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CIVIL UNREST IN THE UNITED STATE OF AMERICA:  
FACING THE THREAT

by

MENEMSHA P.S. MILNOR

A master's thesis submitted to the Graduate Faculty in Political Science in partial fulfillment of  
the requirements for the degree of Master of Arts, The City University of New York

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This manuscript has been read and accepted by the Graduate Faculty of Political Science in satisfaction of the requirements for the degree of Master of Arts.

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THE CITY UNIVERSITY OF NEW YORK

## Abstract

This essay explores the purpose and function of the police in a modern state. It draws mainly from the ideas put forth by Walter Benjamin in his 1921 essay, *Critique of Violence*, and focuses exclusively on events surrounding the Black Lives Matter movement. Applying political theory to current events, it investigates the role of police violence as a form of state repression. It is the intention of this essay that it be used for practical purposes, to serve as a foundation on which to base a more rigorous critique the American political system. We must understand racist police violence in order to resist it.

## Acknowledgements

Thank you to Susan Buck-Morss, Uday Singh Mehta, Benedetto Fontana and Francisco Fortuño-Bernier for their wisdom, guidance and support during this project.

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## Introduction

In the first year of its existence as a movement, Black Lives Matter demonstrations numbered close to 900.<sup>1</sup> The movement has resonated with people across the globe, inspiring solidarity marches from Ghana to Moscow, Japan and Tibet. The protests, centered on the problem of racist policing in the United States, raise the question of what constitutes the nature of the police in a modern state. But the issues addressed by Black Lives Matter are not unique to the 21st century – what is now called “police brutality” has always been present in the lives of African Americans, especially those who are either poor or working class. We do not need history to know that uprisings do not always occur when the going gets rough. The phenomenon of racist police violence alone does not explain the impetus for the growing resistance movement. With decades of crippling poverty, an increasingly militarized police force<sup>2</sup>, and a resurgence of white supremacist values,<sup>3</sup> among other things, the United States has long been ripe for revolt. To what can we attribute the inspiration behind Black Lives Matter?

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<sup>1</sup> Alisa Robinson, “At least 888 Black Lives Matter demonstrations have been held in the last 317 days,” Elephrame, 18 May, 2015, accessed on May 31, 2015, <https://elephrame.com/textbook/protests>.

<sup>2</sup> The U.S. government is currently investing hundreds of millions of dollars in cutting-edge military technology to be used exclusively by the police. As is well known, the federal government is also distributing secondhand U.S. military equipment from recent wars abroad to local police departments across the country. In addition, the federal government subsidizes state-run programs designed to place young war veterans in positions of law enforcement. For information on the growing militarization of police in the United States see, “Police Militarization meets Hacker Culture: Swatting,” *VICE NEWS*, 5 January, 2014, accessed on June 3, 2015, <https://www.youtube.com/watch?v=-ziLjOPCQwg>. To learn more about veteran employment initiatives under President Obama see, “For Immediate Release: Obama Administration Awards ‘Vets to Cops’ Hiring Grants,” *Office of the Press Secretary, the White House*, June 25, 2012, accessed on February 10, 2015, <https://www.whitehouse.gov/the-press-office/2012/06/25/obama-administration-awards-vets-cops-hiring-grants>.

<sup>3</sup> For interesting coverage from a photojournalist perspective see Anthony Karen’s work at <http://www.anthonykaren.com/Website-Assets/Misc-website-items-bio-text-et/Portfolio>. For excellent

Traveling through the channels of Twitter, Facebook and Instagram, cellphone videos have been the dominant medium through which Black Lives Matter came to life. Liberal white Americans are, quite literally, seeing racist state violence in a new way. But again, Black Lives Matter cannot simply be explained by what white people are or are not seeing, because the movement has been led for the most part by African American youth.

The use of cameraphones as a tool for political resistance was popularized during the Arab Spring, gaining footing in the United States around the time of Occupy Wall Street.<sup>4</sup> Up until recently, video documentation of police violence was rare, mainly because few people had access to video cameras, least of all those targeted by capitalist state violence. If and when police violence was captured on film, it was generally done so by professionals, like journalists or scholars.

For decades, feature-length documentaries were been the primary format through which to express controversial interpretations of history. The advantage of a documentary is its capability of conveying as much information as a full book, but the downside is that it takes months or even years to produce. Cellphone videos, on the other hand, lend themselves well to the fast pace of political movements because they can be created and transmitted across the globe in a matter of minutes.

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news reporting on the subject see the work of Gene Demby of NPR's CodeSwitch at, <http://www.npr.org/sections/codeswitch/2014/11/12/363511888/why-the-kkk-is-reaching-out-beyond-white-folks>.

<sup>4</sup> Rabih Mroué, "The Pixelated Revolution," *TDR/The Drama Review* 56, no. 3 (2012): 18-35.

Although the tools necessary for the making of a documentary have become increasingly accessible, the process still requires at the very least a semi-professional camera and a computer with editing software. In contrast, the only device needed to make a cellphone video is a cameraphone. Independent filmmakers are often vulnerable to the whims and particularities of their beneficiaries, depending on how they are funded. There are no such barriers for publicizing a cellphone video because cellphones are a consumer product, and consumers have the right to self-express freely per the constitution of the United States. Cameraphones are able to disseminate politically subversive ideas at a time when state repression is otherwise extremely high. May the irony of this not be lost on us: the products of capital are being used to undermine the legitimacy of the capitalist state. Black Lives has succeeded, if only temporarily, in turning capital against itself. How is this possible?

Despite strict federal regulation of audio recording in the United States, there are no legal equivalents for video recording. Interestingly enough, the laws that apply to audio recording *do not* apply when the audio is attached to a video. Not only is federal regulation of video recording almost non-existent, but the law does not even distinguish between video cameras, cameraphones, or privately operated surveillance cameras. This means that both private businesses and individual citizens have the right to publicize the contents of any video footage insofar as the camera was in plain sight at the time of the recording.<sup>5</sup> Lastly, there are no laws prohibiting citizens from videotaping *or* audio-recording the police.

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<sup>5</sup> Chip Smedly, "What laws says and don't say about video surveillance," *Lancaster Online*, September 11, 2013, [http://lancasteronline.com/news/what-law-says-and-doesn-t-say-about-video-surveillance/article\\_1fb5c8dc-93e6-5ca5-ab90-272371e9d4df.html](http://lancasteronline.com/news/what-law-says-and-doesn-t-say-about-video-surveillance/article_1fb5c8dc-93e6-5ca5-ab90-272371e9d4df.html).

Citing the work of Marie-José Mondzain in her essay *Visual Empire*, Susan Buck-Morss argues that when it comes to the question of popular sovereignty, whoever controls the image holds the power.<sup>6</sup> What we can and cannot see is politically relevant. If we take *seeing* to mean critical engagement with the visual world, then *how* we see is of great importance.<sup>7</sup>

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<sup>6</sup> Buck-Morss, *Visual Empire*, 2013, <http://susanbuckmorss.info/text/visual-empire/>.

<sup>7</sup> Nicholas Mirzoeff, *The Right to Look* (Duke University Press, 2011).

## Ferguson to Palestine

Healing is a challenge in life. It is a victim's sole obligation. By healing you resist oppression. But when I am hurt over and over again I forget the wounds that rule my life. Forgotten wounds cannot be healed. So I film to heal.<sup>8</sup>

These are the words of Emad Burnat, the filmmaker of the 2011 Oscar-nominated documentary, *5 Broken Cameras*, an exposé of life in the occupied territories of the West Bank, Palestine. The film spans the course of five years and takes place in Burnat's small hometown of Bil'in, where he was born and raised. Although Burnat does freelance videography on the side, he is first and foremost a farmer. Prior to the escalation of the conflict in Gaza, Burnat mainly used his camera to make home videos of his wife and children. The filming begins in 2005 with the birth of his son, Gibreel, the documentary's protagonist. Burnat never speaks when filming, instead, he applies a voiceover as a means of narrating the story. The viewer experiences his voice as if it were her own internal monologue.

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<sup>8</sup> Emad Burnat, *5 Broken Cameras*. Kino Lorber Inc. 2011.



Daba Confronts Israeli Soldiers

Few people in Bil'in have the means to participate in a capitalist economy because most of the families are subsistence farmers. This means that as a community they grow all of the food necessary to live, but money does not play an integral role in the exchange. One of the consequences of the Israeli occupation was the destruction of the soil in Bil'in, making it nearly impossible for the community to remain self-sufficient. In the documentary, we can see that the farmland is littered with shiny metallic objects from tear gas canisters to bullet casings and hand grenades. If at any point the Palestinian resistance movement was primarily motivated by a desire for justice, by 2005 it was driven by sheer necessity. One of the film's strengths is that it captures well the emotional and tactical difficulties of nonviolence. Year by year and inch by inch the Israeli settlement houses close in on the small town of Bil'in as the Israeli military presence grows stronger. What seems like needless provocation to Israeli soldiers is necessary resistance to the people of Bil'in. If the people of Bil'in stop fighting it will only be a matter of time before they are forced off their land, or killed.

Towards the end of the film one of the town's leading activists, Phil, is shot and killed by an Israeli soldier during a protest. Phil is described by the filmmaker as being known for his relentless optimism and warmth of character. In the midst of mourning the loss of Phil, the town organizes a rally in his honor. The rally ends with people running in every which direction as teargas and rubber bullets rain upon on them. The scene finishes with a shot of Phil's brother, Daba, confronting a barricade of Israeli soldiers face to face. "Why are you doing this?" he shouts at them. "Where is your heart? Your commander has no heart!" Moments later, Daba is

seen lying on his back facing the Israeli army with his arms and legs outstretched. “Let me have it!” he cries. “I wanna die!” (Figure 1). The soldiers ignore Daba and the scene cuts to a new day.

This scene bears a striking resemblance to several events that recently took place in the United States. One such event is the fatal shooting of a young man named Kajieme Powell, who died on August 19, 2014 in St. Louis, Missouri. The moments leading up to and following his death are documented by three separate video cameras: two private surveillance cameras and the cellphone camera of an eyewitness.

The first scene, so to speak, takes place inside of a corner store called Six Star Market. Powell enters casually, grabs two sodas and leaves without paying. According to the police report, the storeowner was aware in the moment that Powell was shoplifting, but decided to let it slide. In the second scene, which is recorded by a surveillance camera outside of the store, Powell is drinking one of the sodas with his back to the shop. Before exiting the frame, he turns around, faces the storefront entrance and waits. Nothing happens and he leaves. Less than one minute later, he reenters the store, grabs a package of pastries and leaves again without paying. The forth scene shows the storeowner with his arms raised in the air, clearly upset as he follows Powell out of the store and into the street. Shortly thereafter, he returns to his store and reports the stolen items.<sup>9</sup>

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<sup>9</sup> For access to the full video surveillance tapes, as well as the audio from the 911 call that was placed by the owner of Six Star Market, see Rachel Lippmann, “St. Louis Police Release Video, Calls from City Shooting,” *St. Louis Public Radio* “kwmu,” 5:15 pm, 20 August 2014, <http://news.stlpublicradio.org/post/st-louis-police-release-video-calls-city-shooting>. To see a shorter, edited version of the surveillance tapes, which I compiled for this paper, see <https://vimeo.com/126740576>.

In the figure below, there are four stills taken from the two surveillance cameras. On the top left is Powell taking the two sodas from the back of the store at 10:55 am. On the top right, we see Powell less than one minute later standing outside of the market facing the entrance.



Powell at Six Star Market

On the bottom left, Powell is back in the store again and reaching for the pastries. In the final image on the bottom right we see the storeowner, demonstrably aggravated, following Powell into the street at 10:58 am.

Once Powell has left the premises of the store the filming is resumed by St. Louis resident, Brian Mable, who had just received a call from a friend reporting the incident. At the request of his friend to “do something,” Mable tracked Powell down and started filming with his cellphone camera. As with *5 Broken Cameras*, the viewer’s experience is mediated by Mable’s voice, which narrates the seven-minute video from beginning to end, but unlike the documentary, the cellphone audio is attached to the video and so his tone embodies the emotion of the moment. At first, Mable seems somewhat amused by the situation. “Daaamn,” he says when he is close enough to see and hear Powell. “He just stole two sodas like fuck them, I’m finna drink ‘em”. The camera moves as if it were a set of eyes, following Powell back and forth as he paces. Passersby acknowledge Mable’s presence and the viewer feels embedded in the scene.

The two sodas are placed neatly on the edge of the sidewalk at a distance from where Powell is pacing. They seem to be of no importance to him, as he pays them no mind. A white pickup truck pulls up to the curb and a man inside advises Powell to calm down. “Get the fuck away from me,” he responds. Then, he turns his body towards Mable, and staring directly into the lens of the camera, repeats himself. “Get the fuck away from me with this shit. I’m on Instagram. I’m on Facebook. You know who I am? I’m tired of this shit.”

“He’s tired of this shit,” Mable says quietly. When the police van arrives, two officers emerge with their guns pointed directly at Powell. He immediately backs away from the officers.

But then he pauses, and as if bracing himself, tells them to shoot him. “Shoot me!” he says forcefully. “Shoot me now, motherfucker.” The officers command Powell to take his hands out of his pockets, and he does, exposing a knife so small it is barely visible on camera. With both hands by his side, he climbs on top of a small concrete ledge where he stands for a brief moment before moving towards the nearest officer’s outstretched gun. One second, two footsteps, and at least seven bullets later, Powell is down. Mable is silent. “Oh my God. They just killed him.”<sup>10</sup>

How does the United States’ treatment of Powell compare to Israel’s treatment of Daba? Israel defines its “existence” by physically and socially excluding the majority of Palestinian people from being a part of the Israeli state. Palestinian freedom fighters are regarded as enemies of the state because the government interprets any kind of resistance to the Israeli occupation as a threat to the Israeli state’s right to exist. Even so, the Israeli soldiers chose not to shoot Phil’s brother, Daba, when given the chance. The United States, on the other hand, claims Powell as a citizen and yet treat him as if he has no rights. Powell is treated more like an enemy by his own government than Daba is treated by Israel, the supposed enemy. Could it be that one’s status as an “official” enemy is ironically some form of protection as compared to the anomalous citizen/enemy status of Powell? Furthermore, what cause would the American state have for viewing Powell as an enemy? A citizen must be officially classified as a traitor by their home country in order to be treated like an enemy of the state. Did Powell do something constitutive of

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<sup>10</sup> “Powell Shooting (Cellphone Camera),” YouTube video, 6:30, posted by “kwmu,” August, 20, 2014, <https://www.youtube.com/watch?v=j-P54MZVxMU&bpctr=1427688382>. In the event that the video is removed from YouTube, I have also made the video available here as well: <https://vimeo.com/126017292>.

traitorous behavior? Was his iconoclastic attitude towards the police interpreted as an act of betrayal, and if so, did the punishment match the crime? What kind of morality would it be that considered trivial offenders like Powell vulnerable to the full violent force of law?

In Response to the shooting of Kajieme Powell, St. Louis police chief Sam Dotson stated that, “The officers did what I think you or I would do, they protected their life in that situation....In a lethal situation, they used lethal force.”<sup>11</sup> But upon watching the video, it is hard to understand *why* the officers were so afraid of Powell. He was not moving very fast when they approached him. They could have easily backed away when they saw him coming towards them. There were certainly alternative forms of self-defense at the officer’s disposal and yet in the spontaneity of the moment they both chose to kill him. Some reports claim that between the two officers a total of twelve shots were fired.<sup>12</sup>

Based on the visual evidence, the police department’s claim that the officers killed Powell in self-defense is not particularly compelling. At the same time, it seems unlikely that they killed Powell because they saw him as an enemy of the state. Would it be a stretch to imagine that the two officers intuited Powell as a legitimate threat without fully understanding the nature of the threat posed? If Powell was punished for challenging the legitimacy of the law, then the threat he represented was not corporeal, but rather symbolic.

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<sup>11</sup> Joe Coscarelli, "Graphic Video Shows St. Louis Police Shoot and Kill Kajieme Powell Near Ferguson," *New York Magazine*, August 20, 2014, <http://nymag.com/daily/intelligencer/2014/08/video-st-louis-police-kill-kajieme-powell-near-ferguson.html>].

<sup>12</sup> Natasha Lennard, “Police Releasing the Kajieme Powell Shooting Video Is a Grasp at Domestic Control” *Vice News*, 21 August 2014, 11:30 am, <https://news.vice.com/article/police-releasing-the-kajieme-powell-shooting-video-is-a-grasp-at-damage-control>.

## Sovereignty as Sacred

To paraphrase Walter Benjamin in his 1921 essay *Critique of Violence*, the police do not see the impetuous killing of a young adult for a minor crime as a sign of something rotten in the law<sup>13</sup> – what they see is a rotten citizen breaking a sacred law. As Talal Asad argues in *Religion: Beyond a Concept*, secular society is incredibly unforgiving of lawbreakers because secular law is seen as the most sophisticated expression of universal morality, that is, of pure reason.<sup>14</sup> If the modern state is interpreted as the highest expression of humanity potentiality, it follows that the law embodies an enlightened sense of morality. Secular society reserves a special kind of brutality for lawbreakers because of the conflation between the law and morality. Lawbreakers are demonized, viewed as either irrational, incompetent, or malicious. This perhaps helps to explain why a police officer might feel justified in killing a young man for an offense as minor as the stealing of a soda.

If we take a closer at the American political system, we see that it has a rather strange relationship to the concept of reason. The American state is an amalgamation of political forms, commonly referred to as a mixed government. Among these are two models that have never been well suited for one another, democracy and social contract, the incompatibility of which stems largely from their differing perspectives on reason. Democracy assumes that individuals are

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<sup>13</sup> Walter Benjamin, “Critique of Violence”, trans. Edmund Jephcott and published in *Selected Writings* Vol. 1, Ed. Marcus Mullock and Michael W. Jennings, (London and Massachusetts: Harvard University Press, 2002), 239.

<sup>14</sup> Talal Asad, “Reflections on Blasphemy and Secular Criticism” in *Religion: Beyond a Concept*, ed. Hent de Vries, (Fordham University Press, 2008).

capable of using reason to self-govern, while contract theory assumes the exact opposite, hence the need for a strong sovereign.

According to Thomas Hobbes, one of the founding philosophers of contract theory, humanity would destroy itself without the presence of a sovereign.<sup>15</sup> In his seminal text, *The Leviathan*, Hobbes explains that a social contract is only legitimate insofar as it formed with the consent of the people. However, once the contract has been formed, the authority of the sovereign must be absolute and unconditional. The forming of a contract by the commonwealth signifies that all members of society have agreed to forego a portion of their natural liberty in exchange for the assurance of physical security, and therefore, peace of mind. The only circumstance under which a citizen may be legitimated in challenging the rule of law, says Hobbes, is if one feels that the sovereign has threatened their life.

Hobbes's belief in the necessity of a strong central state is premised on the idea that humans are fundamentally incapable of self-governance. From this perspective, a threat to state sovereignty is a threat to humankind. The sovereign is under no obligation to explain or justify their actions to the people – their job is to ensure that the sovereignty of the law is protected at all costs. The police, as guardians of the sacred secular state, must be able to move outside of the law in order to protect it, and so there are no real limits to amount of power held by the police.

In his book titled *Political Theology*, German philosopher Carl Schmitt argues that all concepts of modern political thought are secularized theological principles.<sup>16</sup> In the modern state,

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<sup>15</sup> Thomas Hobbes, *Leviathan*, (Penguin, 1981).

<sup>16</sup> “All significant concepts of the modern theory of the state are secularized theological concepts not only because of their historical development – in which they were transferred from theology to the theory of

the sovereign can be seen as replacing the role of the medieval Christian God. Secular values have a mystical self-validating quality about them because the laws of reason are believed to determine morality. If the state is built purely on reason, it follows that the laws are by necessity rational and scientific, too. “The general validity of a legal prescription has become identified with the lawfulness of nature, which applies without exception.”<sup>17</sup>

The problem with this logic is its circular, almost tautological nature: that a given law exists at all is seen as proof that it exists for a good reason. What secular society tends to forget, however, is that all science begins in faith. The starting point of Hobbes’s political theory, for example, is faith in the universal equality of all humans. How does he explain his arrival at this truth? In the beginning of the *Leviathan*, Hobbes deliberately mistranslates an ancient Greek aphorism, which in Latin is *Nosce Te Ipsum* and in English “know thyself,” as “read thyself”, by which he means to say that self-knowledge is objective. To read yourself is to observe your actions. Observing your actions is as good as observing the actions of others, he says, because humans share the same psychological dimensions. Simply put, there is a universal logic of motives that dictates human behavior. One need only look within him or her self to see that their wants and needs are no different from the wants and needs of everyone else.<sup>18</sup>

We find this same line of reasoning in the most frequently cited clause of the United States Declaration of Independence: “We hold these truths to be self-evident, that all men are

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the state, whereby, for example, the omnipotent God became the omnipotent lawgiver – but also because of their systematic structure, the recognition of which is necessary for a sociological consideration of these concepts,” Carl Schmitt, *Political Theology*, trans. George Schwab (MIT Press, 1985), 35.

<sup>17</sup> *Ibid.*, 48.

<sup>18</sup> Class lecture, Uday Singh Mehta, Graduate Center, CUNY, September 2014.

created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.” But as aforementioned, the United States has a conflictual relationship to reason. The tension between faith in reason and distrust of reason is played out nowhere more clearly than in the practices of law enforcement, especially the police. In the spirit of mixed government, power is both centralized and decentralized. By dividing power among the states and within the different branches of government, America sees itself as accomplishing the project of democracy and empire. Based on the principles of universal reason, the law insists that all individuals are capable of acting reasonably and therefore each and every individual is fully responsible for his or her own actions. However, the mere fact that the police exist at all implies that citizens are incapable of governing themselves, and thus, of practicing democracy.

### A State Untied

The motto “black lives matter” was created as a hashtag in July of 2013 after the announcement that George Zimmerman would be acquitted on all charges in the fatal shooting of

unarmed African American teenager, Trayvon Martin.<sup>19</sup> Protests erupted across the country following Zimmerman's acquittal, but quieted down over the winter months. The hashtag came back to life in the summer of 2014 when a particular video showing the strangling of Eric Garner spread like wildfire across the Internet.<sup>20</sup>

On July 17, Ramsey Orta used his camera phone to record the moments leading up to the death of Eric Garner in Staten Island, New York.<sup>22</sup> Garner was allegedly arrested under the suspicion of selling loose cigarettes on the street, however, the video suggests otherwise. In the footage of Garner before his arrest, we see him adamantly rejecting the police's accusations and pleading with them to stop harassing him. Based on the video, it appears as though the reason why Garner is then tackled to the ground by five officers has less to do with the suspected crime in question and more to do with the lack of deference that he shows towards the police. Garner died of a heart attack after being put into a chokehold by Officer Daniel Pantaleo, a tactic that is

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<sup>19</sup> Alisa Robinson, *Elephrame*, Online database (3 February 2015), accessed on February 10, 2015, <https://elephrame.com/contribute/2014-to-2015-Black-Lives-Matter-Demonstrations/topic>.

<sup>20</sup> I have uploaded onto Vimeo every video referenced in this paper in the occasion that over time the original links change and the videos become difficult to find online. All videos referenced herein are available at, <https://vimeo.com/theuntiedstateofamerica>.

<sup>22</sup> "I can't breathe": Eric Garner put in chokehold by NYPD officer – video," *The Guardian*, December 4, 2014, <http://www.theguardian.com/us-news/video/2014/dec/04/i-cant-breathe-eric-garner-chokehold-death-video>. The video is also available here as well: <https://vimeo.com/126018261>. Ramsey Orta was arrested in August and incarcerated at Rikers Island for charges unrelated to his role in the video recording of Garner's death. Orta, however, sees his imprisonment as retaliation by the police for his video. For more information on his arrest, see Carlos Miller, "Ramsey Orta, Man Who Recorded Eric Garner Death Remains Jailed Despite Family Having Raised Bail," *PINAC NEWS*, 9 April 2015. <http://photographyisnotacrime.com/2015/04/ramsey-orta-man-who-recorded-eric-garner-death-remains-jailed-despite-family-having-raised-bail/>.

banned from use by the State of New York.<sup>23</sup> Regardless, Pantaleo was acquitted of any charges related to Garner's death. We do not know *why* he was acquitted, because Justice William E. Garnet refused to publicize the Department of Justice report. Nonetheless, Garnet told the press that his decision not to release the report was on account of his fear that the details of the trial would unnecessarily disturb the public.<sup>24</sup> But the public had long since moved beyond the stage of shock and into one of rage.

Like Pantaleo, the officer responsible for the death of eighteen-year-old Michael Brown in Ferguson, Missouri was found not guilty in a court of law. In this case, the jury decided to release the official Justice Report, as well as the findings from a separate legal investigation into patterns of racism in the Ferguson Police Department, the latter of which provided ample evidence of racism within the department.<sup>25</sup> According to the Justice Report, Wilson stopped Brown and his friend for walking in the street as opposed to the sidewalk. Wilson grew increasingly upset with Brown as he repeatedly refused to obey his orders to get onto the sidewalk. The two got into a physical struggle that eventually ended with Wilson shooting Brown to death.

The death of Kajieme Powell took place on August 19, just ten days after Brown's fatal shooting and less than four miles from the street where he died. This time, the shooting was

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<sup>23</sup> Krishnadev Calamur, "N.Y. Judge Rejects Release of Grand Jury Testimony in Eric Garner Case," *NPR*, 3:45 pm, March 19, 2015, <http://www.npr.org/sections/thetwo-way/2015/03/19/394096089/judge-rejects-release-of-grand-jury-testimony-in-eric-garner-case>.

<sup>24</sup> "The Judge's Decision to Keep Garner Evidence Sealed," *New York Times*, [http://www.nytimes.com/interactive/2015/03/19/nyregion/judges-decision-garner-evidence.html?\\_r=0](http://www.nytimes.com/interactive/2015/03/19/nyregion/judges-decision-garner-evidence.html?_r=0).

<sup>25</sup> United States Department of Justice. Civil Rights Division. *Investigation of the Ferguson Police Department*, March 4, 2015.

caught on video by a cellphone camera, and within the first week of being on YouTube, it received nearly two million views. One month to the day after Powell's shooting, news emerged that no charges were being filed against the private security guards responsible for the killing of an unarmed African American man named McKenzie Cochran, who died in a Detroit shopping mall on January 28. The cause of Cochran's death was ruled to be "position compression asphyxia," or suffocation.<sup>26</sup> The criminal prosecutor claimed that the guards were poorly trained and that there was no proof of their intent to kill. A mall patron used his camera phone to record the full seven minutes that it took the five security guards to suffocate Cochran to death. In the cellphone video you can hear the muffled screams of Cochran as he tells the guards that he cannot breathe. One of the five guards that is holding him down is shouting the words "stop resisting" over and over. Although the video had been posted on YouTube since January, it received the majority of its views in late September. This is perhaps because, as a result of the Garner and Powell videos, the country was paying far closer attention than usual to the brutalization of black lives by the police.

Also in September, the Ohio grand jury released footage from the Wal-Mart surveillance camera that captured the fatal police shooting of twenty-two-year-old John Crawford on August 5 in Beavercreek, Ohio. The judge's decision to publicize the surveillance tapes came after Color of Change, a non-profit research foundation dedicated to race issues, waged a campaign

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<sup>26</sup> Kate Abbey-Lambertz, "Mall Security Guards Who Killed Unarmed Black Man Won't Be Charged," *Huffington Post*, September 9, 2014, [http://www.huffingtonpost.com/2014/09/19/mckenzie-cochran-northland-mall-died\\_n\\_5849348.html](http://www.huffingtonpost.com/2014/09/19/mckenzie-cochran-northland-mall-died_n_5849348.html).

pressuring the judge to release the footage.<sup>27</sup> In addition to the surveillance footage, the courts also released the audio recording from the 911 call that instigated the police's involvement. The caller, Ronald Richie, claimed that Crawford was walking around the store pointing the gun at children and threatening to shoot them. Although the video *does* show Crawford swinging the gun around, even pretending to aim it at times, there is no evidence that Crawford either pointed the weapon directly at someone, or that he verbally threatened anyone. The gun that Crawford was playing with was a \$71 air rifle that he had found lying on a Wal-mart shelf, out of its box.<sup>28</sup> What we learn from the video is that Crawford was shot within seconds of the police arriving on scene, collapsing to the ground before a single officer appears in the surveillance video. At the time he was shot Crawford had the weapon by his side and was talking on the phone with the mother of his children. Although it was reckless of Crawford to play casually with a weapon in public, Ohio *is* an "open carry" state, which means that gun owners are not required by law to conceal their private firearms in public. None of the police officers involved were charged with a crime.

One of the more unbearable videos to watch is the police shooting of Tamir Rice. November 22, Officer Timothy Loehmann shot and killed twelve-year-old Tamir Rice in Cleveland, Ohio. In the video, Loehmann shoots Rice within two seconds of arriving on scene

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<sup>27</sup> Goodman and Juan Gonzalez, "No Charges in Ohio Police Killing of John Crawford as Wal-Mart Video Contradicts 911 Caller Account," *DemocracyNow!*, September 25, 2014, [http://www.democracynow.org/2014/9/25/no\\_charges\\_in\\_ohio\\_police\\_killing](http://www.democracynow.org/2014/9/25/no_charges_in_ohio_police_killing).

<sup>28</sup> The officers that killed Crawford were at the time equipped with military gear. It is peculiar that officers with military training were unable to distinguish between an air rifle from a firearm. Their assessment and handling of the situation in no way reflects the skills of a military officer.

and Rice instantly collapses to the ground.<sup>29</sup> Loehmann backpedals to the far side of the cop car as his partner goes to inspect the suspect's condition, which he does by nudge Rice's limp body with the boot.<sup>30</sup> Neither one of them get close enough to check Rice's vital signs. When Rice's fourteen-year-old sister comes running into the scene, the officer's quickly run towards her and pin her down before she is able to reach her brother. The video shows her kicking and struggling to break free, but is ultimately unsuccessful. The officers eventually handcuff her and place her in the backseat of the police car, where she then is forced to sit next to Officer Loehmann, the man who had just murdered her brother. When Rice's mother arrives the police tell her that if she does not calm down they will arrest her.<sup>31</sup>

The entire event was caught on videotape by a public surveillance camera. It shows Rice playing with a visually realistic toy gun on the sidewalk in front of a public gazebo. He is pacing back and forth, at times even pointing the gun, but never do we see him aim it at anyone. Just as

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<sup>29</sup> Inspired by Pilling's use of montage with the surveillance footage of Crawford shooting, I have constructed a similar video of the Rice shooting using an excerpt from the public surveillance video and the 911 call that prompted the police to respond: <https://vimeo.com/127906878>. Below is the original source of the surveillance video, as well as the audio from the 911-dispatch conversation. "911 Caller: 12-Year-Old Boy Shot by US Police Probably Had a 'Fake' Gun," YouTube video, 2:10, posted by "The Telegraph," November 24, 2014, <https://www.youtube.com/watch?v=HDaOG90Dahg>. For more reading on the subject see Tom McCarthy, "Cleveland Officer Who Fatally Shot Tamir Rice Judged Unfit for Duty in 2012," *The Guardian*, December 4, 2014, <http://www.theguardian.com/us-news/2014/dec/03/officer-who-fatally-shot-tamir-rice-had-been-judged-unfit>.

<sup>30</sup> A memo from two years prior later revealed that Officer Loehmann had been declared unfit for duty by his previous supervisor, a detail that was apparently overlooked when he was hired by the Cleveland police department. See Adam Ferrise, "Cleveland Officer Who Shot Tamir Rice Had 'Dismal' Handgun Performance for Independence Police," *Cleveland.com*, December 3, 2014, [http://www.cleveland.com/metro/index.ssf/2014/12/cleveland\\_police\\_officer\\_who\\_s.html#incart\\_m-rpt-1](http://www.cleveland.com/metro/index.ssf/2014/12/cleveland_police_officer_who_s.html#incart_m-rpt-1).

<sup>31</sup> Elliott McLaughlin, "Tamir Rice's teen sister 'tackled,' handcuffed after his shooting, mom says," *CNN*, 10:52 am, 9 December 2014, <http://www.cnn.com/2014/12/08/us/cleveland-tamir-rice-mother/>.

with Crawford, the police were brought into the situation because of a 911 call, the audio of which has been released to the public. The caller, sitting within ten yards from where Rice was playing, stays on the phone with the dispatcher for more than two minutes, all the while describing Rice's actions. His voice is calm and steady, casual even. At one point he tells the dispatcher that he believes the gun to be a toy.





### Ferguson Rises, Cameraphones in Hand

Two days after Rice was killed, the jury declared Officer Wilson not guilty for the shooting of Michael Brown. Above (Figure 3) are two photographs from the uprisings that took place in Ferguson on November 24 following Wilson’s acquittal. Protestors took to the streets, burning down nearly a dozen buildings, setting police cars and American flags on fire and smashing in storefront windows.<sup>32</sup> On the top image in Figure 3, a man is holding up a cellphone

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<sup>32</sup> Jim Reilly, Louise Boyle, Ashley Collman, David Martokso and Dan Bates, “Ferguson burns: 80 arrested as rioters torch police cars and buildings and looters ransack shops after grand jury decision not to indict cop Darren Wilson for killing black teen Michael Brown,” *DailyMail.co.uk*, 1:38 pm, November 25, 2014, <http://www.dailymail.co.uk/news/article-2844491/Ferguson-Missouri-Police-officer-Darren-Wilson-NOT-face-charges-shooting-unarmed-black-teen-Michael-Brown.html>.

behind a burning building. Riot police fired shotguns, beanbag rounds, stun grenades, rubber bullets and teargas canisters into the crowds that night.

Since the uprising in Ferguson, the movement as a whole has grown increasingly militant. At the very end of the year, on December 13, thousands marched for justice in Washington, DC following the December 3 acquittal of Daniel Pantaleo. The event was spearheaded by the National Action Network (NAN), a non-profit organization that focuses on issues of civil rights in America, founded by MSNBC talk show host, Al Sharpton. NAN had invited organizers from Ferguson and St. Louis, among other cities, to join the official list of speakers at the march, which was live-recorded by C-SPAN and broadcasted on corporate media outlets across the country. Those who spoke were invited to do so on behalf of NAN, which provided the funds for stage and all audio equipment necessary.

However, at one point, St. Louis activist Johnetta Elzie rushed the stage and accused Sharpton of trying to co-opt the movement away from the young people who started it, instead trying to turn it into a program with a safe, liberal, reformist agenda. Similar accusations had recently been made of the Justice League, another non-profit organization, which had begun to establish itself as the face of Black Lives Matter in New York City.

Several activists from St. Louis and Ferguson were invited by NAN to speak. Among them was teenage activist Joshua Williams from Ferguson. Summarizing his experiences, he says “I went to jail for five days. Five times I went to jail for protesting in the street. And every night I got out of jail and I went back in the police’s face. That shows them that I don’t care about

them.”<sup>33</sup> Simple as these words are, they offer a clue as to what might be the nature of the threat that Brown and Powell posed to the police. The next speaker to take the stage was Leighton Watson, Student Association President of Howard University.

What I’ve come to realize is that America is really a living, breathing contradiction. This is the country that wrote ‘all men are created equal,’ but then in the same document said that people that look like me and you are only worth three-fifths of a person...And now the people that have been commissioned to protect us and serve us are instead harassing us and killing us.<sup>34</sup>

Watson makes a strong argument: the nation *was* founded on racist principles and the American state is, as a consequence, full of contradiction. It is also true that the police are commissioned to protect and serve us, but if protecting our safety was a priority, then what explains all of these killings? That the police kill citizens on suspicion of crimes as petty as theft problematizes the idea that the foremost task of the police is the protection of individual people’s safety.

On April 2, the video from a body camera revealed reserve deputy Robert Bates fatally shooting Eric Courtney Harris in what he said was an accident in the middle of an undercover operation.<sup>35</sup> Moments after he is shot the police are seen throwing him onto the pavement and handcuffing him. As one of the cops is pressing Harris’s face into the ground with his knee, Harris says that he is losing his breath. “Fuck your breath,” says the officer in return.

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<sup>33</sup> Raven Rakia and Aaron Miguel Cantú, *Gothamist*, 1:55 pm, April 7, 2015, [http://gothamist.com/2015/04/07/black\\_lives\\_matter\\_movement.php](http://gothamist.com/2015/04/07/black_lives_matter_movement.php).

<sup>34</sup> “"Justice for All" March,” C-SPAN, December 13, 2014, <http://www.c-span.org/video/?323260-1/justice-march>.

<sup>35</sup> Catherine E. Stoichet, Jason Morris and Ed Lavandera, “Deputy charged in Tulsa shooting,” *CNN*, April 14, 2015, <http://www.cnn.com/2015/04/13/us/tulsa-police-shooting-eric-harris-deputy-charged/>.

On April 4, Officer Michael Slager fired an entire round of bullets into the backside of Walter Scott. Slager had pulled Scott over for a nonfunctioning break light, when Scott decided to bolt from the car and run. Passerby Feiden Santana caught the entire shooting on video using his cellphone camera.<sup>36</sup> Santana, who in an interview said he almost deleted the video for fear of retribution following Orta's imprisonment, decided to bring the video to Scott's family rather than to the police. As a result, Santana and his family suffered months of harassment by the Tulsa police. Santana's aunt claimed that the police would repeatedly arrive at her house at four o'clock in the morning and shine flashlights into their home to scare them.<sup>37</sup>

On the night of April 17, a St. Louis police officer fatally shot Thaddeus McCarroll in Jennings, Missouri. According to a press released written by the police department, the St. Louis police were responding to a late night phone call from McCarroll's mother, who said that her son claimed he was going on a "journey" and "mission" in reference to a "black revolution."<sup>38</sup> The reason she called the police, they say, is because she had been locked out of her house by her son and that he had armed himself with a knife.<sup>39</sup> The "tactical unit" of the police department was

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<sup>36</sup> "Video Shows Fatal Police Shooting," *New York Times*, April 7, 2015, <http://www.nytimes.com/video/us/100000003615939/video-shows-fatal-police-shooting.html>. Also available on: <https://vimeo.com/126018524>.

<sup>37</sup> Amy Goodman and Juan González, "Feiden Santana, Witness Who Filmed Walter Scott Shooting, Speaks Out for First Time," April 9, 2015, [http://www.democracynow.org/2015/4/9/headlines/feidin\\_santana\\_witness\\_who\\_filmed\\_walter\\_scott\\_shooting\\_speaks\\_out\\_for\\_first\\_time](http://www.democracynow.org/2015/4/9/headlines/feidin_santana_witness_who_filmed_walter_scott_shooting_speaks_out_for_first_time)

<sup>38</sup> Dennis Lynch, "Thaddeus McCarroll Shooting: Police Release Body Camera Video of Man Killed by Police in Missouri," *International Business Times*, 11:05 am, April 18, 2015, <http://www.ibtimes.com/thaddeus-mccarroll-shooting-police-release-body-camera-video-man-killed-police-1887542>.

<sup>39</sup> "For Immediate Release: St. Louis County Police Tactical Operations Unit Shoots Armed Subject in the City of Jennings," *News from the St. Louis County Police*, April 18, 2015, <http://cdn.missourinet.com/wp-content/uploads/2015/04/145559.pdf>.

sent to handle the situation. According to the police report, the “negotiator” of the operation spent an hour trying to coax McCarroll out of the house before he was shot. But all we know is what we can make out of the four-minute excerpt that was released to the public, which ends with the sounds of the bullets that take McCarroll’s life. The audio is the strongest part of the video, since virtually nothing is visible on the film. McCarroll died after the “negotiator” decided it was a good idea for the other officers to fire rubber bullets at McCarroll’s leg, the idea being that if McCarroll were provoked he would exit the house. And exit the house he did. According to official police reports, McCarroll came charging out of the house with a knife in one hand and a Bible in the other. He was shot to death and died on scene. As the story goes, the officer’s shot him because they feared for their safety.<sup>40</sup>

Then there was Freddie Gray, the young man who died while in police custody on April 19 in Baltimore, Maryland from injuries sustained by the police. Six Baltimore police officers were indicted for playing a role in the death of Freddie Gray. According to Gray’s family his voice box was crushed and his spine was eighty percent severed at his neck. Cellphone videos obtained by the *Baltimore Sun* later reveal that Freddie Gray was lying motionless while officers place handcuffs around his ankles, contradicting the police’s story that he was “irate” and “combative”.<sup>41</sup>

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<sup>40</sup> Mike Lear, St. Louis County police fatally shoot man in Jennings (VIDEO),” *Missourinet*, April 18, 2015, <http://www.missourinet.com/2015/04/18/st-louis-county-police-fatally-shoot-man-in-jennings-video/>.

<sup>41</sup> Amy Goodman and Juan Gonzalez, “Indicted: Grand Jury Brings Charges Against Baltimore Police Officers Tied to Freddie Gray Death,” *DemocracyNow!*, May 22, 2015, [http://www.democracynow.org/2015/5/22/indicted\\_grand\\_jury\\_brings\\_charges\\_against](http://www.democracynow.org/2015/5/22/indicted_grand_jury_brings_charges_against).

## The Threat

The police tell us that they only use lethal force when the suspect in question poses a threat to the lives of the officers involved or to the surrounding community.<sup>42</sup> The morning after Brown was killed a state detective interviewed officer Wilson. When asked what was going through his mind during the event, Wilson responded that he was thinking about how he was going to survive. The Justice Report states that, “Given Brown’s violent and otherwise erratic behavior, Wilson was concerned that Brown was a danger to anyone who crossed his path as he ran.” It is important to remember that a Justice Report, though intended as a summary of both defendant and witness point of view, is a document that is edited and thus curated by a government official. If treated as a neutral source it can be quite misleading. Notice the sentence construction in the above quotation from the Michael Brown Justice Report. In summarizing Wilson’s testimony, it presents the manner of Brown’s behavior (violent and erratic) as if it were a matter of fact, as opposed to what is *actually* is, namely, Darren Wilson’s perspective.

Loehmann, the man responsible for the fatal shooting of twelve-year-old Tamir Rice, claimed he shot the boy because he feared for his life. The officers charged with the death of

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<sup>42</sup> Darren Wilson, interviewed by St. Louis County Police Department, St. Louis, MO, August 10, 2014, transcript, <https://s3.amazonaws.com/s3.documentcloud.org/documents/1370766/interview-po-darren-wilson.pdf>, 5. United States Department of Justice, *Department of Justice Report Regarding the Criminal Investigation into the Shooting Death of Michael Brown by Ferguson, Missouri Police Officer Darren Wilson* [Memorandum], March 4, 2015, [http://www.justice.gov/sites/default/files/opa/pressreleases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](http://www.justice.gov/sites/default/files/opa/pressreleases/attachments/2015/03/04/ferguson_police_department_report.pdf). <http://www.washingtonpost.com/news/post-nation/wp/2015/01/02/cleveland-police-expected-to-hand-investigation-of-tamir-rice-shooting-to-county-sheriff>. Stacia L. Brown, “Looking While Black: When Eye Contact with Police is Considered a Crime,” *New Republic*, April 30, 2015, <http://www.newrepublic.com/article/121682/freddie-grays-eye-contact-police-led-chase-death>.

Freddie Gray stated that they took Gray into custody because he made eye contact with them in a way that made them uncomfortable. After the fatal shooting of Thaddeus McCarroll by the St. Louis police, Chief of Police Jon Belmar stated, “This is another tragic situation where police officers had no other option than to use deadly force against an armed subject.”

One possible reason why the police were able to escape legal persecution following the murder of Kajieme Powell is because, as a general rule, the courts tend to side with police in criminal hearings. Furthermore, there is no consistent criterion for what constitutes a legitimate threat. Therefore, officers can almost always rationalize the use of force in a court of law, because in the final moment, it is the police who determine what is or is not threatening. Since the experience of fear, and thus the assessment of danger, is highly subjective, the fact that a white officer may fear a black person on the basis on their skin color alone does not make that white officer’s fear any less real. The point here is simply to point out that as long as an officer is able to convince a jury that his or her fear was real, then the use of lethal force will be seen as legitimate in the eyes of the law.<sup>43</sup> Needless to say, the justice system is no less immune to racial prejudice than the police department.

To recap, what makes the police in a modern state unique from all other law enforcement agencies is that they reserve the unconditional authority to define and redefine what constitutes a threat. Police officers do this every time they make a judgment as to whether or not a civilian ought to be killed. Just like everyone else, police officers make spontaneous decisions that have

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<sup>43</sup> For more information on this topic, see, “Police Use of Force,” *National Institute of Justice*, 13 April 2015, <http://www.nij.gov/topics/law-enforcement/officer-safety/use-of-force/pages/welcome.aspx>.

real material consequences. The difference is that the police are far less vulnerable to the scrutiny of the law and have, as a rule, all the resources needed to maim or kill a person immediately. That the police can break the law without suffering legal consequences is precisely what distinguishes them as an apparatus of the state, that is, as an armed organization designed to monopolize the legitimate use of force for the purpose of protecting the state.

According to Benjamin, the law cannot enforce itself without the police. The reiterative power of the law is what constitutes the law as such – every time an arrest is made the legitimacy of the law is reinforced. Benjamin identifies coercion at the center of the legal system and it is this coercive legal power that he calls violence. Questions of legitimacy with regards to violence can only be discussed within the framework of the law, which he says is necessarily founded on violence. The reason why the police call any person or act that challenges the supremacy of the law “violent” is because this is how the state is able to maintain its monopoly on the legitimate use of force. The moment a state fails to maintain a monopoly on violence is the exact moment at which the state loses its sovereignty.

Individual human life is *not* a priority to the police. The only life that the police are invested in preserving is the life of the state. In agreement with Carl Schmitt, who makes this point forcefully in *The Concept of the Political*, Benjamin writes:

One might perhaps consider the surprising possibility that the law’s interest in a monopoly of violence vis-a-vis individuals is explained not by the intention of preserving legal ends but, rather, by the intention of preserving the law itself; that violence, when not in the hands of the law, threatens it not by the ends that it may pursue but by its mere existence outside the law<sup>44</sup>

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<sup>44</sup> Walter Benjamin, “Critique of Violence,” 239.

The failure of the courts to indict police officers for acts of brutality against unarmed civilians demonstrates just how far the police can go in their law-making character. The breaking and making of laws by the police is done for the higher purpose of safeguarding the state. The position of the police towards the particularities of a given law must be one of indifference. Their job requires a certain ambivalence towards the specific legal ends of any one policy. They cannot criticize or question the law, because their sole purpose is to defend its right to exist, and to continue existing, no questions asked. The law affirms its own legitimacy simply by existing, which is why officers must defend the law *in all cases*, regardless of how seemingly trite the offense. The breaking of any law, no matter how small, needs to be avoided. When Benjamin writes, “that violence, when not in the hands of the law, threatens it not by the ends that it may pursue but by its mere existence outside of the law,” what he means is that violence is only threatening to the state when it is enacted outside of legal parameters and thus without the law’s permission.

The modern nation-state is invested in shaping a citizenbody that does not see itself as capable of radical social change. That citizens of secular nation-states tend not to recognize themselves as having agency in the reproduction of the law is a testament to the state’s mystical power. As soon as an individual so much as doubts the legitimacy, and thus permanence, of the law as such, he or she becomes a threat to its existence.

[Police violence] is lawmaking because its characteristic function is not the promulgation of laws but the assertion of legal claims for any decree, and law-preserving because it is at the disposal of these ends. The assertion that the ends of police violence are always identical or even connected to those of general law is entirely untrue. Rather, the ‘law’ of the police really marks the point at which the state, whether from impotence or because

of the immanent connections within any legal system, can no longer guarantee through the legal system the empirical ends that it desires at any price to attain.<sup>45</sup>

It is not a police officer's job to follow the law – it is their job to preserve the law. The police can and will break the law if they believe that the sovereignty of the law is at stake. It is in the act of breaking a law that the police effectively establish a new one. As both Schmitt and Benjamin point out, law-breaking by the police is not an exception, as we are wont to believe – it is the rule. This is what Benjamin means when he says that the police are both law-preserving and law-creating. There is no standard definition provided by the federal government to law enforcement agencies as to what constitutes a threat. It is individual officers that determine what is and is not a threat based on their subjective experience.

People across the country are wondering why the police are not held accountable to the same law that they serve. Since the main, if unstated, function of the police is to protect the sovereignty of the law, it follows that every other purpose is, at least, secondary to this one. State repression in the form of police brutality is legitimized when the sovereignty of the state appears to be at stake.

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<sup>45</sup> Ibid., 243.



Michael Brown takes the “Cigarillos”

#### Devil’s Advocate

Confronted with a world ruled by the settler, the native is always presumed guilty  
–Frantz Fanon, *Wretched of the Earth*<sup>46</sup>

In a world constructed in the image of white supremacy, black people are guilty until proven otherwise, seemingly, just for existing. To be guilty means that one is not recognized as belonging to society, and therefore as not equal before the law. To be guilty is to be not fully human. According to Wilson’s testimony, when Wilson asked Brown to get on to the sidewalk,

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<sup>46</sup> Fanon, *Wretched of the Earth*, 53.

Brown allegedly responded, “Fuck what you have to say”<sup>47</sup>. Wilson pulled over and parked his vehicle diagonally in the middle of the lane, blocking their path. “Come here,” he said to Brown. “What the fuck you gonna do?” replied Brown. At some point – it is unclear exactly when – Brown told Wilson that he was “too much of a pussy to shoot”.<sup>48</sup> According to several eyewitness testimonies, Brown was running away from the officer when he abruptly stopped and began “moving towards” Officer Wilson’s outstretched gun. Assuming that there is at least some element of truth to these versions of the story, then we are left with the question of why Michael Brown would do such a thing?

It is possible that in that moment Brown felt sure that his death was inevitable. Or perhaps Brown knew that trying to escape would only confirm the presumption of his guiltiness.<sup>49</sup> The only response that *might* have prevented Brown and Powell from getting killed is precisely that which would have reinforced their dehumanization, that is, submission to a racist law. Rather than “running away from the law” and affirming the notion of their inherent culpability, Brown and Powell confront the law in the most literal way possible: they “move towards” the officers, walking directly into the racist violence of the law. By refusing to show subservience to the law they are rejecting its legitimacy as sovereign. As Fanon would say, their resistance to the law cost them their lives yet redeemed their dignity as human beings.

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<sup>47</sup> United States Department of Justice, *Department of Justice Report Regarding the Criminal Investigation into the Shooting Death of Michael Brown by Ferguson, Missouri Police Officer Darren Wilson* [Memorandum], March 4, 2015, <http://www.justice.gov/usao/pam/Documents/DOJ%20Report%20on%20Shooting%20of%20Michael%20Brown.pdf>, 13.

<sup>48</sup> *Ibid*, 14.

<sup>49</sup> One of the popular protest chants that emerged in the aftermath of Wilson’s acquittal was the following: “The whole damn system is guilty as hell. Arrest, indict, send those killer cops to jail!”

According to Buck-Morss, within the context of the secular nation-state, the sovereign is legitimated in the form of an icon. What could be more iconic of state power than the police? “Is it not true that the greatest threat to political hegemony today comes from challenges to just this iconic authority?”<sup>50</sup> She then goes on to say, “In the metaphysical world of the iconomy, the believer interprets such violence as the work of the devil”<sup>51</sup> In the Justice Report, Wilson describes Brown as becoming so enraged that he “looked like a demon.”<sup>52</sup> This perhaps speaks to the nature of the threat that Brown and Powell symbolized. What these two men shared in common was a complete lack of deference for the rule of law. Brown and Powell were not rebels without a cause. They broke the law to make a point. They defied the law loudly and unapologetically, in full recognition that their defiance was not of one particular law, but of *the law itself*.

According to Wilson’s testimony, Brown was in the midst of running from Wilson when he all of a sudden stopped and turned around to face Wilson. The words Wilson used to describe Brown at that moment were “psychotic,” “hostile” and “crazy.” It was as if he were “looking through me,” said Wilson. Brown *was*, in a manner of speaking, looking through Officer Wilson, but not in the way Wilson had in mind. Brown appears to Wilson as if he were the devil because of his unremorseful disregard for the sacred secular law. Wilson was scared of Brown and rightly

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<sup>50</sup> Buck-Morss, *Visual Empire*, 8.

<sup>51</sup> *Ibid.*, 2.

<sup>52</sup> Department of Justice, 14.

so. There was nothing Wilson could do to control Brown, because Brown was willing to struggle until death in order to claim his humanity.<sup>53</sup>

[T]he police intervene ‘for security reasons’ in countless cases where no clear legal situation exists, when they are not merely, without the slightest relation to legal ends, accompanying the citizens as a brutal encumbrance through a life regulated by ordinances, or simply supervising him. Unlike law, which acknowledges in the ‘decision’ determined by place and time a metaphysical category that gives it a claim to critical evaluation, a consideration of the police institution encounters nothing essential at all. Its power is formless, like its nowhere-tangible, all-pervasive, ghostly presence in the life of civilized states.<sup>54</sup>

In a press release following Kajieme Powell’s death, St. Louis Police Chief Sam Dotson referred to Powell’s death as a “suicide by cop.”<sup>55</sup> Of the police, Benjamin states, “Its power is formless, like its nowhere-tangible, all-pervasive, ghostly presence in the life of civilized states”.<sup>56</sup> Ghostly indeed. So ghostly that officers who shot Kajieme Powell all but disappear as Powell commits suicide. According to Dotson, the officers had no choice, just like Timothy Loehmann had no choice when he shot twelve-year-old Tamir Rice, and Darren Wilson had no choice when he shot Michael Brown, and so forth and so on. It is interesting that the officers treated Powell as if he were incapable of acting reasonably by shooting him within seconds of arriving on scene, yet as soon as Powell was dead, he was restored with the fullness of his agency and will. Only as a dead man is he recognized as a sovereign individual capable of thinking rationally and taking responsibility for his actions. In an ironic twist, the police are

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<sup>53</sup> See GWF Hegel on the struggle until death of the master slave dialectic in his *Phenomenology of Spirit* (Oxford, 1977).

<sup>54</sup> Benjamin, “Critique of Violence,” 243.

<sup>55</sup> Coscarelli, 3.

<sup>56</sup> Benjamin, “Critique of Violence,” 243.

suddenly the ones incapable of autonomous decision-making, as when confronted with the decision of whether to kill or not to kill, they had no choice.

In the official police report, Powell is labeled as the “suspect” and the two officers are referred to as “victims,” propagating the idea that they were somehow tricked into killing Powell against their will. The move to categorize the officers as victims relies on the assumption that Powell actually intended to commit suicide, of which there is no substantial evidence. Intention, says Benjamin, is the death of truth.<sup>58</sup>

At the end of the day, we are left with all sorts of unanswered questions about the nature of Brown and Powell’s actions. What does it mean when a citizen sacrifices their life at the hands of the state? Does it depend on the subject’s intention, or is there some other way to gauge the meaning of the act? If the act resonates with enough people then its meaning will continue to change over time. Individual acts of civil disobedience may inspire reenactments, but they also may spark in people the desire to organize collective forms of resistance, as Black Lives Matter is doing today. What is an even greater threat to state sovereignty than one law-breaker? The answer: many law-breaking citizens united in solidarity.

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<sup>58</sup> Walter Benjamin, *The Origin of German Tragic Drama*, (New Left Books, 1963).

## Lawbreaking as Lawmaking / The Event

The event is not a miracle that overcomes us with awe and strikes us down. It lifts us up, precisely because it is accomplished by ordinary people who interrupt business as usual in order to act collectively, empowering not only those who are present, but those who, in watching, feel a tremendous surge of solidarity and sense of human togetherness – even (dare I say it?) universality.

–Susan Buck-Morss, *Commonist Ethics*<sup>59</sup>

Buck-Morss refers to a circular historical repetition representing the political regime that magically reproduces itself as if by an act of God: “The historical event that ruptures the circle’s mythic repetition is also the possibility of a better of a future.”<sup>60</sup> Of course, no regime is capable of existing without the participation of human subjects. State institutions operate because people are operating them. Behind every political regime is real human agency. But rulers can only rule when the people believe in the legitimacy of their reign. The state can get away with murder as long as the source of its power remains a mystery.

The historical event occurs when individuals, aware of themselves as agents of free will, organize together for the purpose of radically changing society. It is not merely symbolic or only theoretical – it is based in praxis, the creation of a new ethics. In Freddie Gray’s eulogy, Reverend Jamal Bryant spoke about the meaning of Gray’s eye contact with the officers. Addressing Gray’s mother, Gloria Darden, he said,

On April 12 at 8:39 in the morning, four officers on bicycles saw your son. And your son, in a subtlety of revolutionary stance, did something black men were trained to know not to do. He looked police in the eye. And when he looked the police in the eye, they knew that there was a threat, because they’re used to black men with their head bowed down low, with their spirit broken. He was a threat simply because he was man enough to look

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<sup>59</sup> Buck-Morss, *Commonist Ethics*, 8.

<sup>60</sup> Buck-Morss, *Visual Empire*.

somebody in authority in the eye. I want to tell this grieving mother... you are not burying a boy, you are burying a grown man. He knew that one of the principles of being a man is looking somebody in the eye.<sup>61</sup>

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<sup>61</sup> Stacia L. Brown, "Looking While Black: When Eye Contact with Police is Considered a Crime," *New Republic*, April 30, 2015, <http://www.newrepublic.com/article/121682/freddie-grays-eye-contact-police-led-chase-death>.

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