how stereotype threat can provoke racial

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<sup>57</sup> Jeff Stone et al., *Stereotype Threat Effects on Black and White Athletic Performance*, 77 J. PERSONALITY & SOC. PSYCHOL. 1213 (1999).

<sup>58</sup> Steele & Aronson, *supra* note 53; Steven J. Spencer et al., *Stereotype Threat and Women's Math Performance*, 35 J. EXPERIMENTAL SOC. PSYCHOL. 4 (1999).

<sup>59</sup> Stone et al, *supra* note 57.

<sup>60</sup> See Paul G. Davies et al., *Consuming Images: How Television Commercials that Elicit Stereotype Threat Can Restrain Women Academically and Professionally*, 28 PERSONALITY & SOC. PSYCHOL. BULL. 1615 (2002).

<sup>61</sup> Goff, *The Space Between Us*, *supra* note 19, at 91.

<sup>62</sup> *Id.* See also Jennifer A. Richeson & J. Nicole Shelton, *When Prejudice Does Not Pay: Effects of Interracial Contact on Executive Function*, 14 PSYCHOL. SCI. 287 (2003); Jacquie D. Vorauer, Kelley J. Main & Gordon B. O'Connell, *How do Individuals Expect to be Viewed by Members of Lower Status Groups? Context and Implications of Meta-Stereotypes*, 75 J. PERSONALITY & SOC. PSYCHOL. 917 (1998).

<sup>63</sup> Goff, Davies & Steele, *supra* note 19.

<sup>64</sup> *Id.*; Richeson & Shelton, *supra* note 62; Vorauer et al., *supra* note 62.

disparities in police use of force by discussing research conducted within the San Jose Police Department.

### B. Threat and Racial Violence

In 2009, the San Jose Police Department voluntarily participated in research to determine, among other things, the role that an officer's biases might play in causing racially inequitable outcomes.<sup>65</sup> As part of the research, a group of nearly 100 officers volunteered to complete a battery of psychological instruments including measures of explicit racial bias, implicit racial bias, and stereotype threat. Researchers were also given access to each participating officer's performance file, including his use of force history. This allowed researchers to match the officer's history with his psychological profile. After controlling for a wide variety of factors, including the district officers patrolled as well as years on the force,<sup>66</sup> researchers performed a multiple regression model designed to identify possible relationships between psychological predictors and police behaviors.

What researchers found was that explicit racism did not predict overall rates of force used across officers or racial disparities in the use of force. However, researchers did find a counter-intuitive relationship between the use of force and stereotype threat. They discovered that the more officers were concerned with appearing racist, the more likely they were to have used force against black suspects, but not suspects of other races, throughout the course of their careers.<sup>67</sup>

Why might an egalitarian-minded officer's concern with being evaluated as a racist be associated with greater use of force against black citizens? While this result may appear surprising, there are several reasons to expect this relationship. First, attitudes are relatively weak predictors of behavior.<sup>68</sup> Consequently, it is unsurprising that explicit prejudice was not a robust predictor of racial disparities in police behavior. Second, self-threats tend to figure more heavily in propensities towards violence than biases directed towards others.<sup>69</sup> Finally, these findings are more easily understood when accompanied by an understanding of standard officer safety training. Most officers agree that safety is the most important component of

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<sup>65</sup> San Jose Report, *supra* note 22, at 3.

<sup>66</sup> Controlling for officer age, ethnicity, length of time on the force, self-reported education level, self-reported racial prejudice, and self-reported income.

<sup>67</sup> Because the police behaviors occurred before the psychological testing, it is important not to make strong claims about causality.

<sup>68</sup> John F. Dovidio, *On the Nature of Contemporary Prejudice: The Third Wave*, 57 J. SOC. ISSUES 829, 840-41 (2001). See generally Richard T. LaPiere, *Attitudes vs. Actions*, 13 SOC. FORCES 230 (1934); Allan W. Wicker, *Attitudes Versus Actions: The Relationship of Verbal and Overt Behavioral Responses to Attitude Objects*, 25 J. SOC. ISSUES 41 (1969).

<sup>69</sup> San Jose Report, *supra* note 22, at 11.

academy and continuing training for officers on patrol.<sup>70</sup> This is why officer safety trainings are among the most popular voluntary trainings and the most diverse continuing education options available for patrol officers.<sup>71</sup> A basic tenet of nearly all trainings is the need for officers to maintain physical and psychological control of a situation in order to preserve personal safety.<sup>72</sup> In other words, officers are trained to believe that threats to their authority constitute an immediate threat to their safety.

Further, officers are instructed that they have two forms of authority with which to maintain that control. The first, moral or legal authority, should be employed whenever possible.<sup>73</sup> The second, coercive or physical authority, should serve only as a last recourse or as a response to an immediate physical threat.<sup>74</sup> Although officers should rely first on moral or legal authority, they may feel unable to rely upon their moral authority to control the situation if they fear that a citizen will judge them to be racist. They may fear that because the citizen may view them as racist, the citizen will deem them to be unworthy of respect. Thus, officers will believe that they have no moral authority in the eyes of the citizen and thus, their moral authority is no longer sufficient to control the situation. As a result, officers may be quicker to use force to control the situation than they would be in a situation where they feel they can rely upon their moral authority. In this way, concerns with appearing racist reduce the options officers believe are available to them. In other words, fear of being seen as racist promotes reliance on coercive authority, i.e. force. Importantly, while it is possible that in any given incident, accusing someone of racism may provoke aggression in response to the simple act of name calling, the research conducted in San Jose demonstrates that it is the individuals who are most concerned with appearing racist that tend to demonstrate the highest rates of disparities in the application of force.

In sum, an officer's concerns with appearing prejudiced can have the ironic effect of causing racially disparate treatment of individuals within the communities they are sworn to protect. In addition, stereotype threat also provokes the kind of regulatory demands that lead people to use stereotypes in their decision-making in the first place. Thus, the ironic outcome is that one's concerns with appearing prejudiced can produce increased reliance on stereotype-laden thinking—thinking

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<sup>70</sup> Geoffrey P. Alpert, Roger G. Dunham & John M. MacDonald, *Interactive Police-Citizen Encounters that Result in Force*, 7 POLICE Q. 475 (2004). See also Cooper, *supra* note 13.

<sup>71</sup> Alpert et al., *supra* note 70.

<sup>72</sup> *Id.*

<sup>73</sup> Phillip Abita Goff, Brooke Allison Lewis Di Leone & Kimberly Barsamian Kahn, *Racism Leads to Pushups: How Racial Discrimination Threatens Subordinate Men's Masculinity*, 48 J. EXPERIMENTAL SOC. PSYCHOL. 1111 (2012); Alpert et al., *supra* note 70; John R.P. French Jr. & Bertram Raven, *The Bases of Social Power*, in STUDIES IN SOCIAL POWER, 259 (Dorwin Cartwright, ed.) (1959).

<sup>74</sup> Goff, Di Leone & Kahn, *supra* note 73; Alpert et al., *supra* note 70; French & Raven, *supra* note 73.

that triggers the implicit biases discussed earlier—which then produces racially disparate outcomes.

A stereotype threat approach to interracial contact does not locate racial problems in the “hearts and minds” of prejudiced agents. Rather, it demonstrates that certain features of the external situation in which individuals find themselves can exacerbate the insecurities that lead to racial violence. When it comes to police violence, what this suggests is that it is important to interrogate whether certain aspects of current policing practices exacerbate stereotype threat in egalitarian police officers. For instance, certain police tactics such as stops and frisks may foster the stereotype that officers are racist, without any corresponding crime control benefit. And, even if some crime control benefit exists, this benefit should be balanced against the increased risk of hegemonic racial violence. Since it may be possible to reduce officers’ insecurities that they will be judged as racist by revising existing policing practices, it is imperative that police departments begin to explore these possibilities. Otherwise, it signals acceptance of the pernicious effects of stereotype threat in producing hegemonic racial violence. We discuss this in more detail in Part IV. Next, we attend to another self-threat that can lead to hegemonic racial violence, namely, masculinity threat.

### III. MASCULINITY THREAT

Masculinity threat refers to the fear of being judged to be insufficiently masculine. To explain why masculinity threat can lead to disparities in police violence, we begin with a brief discussion of masculinity theory. Then, we explore masculinity in police departments, and finally, we explore the relationship between masculinity threat and hegemonic racial violence.

#### A. *In General*

While gender can be understood as simply denoting differences between the sexes that are “natural, essential, or biological,”<sup>75</sup> masculinities theorists argue that gender is socially constructed; it is “the socially generated consensus of what it means to be a man, to be ‘manly’ or to display such behaviour[sic] at any one time.”<sup>76</sup> In sum, to use Angela Harris’ words, “gender is not a thing you have, but a thing you do.”<sup>77</sup> It is a performance.<sup>78</sup>

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<sup>75</sup> Candace West & Don H. Zimmerman, *Doing Gender*, 1 GENDER & SOC’Y 125, 137 (1987).

<sup>76</sup> Deborah Kerfoot & David Knights, *‘The Best is Yet to Come?’: The Quest for Embodiment in Managerial Work*, in MEN AS MANAGERS, MANAGERS AS MEN: CRITICAL PERSPECTIVES ON MEN, MASCULINITIES AND MANAGERIAL WORK 78, 86 (David L. Collinson & Jeff Hearn eds. 1996); Francisco Valdes, *Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of “Sex,” “Gender,” and “Sexual Orientation,”* in *Euro-American Law and Society*, 83 CALIF. L. REV. 1, 21–22 (1995) (noting that gender refers to the impact of culture upon one’s biological construction). Masculinities theorists Connell and Messerschmidt argue that “Masculinity is not a fixed entity embedded in the body or personality traits of individuals. Masculinities are configurations of practice that are

Since masculinity can be understood as a performance, for whom do men perform their gender identity? Gender theorists argue that men are constantly concerned with how they are being rated by other men<sup>79</sup> and are also chronically anxious that they will be found wanting in their masculinity.<sup>80</sup> Thus, men often perform their gender identity for the benefit of other men.

Social psychologists have confirmed the precarious nature of masculine identity.<sup>81</sup> Weaver and colleagues found that men generally perceive manhood “not as a developmental guarantee, but as a status that must be earned. . . . [And] once manhood status is earned, it can be lost relatively easily.”<sup>82</sup> Thus, masculine identity is “something that must be earned and re-earned through active demonstrations.”<sup>83</sup> More recently, Jackson and Goff found that masculine identity is the single most important common identity among men that is also precarious.<sup>84</sup> Taken together, threats to masculine self-concept constitute a frequent and pervasive class of threats for men.

What are some of the consequences of masculinity threat? Vandello and colleagues found that because masculine gender identity is precarious, men find challenges to their masculine identity anxiety-provoking and thus, “often feel compelled to demonstrate their manhood through action.”<sup>85</sup> For instance, Jackson

accomplished in social action and, therefore, can differ according to the gender relations in a particular social setting.” R.W. Connell & James W. Messerschmidt, *Hegemonic Masculinity: Rethinking the Concept*, 19 GENDER & SOC’Y 829, 836 (2005). See also JAMES W. MESSERSCHMIDT, MASCULINITIES AND CRIME: CRITIQUE AND RECONCEPTUALIZATION OF THEORY 174 (1993) (“we do gender according to the social setting in which we find ourselves.”).

<sup>77</sup> Angela P. Harris, *Heteropatriarchy Kills: Challenging Gender Violence in a Prison Nation*, 37 WASH. U. J.L. & POL’Y 13, 20 (2011). See also Harris, *supra* note 13, at 782; MESSERSCHMIDT, *supra* note 76, at 132 (“‘Doing gender’ means creating differences between men and women.”).

<sup>78</sup> See generally Devon W. Carbado & Mitu Gulati, *Working Identity*, 85 CORNELL L. REV. 1259 (2000).

<sup>79</sup> Cooper, *supra* note 13, at 687–88.

<sup>80</sup> *Id.* See also Harris, *supra* note 77, at 24 (2011) (noting that “[b]eing judged and found wanting in one’s masculinity is a constant possibility for men; they are constantly under the male gaze of judgment”).

<sup>81</sup> Johnathan R. Weaver et al., *The Proof is in the Punch: Gender Differences in Perceptions of Action an Aggression as Components of Manhood*, 62 SEX ROLES 241, 242 (2010).

<sup>82</sup> *Id.* See also Joseph A. Vandello et al., *Precarious Manhood* 95 J. PERSONAL & SOC. PSYCHOL. 1325, 1335 (2008) (finding across five studies that “manhood is seen as more of a social accomplishment that can be lost and therefore must be defended with active demonstrations of manliness.”).

<sup>83</sup> Weaver et al., *supra* note 81, at 242. See also Jennifer K. Bosson & Joseph A. Vandello, *Precarious Manhood and its Links to Action and Aggression* 20 CURRENT DIRECTIONS IN PSYCHOL. SCI. 82, 83 (2011).

<sup>84</sup> Matthew C. Jackson, *Male Pattern Blindness: The Consequences of Defending Manhood* (2013) (unpublished doctoral dissertation, University of California, Los Angeles) (on file with author).

<sup>85</sup> Vandello et al., *supra* note 82, at 1327.

and Goff found that masculinity threat led men to engage in riskier financial behavior in an effort to affirm their manhood.<sup>86</sup>

Furthermore, threats to masculinity can lead men to engage in violence.<sup>87</sup> This is likely to occur “in contexts in which physical aggression is the most salient masculine option or other routes to restoring manhood seem less attractive or effective.”<sup>88</sup> Numerous studies confirm that masculinity threats can result in aggressive behaviors. In one of these studies, men whose masculinity was threatened chose afterwards to punch a bag rather than to solve a puzzle.<sup>89</sup> Additionally, they punched the bag harder than men whose masculine identities had not been threatened. In another study, men performed more pushups when threatened than when not.<sup>90</sup> Evidence also demonstrates that behaving aggressively can actually relieve the anxiety caused by a masculinity threat.<sup>91</sup> Thus, when masculinity is threatened, aggressive behavior not only allows men to perform their masculine identity, but it also reduces their gender anxiety.

Men often respond to masculinity threats with aggression because physical aggression “is part of men’s cultural script for sustaining and restoring manhood.”<sup>92</sup> This was confirmed in a study in which participants were asked to interpret the physically aggressive acts of another man whose masculinity had been threatened. Researchers found that male observers were more likely to explain these acts as a necessary response to the situation rather than resorting to explanations that attributed the behaviors to the actor’s personality.<sup>93</sup> As the authors noted, “men display[] a unique sensitivity to the situational factors that compel men to defend their gender status with aggression.”<sup>94</sup> Their finding is all the more remarkable because, typically, people explain the behaviors of others with resort to dispositional rather than situational explanations, a psychological process known as fundamental attribution error.<sup>95</sup>

Importantly, masculinity threats do not inevitably result in physical violence. Rather, as gender theorists recognize, there are multiple masculinities that struggle for dominance within any given culture or institution,<sup>96</sup> and some promote

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<sup>86</sup> Jackson, *supra* note 84.

<sup>87</sup> Vandello et al., *supra* note 82.

<sup>88</sup> *Id.*

<sup>89</sup> Bosson & Vandello, *supra* note 83.

<sup>90</sup> Goff, Di Leone & Kahn, *supra* note 73, at 1116.

<sup>91</sup> Bosson & Vandello, *supra* note 83, at 84.

<sup>92</sup> Weaver et al., *supra* note 81, at 247.

<sup>93</sup> *Id.* at 248.

<sup>94</sup> Bosson & Vandello, *supra* note 83, at 84.

<sup>95</sup> *Id.*

<sup>96</sup> R.W. Connell & James W. Messerschmidt, *Hegemonic Masculinity: Rethinking the Concept*, 19 GENDER & SOC’Y 829, 833, 846 (2005); James Messerschmidt & Stephen Tomsen, *Masculinities*, in ROUTLEDGE HANDBOOK OF CRITICAL CRIMINOLOGY 174 (Walter S. DeKeseredy & Molly Dragiewicz eds., 2012).

aggressive masculinity while others do not. In subpart B, we examine masculinity in police departments and explain why it can lead to hegemonic racial violence even in the absence of racial animus.

### B. In Police Departments

When considering masculinity in police departments, it is important to distinguish between rank and file officers on the one hand, and police leadership on the other. Management officers are in a position of dominance over the rank and file, and thus “have access to the hegemonic masculinity of authority, control, and technical mastery . . . .”<sup>97</sup> In order to compensate for the potentially emasculating nature of being at the bottom of the police hierarchy, rank and file officers have been known to disparage the masculinity displayed by management officers and to glorify hypermasculinity, a form of masculinity defined by exaggerated displays of physical strength and aggression.<sup>98</sup> In this way, street officers construct themselves as the “brave and aggressive soldier who has mastered the art of violence,”<sup>99</sup> while belittling management officers as disengaged from the masculine nature of “real police work.”<sup>100</sup>

Hypermasculinity amongst the rank and file is encouraged, reinforced, and policed in numerous ways. For instance, the recruitment materials from twenty-

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<sup>97</sup> Harris, *supra* note 13, at 794 n.62.

<sup>98</sup> MESSERSCHMIDT, *supra* note 76, at 178 (citing to Jennifer Hunt, *The Development of Rapport through the Negotiation of Gender in Field Work among Police*, 43 HUM. ORG. 283 (1984)). See also Harris, *supra* note 13, at 794 n.62 (noting that rank and file officers “respond to being made to feel inferior and feminized by presenting themselves as hypermasculine”); Susan L. Miller, Kay B. Forest & Nancy C. Jurik, *Diversity in Blue: Lesbian and Gay Police Officers in a Masculine Occupation*, 5 MEN AND MASCULINITIES 355, 358 (2003) (“[T]he dominant ideal of police masculinity typically deviates from modern hegemonic masculinity, which emphasizes managerial and technical dominance. This hegemonic ideal is most closely associated with the behavior of elite white men.”) (citations omitted). Street cop work is associated more closely with “working-class masculinity that emphasize[s] physical strength and aggressiveness.” *Id.*

<sup>99</sup> MESSERSCHMIDT, *supra* note 76, at 179. As sociologist Jennifer Hunt observed after spending time serving as an officer in a major metropolitan police department:

Rank is inversely correlated with masculinity in the policeman’s view of the world. Thus rank-and-file officers perceived that administrators were engaged in “feminine labor” such as public relations and secretarial work. These “pencil-pushing bureaucrats” were not involved in the “masculine” physical labor which characterized “real police work” on the street. High ranking administrators were also viewed as “inside tit men,” “asskissers” and “whores” who gained their positions through political patronage rather than through superior performance in the rescue and crime fighting activities associated with “real police work.”

Jennifer Hunt, *The Development of Rapport Through Negotiation of Gender in Field Work Among Police*, 43 HUM. ORG. 283, 287 (1984).

<sup>100</sup> MESSERSCHMIDT, *supra* note 76, at 178–79 (“Street-cop masculinity—differentiated from and elevated above the demeanor of management—reflects, in part, street-cop desire to deny a subordinate position within hierarchical departmental power relations among men.”).

two departments serving the twenty-five most populous cities in the United States highlight attributes associated with hypermasculinity.<sup>101</sup> The San Jose Police Department materials stress the “paramilitary structure” of its academy and the requirement of “weekly physical conditioning.”<sup>102</sup> The NYPD “emphasizes the need for not only a physically strong candidate but also one skilled in the use of deadly force and agile enough to complete the entire [physically strenuous] exam in less than five minutes.”<sup>103</sup> Ironically, even those departments that highlight gender diversity do so in a manner that focuses attention on women’s “outsider” status by underscoring their “family-orientation, physical incompetence, and concern toward physical violence . . . .”<sup>104</sup> These references to physicality signal that strength and aggression are necessary and important aspects of policing.

The emphasis on hypermasculine traits continues in the police academy. In a disturbing study of one academy training program, researchers noted the “hidden curriculum” that “instructs students about the particular form of masculinity that is lauded in police culture, the relationship between extreme masculinity and police work, and the nature of the groups that fall ‘inside’ and ‘outside’ of the culture of policing.”<sup>105</sup> Recruits were taught in various ways that aggressive, misogynist forms of masculine identity were favored and expected. Furthermore, physical fighting and violence were emphasized both in and out of class.<sup>106</sup> Additionally, recruits learned through the words and actions of their instructors that “it is acceptable to exclude women, that women are naturally very different from men and thus can be treated differently, that denigrating and objectifying women is commonplace and expected, and that they can disregard women in authority.”<sup>107</sup>

Officer socialization continues in various ways once a recruit enters the police department. First, although the number of women officers has increased, policing is still a male-dominated profession.<sup>108</sup> In 2007, for instance, over 82 percent of police officers across the country were men,<sup>109</sup> a statistic that “reflects the fact that

<sup>101</sup> Michael F. Aiello, *Policing the Masculine Frontier: Cultural Criminological Analysis of the Gendered Performance of Policing*, in CRIME, MEDIA, CULTURE 12, 13 (2013).

<sup>102</sup> *Id.* at 13. The Department also highlights the importance of its educational component.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at 15. Seven of the twenty-two departments overtly highlighted these gender differences. *Id.* at 16.

<sup>105</sup> Anastasia Prokos & Irene Padavic, ‘There Oughtta Be a Law Against Bitches’: Masculinity Lessons in Police Academy Training, 9 GENDER, WORK AND ORG. 439, 440 (2002).

<sup>106</sup> *Id.* at 449.

<sup>107</sup> *Id.* at 454.

<sup>108</sup> Susan L. Miller & Emily Bonistall, *Gender and Policing: Critical Issues and Analysis*, in ROUTLEDGE HANDBOOK OF CRITICAL CRIMINOLOGY 316 (Walter S. DeKeseredy & Molly Dragiewicz eds., 2012).

<sup>109</sup> LYNN LANGTON, DEPARTMENT OF JUSTICE, U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, WOMEN IN LAW ENFORCEMENT, 1987–2008 (2010) available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/wle8708.pdf>. Additionally, women remain woefully underrepresented in police leadership. Miller & Bonistall, *supra* note 108, at 316.

police work is still viewed by police themselves and the public as a masculine pursuit best characterized by aggressive macho crime fighting.”<sup>110</sup> Second, officer training continues to emphasize physical strength, danger and the physical aspects of the job, all of which codes policing as hypermasculine.<sup>111</sup>

Third, women within departments are steered towards gender-stereotyped roles.<sup>112</sup> They are “segregated into the non-masculine, paperwork-dominated, aspects of the job, thus preserving the masculine character of the crime-fighting policeman.”<sup>113</sup> In fact, male officers often resist the inclusion of women into patrol work, arguing that they do not have the physical strength and ability to demonstrate the authority and garner the respect necessary to police the street.<sup>114</sup>

In sum, physically aggressive masculinity is institutionalized in police departments.<sup>115</sup> In fact, hierarchies amongst the rank and file are defined by the amount of aggression and violence perceived to be necessary to perform the job.<sup>116</sup> One former twenty-seven year veteran of the Boston Police Department disclosed that:

[P]olice officers who work in what is (perhaps inaccurately) characterized as more dangerous duty in inner-city neighborhoods (i.e., communities of color) are held in higher masculine esteem than officers who work in the relative tranquility of a suburban or downtown community. They refer to themselves as “ghetto cops,” while police who work in upscale downtown districts hail from the *bon ton* divisions and the “bright lights.”<sup>117</sup>

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<sup>110</sup> Miller & Bonistall, *supra* note 108, at 316.

<sup>111</sup> Jennifer Brown, Anita Maidment & Ray Bull, *Appropriate Skill-task Matching or Gender Bias in Deployment of Male and Female Police Officers?* 3 POLICING AND SOCIETY 121, 121 (1993); Aiello, *supra* note 101, at 12–13 (citing JOHN P. CRANK, UNDERSTANDING POLICE CULTURE 230 (2004)).

<sup>112</sup> Miller & Bonistall, *supra* note 108, at 316 (“[E]ntrenched gender-role stereotypes and assumptions have been used to exclude women from becoming fully participating, vested police officers with job roles and responsibilities similar to those of their male counterparts.”).

<sup>113</sup> Prokos & Padavic, *supra* note 105, at 442. *See also* Brown, Maidment & Bull, *supra* note 111, at 131 (finding evidence of steering women officers to certain tasks).

<sup>114</sup> Miller & Bonistall, *supra* note 108, at 317.

<sup>115</sup> MESSERCHMIDT, *supra* note 76, at 174.

<sup>116</sup> *See also* Steve Herbert, ‘Hard Charger’ or ‘Station Queen’? *Policing and the Masculinist State*, 8 GENDER, PLACE & CULTURE 55, 59 (2001) (noting that detectives and management “are regularly disparaged by patrol officers; they are not ‘real men’ because they avoid the test of masculinity that the danger of the street presents”).

<sup>117</sup> Thomas Nolan, *Behind the Blue Wall of Silence*, 12 MEN & MASCULINITIES 250, 252 (2009).

The hypermasculinity of the rank and file is continuously reaffirmed through the subordination and harassment of women.<sup>118</sup> One study found that two-thirds of the women police officers interviewed had experienced discrimination from supervisors and peers within the department and from citizens.<sup>119</sup> Additionally, copious evidence of sexual harassment in the form of inappropriate touching, jokes, attempted rapes, and derogatory comments exists.<sup>120</sup> For instance, a 1998 study by the National Center for Women and Policing found that 80 percent of female police officers had been sexually harassed at work.<sup>121</sup> Some women found this harassment even more stressful than the violence they might experience on the street.<sup>122</sup>

The policing of masculinity within departments also includes the harassment of gay men.<sup>123</sup> Evidence suggests that these men are the most denigrated social group within police departments.<sup>124</sup> Furthermore, police officers are often the perpetrators of violence against gay citizens.<sup>125</sup>

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<sup>118</sup> Miller, Forest & Jurik, *supra* note 98, at 365; Connell & Messerschmidt, *supra* note 76, at 844 (“To sustain a given pattern of hegemony requires the policing of men as well as the exclusion or discrediting of women.”).

<sup>119</sup> Miller & Bonistall, *supra* note 108, at 322.

<sup>120</sup> *Id.* See also Merry Morash & Robin N. Haarr, *Gender, Workplace Problems, and Stress in Policing*, 12 JUSTICE Q. 113, 133 (1995) (“The nature of the harassment . . . include[d] constant displays of pornography, jokes or comments based on sexual stereotypes of women, and calling attention to women’s sexuality.”); Joseph Balkin, *Why Policemen Don’t Like Policewomen*, 16 J. SCI. & ADMIN. 29, 33 (1988) (noting the use of anti-women remarks, refusal to speak to women altogether, questioning their sexuality); C. FEINMAN, *WOMEN IN THE CRIMINAL JUSTICE SYSTEM* (3d ed. 1994) (noting woman sent to high crime area after complaining); SUSAN EHRLICH MARTIN & NANCY C. JURIK, *DOING JUSTICE, DOING GENDER: WOMEN IN LAW AND CRIMINAL JUSTICE OCCUPATIONS* 38 (2d ed. 2006) (noting that women found dildos and pornography in their lockers).

<sup>121</sup> Miller, Forest & Jurik, *supra* note 98, at 359–60.

<sup>122</sup> Miller & Bonistall, *supra* note 108, at 321; Frances Heidensohn, ‘*We Can Handle It Out Here*’. *Women Officers in Britain and the USA and the Policing of Public Order*, 4 POLICING & SOC’Y 293, 301 (1994) (noting that “[d]ealing with harassment by male colleagues was often a greater problem for women than handling street or domestic violence”).

<sup>123</sup> See also Dean Lusher & Gary Robins, *Hegemonic and Other Masculinities in Local Social Contexts*, 11 MEN & MASCULINITIES 387, 387 (2009) (“Hegemonic masculinity controls a hierarchy of masculinities set up in a way to maintain these gender relations. So hegemonic masculinity has dominance not just over women but also over subordinate masculinities, such as gay or academically inclined.”).

<sup>124</sup> Miller & Bonistall, *supra* note 108, at 322.

<sup>125</sup> GARY DAVID COMSTOCK, *VIOLENCE AGAINST LESBIANS AND GAY MEN* (1991). As a former police lieutenant writes:

Openly gay male police suffer a vituperative ostracization that far outstrips their lesbian counterparts in police organizations. The women police who are lesbians have, ironically, been largely mainstreamed into this male-dominated world; they pose little occupational threat to their male colleagues and they are seen as not available sexually. The men who are gay have never fared as well however, and they have historically been subjected to brutal hostility and oppression at the hands of (many of) their homophobic colleagues.

Male police officers often comment on the necessity of proving their masculinity through performance of a straight, macho identity.<sup>126</sup> For instance, one police veteran shared that patrol officers may not call for help for fear of being viewed as insufficiently masculine in the eyes of other officers. As he relates, “officers who ‘call for help’ are seen as weak, as vulnerable, and as feminine. . . . The subculture dictates that ‘real men’ will never need to call for help; those who do are often subjected to ridicule and scorn after having done so.”<sup>127</sup> Gay officers also discuss the need to “do” gender by “overemphasiz[ing] their toughness and strength to facilitate acceptance into a profession that values and expects such macho attributes.”<sup>128</sup> In police departments, then, male officers may constantly feel at risk of being found wanting in their masculinity—not only in the eyes of their fellow officers, but also in the eyes of those they encounter on the street. Next, we explore the relationship between hypermasculinity and hegemonic racial violence.

### C. Hypermasculinity and Hegemonic Racial Violence

We are not the first scholars to discuss the association of hypermasculinity, race, and policing. In her path-breaking article, *Gender Violence, Race, and Criminal Justice*, Angela Harris convincingly argued that police brutality is a form of gender violence because it is a means by which officers can perform their masculinity identity.<sup>129</sup> Furthermore, her analysis revealed “the thread of hypermasculinity that runs through racism.”<sup>130</sup> She notes that the police often have an antagonistic relationship with communities of color, and that officers working in poor urban neighborhoods may come to see themselves as law enforcers in a community of savages. “In such a situation,” she writes, “race, gender, and nation converge. ‘Us versus them’ collapses into ‘us versus the nonwhites,’ and rogue police officers, like private perpetrators of hate violence, are provided with ample opportunity to prove not only their patriotism but also their masculinity.”<sup>131</sup> Thus, she concludes, “[a]cts of violence can be ways of doing race as well as gender.”<sup>132</sup>

Frank Rudy Cooper’s compelling article, *Who’s the Man?: Masculinities Studies, Terry Stops, and Police Training*, also explores the relationship between masculinity and racism, specifically in the context of racial profiling. He argues that male officers will often punish disrespect by staging masculinity contests, “a face-off between men where one party is able to bolster his masculine esteem by

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Nolan, *supra* note 117, at 256.

<sup>126</sup> Miller, Forest & Jurik, *supra* note 98, at 369.

<sup>127</sup> Nolan, *supra* note 117, at 255.

<sup>128</sup> Miller, Forest & Jurik, *supra* note 98, at 376.

<sup>129</sup> Harris, *supra* note 13, at 788.

<sup>130</sup> *Id.* at 799.

<sup>131</sup> *Id.* at 797–98 (citations omitted).

<sup>132</sup> *Id.* at 799.

dominating the other.”<sup>133</sup> Since masculinity “incorporates an expectation that one denigrate[] racial minority males,”<sup>134</sup> racial profiling allows officers to boost both their racial and masculine esteem.<sup>135</sup> They bolster their racial esteem by disparaging black men during the course of the interaction and their masculine esteem by successfully dominating another man. Thus, like Angela Harris, Cooper argues that both race and gender influence the behaviors of racist officers.

In this subpart, we build on their arguments in two ways. First, while masculinity is no doubt tied to racism, masculinity threat can lead to hegemonic racial violence even in the absence of conscious bias. We argue that because black men are perceived as more masculine than men from other racial groups,<sup>136</sup> they pose the greatest threat to an officer’s masculine identity. As a result, they are more likely to be the victims of police use of force. Second, we also present new, groundbreaking research by Goff demonstrating that the experience of masculinity threat can lead white men to accept hegemonic racial violence as justifiable.

### 1. San Jose Report

The previously discussed San Jose Police Department research also examined the relationship between masculinity threat and police use of force. The officers involved in the study completed several measures of masculinity threat.<sup>137</sup> Then, their scores were compared to their record of force for the previous two years.<sup>138</sup> The results demonstrated that the more officers were insecure in their masculinity, the more likely they were to use greater force against blacks relative to other racial groups.<sup>139</sup> In other words, masculinity threat predicted whether officers had actually used force against black men in the previous two years. However, masculinity threat was not associated with the use of force against men of other races. Additionally, neither explicit racism nor implicit bias was associated with the use of greater force.<sup>140</sup> Even egalitarian-minded officers were more likely to have used force against noncompliant black suspects if the officers were highly insecure in their masculinity.

What might explain this result? Young black men in poor urban environments are stereotyped, both consciously and unconsciously, as violent, criminal, dangerous, and animal-like. These images are so deeply embedded in

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<sup>133</sup> Cooper, *supra* note 13, at 674. See also Harris, *supra* note 13, at 698.

<sup>134</sup> Harris, *supra* note 13, at 676.

<sup>135</sup> *Id.*

<sup>136</sup> Phillip Atiba Goff, Margaret A. Thomas & Matthew Christian Jackson, *Ain't I a Woman?*, 59 *SEX ROLES* 392, 403 (2008).

<sup>137</sup> San Jose Report, *supra* note 22, at 5–6.

<sup>138</sup> *Id.* at 4.

<sup>139</sup> *Id.* at 11.

<sup>140</sup> *Id.*

our culture that they have “become common-sense ‘truths.’”<sup>141</sup> In Part I, we demonstrated how these unconscious stereotypes can cause disparate racial effects even in the absence of conscious racial animus. In the context of masculinity threat, these negative racial stereotypes likely do additional work by helping to construct black men as more masculine in relation to other men. In fact, empirical evidence confirms that black men are viewed as more masculine vis-a-vis other races.<sup>142</sup>

Regardless of an officer’s conscious racial attitudes, then, black men pose the greatest threat to an officer’s masculinity, especially if their actions are perceived as noncompliant and thus, disrespectful or challenging to an officer’s masculine authority. We use the phrase “perceived as noncompliant” because there are circumstances where officers may view actions to be noncompliant when they are not.<sup>143</sup> Perceived noncompliance is a sign of disrespect that poses a masculinity threat.<sup>144</sup> Since aggression is often a consequence of threats to masculinity in hypermasculine environments, black men are more vulnerable to police violence as officers “do” gender to defend or prove their masculinity not only to themselves and to the victim but also to any fellow officers who might be present. Disturbingly, all this can occur without conscious racial bigotry on the part of the officer.

Importantly, we are not suggesting that aggression and violence are the only ways to respond to masculinity threats. However, such responses are more likely in hypermasculine environments, like police departments, because this is the recognized way of establishing one’s manhood. Thus, the hypermasculine setting of police departments places young black men at greater risk of racial violence, even if they are acting identically to young white men in similar situations and even if the officer who confronts them is consciously egalitarian. Specifically, an egalitarian officer who is insecure in his masculinity may feel even more insecure when interacting with someone who represents the archetype of hypermasculinity, i.e. young black men. His insecurities may cause him to overreact to perceived signs of disrespect or noncompliance and to use violence to compensate. In sum, it is because officers work in hypermasculine environments that black men are at greater risk of police violence. If a different type of masculinity were hegemonic amongst the rank and file, then officers’ responses to masculinity threat likely

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<sup>141</sup> PATRICIA HILL COLLINS, *BLACK SEXUAL POLITICS: AFRICAN AMERICANS, GENDER, AND THE NEW RACISM* 151 (2005).

<sup>142</sup> Goff, Thomas & Jackson, *supra* note 136.

<sup>143</sup> For instance, in the following studies, participants’ interpretations of behaviors were affected by unconscious racial biases. See, e.g., Birt L. Duncan, *Differential Social Perception and Attribution of Intergroup Violence: Testing the Lower Limits of Stereotyping of Blacks*, 34 *J. PERSONALITY & SOC. PSYCHOL.* 590 (1976); Sandra Graham & Brian S. Lowery, *Priming Unconscious Racial Stereotypes About Adolescent Offenders*, 28 *LAW & HUM. BEHAV.* 483, 485 (2004). See also 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, 308–09 (2012).

<sup>144</sup> Cooper, *supra* note 13.

would be different.

Next, we provide the results of original research that demonstrates an additional problematic consequence of masculinity threat, namely, that it can cause dominant group members to be more likely to justify hegemonic racial violence.

## 2. Justifying Hegemonic Racial Violence

Previous research, including that described above from the San Jose Police Department, suggests that threats to an individual's masculine self-concept can cause that individual to perform compensatory acts of aggression in response. However, no research exists demonstrating a group-based orientation to masculinity threat. In other words, are men who are under masculinity threat more likely to justify interracial violence performed by another member of their in-group?

Our previous discussion revealed that a threat to a dominant group member's own masculine self-concept can lead him to engage in compensatory violence against blacks, but not against men of other racial groups. This leads us to hypothesize that perhaps threats to a dominant individual's masculine self-concept might also provoke him to be more likely to justify hegemonic violence, as opposed to violence in general. To test this hypothesis, we conducted experimental research for this special issue to determine whether or not individual-level masculinity threats might lead individuals to justify hegemonic racial violence.

We recruited 180 white and Asian men from Amazon's Mechanical Turk mechanism.<sup>145</sup> This allowed for a national sample that, while it skews more liberal and more educated than the U.S. median, provides a broad sample of viewpoints.<sup>146</sup> Participants were given a "masculinity knowledge" test that purported to test cultural knowledge that men tend to know. After taking the test, they were given false feedback suggesting that they scored either better than 87% of other men or worse than 87% of other men. This served as our manipulation of masculinity threat, with those scoring worse than 87% of other men being "threatened," and those scoring better having their masculinity affirmed. Previous researchers have utilized this manipulation.<sup>147</sup>

After receiving the false masculinity feedback, participants read a vignette

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<sup>145</sup> There were 161 White men, and the remainder was Asian, who are often seen as less stigmatized in criminal justice contexts. The median age of the participants was 32. Mechanical Turk is a portal owned by Amazon.com that is commonly used to recruit a broad sample of survey respondents from across the country. Participants choose what surveys to complete based on minimal project descriptions and are paid a small amount in exchange for completing the study. In this case, the participants were paid \$0.25.

<sup>146</sup> See generally *ADVANCED METHODS FOR CONDUCTING ONLINE BEHAVIORAL RESEARCH* (Samuel D. Gosling & John A. Johnson, eds. 2010).

<sup>147</sup> Vandello et al., *supra* note 82.

that was taken almost verbatim from media reports of the Jordan Davis shooting.<sup>148</sup> Jordan Davis was a seventeen-year-old black teenager who was shot in the back by 47-year-old Michael Dunn, a white male, after a dispute about the volume of music emanating from the vehicle in which Davis was a passenger. We manipulated hegemonic racial violence by having half of our participants read about a white adult man shooting a black teenage boy (the hegemonic racial violence group), and having the other half read about a black adult man shooting a white teenage boy (the counter-hegemonic violence group). These two manipulations resulted in participants being randomly assigned to a 2 X 2 between subjects factorial design. In other words, participants were randomly assigned to one of four conditions: masculinity threat/hegemonic racial violence; masculinity threat/counter-hegemonic violence; masculinity affirmance/hegemonic racial violence; and finally, masculinity affirmance/counter-hegemonic violence. Participants in each group then answered questions about how masculine the shooter was and how justified the shooting was.<sup>149</sup>

Consistent with our hypothesis, the results demonstrated that masculinity threat caused participants to endorse and justify hegemonic racial violence. As Figure 1 demonstrates, those participants whose masculinity was threatened rated the white shooter of the black target as more masculine than those whose masculinity was affirmed. Furthermore, as shown in Figure 2, participants whose masculinity was threatened also rated the white shooter's actions as being more justified than those whose masculinity was affirmed. These results were all statistically significant.<sup>150</sup>

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<sup>148</sup> See Appendix for the news reports used.

<sup>149</sup> These were each single-item questions: [Masculinity] "How do you think Mr. Meeks [White Perpetrator] would score on the Personality quiz you took earlier in this study?" and [Justification] "Mr. Meeks [White Perpetrator] was justified in shooting Jamal [Black Victim]."

<sup>150</sup> As Figure 1 shows, simple effects tests (a statistical test of whether or not two conditions within a larger model differ significantly) revealed that participants who read about White perpetrators shooting Black victims felt the White shooter was more masculine when their masculinity was threatened ( $M = 4.23$ ,  $SD = .75$ ) than when their masculinity was not threatened ( $M = 3.72$ ,  $SD = 1.05$ ),  $F(1, 176) = 6.27$ ,  $p = .01$ . Additionally, Participants under threat rated the White perpetrator as significantly more masculine than the Black perpetrator ( $M = 3.65$ ,  $SD = 1.05$ ),  $F(1, 176) = 8.92$ ,  $p = .004$ . This was qualified by the predicted two-way interaction,  $F(1, 176) = 8.35$ ,  $p = .004$ , consistent with our hypotheses.

"M" denotes the mean of a distribution. "SD" denotes the standard deviation of that distribution, a measure of variability of data. "F" is an inferential statistic that allows us to test whether the observed data differs from what one would find from random error. And "p" is the probability that this pattern of data was obtained at random, with " $p < .05$ " being the conventional standard of statistical significance.

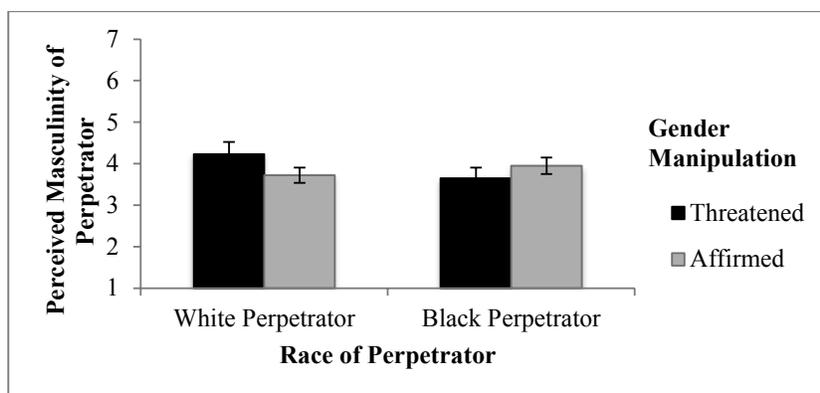


Figure 1. Mean participant ratings of the perpetrator's level of masculinity as a function of the perpetrator's race and whether the participant's gender identity was threatened or affirmed.

Conversely, as Figure 1 demonstrates, masculinity threat did *not* lead participants to endorse counter-hegemonic racial violence.<sup>151</sup> Those participants whose masculinity was threatened rated the black shooter of the white target as *less* masculine than those whose masculinity was affirmed, suggesting, as we hypothesized, that participants were compensating for their own threatened masculinity by denigrating the masculinity of a threatening group.

Furthermore, participants whose masculinity was threatened also rated the black shooter's actions as being *less* justified than those participants whose masculinity was affirmed, as shown in Figure 2. This suggests that masculinity threat caused dominant group members to affirm the dominant status of other in-group members. Thus, when their masculine self-concept was threatened, men not only affirmed the masculinity of another member of their in-group member but also found their in-group members' actions to be more acceptable.

<sup>151</sup> As Figure 2 reveals, ratings of masculinity mirrored ratings of how justified the shooting was, again, consistent with our hypotheses. Simple effects tests revealed that participants under threat rated the White perpetrator as marginally more justified ( $M = 4.60$ ,  $SD = .88$ ) than the Black perpetrator ( $M = 4.25$ ,  $SD = 1.18$ ),  $F(1, 176) = 2.72$ ,  $p = .10$ .

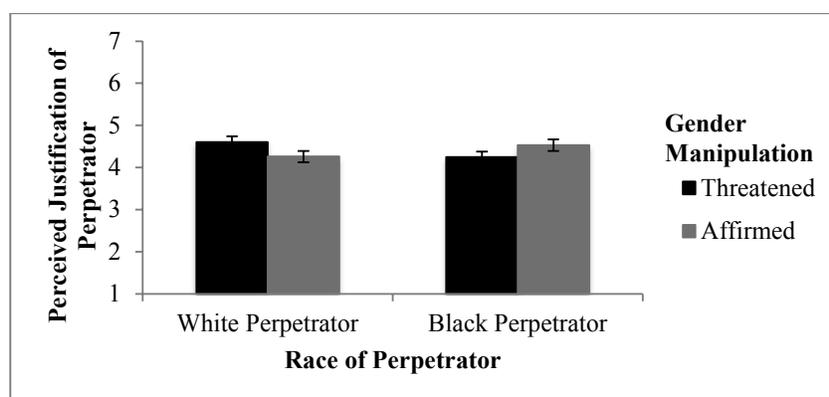


Figure 2. Mean participant ratings of how justified the perpetrator was in shooting the victim as a function of the perpetrator's race and whether the participant's gender identity was threatened or affirmed.

We also examined whether there was any correlation between ratings of the shooter's masculinity and perceptions of how justified the shooting was. Our results revealed that for participants whose masculine self-concept was threatened, the more they saw the black shooter as masculine, the *less* justified they rated the shooting to be.<sup>152</sup> However, the more they saw the white shooter as masculine, the *more* justified they rated the shooting.

Participants whose masculine self-concept was affirmed, however, demonstrated a different pattern. Similar to those whose masculinity was threatened, the more they rated the white shooter as masculine, the more they thought the shooter was justified.<sup>153</sup> However, for those who rated the black shooter of a white target, there was no relationship between the masculinity of the black shooter and justifications for the shooting.<sup>154</sup> The difference between these correlations, however, was not significant.<sup>155</sup>

Finally, we examined whether part of the reason that threats to masculinity increased judgments that the shooting of the black target by the white shooter is justified is that threatened participants are *also* rating the shooter as more

<sup>152</sup> For participants whose masculine self-concept was threatened, the correlation between perpetrator masculinity and ratings of justification was larger for White shooters who shot Black targets,  $r(41) = .14$ , n.s. than for Black shooters who shot White targets,  $r(49) = -.33$ ,  $p = .02$ ,  $Z = 3.35$ ,  $p < .001$ . The "r" denotes the Pearson correlation value, a statistic indicating the size and direction of a relationship between two variables. "Z" in this case denotes an inferential statistic used to test whether two correlations are different from each other.

<sup>153</sup>  $r(41) = .37$ ,  $p = .02$ .

<sup>154</sup>  $r(41) = .16$ , n.s. "N.S." means that this finding was not significant.

<sup>155</sup>  $Z = 1.00$ , n.s.

masculine.<sup>156</sup> We found that this was the case. For participants who viewed the white shooter of the black target, it was not only true that those who received masculinity threatening feedback saw the shooting as more justified than those who received the masculinity affirming feedback, but also, it was the degree to which individuals saw the perpetrator as more masculine that predicted this difference.<sup>157</sup>

Taken together, this study suggests that masculinity threat causes dominant individuals to accept and justify hegemonic, but not counter-hegemonic racial violence. This is done by endorsing the performance of masculinity of white shooters of black teenage boys. However, when under threat, dominant group members do not endorse the shooting of white teenagers by black shooters. In other words, consistent with our hypotheses and the theoretical framework advanced in this Essay, threats to masculine self-concept cause dominant individuals to justify racial violence performed by dominant group members against subordinate group members, but not the opposite.

In the context of policing, these results suggest some disturbing prospects. Not only must we be concerned that police (men in particular) may respond to self-threats with racially disparate aggression, but also that officers and laypeople under conditions of threat may justify that violence more. That is, self-threats may provoke individual acts of violence and provoke third-party justifications of that violence. Unlike violence that seems obviously motivated by racial animus, racially disparate violence stemming from self-threats may be more easily justified, leaving the disparate outcomes to persist with impunity. While these preliminary findings should be translated into actual police settings, the research in this area suggests an urgent need to address the potentially hidden and severe consequences of self-threats within the criminal justice system.

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<sup>156</sup> We used Baron and Kenney's test of mediation to examine this; this test is a standard statistical test of direct and indirect effects. See generally Reuben M. Baron & David A. Kenny, *The Moderator-Mediator Variable Distinction in Social Psychological Research—Conceptual, Strategic, and Statistical Considerations*, 51 J. PERSONALITY & SOC. PSYCHOL. 1173–82 (1986).

<sup>157</sup> The masculinity ratings of the white shooter partially and marginally mediated the relationship between the masculinity threat and justifying the shooting.  $Z = 1.88$ ,  $p = .06$ . (In this case, "Z" denotes an inferential statistic that allows us to test whether the relationship between gender threat and ratings of how justified the shooter was significantly moderated by ratings of the masculinity of the shooter.) Again, for participants who viewed the white shooter, masculinity threat marginally predicted how justified participants felt the perpetrator was.  $\beta = -.17$ ,  $B = -.35$ ,  $SE = .22$ ,  $t = -1.63$ ,  $p = .11$  ("β" denotes a "beta weight", a standardized inferential statistic that allows us to test the predictive strength of a line fitted to data. "B" denotes the unstandardized form of this variable. "SE" denotes the standard error of "B," a measure of variability. And "t" is an inferential statistic that allows us to test whether or not two groups are different from each other.) Masculinity threat also significantly predicted the masculinity ratings of White shooters,  $\beta = -.27$ ,  $B = -.52$ ,  $SE = .20$ ,  $t = -2.59$ ,  $p = .01$ . Masculinity ratings of White shooters, in turn, significantly predicted ratings of how justified the shooting was, after controlling for masculinity threat,  $\beta = .29$ ,  $B = .31$ ,  $SE = .12$ ,  $t = 2.72$ ,  $p = .008$ . Finally, the degree to which masculinity threat influenced perceptions of the justification for the shooting were significantly reduced when controlling for masculinity ratings of the shooters,  $\beta = -.09$ ,  $B = -.19$ ,  $SE = .22$ ,  $t = -.87$ ,  $p = .39$ .

## IV. IMPLICATIONS

This Essay examined how hegemonic racial violence can occur even in the absence of malicious racial intent on the part of individual officers.<sup>158</sup> Furthermore, we have demonstrated that officers' insecurities are just as consequential as both conscious racism and unconscious racial bias in causing pervasive racial disparities in police violence. Finally, we showed that these psychological processes not only contribute to hegemonic racial violence, but also cause dominant individuals to view that violence as justifiable.

Importantly, these effects are not inevitable. Unconscious racial bias and self-threats result in hegemonic racial violence in contexts that facilitate them, and these contexts can be changed. Thus, we argue that the state has a responsibility to scrutinize its policing practices to determine whether they cultivate the psychological processes that lead to racial disparities in the use of force by the police. Once these problematic practices are identified, then the state should take steps to change them. In sum, we argue that the state must protect all of its citizens from state perpetrated violence, regardless of whether that violence results from intentional animus or not.

In subpart A, we argue that the current model of policing helps sustain and exacerbate the psychological processes that lead to hegemonic racial violence. We briefly explore one promising avenue of reform, community policing, and suggest that the conversation surrounding community policing would be enriched by engagement with issues of power and privilege that critical race scholars could bring. In recognition of the fact that transformation of current policing practices cannot take place overnight, subpart B considers some interim remedies to reduce hegemonic racial violence.

*A. Community Policing*

As our previous discussion suggests, hegemonic racial violence will flourish under policing practices that make it easier for officers to dehumanize the communities they police, that foster beliefs that police officers are racists, and that encourage hypermasculinity. One potentially promising approach to policing that can avoid these problems is community policing.

In theory, community policing embraces the idea that the social work aspects of policing are important.<sup>159</sup> Under the ideal model, officers and communities

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<sup>158</sup> Ian F. Haney López, *Institutional Racism: Judicial Conduct and a New Theory of Racial Discrimination*, 109 YALE L.J. 1717 (1999).

<sup>159</sup> Herbert, *supra* note 116, at 63; *see also* SUSAN L. MILLER, GENDER AND COMMUNITY POLICING: WALKING THE TALK 5 (1999) (“[The] image of the ideal community police officer has a social-work orientation, a style that traditionally has been beyond the purview of acceptable policing.”). Angela Harris has argued that “the police mission ‘to serve and protect’ need not be accomplished through force and domination. Scattered attempts to reshape policing along the lines of

work closely to address the underlying causes of crime and disorder. The focus is on crime prevention, not on making arrests and maintaining order. In theory, officers engaged in community policing “listen closely to and empathize with residents, . . . disentangle disputes that exist within communities, and . . . allow themselves to exist in deeply cooperative relationships.”<sup>160</sup>

While most departments represent that they are engaged in community policing,<sup>161</sup> the reality is far from the ideal.<sup>162</sup> Instead, policing largely remains mired in practices that were ushered in during the so-called “professionalism era” that began in the 1930s and 1940s primarily in response to concerns over police corruption.<sup>163</sup> One major change to policing that occurred during this period was that officers began patrolling neighborhoods in cars instead of on foot, which distanced officers from the communities they policed.<sup>164</sup> Some departments went even further to “de-personalize policing” by frequently reassigning officers to new neighborhoods to patrol.<sup>165</sup>

Additionally, the professionalism model narrowed police functions to crime control rather than social work<sup>166</sup> and taught officers to view themselves as experts who did not need community input to inform their practices.<sup>167</sup> Furthermore, response times to calls for service and the number of arrests made became the

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social work, for instance, deserve more attention and study.” Angela P. Harris, *Heteropatriarchy Kills: Challenging Gender Violence in a Prison Nation*, 37 WASH. U. J.L. & POL’Y 13, 63 (2011).

<sup>160</sup> Herbert, *supra* note 116, at 63; George L. Kelling, Robert Wasserman & Hubert Williams, *Police Accountability and Community Policing*, in COMMUNITY POLICING: CLASSICAL READINGS, 269, 270 (Willard M. Oliver ed., 1999).

<sup>161</sup> Wesley G. Skogan, *The Promise of Community Policing*, in POLICE INNOVATION: CONTRASTING PERSPECTIVES 27, 27 (David Weisburd & Anthony A. Braga eds., 2006) (“By 2000, a federal survey . . . found that more than 90 percent of departments in cities over 250,000 in population reported having full-time, trained community policing officers in the field.”) However, community policing involves a number of different practices, including patrolling on foot, or with bikes, horses, or segways. *Id.* Some communities “train civilians in citizen police academies, open small neighborhood storefront officers, conduct surveys to measure community satisfaction, canvass door-to-door to identify local problems, publish newsletters, conduct drug education projects, and work with municipal agencies to enforce health and safety regulations.” *Id.*

<sup>162</sup> See generally STEVE HERBERT, *CITIZENS, COPS, AND POWER: RECOGNIZING THE LIMITS OF COMMUNITY* (2006).

<sup>163</sup> George L. Kelling & Mark H. Moore, *The Evolving Strategy of Policing*, in COMMUNITY POLICING: CLASSICAL READINGS, *supra* note 160, at 97, 101–02.

<sup>164</sup> *Id.* at 104; Samuel Walker, “Broken Windows” and *Fractured History: The Use and Misuse of History in Recent Police Patrol Analysis*, in COMMUNITY POLICING: CLASSICAL READINGS, *supra* note 160, at 326, 327–28; George L. Kelling & William J. Bratton, *Implementing Community Policing: The Administrative Problem*, in COMMUNITY POLICING: CLASSICAL READINGS, *supra* note 160, at 261.

<sup>165</sup> Walker, *supra* note 164, at 328.

<sup>166</sup> Kelling & Moore, *supra* note 163, at 103; Kelling & Bratton, *supra* note 164, at 261.

<sup>167</sup> Herbert, *supra* note 116, at 62.

primary methods for measuring officer success.<sup>168</sup> These data-driven aspects of policing continue today. In fact, this preoccupation with numbers has resulted in aggressive, proactive law enforcement practices that alienate communities from the police<sup>169</sup> and foster an “us versus them” mentality that encourages officers to view themselves as soldiers in a war against the residents of indigent, minority neighborhoods.<sup>170</sup> Despite the asserted commitment to community policing in many departments, the professionalism model remains predominant.

Community policing in its ideal form could potentially mitigate the violence associated with implicit dehumanization, stereotype threat, and masculinity threat. First, the current policing model fosters dehumanization by encouraging arms-length relationships between the police and citizens that prevent the development of understanding and close engagement. By promoting closer relationships, community policing could reduce implicit dehumanization since it is more difficult to dehumanize people with whom one is familiar.<sup>171</sup>

Second, to the extent that community policing nurtures the community’s trust in the police and improves perceptions of police legitimacy, it can also reduce stereotype threat in egalitarian officers. That is because improved police-citizen relationships may reduce an officer’s anxiety that community members will prejudge him to be racist. Furthermore, as officers and neighborhood residents become familiar with each other, an egalitarian officer may become more comfortable and less likely to fear that his actions will be interpreted as being racially motivated.

Third, community policing can also disrupt hypermasculinity amongst the rank and file. By focusing on cooperative relationships instead of aggressive crime-fighting, community policing “elevat[es] ‘feminine’ skills such as empathy, caring, and connection that historically were unacceptable to the male culture of traditional policing.”<sup>172</sup> As sociologists Susan Miller and Emily Bonistall, write:

Community policing . . . challenges the masculinized ethos by

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<sup>168</sup> Kelling & Moore, *supra* note 163, at 105–06; Kelling & Bratton, *supra* note 164, at 261.

<sup>169</sup> Herbert, *supra* note 116, at 62; Barbara E. Armacost, *Organizational Culture and Police Misconduct*, 72 GEO. WASH. L. REV. 453, 495 (2004) (noting that the numbers game “resulted in overly contentious and violent police-citizen confrontations, and created the risk of a ‘siege (‘we/they’) mentality’ between [LAPD] officers and their communities” that was partly responsible for the rampart corruption scandal); *see also* Erwin Chemerinsky, *An Independent Analysis of The Los Angeles Police Department’s Board of Inquiry Report on the Rampart Scandal*, 34 LOY. L.A. L. REV. 545 (2001).

<sup>170</sup> Armacost, *supra* note 169, at 501.

<sup>171</sup> *See supra* text accompanying notes 51 & 52 (discussion of perspective taking and its effects on implicit dehumanization). *See also* Herbert, *supra* note 116, at 59 (noting that “[w]ithin the discourse of the LAPD, the term ‘bad guy’ is ubiquitous, and serves to ‘other’ any suspect who threatens the peace or challenges police authority. Such a distinction thereby helps justify any use of force the police may employ to capture those suspects”).

<sup>172</sup> Miller & Bonistall, *supra* note 108, at 319. *See also* Herbert, *supra* note 116, at 63.

prioritizing connections and cooperation between police officers and community members in addressing crime and other social problems . . . a more informal, relational, and conciliatory style of policing is encouraged. Roles that were previously denigrated as feminine, and too “soft” or emotional for “real” police work, have become the ideal qualities for community police officers to possess.<sup>173</sup>

By devaluing hypermasculinity, community policing can reduce the masculinity threat that results in hegemonic racial violence. Although male police officers would still “do” gender, their performance of masculinity would not be tied to physical aggression but rather to their ability to solve problems through creativity and innovation.

Furthermore, a shift to community policing could help upset the coding of policing as hypermasculine. This, in turn, might attract different types of recruits, including more women<sup>174</sup> and others who may not currently be drawn to policing because of its hypermasculine identity. Conversely, those who are currently attracted to policing because of its reputation for violence and aggression may no longer be interested in joining the force.

While community policing holds great promise for reducing hegemonic racial violence, there is reason for some caution. The idea of community can be deeply problematic if not informed by an analysis of power and privilege. For instance, depending on how the community is defined, it can foster racial subordination. To the extent that the powerful elite within a community view young black men and other people of color with suspicion, these more privileged members can work with the police to implement policies that increase state control over subordinated groups. Furthermore, communities can perpetuate racial subordination by favoring dominant voices and values at the expense of the minority. As Roberto Unger once observed, “[b]y its very nature, community is always on the verge of becoming oppression.”<sup>175</sup> There are many other unresolved issues that deserve study, including how community should be defined, who can or should speak on behalf of the community, and can genuine partnerships between subordinated groups and the police exist.<sup>176</sup> It is beyond the scope of this Essay to consider

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<sup>173</sup> Miller & Bonistall, *supra* note 108, at 318.

<sup>174</sup> Importantly, we are not saying that women will necessarily perform differently than men in the role of patrol officers. However, there is evidence that seems to suggest that this is true. For instance, at least one study demonstrated that female officers are less likely than male officers to use force. James P. McElvain & Augustine J. Kposowa, *Police Officer Characteristics and the Likelihood of Using Deadly Force*, 35 CRIM. JUST. & BEHAV. 505, 521 (2008). See also Herbert, *supra* note 116, at 60; Miller & Bonistall, *supra* note 108, at 317.

<sup>175</sup> ROBERTO M. UNGER, KNOWLEDGE AND POLITICS 266 (1975).

<sup>176</sup> See, e.g., JANE J. MANSBRIDGE, BEYOND ADVERSARY DEMOCRACY 61–62 (1980) (noting that the well-educated were more confident in speaking publicly).

these issues more closely, but, given the potential promise and perils of community policing, critical race scholars should become involved in the conversation.<sup>177</sup>

### B. *Interim Solutions*

While moving towards community policing to reduce hegemonic racial violence is the goal, such a change cannot be effected overnight. Indeed, the current model of policing is so entrenched that even suggesting change can meet resistance. In the meantime, hegemonic racial violence will continue unabated unless some changes are made. In this subpart, we accordingly consider some promising interim solutions to address and reduce racial violence.

First, we urge critical race scholars and practitioners to work closely with police departments and social scientists to identify interventions to reduce hegemonic racial violence.<sup>178</sup> There is already precedent for these partnerships. As previously discussed, Phillip Atiba Goff worked with the San Jose Police Department to identify some causes of racial disparities in policing and to develop solutions. Additionally, his organization, the Center for Policing Equity, has collaborated with a wide array of police departments across the country to conduct original research in order to foster the equitable delivery of police services. Thus, it is possible to build fruitful and successful collaborations with police departments.

Second, police departments should make changes to their training practices, both in the police academy and in the department. Frank Rudy Cooper has already proposed some changes to police training in order to address the problems posed by masculinity contests, including teaching officers to rely less on physical aggressiveness in response to disrespect.<sup>179</sup> We endorse his suggestions and would go even further. There is evidence that “police work rarely entails the aggressiveness celebrated by the masculinist cop,”<sup>180</sup> and that the “reality of police work . . . involves much tedium and paperwork and relatively little crime fighting or violence.”<sup>181</sup> If this is accurate, police training should focus more attention on teaching skills that foster creative problem-solving and collaborative decision-making than on physical strength and aggressiveness. The former is associated

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<sup>177</sup> Richard Delgado, *Law Enforcement in Subordinated Communities: Innovation and Response*, 106 MICH. L. REV. 1193 (2008) (book review).

<sup>178</sup> For a discussion of critical race praxis, see Eric K. Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America*, 95 MICH. L. REV. 821 (1997); Keith Aoki & Margaret Chon, *Critical Race Praxis and Legal Scholarship*, 5 MICH. J. RACE & L. 35, 36 (1999); Julie A. Su & Eric K. Yamamoto, *Critical Coalitions: Theory and Praxis*, in CROSSROADS, DIRECTIONS, AND NEW CRITICAL RACE THEORY, *supra* note 1, at 389–90.

<sup>179</sup> Cooper, *supra* note 13.

<sup>180</sup> Herbert, *supra* note 116, at 60.

<sup>181</sup> Prokos & Padavic, *supra* note 105, at 442.

with community policing while the latter encourages hypermasculinity.<sup>182</sup> Furthermore, while officer safety is always a concern, there is some evidence that displays of force are not as effective as less confrontational strategies for defusing tense situations.<sup>183</sup>

Third, departments should revise incentive structures to reward skills related to an officer's demonstrations of creative problem solving, ingenuity and interpersonal skills as opposed to hypermasculine behaviors such as making arrests. Otherwise, officers will continue to prioritize practices associated with hypermasculinity.

Finally, departments should abandon practices that show little effectiveness in reducing crime but which exacerbate community tensions. That is because these tensions foster hegemonic racial violence for at least three reasons. First, officers tend to view neighborhoods that are "anti-police" as more dangerous, and thus, as more masculine.<sup>184</sup> As a result, for police officers seeking to prove their masculinity through displays of aggression and daring, these neighborhoods are ideal locales to perform their masculinity. Hence, "[t]o enact masculinism is thus to reinforce a racialized pattern that yields aggressive patrolling in minority-dominated neighborhoods."<sup>185</sup>

Second, community-police antagonism helps foster the "us versus them" mentality that can lead to implicit dehumanization. Third, police practices that exacerbate tensions within urban, minority neighborhoods promote and sustain the view that officers are racist. As discussed, police officers are aware of these views and for egalitarian officers, the fear of confirming this stereotype can lead to hegemonic racial violence.

One practice that should be abandoned is stop and frisk. For one, this policing strategy creates significant anger and resentment within minority communities while its crime control benefits continue to be debated. A recent report from the New York Attorney General's Office concluded that although millions of non-White citizens were targeted by the NYPD for stops and frisks between 2009 and 2012, only 1.5% of the arrests resulted in a sentence of incarceration,<sup>186</sup> only 0.1% of stop and frisk arrests resulted in a conviction for weapons possession or a crime of violence,<sup>187</sup> and almost one-half of all arrests

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<sup>182</sup> Herbert, *supra* note 116, at 59 (noting that police training, which "focuses heavily on managing violence and only lightly on resolving interpersonal disputes").

<sup>183</sup> Brown, Maidment & Bull, *supra* note 111, at 124.

<sup>184</sup> Herbert, *supra* note 116, at 57, 59–60; Nolan, *supra* note 117, at 252 (noting "bright lights").

<sup>185</sup> Herbert, *supra* note 116, at 57.

<sup>186</sup> ERIC T. SCHNEIDERMAN, NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL, A REPORT ARISING FROM THE NEW YORK CITY POLICE DEPARTMENT'S STOP-AND-FRISK PRACTICES 1, 3, 10 (2013).

<sup>187</sup> *Id.* at 3.

made after a stop and frisk did not result in any conviction at all.<sup>188</sup> Furthermore, the anger and resentment produced by the practice makes it more difficult to detect and solve crime because the police lose legitimacy in the eyes of the community, resulting in decreased cooperation with the police.<sup>189</sup>

An additional problem with stops and frisks is that the practice contributes to police-citizen tensions, leading officers to view these neighborhoods as anti-police. As discussed, this facilitates hegemonic racial violence both because these neighborhoods become ideal sites for masculine gender performances and because this antagonism fosters the alienation that facilitates implicit dehumanization. Finally, stops and frisks contribute to the view held by many residents in poor, urban, minority communities that officers are racist.<sup>190</sup>

These interim suggestions are preliminary and deserve more development than we are able to provide in this Essay. However, there is reason for optimism that departments will implement at least a few of them. As previously discussed, some departments are already working voluntarily to reduce racial disparities in policing practices. Furthermore, there are likely allies to be found within departments. For instance, police unions representing non-white officers and women may be supportive of some of these proposals. Additionally, egalitarian officers likely will be disturbed to learn about stereotype threat and its possible effects on their behaviors and thus may be motivated to implement changes to policing practices that exacerbate its effects.

#### CONCLUSION

A central tenet of critical race theory is that racism has become normalized within institutions and systems and, thus, does not require individual or collective racial animus to support subordination. Our examination of hegemonic racial violence confirms this important insight. Thus, we focused our analysis on transforming systems of policing that continue to reproduce racial disparities in police violence. Importantly, however, existing legal doctrine is also inadequate to address hegemonic racial violence. A new doctrinal framework is necessary to address it and we offer a couple of observations here.

First, any new approach must abandon the law's current reliance on demonstrating racial animus and must embrace a race-conscious approach. That is because racial animus cannot account for the fact that unconscious racial biases and perpetrator insecurities both result in unconscionable racial disparities in

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<sup>188</sup> *Id.* at 1, 9.

<sup>189</sup> Bennett Capers, *Crime, Legitimacy, & Testifying*, 83 *IND. L.J.* 835 (2008); Delgado, *supra* note 177.

<sup>190</sup> Jeffrey Fagan, Tom Tyler & Tracey Meares, *Street Stops and Police Legitimacy in New York* (Sept. 22, 2011) (unpublished manuscript) available at [http://www.jjay.cuny.edu/Fagan\\_Tyler\\_and\\_Meares\\_Street\\_Stops\\_and\\_Police\\_Legitimacy\\_in\\_New\\_York.pdf](http://www.jjay.cuny.edu/Fagan_Tyler_and_Meares_Street_Stops_and_Police_Legitimacy_in_New_York.pdf).

police violence. Approaches for reducing the effects of both unconscious biases and self-threats require that attention be paid to race.<sup>191</sup>

Second, we envision a new legal regime that places the onus on the state to remedy the institutional factors that exacerbate hegemonic racial violence. The state has a duty to ensure that police officers use force equitably. Thus, it should have a concomitant duty to intervene when incontrovertible evidence of disparate treatment by its agents, the police, exists. The state's failure to act by revising policing strategies when evidence exists that these strategies facilitate racial disparities is culpable, at least when the state has the ability to act and its actions could remedy the problem. This conception rests culpability not on the demonstration of racial animus, but on the state's failure to remedy the racial subordination that is built into existing systems and practices. Consequently, just as the law makes a distinction between intent to do harm and negligence resulting in harm, one can imagine a legal system—better informed by the mind sciences—that likewise punishes the state for failing to take affirmative steps to protect all of its citizens from violence when the duty and means to do so exist.

Lastly, this Essay calls upon legal scholars to broaden their consideration of psychological science beyond a focus on implicit racial bias. Perhaps because of the revelatory function that implicit bias played in the early behavioral realism approaches to race and discrimination, it is not surprising that much of the behavioral realism literature focuses squarely on the implications of unconscious bias. However, the psychological science on contemporary bias is more robust. Implicit bias exists within a vast research literature on cognitive, affective, and motivated pathways to discrimination. Consequently, for legal scholarship to take seriously the charge of behavioral realists to translate what science knows about the human condition to the rules that govern human behavior, a more inclusive and integrative approach to importing that science is required. In the case of racial disparities in law enforcement, that integration should lead scholars to focus extensively on the ways that self-threats—and not only unconscious racial biases—predict unequal applications of the law. In sum, the manner in which we regulate the consequences of the wars inside each of us is not only a matter for poets and philosophers, but also for governance and jurisprudence. Thus, the breadth of the human experience that legal scholars must endeavor to understand is broader, still, than we have previously acknowledged.

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<sup>191</sup> For a general discussion, see Phillip Atiba Goff et al., *The Perils of White Stereotype Threat* (unpublished manuscript) (on file with author); see also Cynthia Lee, *supra* note 13.

## APPENDIX

The following fabricated reports are the materials used in the interracial shooting condition where the perpetrator was identified as White and the victim as Black.

**News Report**

dallasnews

Powered by *The Dallas Morning News*

By: [REDACTED]  
Staff Writer  
Published: 8 September 2013 10:15am

DALLAS – Dallas Police are investigating a deadly shooting at a local gas station.

The shooting happened approximately at 8pm at a gas station near the intersection of Jefferson Blvd and Riverfront Blvd.

According to police, Jamal Washington was playing loud music in a car with friends when Brett Meeks approached the vehicle and demanded they turn their music down.

After a brief verbal exchange in which Mr. Meeks told officers that he "feared for his life," Mr. Meeks then retrieved his 9mm handgun from his own vehicle and opened fire on Mr. Washington's vehicle.

The gunshots killed Mr. Washington instantly and injured the two other passengers.

Police said that surveillance video from the gas station captured most of the altercation, but not the audio.

Mr. Washington, only seventeen years of age, leaves behind his mother, father, and two sisters.

Charges have yet to be filed against Mr. Meeks who claims he was 'standing his ground' as permitted by Texas law.

**Police Report****Case Number: 010147587****Date 7 September 2013**  
[REDACTED]**Incident Type: Shooting****Address of Occurrence: [REDACTED], Dallas, TX 75207****Witnesses:****Brett Meeks: Shooter. Male, 28, White****Michael Patel: Gas Station Owner. Male, 43, Indian****Evidence:****Closed-circuit surveillance footage****Weapon/Objects Used: 9mm Pistol/Firearm**

On September 7, 2013, at approximately 20:47, Mr. Brett Meeks shot 3 teenaged boys in a 2003, red Toyota Camry, killing Mr. Jamal Washington, 17 years of age, instantly and severely injuring the other two boys in the vehicle. Because the shooting occurred outside [REDACTED], Mr. Michael Patel, the station's owner, was able to provide the store's security camera footage as evidence. The footage clearly shows Mr. Meeks speaking with the three boys in an agitated manner and later forcibly entering Mr. Washington's vehicle. Then, the footage reveals Mr. Meeks leaving Mr. Washington's vehicle so that he can retrieve his 9mm handgun from his own vehicle and proceed to shoot at the three teenagers. The surveillance equipment does not capture audio, consequently there is no evidence detailing the exact conversations between Mr. Meeks and the teenagers.

After speaking with Mr. Meeks, Deputy [REDACTED] learned that "Mr. Washington and his two friends were playing Rap music at a very high volume." Mr. Meeks approached the car in attempt to get the boys to lower their music, however, he states, "They refused to listen to [him] and actually turned the music up higher." Mr. Meeks then attempted to forcibly lower the music after his demands to lower it were not acknowledged. After a loud altercation with several expletives exchanged between the car of teens and Mr. Meeks, Mr. Meeks began to feel threatened and stated he "feared for his life" in response to threats he alleges that Mr. Washington made. This led Mr. Meeks to retrieve his handgun from his vehicle and open fire. Because Mr. Meeks has asserted a 'Stand Your Ground' defense charges have yet to be filed.