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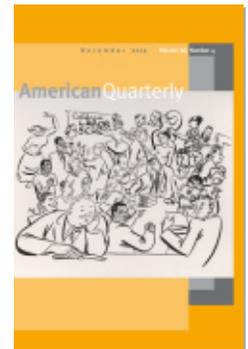
## The Whiteness of Police

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# The Whiteness of Police

*Nikhil Pal Singh*

[For] preventing the many dangers and inconveniences that may arise from the disorderly and unlawful meetings of Negroes and other slaves, patrols should be established.

—Georgia General Assembly, 1818

The police power is the counterpart . . . to the realm of individual liberty.

—John Burgess, 1899

Whiteness is a status conferring distinct—yet conjoined—social, political, and economic freedoms across a vertiginously unequal property order. A conscious assemblage, it was designed to extend, fortify, individualize, and equalize the *government* of public life in a world dominated by private property holders whose possessions included other human beings and lands already inhabited yet unframed by prior claims of ownership. Whiteness, however, does not issue directly from private property. It emerges from the governance of property and its interests in relationship to those who have no property and thus no calculable interests, and who are therefore imagined to harbor a potentially criminal disregard for propertied order.<sup>1</sup> The slave was “by nature a thief,” writes Benjamin Franklin—later amending this to argue that thieving propensity was an effect of slavery as an institution. His compatriot Thomas Jefferson argued that emancipation would produce an imminent threat to the institution of US society itself, one that would require a permanent sequester of freed people far from US shores, as blacks unable to forget the terrible crimes done to them would nurse murderous wishes and intentions, while whites would live in state of anticipatory fear that urged preemptive violence.<sup>2</sup> These slippages are telling. Regardless of its source or etiology (white oppression or black nature), the racial line constructing civil life marked a materially and existentially consequential mistrust born of criminal acts.

By the same token, the legal, normative, and ideological investment in personal whiteness as its own peculiar species of property offered a quasi-democratizing stake in this order. Whiteness suggested a relationship between differential human valuation and materially valuable access to indigenous

land and human capital (i.e., slaves), and later skilled jobs and varieties of state support.<sup>3</sup> Yet for the majority destined for waged (or wageless) life under capitalism, claiming and asserting whiteness also promoted access to material benefits and sadistic pleasures derived from the management of racial order itself. The larger point is that the ongoing racial differentiation of society over several centuries—which now includes accretive rejections of formal, legal racial ascription beginning in the second half of the twentieth-century—has been continuously remade as the quasi-democratic counterpart to publicly sanctioned private accumulation and the social costs, divisions, and crises that it engenders. The democracy in question, however, foreclosed aspirations toward a democracy of white property holding, even as it tended to promote the idea of a democracy of police power with respect to, and as a method for regulating, an unequal ordering of property relations, that is, *the whiteness of police*.

Policing can be understood as those preventive mechanisms and institutions for ensuring private property *within* public order, including access to the means of violence, their legal narration, and their use. Policing is anticipatory: it comprises, in the words of Michel Foucault, those “supervisions, checks, inspections and varied controls, that, even before the thief has stolen makes it possible to identify whether he is going to steal.”<sup>4</sup> Where discipline seeks to arrest the movement of wrong [doing] bodies in space through varieties of artificial enclosure, security ensures the proper circulation of multitudes of people and things across great distances.<sup>5</sup> Police in this sense, as founding US political scientist John Burgess noted early on, is a paradigmatic institution for a society founded on individual liberty. It marries juridical consistency with administrative prerogative, coordinates the proportion of carceral space to open space, and calculates relationships between necessary use of force and the inherent riskiness of a society dependent on consent of the governed. Policing further differentiates between where to arrest and the imperative to develop; it determines finally who requires discipline so that others can be secure enough to pursue their self-interest.

Often overlooked by important Foucault-inspired accounts of policing and security is how the constitution of this predictive, self-aggrandizing, and probabilistically defined power within the United States, as well as in other slave-owning, settler colonial, and colonizing societies, was inextricable from plural forms of racial differentiation against which an elastic and inclusive sense of whiteness coalesced as a political subjectivity. As aforementioned references to Franklin and Jefferson suggest, criminalization became indispensable to liberal governors, who worried from the very earliest development of US nationhood

that the condemnation of blackness or redness alone was insufficient to justify the myriad wrongs committed by settlers, slave owners, and traders. Franklin's longing that an "Edenic" North America might become a production hub for the world's "purely white people," though not realistic, was no pious wish; this programmatic vision supported ongoing and conscious governmental intervention into the sociobiological constitution of human collectivity along an ever-widening arc of contact and exchange among different peoples.

Police action in turn developed along the continuum of racial management that moved from biopolitical inclusion (an ever-graduating whiteness) to necro-political destruction of entire communities (genocide). It is important here to understand the production of whiteness as an active and ongoing social process—one built on a prior history of racial differentiation, but one that also worked by generating new distinctions. Change in racial orders is as important as what arguably remains the same; it corresponds to spaces of politics and struggle, resistance and flight, and suggests the requirement that racial orders must be institutionalized, that is, managed by personnel who are recruited, invested in, and subjectively constituted for this purpose. Similarly, the racially dominated have been addressed differently. The exterminationist pole of the US racial spectrum that encompasses relations with indigenous peoples had the character of irregular warfare in a context of plural, unsettled sovereign land claims. Whiteness confronted blackness, by contrast, through a negative biopolitics oriented toward the management of capital and the ongoing depletion (and depreciation) of the lives of people whose bodies and labors were essential to its accumulation.

At the same time, in each situation race management induced an ongoing slippage between policing and war that still visibly characterizes the present.<sup>6</sup> The steady expansion at local scales of criminal jurisdiction with respect to indigenous counterviolence was a primary way to erase tribal sovereignty negotiated through warfare and treaty obligations.<sup>7</sup> The slave patrol in turn grew directly from the citizen militia, its primary purpose motivated by fears of servile insurrection. Developing the legal and narrative means to criminalize the counterviolence of dominated people (in fact and *in potentia*) was central to not only the institutionalization and legitimation of suppressive force but also a repression and disavowal of prior recognition that sources of enmity, discord, and trauma issued centrally from white violence itself. Beneath any such ideological ruminations or psychic processes lay the practical concern: how to both defend and legitimate a social order built on ongoing murder and dispossession, that is, the theft of black labor and indigenous lands.

It is significant in this regard that the meaning of racial differentiation was immediately and concretely realized through minute gradations in the ordering of punishments. Under late seventeenth-century Virginia law, enslaved black and native bodies guilty of an offense—generally some form of work avoidance, petty theft, or retaliation for abuse—were to be stripped of any protective garment before whipping; white Christian servants by contrast retained the dignity and protection of clothing while being beaten.<sup>8</sup> The fabrication of race through petty differentiations of violent punishments enacted on the body evolved into more salient distinctions between the punished and the punishers. A key mediating institution was the slave patrol, which in the language of the Georgia General Assembly (and notwithstanding divergent social histories of the indigenous and the enslaved) “presumed every negro, indian, mulatto or mustizo [*sic*] . . . is a slave.”<sup>9</sup> John Capheart, a constable and slave catcher in Norfolk, Virginia, in the 1840s, illuminates the distinctive economy of deterrence and prerogative, sadism and reward that emerged in the securing of racial order:

It was part of my business to arrest all slaves and free persons of color, who were collected in crowds at night and lock them up. . . . I did this without warrant and at my own discretion. Next day they are examined and punished. The punishment is flogging. I am one of the men who flog them. . . . I am paid fifty cents for every negro I arrest, and fifty cents more if I flog him. I have flogged hundreds. . . . I never refuse a good job of that kind.<sup>10</sup>

In an approving summary of this period, written at the turn-of-the twentieth-century, notable white supremacist historian U. B. Phillips observes, “All white persons were permitted and in some regards required to exercise a police power over slaves.”<sup>11</sup> Phillips was not alone in framing the privileged and indeed compulsory relationship between police power and “all white persons.” It is not incidental that the first systematic theorists of police power in the United States wrote during the ascendant period of US white supremacy. Above all, they emphasize the formless, discretionary, and aggrandizing dimensions of police functions and institutions suited to a world in rapid racial transition. For Ernst Freund, “The police power is not a fixed quantity, but . . . the expression of social, economic and political conditions. As long as these conditions vary, the police power must continue to be elastic, i.e. capable of development.” Looking to the state and local scales of US political sovereignty, Burgess calls “the police power of the commonwealths . . . ‘the dark continent’ of our jurisprudence . . . the convenient repository of everything for which our juristic classifications can find no other place.” In the name of tightening bonds of public order within

the global realm, US president (and former New York City police commissioner) Theodore Roosevelt undoes national-territorial strictures on the idea of policing, arrogating to the United States an expansive “international police power” to confront “chronic wrongdoing, or an impotence which results in the general loosening of ties of civilized society.”<sup>12</sup>

One does not need to read deeply here to notice the elective affinities and synergies of police and race within a developmental schema that comprises normative visions of public order and the rule of law *alongside* the preservation and cultivation of spaces of exception through which discretionary violence is both given public sanction and the freedom to grow institutionally. Blackness all but defined a state of biopolitical “impotence” and propensity to “chronic wrong-doing” that for Roosevelt called forth an enlarged and more diffuse police function. The primary object of police, blackness was by this time an increasingly thick and naturalized but also fungible way to define a (state of) being whose relationship to contract was untrustworthy and unstable and at worst null and void, requiring permanent supervision and when necessary direct domination. Black people at this time would be deemed ineligible to buy insurance, with membership in the race said to constitute an inherent risk of premature death. Actuaries like Frederick Hoffman who drew these conclusions in turn pioneered the development of crime statistics that provided positivist validation of black criminal propensity that modernized police violence as a matrix of racial discipline.<sup>13</sup> The new dispensation of blackness as a negative biopolitics in need of permanent police was underscored by the US Supreme Court in *Plessy v. Ferguson*, which described prohibition of interracial marriage as a technical interference with “freedom of contract” that was nonetheless justified as an exercise of “the police power of the state.”<sup>14</sup>

The specific importance of police power revolves around its ongoing links to colonial and settler colonial methods and relationships including extermination and population transfer, but as importantly its conservation within and utility for the machineries of value creation, capital accumulation, and the economies of violence that these machineries require and develop. As an exemplary blackened and disordered space in the racial imagination of the time, the Philippines under US occupation proved to be a key institutional proving ground. In the phrase of Alfred McCoy, it emerged as a “laboratory of police modernity,” in which the development and synthesis of methods of clandestine operations, information science, photographic identification, demographic research, intelligence gathering, and legal repression far outstripped the major metropolitan police forces of that time. Such developments of course

were a response to anticolonial insurgency. And, as one US general put it, “the keynote of the insurrection among Philipinos [*sic*] is not tyranny, for we are not tyrants, it is race.”<sup>15</sup>

In sum, the whiteness of police develops from a correlation to “the Dark Continent” as the domain in which social and political life is seen as always already suspended. This condition constitutes a permanent state of emergency or exception. From the standpoint of power, it has no knowable properties beyond its criminal propensity and open-ended threat potential. In other words, these threats are such that they require rigorous and ongoing applications of “legitimate” violence along a potentially limitless vector. Enhancement of institutional capacities for policing was related as well to an increasingly paranoid sense of the potential loss of white monopolies on space, power, and moral right. Supporting Roosevelt’s vision of US military “points of vantage” straddling the globe, the naval strategist Alfred Thayer Mahan viewed it as the key to deciding whether “eastern or western civilization is to dominate throughout the earth and to control its future.”<sup>16</sup> Responding to a rising tide of liberal and nonwhite critics of the “white Australia” policy, Prime Minister Alfred Deakin offered a far-seeing judgment that what would be needed were “colorless laws [that could be] administered so as to draw a deep colour line of demarcation between Caucasians and all other races.”<sup>17</sup>

We do not tend to think of color blindness or formal equality as prerequisites for state building during the high era of white supremacy. Yet, insofar as the production of whiteness has been concomitant with formal universality and liberal-capitalist conceptions of progress and development, the key moral and intellectual challenge has always revolved around how to reconcile commitments to racially disparate fate with claims to justice and fairness. It is mistaken in my view to think of race making in terms of contradiction with universal reason; rather, it is the grounds on which claims to rationality are proffered. Neither blackness nor whiteness is in this sense strictly reducible to specific white people or black people. Rather, whiteness and blackness as well as other modern racial forms emerge as subject positions, habits of perception, and modes of embodiment that develop from the ongoing risk management of settler and slave capitalism, and more generally racial capitalism (i.e., capitalism). That there are both varieties of capitalism and plural and heterogeneous processes of racial formation that develop simultaneously around the world offers a qualification. Needless to say, a sharply dualist conception of blackness and whiteness accrues special force within the Anglo-American variant of capitalism that attains global reach in the nineteenth and twentieth centuries.

Even as the completion of continental expansion and the transition from slavery to freedom appeared to normalize and extend the wage contract to all persons, it also gave rise to new elaborations of, and responses to, both blackness and indigeneity as temporal lag, state of exception, endangered and thus dangerous predicaments, and most importantly as domains from which to exercise easy violence for the direct extraction of value differentials, the relative measurement of states of security and threat potentials, and the probabilistic assignment of premature death.

Whiteness carries a tremendous price accrued from the debt burdens assumed by blackness most visibly, as well as other forms of racialization. But such valuation is made concrete and realizable through the work of policing, both the quotidian surveillance that ensures the maintenance of racially valorized and devalorized space and the exemplary spectacles by which forms of overt police violence tutor publics in the value of whiteness as a domain of safety and self-preservation, regardless of whether they derive pecuniary benefits from such a relation. Insofar as conscription as much as reward is part of its formation, there is also a powerfully self-punishing quality inherent to the order of white supremacy, that is, whiteness must constantly police itself. In sum and given its broad significance, it is surprising that the concept of police has not been more central within scholarly discussions of whiteness and its history. A brief speculative essay such as this one cannot offer anything approaching a full accounting of how the racialized economy and government of the United States shaped the development of modern police powers, domestically and internationally, how police powers developed in and through racial differentiation, and how conceptions of race and expansions of criminal jurisdiction over previously noncriminal domains (i.e., criminalization) have been braided together in mutually supportive ways. What I have tried to do is to suggest some starting points for such an inquiry, as it is one that may hold some of the keys to comprehending the conservation of racisms in the face of the emergence of antiracist and postracist *doxa* in the contemporary period. For once this problematic is made central, the long-standing proximity of the racial and the criminal becomes ubiquitous.

It is perhaps facile to equate “the beat” that marked out the geography of the slave patrol with the modern patrolman’s beat. Still, former New York City police commissioner Raymond Kelley (at one time a candidate for director of Homeland Security) defended the racially disproportionate policy of stop and frisk on the grounds that it “instills fear” in the city’s criminal element. Encouraged by a “statistics based performance management system,” the NYPD has

conducted a staggering 4 million stops and some 2.3 million frisks since 2004. More than 81 percent of these targeted the city's black and Latino residents. Only 1.5 percent of these police actions resulted in the discovery of a weapon and only 6 percent of all stops resulted in arrest. Judge Shira A. Sheindlin, who ruled against the city's defense of this policy (before being removed from the case herself), notes that "the racial composition of the precinct or census tract predicts the stop rate above and beyond the crime rate" and that the population stopped and frisked is "overwhelmingly innocent."<sup>18</sup>

Policing what comes to be *denoted as crime*—from mild correction to justifiable homicide—was the essence of slave and frontier law. The long arc of criminalizing blackness in particular helps us to recognize racial distinction as the obscured mode of institution of society that has been retained across changes in formal racial categories and degrees of inclusion. If white supremacy is understood as a form of group-differentiated power and pleasure that accrues value, the racial distribution and directionality of the legitimate violence it exerts over those regarded as "dangerous and inconvenient" publicly confirms it and performs its most essential work. "The majority of Negroes are of a plotting disposition, dark, sullen, malicious, revengeful, and cruel in the highest degree," Benjamin Franklin notes toward the end of his life, this time without qualification. Despite his growing abolitionist sympathies, Franklin doubted that "mild laws could govern such a people," which is to say that he affirmed the whiteness of police.<sup>19</sup> The routine police murder of black men and women from Amadou Diallo to Renisha McBride and Michael Brown in our own time demonstrates its continuous legacy. When President Barack Obama's attorney general Eric Holder recently defended juridically indefensible targeted killing by drone—a practice whose collateral victims include those engaging in forms of feasting and funerary sociality—by likening it to the exigencies of the police who not unreasonably "prevent escape by using deadly force," he once again extends its sway to the ends of the earth.<sup>20</sup>

#### Notes

1. Fred Moten and Stefano Harney, *The Undercommons: Fugitive Planning and Black Study* (New York: Autonomedia, 2013), 57. See also Bryan Wagner, *Disturbing the Peace: Black Culture and Police Power after Slavery* (Cambridge, MA: Harvard University Press, 2009).
2. Benjamin Franklin, "Observations Concerning the Increase of Mankind, the Peopling of Countries, etc. . . ." (1751), in *The Papers of Benjamin Franklin*, ed. Leonard W. Labaree et al. (New Haven, CT: Yale University Press, 1959–), 4:225–34. See also David Waldstreicher, *Slavery's Constitution: From Revolution to Ratification* (New York: Hill and Wang, 2010), 26.

3. See Cheryl Harris, "Whiteness as Property," in *Critical Race Theory: The Key Writings That Formed the Movement*, ed. Kimberlé Crenshaw et al. (New York: New Press, 1995); and George Lipsitz, *The Possessive Investment in Whiteness: How White People Profit from Identity Politics* (Philadelphia: Temple University Press, 2009).
4. Michel Foucault, *Security, Territory, and Population: Lectures at the Collège de France, 1977–78*, trans. Graham Burchell (New York: Picador, 2009), 4.
5. Misreadings of Foucault think of this as a historical sequence rather than as a process of layering, or archaeology.
6. The term *race management* is developed more explicitly in relation to the labor process in David R. Roediger and Elizabeth D. Esch, *The Production of Difference: Race and the Management of Labor in US History* (New York: Oxford University Press, 2014).
7. Lisa Ford, *Settler Sovereignty: Jurisdiction and Indigenous People in America and Australia, 1788–1836* (Cambridge, MA: Harvard University Press, 2011).
8. Edmund S. Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (1975; rpt. New York: Norton, 2003).
9. "A Compilation of the Patrol Laws of the State of Georgia in Conformity with a Resolution of the General Assembly" (Milledgeville, GA: S & F Grantland, 1818).
10. Sally Hadden, *Slave Patrols: Law and Violence in Virginia and the Carolinas* (Cambridge, MA: Harvard University Press, 2003), 85.
11. U. B. Phillips, *American Negro Slavery* (New York: D. Appleton, 1918), 500.
12. Ernst Freund, *The Police Power: Public Policy and Constitutional Rights* (Chicago: Callahan, 1904), 3; John Burgess, *Political Science and Comparative Constitutional Law*, vol. 2 (Boston: Ginn and Company, 1900); Roosevelt, quoted in Marcus Dubber, ed., *The New Police Science* (Stanford, CA: Stanford University Press, 2006), 190.
13. Khalil Muhammed, *The Condemnation of Blackness* (Cambridge, MA: Harvard University Press, 2011), 4.
14. US Supreme Court, *Plessy v. Ferguson*, 163 U.S. 537 (1896).
15. Alfred McCoy, *Policing America's Empire: The United States, the Philippines, and the Rise of the Surveillance State* (Madison: University of Wisconsin Press, 2009), 21; Paul Kramer, *The Blood of Government: Race, Empire, the United States, and the Philippines* (Chapel Hill: University of North Carolina Press, 2006), 62.
16. Alfred Thayer Mahan, "A Twentieth Century Outlook," *Harper's New Monthly Magazine*, September 1897, 527. See also Marilyn Lake and Henry Reynolds, *Drawing the Global Color Line: White Men's Countries and the International Challenge of Racial Equality* (Cambridge: Cambridge University Press, 2008), 104.
17. Alfred Deakin, quoted in Lake and Reynolds, *Drawing the Global Color Line*, 164.
18. Shira A. Scheindlin, US Department of Justice opinion and Order 08 Civ. 1034 (SAS), pp. 12–13.
19. Benjamin Franklin, "A Conversation Between an Englishman, a Scotchman and an American on the subject of Slavery," *London Public Advertiser*, January 30, 1770.
20. US Department of Justice, "Lawfulness of a Lethal Operation Directed against a US Citizen Who Is a Senior Operational Leader of Al-Qa'ida or An Associated Force," November 8, 2011, 9, <http://fas.org/irp/eprint/doj-lethal.pdf>.