

2020

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Recommended Citation

I. I. Thusi, *Blue Lives & The Permanence of Racism*, 105 Cornell L. Rev. Online 14 (2020).

Available at: <https://scholarlycommons.law.cwsl.edu/fs/290>

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ESSAY

BLUE LIVES & THE PERMANENCE OF RACISM

India Thusi[†]

In true dystopian form, the killing of unarmed Black people by the police has sparked a national narrative about the suffering of police officers. “Blue Lives Matter” has become the rallying call for those offended by the suggestion that we should hold police officers accountable for killing unarmed Black people. According to a December 2016 poll, 61% of Americans believed that there was a “war on police,” and 68% of Whites had a favorable view of the police as compared to 40% of Blacks. Lawmakers around the country have been proposing Blue Lives Matter laws that make it a hate crime to kill or assault police officers. This strange twist of events is perverse given the social context. Why should the police be viewed as victims in need of additional protection at precisely the same moment that many have questioned their victimization of Black communities? This Essay considers this question and argues that “Blue Lives Matter” is evidence of the permanence of racism as a juridical and discursive matter in this country.

INTRODUCTION

It was fifteen years after the second millennium, and civil unrest rocked our nation’s cities following the police shootings of several unarmed Black people.¹ Protestors were demanding respect for the lives of Black people and chanting, “Black lives matter,” in cities such as New York, Detroit, Baltimore, and

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¹ See Justin Hansford & Meena Jagannath, *Ferguson to Geneva: Using the Human Rights Framework to Push Forward a Vision for Racial Justice in the United States After Ferguson*, 12 HASTINGS RACE & POVERTY L.J. 121, 122 (2015) (“Largely to the credit of young organizers of color that have arisen as leaders in this moment in history, this dialogue has surfaced the extent to which the civil rights reforms of the 1960s left intact the structures that produced and now perpetuate a racial caste system in the United States. The movement’s rallying cry of ‘Black Lives Matter’ boldly highlights exactly where Black individuals fall in this caste system.” (footnote omitted)).

Ferguson.² New technology enabled Black communities to record and broadcast police treating their bodies as strange fruit to be thrown away.³ Armed with smart phones that function as guerilla film equipment, marginalized communities were able to instantly document and broadcast the pain of police violence.⁴ But make no mistake; this pain was not new. Black communities have long complained about police violence in their communities.⁵ In the late 1960s, there was civil unrest in Los Angeles, Detroit, Newark, and Harlem following the police harassment of Black communities.⁶ The National Advisory Commission on Civil Disorders (the Kerner Commission) noted, “Almost invariably the incident that ignites disorder arises from police action. Harlem, Watts, Newark and Detroit—all the major outbursts of recent years—were precipitated by routine arrests of Negroes for minor offenses by white police.”⁷

But now, these displays of police violence were finally being documented and broadcast for all to see.⁸ With this fresh evidence in hand, Black communities were able to visually prove the unjust policing that they have experienced since this nation’s founding. Previously, many media outlets depicted

² See *id.*; Fred O. Smith, Jr., *Abstention in the Time of Ferguson*, 131 HARV. L. REV. 2283, 2358 (2018) (arguing that there should be an exception to the *Younger* abstention doctrine to prevent the criminalization of poverty as occurred in Ferguson, Missouri) (“Americans who are in this cycle are lifting their voice and singing by way of the vociferous chants and marches that seem to erupt each summer in cities from Ferguson to Baltimore to Baton Rouge.”).

³ Justin Hansford, *The Whole System Is Guilty as Hell: Interrupting a Legacy of Racist Police Culture Through a Human Rights Lens*, 21 HARV. J. AFR. AM. PUB. POLY 13, 13 (2015) (“The picture of Mike Brown’s dead body, his blood on the concrete in a long red line. It made me sick to my stomach. My mind started playing the song ‘Strange Fruit’ by Billie Holliday, ‘Blood on the leaves . . . Black bodies swinging in the southern breeze.’ . . . Teenager Mike Brown—stopped for jaywalking, unsubmitive, killed, body left on display for over four hours The devaluing of his life was a devaluing of my own life, the offense to his dignity an offense to my own dignity, the attack on him an attack on the entire community. It was a fresh cut in an old wound.”).

⁴ See Caren Myers Morrison, *Body Camera Obscura: The Semiotics of Police Video*, 54 AM. CRIM. L. REV. 791, 836 (2017) (describing the limitation of video recordings of police violence).

⁵ See generally Devon W. Carbado, *Blue-on-Black Violence: A Provisional Model of Some of the Causes*, 104 GEO. L.J. 1479, 1484 (2016) (examining several of the causes of police violence in Black communities).

⁶ Lonnie T. Brown, Jr., *Different Lyrics, Same Song: Watts, Ferguson, and the Stagnating Effect of the Politics of Law and Order*, 52 HARV. C.R.-C.L. L. REV. 305, 332 (2017).

⁷ *Id.*

⁸ See *supra* note 4 and accompanying text.

police violence as exceptional incidents done by bad apples⁹ and the Black victims of police violence as subhuman creatures in need of taming.¹⁰ The string of cellular videos from 2014 to 2017 challenged these portrayals.¹¹ Americans literally witnessed these killings, either through recorded cellular videos or live broadcast through social media platforms. Upon witnessing these incidents of police violence, all Americans could unite in collective action to ensure that Black souls would feel the protection of the law, not just the violence of it.¹² Witnessing the despair prompted by police killings should be enough to generate empathy, right? Americans could no longer continue to tolerate the killing of Black people at the hands of the police, right?

Surprisingly, the killing of unarmed Black people by the police has sparked a national narrative about the suffering of police officers.¹³ In true dystopian form, police officers killing unarmed Black people has inspired the return of legal lynchings¹⁴ and the perception that police are the real victims of inequality. While protestors demanded more police accountability and chanted that we need to recognize that “Black Lives Matter,” counterprotestors responded “Blue Lives

⁹ See Myriam E. Gilles, *Breaking the Code of Silence: Rediscovering “Custom” in Section 1983 Municipal Liability*, 80 B.U. L. REV. 17, 31 (2000) (“Municipalities generally write off the misconduct of an individual officer to the ‘bad apple theory,’ under which municipal governments or their agencies attribute misconduct to aberrant behavior by a single ‘bad apple,’ thereby deflecting attention from systemic and institutional factors contributing to recurring constitutional deprivations.”).

¹⁰ See, e.g., Jody D. Armour, *Race Ipsa Loquitur: Of Reasonable Racists, Intelligent Bayesians, and Involuntary Negrophobes*, 46 STAN. L. REV. 781, 785 (1994) (discussing how one of the police officers charged with violating Rodney King’s rights “testified that King was ‘a monster-like figure akin to a Tasmanian devil’”).

¹¹ See *supra* note 4 and accompanying text.

¹² Cynthia Lee, *Reforming the Law on Police Use of Deadly Force: De-Escalation, Preseizure Conduct, and Imperfect Self-Defense*, 2018 U. ILL. L. REV. 629, 633–34 (2018) (describing the modest reforms to policing, including an “increase in the number of officer-involved homicide prosecutions over the last several years” and increasing usage of body-worn cameras and dash cameras).

¹³ See Deborah Tuerkheimer, *Criminal Justice and the Mattering of Lives*, 116 MICH. L. REV. 1145, 1160 (2018); Savannah Walker, *Policing Hate: The Problematic Expansion of Louisiana’s Hate Crime Statute to Include Police Officers*, 78 LA. L. REV. 1413, 1414 (2018).

¹⁴ See Jamilah King, *One of the Leaders of the #BlackLivesMatter Movement Has Been Charged with Lynching*, MIC NEWS (June 2, 2016), <https://mic.com/articles/145118/one-of-the-leaders-of-the-Black-lives-matter-movement-has-been-charged-with-lynching#.aCq70NZU2> [<https://perma.cc/E3KB-Q9XP>].

Matter.”¹⁵ “Blue Lives Matter” has become the rallying call for those offended by the suggestion that we should hold the State accountable for killing civilians. According to a December 2016 poll, 61% of Americans believed that there was a “war on police,” and 68% of Whites had a favorable view of the police as compared to 40% of Blacks.¹⁶ In fact, lawmakers around the country have been proposing Blue Lives Matter laws that make it a hate crime to kill or assault police officers.¹⁷ This strange twist of events is perverse given the social context. Why should the police be viewed as victims in need of additional protection at precisely the same moment that many have questioned their victimization of Black communities? This Essay considers this question and argues that “Blue Lives Matter” is evidence of the permanence of racism as a juridical and discursive matter in this country.

A. The Permanence of Racism

The litany of videos of unarmed Black people dying avoidable deaths at the hands of law enforcement officers sparked hope that the nation would be motivated to reform policing practices in a meaningful way. Campaign Zero, a small group of protestors from the Ferguson uprising, developed a set of policy demands that articulated a new vision for policing in the United States.¹⁸ Some of their demands include increasing community oversight of the police, ending broken windows policing, and requiring the police to use body worn cameras.¹⁹ The Movement for Black Lives, a coalition of organizations central to the Black Lives Matter movement, shared a list of policy demands that reimagines the

¹⁵ See Lisa A. Kloppenberg & Wesley H. Dodd, *Justice for All: A Role for ADR Educators*, 32 OHIO ST. J. ON DISP. RESOL. 665, 673–74 (2017) (“[A] counter-protest movement called Blue Lives Matter spread rapidly across the country following attacks on police by former U.S. Army member Micah Xavier Johnson during a Black Lives Matter Protest in Dallas, killing five officers.”).

¹⁶ Emily Ekins, *Policing in America: Understanding Public Attitudes Toward the Police. Results from a National Survey*, CATO INST. (Dec. 7, 2016), <https://www.cato.org/survey-reports/policing-america> [<https://perma.cc/3ESW-N5MR>].

¹⁷ See Lisa M. Olson, *Blue Lives Have Always Mattered: The Usurping of Hate Crime Laws for an Unintended and Unnecessary Purpose*, 20 SCHOLAR: ST. MARY’S L. REV. ON RACE & SOC. JUST. 13, 14–15 (2017) (discussing the increasing use of sentencing enhancements to penalize crimes against law enforcement officers).

¹⁸ CAMPAIGN ZERO, <https://www.joincampaignzero.org/> [<https://perma.cc/X5G3-2ZNS>] (last visited Nov. 10, 2019).

¹⁹ *Id.*