



UiT

THE ARCTIC
UNIVERSITY
OF NORWAY

Faculty for Humanities, Social Sciences and Education

Centre for Peace Studies

Perspectives of Policing: *An Analysis of the Discursive Constructions of Policing, Race, and Criminal Justice in the United States*

Matthew Stephen Burian

Master's thesis in Peace and Conflict Transformation – May 2018



In Loving Memory of Betty Ann Moriarty

August 13, 1928 – October 29, 2016

Acknowledgements

This thesis is not the product of one individual's efforts. There are so many people along the way who have helped me to become the person I am today, and without whom I would never have gotten here. I cannot list all of them, but they are in my thoughts as I complete this process.

First and foremost, my deepest thanks go to my supervisor, Holger Pötzsch, for his tireless support and unending patience, helping me understand theories, pushing me to think more critically, responding to all of my overly long, somewhat manic emails, editing each of my many, very long drafts, and constantly encouraging me throughout this process. He really went above and beyond, and I could not have gotten through this without him.

Many thanks also go to my informants, who took time out of their busy schedules to share their insights and ideas with me, and who, in some cases, went out of their way to help me with this project. I deeply appreciate their willingness to speak to me, and while I am at times critical of their perspectives, I have a great deal of respect for the work they are trying to do, and I hope that we can work together to make positive changes in our communities.

I am also very grateful to Torhild Skillingstad at the Academic Writing Centre for reading through each of my draft chapters and giving me incredibly insightful comments and critiques as well as lots of encouragement. Her input was invaluable for making this thesis what it is, and I am deeply grateful for that.

I also want to thank Anne Marit Bachmann for being a constant rock of emotional stability throughout this stressful process, and for letting me bother her in her office every fifteen minutes over the last year! I would have gone insane without her horrible/hilarious puns and great advice!

My thanks also go to CPS for giving me this incredible opportunity, and to all of my classmates and friends for challenging and pushing me to be a better academic and a better person.

I also want to acknowledge and thank Robert and Bridget Baron (AKA Baron and Baroness), my high school debate coaches and original instructors in the arts of research and argumentation. I still find myself drawing on the skills that they taught me, and I would not be half the academic I am today without them.

Finally, I want to thank my family for supporting me and encouraging me on my crazy adventure to the Arctic.

Abstract

This thesis is an analysis of the competing discursive constructions of policing, race, and criminal justice in the United States. I identify two main competing discourses active in this field, a Liberal Individualist Discourse, and a Social Collectivist Discourse. I explore the way these two discourses construct the three areas in focus and argue that the Liberal Individualist Discourse has led to the implementation of ineffective and counterproductive public safety policies and masks systemic abuses and biases. Using data gathered from interviews with police officers and their critics, I analyze how different parties discursively construct three different areas. First, I look at discursive explanations for the causes of crime and analyze how these explanations position police officers and policymakers to implement certain strategies to prevent crime. The Liberal Discourse constructs crime as the result of rational choices, and positions policymakers to implement deterrence strategies of crime control, while the Social Discourse constructs crime as the result of societal failures and a lack of social programs. Second, I look at how the role of race, bias, and racism in the criminal justice system and U.S. society in general is defined and what explanation this definition provides for the overrepresentation of Black Americans in arrests, prisons, and police shootings. The Liberal Discourse disconnects individuals from race through a discourse of colorblind individualism, masking individual and systemic biases. In contrast, the Social Discourse defines race as a relevant social category that affects an individual's life. Finally, I look at how different actors frame police conduct and interactions between police and the community, focusing on when and why police use lethal force, and how they are (or are not) held accountable for unnecessary uses of lethal force. The Liberal Discourse frames the use of lethal force as rare, usually justified events and constructs the criminal justice system as able to impartially dispense justice on these matters. The Social Discourse frames police use of lethal force as rampant and brutal, and highlights biases in the criminal justice system that make holding police officers accountable for misconduct difficult, if not impossible.

Key Words: Discourse Analysis, Criminal Justice, Policing, Race

Table of Contents

Chapter 1 – Introduction	1
1.1 – Talking About Policing	1
1.1.1 – Motivation and Research Questions	1
1.1.2 – Relevance	2
1.2 – Argument and Overview	3
1.2.1 – Differing Perspectives	3
1.2.2 – Central Argument and Purpose	4
1.2.3 – Overview	4
Chapter 2 – Theory and Method	5
2.1 – Interviews as a Means of Data Collection	5
2.1.1 – Interviews	5
2.1.2 – Why Interviews?	6
2.1.3 – The Limits of Interviews	7
2.1.4 – Overcoming the Limitations	8
2.2 – Social Constructivism	9
2.2.1 – (Almost) Everything is Constructed	9
2.2.2 – Why Social Constructivism?	10
2.3 – Discourse Theory and Analysis	11
2.3.1 – Laclau and Mouffe’s Discourse Theory	11
2.3.2 – Discourse Analysis as a Method	12
2.3.3 – Application of Discourse Analysis	13
2.4 – Discourse and Action	14
2.4.1 – Discourse Theory and Social Action and Organization	14
2.4.2 – Evaluating Actions	14
2.5 – Hegemony	15
2.5.1 – The Theory of Hegemony and Hegemonic Interventions	15
2.5.2 – Applying the Theory of Hegemony as Method	16
2.6 – Positioning and Liminality	16
2.6.1 – Positioning Theory and Overdetermination	16
2.6.2 – Liminality and the Third Space	17
2.6.3 – Creating a Liminal Space and Enabling Overdetermination	18

2.7 – Other Considerations	19
2.7.1 – Other Limitations	19
2.2.8 – Positioning Myself	20
2.8 – Conclusion	21
Chapter 3 – Causes of Crime	22
3.1 – The Liberal Discourse: The Rational Criminal	22
3.1.1 – Introduction	22
3.1.2 – Accountability and Crime	23
3.1.3 – Liberalism in Criminology: Classical Criminology and Deterrence	24
3.1.4 – Rationality Meets Reality: The Results of Deterrence	26
3.1.5 – Concluding Comments.....	28
3.2 – The Social Discourse: Society, Structure, and Environment.....	29
3.2.1 – Introduction	29
3.2.2 – The Not So Rational Criminal	29
3.2.3 – Crime Beyond Our Control.....	32
3.2.4 – A Failed Society.....	33
3.2.5 – Concluding Comments.....	36
3.3 – Overdetermination and Liminality: A Social Shift.....	36
3.3.1 – Introduction	36
3.3.2 – Hegemonic Interventions: Soft on Crime	36
3.3.3 – When Deterrence Fails: Enabling Overdetermination	38
3.4 – Concluding Comments	40
Chapter 4 – Bias, Racial Profiling, and Racism	41
4.1 – Understanding the Discussion: A look at the Statistics	41
4.1.1 - Introduction	41
4.1.2 – A look at the Statistics	42
4.1.3 – Concluding Comments.....	43
4.2 – The Liberal Discourse: Unbiased Society, Unbiased Policing	43
4.2.1 – Introduction.....	43
4.2.3 – Spinning Statistics and Not Seeing Race	44
4.2.5 – Colorblindness and Liberalism	46
4.2.6 – Concluding Comments.....	47

4.3 – The Social Discourse: Race as an Influential Social Category	47
4.3.1 – Introduction.....	47
4.3.2 – Perceptions of Black Criminality.....	48
4.3.3 – Racial Profiling and Policing.....	49
4.3.4 – Conclusion: The Collective Experience of Black Americans.....	51
4.4 – Overdetermination and Liminality: Race, Class, and Crime.....	52
4.4.1 – Introduction.....	52
4.4.2 – A Complex Picture.....	53
4.4.3 – Hegemonic Interventions: The Race Card.....	54
4.4.4 – The Liminal Discourse: Class, Race, and Crime.....	56
4.5 – Concluding Comments	60
Chapter 5 – Police Conduct and Accountability	61
5.1 – The Liberal Discourse: The Uncommon Non–Problem of Use of Force.....	62
5.1.1 – Introduction.....	62
5.1.2 – The Uncommon Use of Lethal Force.....	62
5.1.3 – A Liberal Conception of Justice: Due Process and the Case of Philando Castile	64
5.1.4 – Concluding Comments.....	66
5.2 – The Social Discourse: Biased Society and an Unfair System	67
5.2.1 – Introduction.....	67
5.2.2 – Police Are Shooting People	67
5.2.3 – Benefit of the Doubt and Lack of Police Accountability.....	68
5.2.4 – Entangling Influences and Structural Issues	71
5.2.5 – Concluding Comments.....	72
5.3 – Overdetermination and Liminality: A Community Discourse	72
5.3.1 – Introduction.....	72
5.3.2 – Necessary Evils: Liminality and Overdetermination.....	73
5.3.3 – Understanding Violence and Fear.....	74
5.3.4 – A Way Forward.....	76
5.4 – Concluding Comments	80
Chapter 6 – Conclusion.....	81
6.1 – A Liminal Space	81
6.2 – Summary.....	82

6.3 – What Now?	83
6.3.1 – Reforms and Liminal Spaces	83
6.3.2 – Further Research	84
6.4 – Concluding Comments	85
Works Cited	I
Appendix	VI
Interview Guide for Police Informants	VI
Interview Guide for Informant Triangle	IX
Note	XI

Chapter 1 – Introduction

1.1 – Talking About Policing

On July 6, 2016, Philando Castile, a Black American man, was driving with his girlfriend, Diamond Reynolds, and his girlfriend's four year old daughter in St. Anthony, Minnesota when they were pulled over by a police officer who believed Castile looked like a suspect in a nearby robbery. The officer asked Castile for his license and registration, and Castile informed the officer that he was carrying a licensed firearm in his pocket. Several seconds later, the officer shot Castile seven times, killing him. According to Reynolds, the officer shot Castile while he was reaching for his ID. The officer claimed Castile was reaching for his gun. The aftermath of the shooting was livestreamed by Reynolds and quickly went viral and the officer was eventually charged with second-degree manslaughter and two counts of dangerous discharge of a firearm. In June 2017, the officer was acquitted.¹ Both the shooting and the subsequent acquittal of the officer sparked massive protests across Minnesota, and across the United States.² Organizers of the protests posted on Facebook: 'This verdict shows how the system is rigged against justice for victims of police terror.'³

The Philando Castile case has been incorporated into a larger narrative by organizations like Black Lives Matter, a narrative that includes the cases of Michael Brown, Alton Sterling, and Jamar Clark, to name a few. Each of these cases represents one more example of police using lethal force against a Black American, other 'victims of police terror.' By starting a social movement and coordinating protests across the country, organizations like Black Lives Matter have brought renewed attention to the conduct of police officers, especially the way they interact with minority communities and use lethal force, and started a heated debate about how we understand crime, criminal justice, and the role of race in the United States. Is the criminal justice system really rigged? Are these acts of "police terror?" This thesis is an exploration of this debate.

1.1.1 – Motivation and Research Questions

Although controversy over police practices is not new in U.S. history, and there have always been discussions about race and racism in U.S. society, what caught my attention about the Castile case, and thus sparked my interest in this topic, was that it was so clearly interpreted in two radically

¹ Mitch Smith, "Minnesota Officer Acquitted in Killing of Philando Castile," *The New York Times*, June 16, 2017.

² Merrit Kennedy, "Hundreds Protest after Minnesota Officer Found Not Guilty in Philando Castile Death," *National Public Radio*, June 16, 2017.

³ Bill Kirkos and Raph Ellis, "Philando Castile Shooting: 18 Arrested as Thousands Protest Verdict," *CNN*, June 17, 2017.

different ways. Some say that the officer's actions were justified because Castile *might* have been reaching for his gun, while others say that Castile was a victim of police terror. We can hear the stories of the officer and Reynolds, and we can see on video two different perspectives: the officer's dashboard camera, and Reynolds' live-streaming after the shooting. It struck me as interesting that people could take the same event, the same information, and come to totally different conclusions, and, more interestingly, that these different conclusions seemed to represent a wider conflict centered on the relationship between police and minority communities. Thus I decided to use this thesis to explore the following questions:

- How do different parties in the United States, such as police officers to Black Lives Matter members, frame events like the shooting of Philando Castile and police use of force in general?
- How do these different parties define the role of race and racism in policing and criminal justice?

More critically, I also wanted to use this as an opportunity to understand *why* policing is the way it is. Thus, I added another question:

- How does the way these parties think and talk about crime, policing, and justice influence what is *done* about crime and policing, and more broadly how the criminal justice system is organized?

To answer these questions, I entered into the contemporary debates about policing by interviewing police officers and their critics, and reading about their different perspectives in newspapers and academic literature. I then used discourse analysis (see Chapter 2) to analyze how different sources construct and frame crime, race, and policing in the United States.

1.1.2 – Relevance

Protests against police by organizations like Black Lives Matter provide one reason to examine in more detail the way the U.S. criminal justice system functions. Additionally, the U.S. has the highest incarceration rate in the world, at 670 per 100,000 individuals in 2015,⁴ costing the U.S. government and taxpayers approximately \$80 billion a year.⁵ Furthermore, between 2015 and

⁴ "Fact Sheet: Trends in U.S. Corrections," (The Sentencing Project, 2017).

⁵ Steven Raphael and Michael Stoll, "A New Approach to Reducing Incarceration While Maintaining Low Rates of Crime," in *Discussion Paper* (The Hamilton Project, 2014), 5.

2017, an average of 981.7 people were killed by police per year, about 2.7 shootings per day.⁶ In short, hundreds of people are dying each year and tens of billions of dollars are being funneled into correctional institutions rather than, for example, schools, hospitals, or infrastructure. These facts should indicate the importance of looking more closely at criminal justice and police. More broadly, policing and criminal justice are arguably vital functions of a state, which can be used either to control and oppress or create a safe environment for people to prosper. Because of this, getting it right with policing is critical.

1.2 – Argument and Overview

1.2.1 – Differing Perspectives

Based on my analysis of data from interviews with informants both inside and outside law enforcement, I identified two dominant perspectives (or Discourses (See 2.3)) shaping contemporary debates about criminal justice and race in the United States. The first is a Liberal Individualist perspective, which is the dominant U.S. American discourse. According to this Discourse, the individual is rational, and therefore makes rational choices to commit crimes. Additionally, this Discourse disconnects the individual from social groups or categories, and downplays the effect of things like race on an individual's life or in the criminal justice system. The second perspective is the Social perspective which emphasizes social and structural injustices, highlighting how poverty or a lack of education caused by systemic failures can lead to crime, and how racism and bias still play important roles in U.S. society and the criminal justice system.

While there are certainly more than two perspectives on policing, I have chosen to present these two for several reasons. First, they are the most distinct from each other, making comparisons between them easier. Second, these two perspectives emerged as the most prevalent in my data, meaning I had the most material to analyze. Finally, based on further research, these perspectives appear to be the most widespread in U.S. society, and the conflict between these two perspectives seems to be the core of the current conflicts centered on policing, race, and criminal justice in the United States. These perspectives are highly complex and nuanced. I have tried to deal with this nuance as much as possible but, due to the limits of this thesis, a full discussion of these topics

⁶ "Police Shootings 2015 Database," in *The Washington Post* (2015); "Police Shootings 2016 Database," in *The Washington Post* (2016); "Police Shootings 2017 Database," in *The Washington Posts* (2017).

should not be expected. The purpose is instead to reflect on the ways different parties in the U.S. think about law enforcement and race and explore how our perceptions affect our actions.

1.2.2 – Central Argument and Purpose

Each of the two perspectives gives different meanings to events and constructs differing understandings of, and explanations, for the challenges and conflicts of modern policing. As I will argue throughout this thesis, the dominant Liberal perspective on policing and race, based on rational individualism and colorblind egalitarianism, has led to the implementation of ineffective and counterproductive public safety policies and masks systemic abuses and biases. I further argue that in order to promote a more peaceful society, the U.S. must switch perspectives, addressing societal and structural injustices and acknowledging the influence of racism and bias in the criminal justice system. By reflecting on these differing perspectives, this thesis can offer opportunities to change perspectives and accept new ideas and truths, leading to new solutions.

1.2.3 – Overview

In Chapter 2, I outline the theoretical framework and methodological approaches I used to gather and analyze my data, and provide a more detailed explanation of the two perspectives (or discourses) being discussed and how I identified them. In each of the next three chapters, I look at how these two perspectives explain a different aspect of criminal justice: causes of crime, bias and racism, and police conduct and accountability. Chapter 6 presents a conclusion, suggesting areas for further research and giving final thoughts on ways to harmonize perspectives and promote peaceful change.

Chapter 2 – Theory and Method

This chapter elaborates on the theoretical and methodological approaches I used to gather and analyze my data. I conducted a series of interviews with police officers and their critics about the methods and challenges of modern policing, particularly in Minnesota. I then used Laclau and Mouffe’s discourse analysis (based on their version of discourse theory) to analyze their answers. The first subchapter (2.1) will discuss my use of interviews as a means of data collection. Subchapters 2.2 – 2.6 each explain a different part of social constructivism and discourse theory and the corresponding methodological approaches I used to analyze the data gathered from these interviews. In subchapter 2.7, I offer some final reflections on the limitations of my thesis and the implications of my own position. Finally, in the concluding subchapter 2.8, I summarize my approach and outline the following analysis chapters.

2.1 – Interviews as a Means of Data Collection

2.1.1 – Interviews

To gather data for my thesis, I conducted semi-structured, in-person interviews with informants in the law enforcement and social justice communities (See Appendix for interview Guides). In total, I conducted twelve interviews, nine with law enforcement officers and officials, one with a lawyer associated with the Minnesota Peace Officers Association, one with a representative from the American Civil Liberties Union (ACLU), and one with an organizer and activist associated with the organization Black Lives Matter (BLM). I also attended a meeting of the community organization Communities United against Police Brutality (CUAPB).

With the exception of four informants, in all cases direct contact via either phone or email was made prior to the interview to schedule a meeting. Two interviews were conducted at the informants’ homes. Two were conducted in police cars during ride-alongs, which allowed me to gather additional data through observation, as I got to watch the way officers responded to calls or performed traffic stops. The rest of the interviews were conducted at the informants’ workplaces.

The interviews were recorded with the explicit permission of the informant. Afterward, I transcribed the interviews, then sent them back to the informants for confirmation. At this time, informants were allowed to withdraw or clarify answers or add new statements, which none of them did. The data was anonymized and each informant was given a code name by which they will be referred throughout this paper. Informants associated with policing have been given color

code names (e.g. Black, Silver, Navy), while the two informants outside of the police are given shape names (Circle and Triangle). Informants were made aware of the anonymization before interviews were conducted. Because job titles, ranks, and cities (particularly for police) could be used to identify informants, or at least narrow down the range of possible informants, I have not referenced any of these directly. Likewise, because some interviews took place on the same day with people from the same departments, the exact date of the interview will not be revealed. All interviews are listed as taking place in July, 2017, though one took place in early August.

2.1.2 – Why Interviews?

I used semi-structured interviews for several reasons. First, the semi-structured interview format allows the interviewee to go on tangents, ramble, or otherwise digress from the main topic. This may, at times, be irrelevant, but may also provide information about things that the interviewer would not have thought to ask about, potentially producing unexpected insights.⁷ In this way, I was able to get information about topics that I had not asked about. For example, although I did not ask my police informants directly about issues related to race and bias, I found that they came up naturally in the conversation as tangentially related to responses to other questions. Furthermore, the semi-structured interview also allows for follow up questions and asking new spontaneous questions based on what the informant is saying.⁸ This allowed me to maintain an overall structure, ensuring all informants addressed similar themes, while at the same time enabling a change of course in the middle of interviews to pursue particularly interesting or fruitful lines of inquiry.

Besides greater flexibility for both researchers and informants, interviews also ‘provide a means of getting beyond surface appearances and permit greater sensitivity to the meaning contexts surrounding informant utterances.’⁹ As Julia Brannen notes, ‘respondents’ accounts of sensitive topics... are frequently full of ambiguities and contradictions and are shrouded in emotionality.’¹⁰ In an interview setting, the researcher is able to make note of emotional responses like anger or frustration, as well as pauses and hesitations. Additionally, because the researcher may be listening to what more or less resembles a loosely guided stream-of-consciousness answer, they can pick up on contradictory ideas or ambiguities in ways that might not be present in survey data, or in texts

⁷ Alan Bryman, *Social Research Methods*, 5th ed. (Oxford: Oxford University Press, 2016), 466-67.

⁸ Ibid.

⁹ Raymond Lee, *Doing Research on Sensitive Topics* (Sage, 1993), 104.

¹⁰ Ibid.

such as newspaper articles or press releases where such contradictions might be edited out.¹¹ Thus, not only the response itself, but also the process and manner of responding becomes relevant data for analysis.

2.1.3 – The Limits of Interviews

There are a number of limitations to interviews that can potentially result in unreliable or unusable data. These limitations must be identified and their impact on the study must be either addressed or accounted for. This section discusses the limitations of interviews. In the next section, I discuss how I address these limitations.

A major concern with interviews is that different researchers may ask questions or relate to the informants in different ways, potentially resulting in different answers. This has given rise to a ‘persistent objection concerning the reliability of interviewing,’ namely that ‘different interviewers get different results.’¹² It is claimed that ‘if subjects present themselves differently to different interviewers, and also change their opinions during the interchange, then interviews do not produce reliable, objective knowledge.’¹³ In short, if an informant says one thing to one interviewer and another thing to another interviewer, or contradicts themselves in the middle of an interview, how can we trust that what they said to either interviewer is true?

Moreover, even within the context of a single interview, informants may not necessarily tell the “truth” in their answers. This may be for a number of reasons. For one, as Charles Briggs notes, when answering questions, particularly ones about sensitive or controversial topics (such as police use of force or racial bias), ‘respondents often shape their responses in keeping with the imaginings of future texts and audiences.’¹⁴ This filtering might be termed self-censorship. Informants may also change their positions because of transference, whereby the informant ‘develops an identification with the interviewer,’ and thus ‘may produce what it is assumed the interviewer wants to hear.’¹⁵ Similarly, my presence on police ride-alongs may have changed the behavior of the officers I was with.

The setting of the interviews is also critical, as it can impose conscious or unconscious filters on what informants are willing to say. Due to scheduling constraints, and practical demands,

¹¹ Ibid.

¹² Ibid., 105.

¹³ Ibid.

¹⁴ Charles Briggs, "Interviewing, Power/Knowledge, and Social Inequality," in *Inside Interviewing: New Lenses, New Concerns*, ed. James Holstein and Jaber Gubrium (Sage, 2003), 498.

¹⁵ Lee, *Doing Research on Sensitive Topics*, 105.

most of my interviews took place at police stations while my informants were in uniform. This may have made informants less likely to move away from the official discourse and express alternative or dissenting opinions, perhaps because they felt, consciously or unconsciously, that while in uniform they were representing the department in an official capacity and therefore relating official positions. They may also have done this because they were concerned that unpopular opinions expressed during the interview could be overheard by their coworkers.

Finally, the interpretation of data is equally subjective and therefore open to potential distortions. For example, for various reasons ‘interviewers may accord particular features of the respondent’s experience undue prominence.’¹⁶ This may be because the researcher has come to identify with the informant and wishes to paint them in a favorable light, or simply because the researcher is attributing more significance to something (perhaps because it fits their theory) than the informant had intended.¹⁷

2.1.4 – Overcoming the Limitations

I have attempted to overcome these challenges in several ways. First, on a basic level, interviews were done alone and informants were promised anonymity. Additionally, it was made explicit at the beginning of interviews that my informants were not being expected to speak on behalf of their entire organization or (police department, ACLU, BLM, etc.) which may have relieved some pressure to speak or act in a certain way. Given that my police informants articulated a variety of positions and perspectives, I would argue that at least *some* of them managed to move away from “official” positions.

More critically, I tried to conduct as many interviews as possible in various locations with different informants and I do not rely exclusively on interview data, but have also made use of news articles, academic articles, and other texts which can supplement the data I collected in my interviews. This gave me greater ability to triangulate my data. I looked for articulations of the same discourse (see subchapter 2.3) in other sources, such as news media or academic articles to confirm that the discourse was articulated in other settings besides the interview and to assess how frequently it is articulated and by whom. I also followed up on my informants’ claims to check certain facts where it was necessary to do so.

¹⁶ Ibid.

¹⁷ Ibid.

Furthermore, in my analysis, in keeping with Brannen’s observation about contradictions in interview answers, I try to identify moments of hesitation or thoughtfulness, indicating that the informant may have been attempting to frame or word their answer in a particular way. I can also identify moments of thoughtless, reactionary speech that potentially contradict another, earlier claim that was more carefully thought out, showing potential slips where one discourse punctures another and briefly shines through. As I will discuss in subchapter 2.6, these contradictions may indicate that my informants are overdetermined. Furthermore, in cases of transference, when my informants “tell me what I want to hear,” this could be looked at as a liminal moment (see 2.6), a moment where my informant sees and represents, even if only briefly, another position. Thus, the process of answering, just as much as the answer itself, is relevant data for my analysis.

Finally, and most critically, issues of reliability become themselves a source of data, as the answers my informants provide, whether genuine or not, are in their own way parts of the discourse, as articulations of a contingent reality from various possible perspectives. In discourse analysis (see 2.3) the subjectivity and inconsistency of interview data resulting from the interpersonal nature of interviews is not looked at as an obstacle to gathering ‘pure data,’ but rather as data in and of itself, seen as ‘discursive acts and performances in social interaction.’¹⁸ Thus, even if my informants are unable to tell me a true perspective, they are still nonetheless drawing on and articulating a discourse that can be mapped and analyzed. As such, interview data provides me with access to particular subject positions within contingent discursive frames rather than some alleged extra-discursive truth.

2.2 – Social Constructivism

2.2.1 – (Almost) Everything is Constructed

For this thesis, I have taken a social constructivist approach. Marianne Jørgensen and Louise Phillips summarize the basic premises of social constructivism. First, ‘knowledge of the world should not be treated as objective truth,’ but instead, representations of the world are ‘products of our ways of categorizing the world.’¹⁹ Second, ‘we are fundamentally historical and cultural beings and our views of, and knowledge about, the world are[...] historically and culturally specific

¹⁸ Steinar Kvale and Svend Brinkmann, *Interviews: Learning the Craft of Qualitative Research Interviewing*, Second ed. (Sage, 2009), 228.

¹⁹ Marianne Jørgensen and Louise Phillips, *Discourse Analysis as Theory and Method* (SAGE Publications, 2011), 5.

and contingent.’²⁰ And third, ‘knowledge is created through social interaction in which we construct common truths and compete about what is true and false.’²¹ Social constructivism is thus a way of theorizing how we come to understand, categorize, and find meaning in the material world.

Social constructivism is not necessarily, as some claim, the belief that nothing exists and that everything is merely socially constructed. For example, Philando Castile was killed by a police officer during a traffic stop while he was sitting in a car with his girlfriend and her daughter. This event did happen. As Jørgensen and Phillips put it, ‘this is an event that takes place independently of people’s thoughts and talk.’²² Thus, social constructivism does not disregard the facts of material reality. Mark Stoddart explains that ‘[m]aterial reality sets boundaries on the ideas that may emerge as important, or even acceptable, in a given social setting.’²³ However, the same real event can be (and is) explained and interpreted from many different contingent positions. For example, Castile’s death can be, and has been, interpreted as either justified “self-defense” or “police terror” depending on one’s position. In short, as said in the previous paragraph, social constructivism is about understanding and giving meaning to the world, not simply inventing it.

2.2.2 – Why Social Constructivism?

I have chosen to take a social constructivist approach because I want to study how different parties *construct* policing, race relations, and the conflict between the police and minority communities. Facts are, of course, an important part of my thesis. For example, it is important to know what percentage of prisoners in the United States are Black Americans, how many people are shot by police each year, or what the murder rate is in the United States and other countries. However, I am more interested in how my informants *interpret* these facts. How do they explain the overrepresentation of Black Americans in prisons? Is an average of 981.7 deaths per year via police use of lethal force a lot? Compared to what? Why do people commit murder, or any crime for that matter? Why did the officer shoot Philando Castile? Was it because he was Black, or was the officer just afraid that he was reaching for a gun? Or was it both? Each person I interviewed had a different perspective on these topics, a different way of answering these questions (some more different than others). This puts my analysis in the realm of social constructivism. In my interviews,

²⁰ Ibid.

²¹ Ibid.

²² Ibid., 9.

²³ Mark Stoddart, "Ideology, Hegemony, Discourse: A Critical Review of Theories of Knowledge and Power," *Social Thought & Research* 28 (2007): 195.

I was not looking for them to tell me *the* Truth about a subject. I was looking for them to tell me *their* truth, which is to say, I was looking for them to articulate their specific subjective position.

2.3 – Discourse Theory and Analysis

2.3.1 – Laclau and Mouffe’s Discourse Theory

Discourse theory is a particular way of understanding social constructivism and the processes by which we come to give meaning to the material world. In general terms, discourse can be defined as ‘a particular way of talking about and understanding the world (or an aspect of the world),’²⁴ or as ‘a structuring scheme that people utilize to understand the world and themselves, when they interpret a situation and talk and act in this situation.’²⁵ A discourse assigns *meaning* to different concepts, actions, events, or objects.²⁶ In Laclau and Mouffe’s Discourse Theory, these unfixed meanings called “elements.” An element is ‘a sign whose meanings have not yet been fixed,’²⁷ that is, a word or concept waiting to be defined. An element is defined when its meaning is temporarily stabilized in relation to other signs.²⁸ Signs become linked together in chains of equivalence, which establish the connections and relationships between different concepts.²⁹ For example, Castile’s death is an element to which different signs can be attached such as “self-defense” and “justified” or “murder” and “police terror.” This demonstrates how a single event can be given different meanings.

Laclau and Mouffe theorize that discourses are organized around ‘a privileged discursive point’ which they call a nodal point.³⁰ As Phillips and Jørgensen explain, a ‘nodal point is a privileged sign around which the other signs are ordered; the other signs acquire their meaning from their relationship to the nodal point.’³¹ This nodal point could be considered the key concept, the main idea, or the central tenet of the discourse, referred back to when seeking to understand parts of reality. A discourse, then, is the sum total of all of the signs arranged in chains of equivalence around a particular nodal point, organizing a specific social space. However, Phillips

²⁴ Jørgensen and Phillips, *Discourse Analysis as Theory and Method*, 1.

²⁵ Jørn Cruickshank, "The Role of Qualitative Interviews in Discourse Theory " *Critical Approaches to Discourse Analysis across Disciplines* 6, no. 1 (2012): 39.

²⁶ Jørgensen and Phillips, *Discourse Analysis as Theory and Method*, 27.

²⁷ Ibid.

²⁸ Ibid., 29.

²⁹ Ernesto Laclau and Chantal Mouffe, *Hegemony and Socialist Strategy: Towards a Radical Democratic Politics* (London and Brooklyn: Verso, 1985), 127.

³⁰ Ibid., 112.

³¹ Jørgensen and Phillips, *Discourse Analysis as Theory and Method*, 26.

and Jørgensen note that at times, ‘different discourses strive simultaneously to organize the same social space,’³² in a process called the discursive struggle.³³ For example, the struggle to define Castile’s death as a murder or as self-defense can be seen as a discursive struggle, one that takes place in courtrooms and in the media and has very real consequences. Thus, when conducting a discourse analysis, it is possible to identify several different discourses, each centered on a different nodal point and therefore giving a different meaning to the same signs. The next section will focus on how discourse theory is applied as discourse analysis.

2.3.2 – Discourse Analysis as a Method

Discourse analysis is an attempt ‘to map out the process in which we struggle about the way in which the meaning of signs is to be fixed, and the process by which some fixations of meaning become so conventionalized that we think of them as natural.’³⁴ When carrying out discourse analysis, ‘[t]he analyst has to work with what has actually been said or written, exploring patterns in and across the statements.’³⁵ These statements are called “articulations.” General discourse analysis looks to answer the question of ‘what discourse or discourses does a specific articulation draw on?’³⁶ This is done by looking at how articulations establish meaning ‘by positioning elements in particular relationships with one other [sic].’³⁷ This is an analysis of how elements are turned into stable signs, that is, how meaning is given to a concept, and how chains of equivalence are constructed. In other words, discourse analysis looks at what connections are being made between different ideas and concepts, how something is defined, described or explained, and what assumptions underlie those definitions, descriptions, and explanations. Once specific signs and meanings have been identified, the researcher ‘can investigate how other discourses define the same signs[...] in alternative ways,’ and make comparisons between discourses.³⁸

Using Laclau and Mouffe’s discourse theory, it is also possible to look for the nodal point of a discourse by asking ‘what signs have a privileged status, and how are they defined in relation to the other signs in the discourse?’³⁹ This is more or less a search for a general theme, main idea, or core assumption. What idea seems to be underlying all of the articulations in this particular

³² Ibid., 41.

³³ Ibid., 7.

³⁴ Ibid., 25.

³⁵ Ibid., 21.

³⁶ Ibid., 30.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

chain of equivalence? From what point in the discourse do all the other points seem to be taking their cues, so to speak?

2.3.3 – Application of Discourse Analysis

In my analysis, I sorted my informants' articulations into broad themes based on what they were talking about. The major themes that emerged over the course of my interviews were as follows: causes of crime (discussed in Chapter 3), bias and racism (Chapter 4), and police misconduct (Chapter 5). From there, I looked more specifically at the claims that my informants were making about these specific topics, and looked for articulations from other sources that made the same claims. For example, as I will discuss in Chapter 3, when I noticed that several of my informants argued that people committed crime because they were not worried about being held accountable for it, I flagged this as a reoccurring pattern. In this case, there was a pattern of linking "criminality" to "accountability" with an assumed causal link. I also looked into the assumptions that seemed to underlie a particular connection. For example, why would a lack of accountability lead to criminality? What I found was the assumption that people would be deterred from committing crimes because of a fear of being punished. Thus, I was able to link "deterrence" to "criminality" and "accountability." By doing this, I was able to build chains of equivalence that revealed a discursive construction of crime and policing.

In terms of nodal points, I noticed that many of my informants consistently referred back to the individual, for example arguing that individual choices lead to crime, individuals need to change to prevent crime, and that individual behaviors draw suspicion, rather than social categories such as race. In particular, my informants often referred to a construction of the individual as rational, independent, and equal. These are key elements of liberal philosophy and politics. Once this connection was made, I analyzed liberalism in discursive terms as the Liberal Individualist Discourse (or simply the Liberal Discourse), with the "Individual" as the nodal point.

Once this discourse was identified, it was possible to map out the alternative discourse articulated by some of my informants. I did this by looking at articulations where different informants took the same elements but attached different signs or meanings. For example, where some of my informants linked "criminality" with "accountability," others linked it with "poverty" or "drug addiction." All of these points eventually led back to the breakdown of social structures meant to support individuals, for example by educating them or treating their addictions. I therefore labeled this discourse the Social Collectivist Discourse (or Social Discourse), with "Society" as its

nodal point. This thesis is a comparison between these two discourses, mapping out the discursive struggle between them by examining the way they compete to construct and define policing and the criminal justice system.

2.4 – Discourse and Action

2.4.1 – Discourse Theory and Social Action and Organization

Discourses are not merely passive constructions of the world. Instead, they enable certain actions by positioning or predisposing actors within a discourse to act in certain ways. Jørgensen and Phillips explain that there is a ‘link between knowledge and social action,’ meaning that ‘within a particular worldview, some forms of actions become natural, others unthinkable. Different social understandings of the world lead to different social actions, and therefore the social construction of knowledge and truth has social consequences.’⁴⁰ In discursive terms, ‘different discourses each point to different courses of action as possible and appropriate.’⁴¹ Laclau and Mouffe highlight that discourse is not ‘purely linguistic’ but also incorporates ‘the multifarious institutions, rituals and practices through which a discursive formation is structured.’⁴² In short, Jørgensen and Phillips assert that the ‘ascription of meaning in discourses works to constitute and change the world.’⁴³

We can thus look at discourse as both practiced (or performative) and structural. On a performative level, it suggests ways of relating to each other, for example as police officer and civilian (see 2.6 for further discussion on positions). It also suggests actions by identifying relationships and causes. If, for example, a discourse articulates crime as being caused by a failure to hold people accountable for their actions, then holding them accountable should prevent crime. Discourse also works on a structural level, affecting the very way we organize society. In this case, we have created an institution meant to prevent crime by holding people accountable and we call this institution the criminal justice system, which includes police, courts, judges, and lawyers.

2.4.2 – Evaluating Actions

Part of discourse analysis involves ‘identifying the social consequences of different discursive representations of reality.’⁴⁴ Thus, my analysis looks at the practical effects of the two discourses,

⁴⁰ Ibid., 6.

⁴¹ Ibid., 9.

⁴² Laclau and Mouffe, *Hegemony and Socialist Strategy: Towards a Radical Democratic Politics*, 109.

⁴³ Jørgensen and Phillips, *Discourse Analysis as Theory and Method*, 9.

⁴⁴ Ibid., 21.

how they are performed and how they influence the structure of the system. I explore how, for example, linking “criminality” to “accountability” positions police and policymakers to implement a set of crime control policies based on deterrence theory (Chapter 3), or how Black Americans spending time in a location becomes discursively constructed as the crime of loitering, making police more likely to arrest them for this crime (Chapter 4). My analysis thus involves a practical component to the more theoretical analysis of discourse in that I am looking at how discourse affects the behavior of individuals and how it affects the organization of society and the implementation of certain policies.

2.5 – Hegemony

2.5.1 – The Theory of Hegemony and Hegemonic Interventions

Critically, not all discourses are equally influential in the organization of a social space. Some discourses are so “powerful” that they are no longer recognized as constructions. These are called hegemonic discourses. Mark Stoddart describes hegemony as ‘the “common sense” that guides our everyday, mundane understanding of the world.’⁴⁵ This occurs when ‘alternative understandings of the world are suppressed, leading to the naturalization of one single perspective’ as ‘given and unchangeable,’⁴⁶ ruling out alternative practices and ways of organizing.⁴⁷ This is achieved through the exercise of what Foucault calls power, which is the ability to shape knowledge (i.e. discourse) and establish ‘the particular ways in which the world is formed and can be talked about, ruling out alternative ways of being and talking.’⁴⁸ Hegemonic power, as described by Stoddart, ‘works to convince individuals and social classes to subscribe to the social values and norms’ of a system or structure.⁴⁹ Hegemonic interventions are the specific processes by which ‘alternative understandings of the world are suppressed, leading to the naturalization of one single perspective.’⁵⁰ This makes a particular perspective (i.e. discourse) seem natural or objective, while others are delegitimized and come to be unthinkable.

Critically, however, this objectivity is only illusory (which is to say that it is a contingent objectification, relative to that culture and that time), and different hegemonic discourses may

⁴⁵ Stoddart, "Ideology, Hegemony, Discourse: A Critical Review of Theories of Knowledge and Power," 201.

⁴⁶ Jørgensen and Phillips, *Discourse Analysis as Theory and Method*, 35.

⁴⁷ *Ibid.*, 26.

⁴⁸ *Ibid.*, 13.

⁴⁹ Stoddart, "Ideology, Hegemony, Discourse: A Critical Review of Theories of Knowledge and Power," 201.

⁵⁰ Jørgensen and Phillips, *Discourse Analysis as Theory and Method*, 37.

weaken and ‘at any time, enter the play of politics and be problematized.’⁵¹ As Phillips and Jørgensen note, the discourse is always unstable and prone to change, often as a result of contact with other contradictory discourses.⁵² Here, the discursive struggle, discussed earlier, comes into play. The discursive struggle can be seen when hegemony breaks down and actors within a society try to promote a new way of organizing society, develop a new social practice or respond to a problem in a new way, or change the way a topic is viewed.⁵³

2.5.2 – Applying the Theory of Hegemony as Method

As I will discuss throughout my thesis, the Liberal and the Social Discourses are not equally influential in constructing the criminal justice system. I argue that the Liberal Discourse is the hegemonic discourse in the field of criminal justice in the United States. Based on this idea, I looked for articulations, both from my informants and from other sources (e.g. news articles, academic papers, etc.) where another discursive position is acknowledged, but then intentionally discredited or delegitimized. For example, when politicians oppose a deterrence-based approach, they are often labeled “soft on crime.” Similarly, when people, particularly Black Americans, point out or claim to be victims of racial discrimination, they are accused of “playing the race card.” Part of my analysis will look at how these articulations suppress or delegitimize the Social Discourse. Addressing this can help explain why the Liberal Discourse is dominant, and also, and perhaps more importantly, help identify means of challenging and changing the hegemonic discourse. This opens up the possibility of changing positions and finding new solutions.

2.6 – Positioning and Liminality

2.6.1 – Positioning Theory and Overdetermination

When we talk of people articulating a discourse, we can say that they are “positioned” by the discourse. Laclau and Mouffe argue that people are ‘interpellated’ into ‘subject positions’ within a discursive structure.⁵⁴ For example, my informants each were positioned within different discursive frames, some as “police officers,” others as “activists” or “lawyers.” Jørgensen and Phillips assert that ‘[c]orresponding to these positions, there are certain expectations about how to

⁵¹ Ibid., 35.

⁵² Ibid., 27.

⁵³ Ibid., 35.

⁵⁴ Laclau and Mouffe, *Hegemony and Socialist Strategy: Towards a Radical Democratic Politics*, 115.

act, what to say and what not to say.’⁵⁵ More broadly, Tirado and Gálvez argue that ‘once a determined position has been taken, the individual perceives and interprets the world from and through that strategic position.’⁵⁶ For example, within the Liberal Discourse, a police officer is expected to carry out a certain set of functions, for example, deter crime, and thus they are expected to believe and say that crime can be prevented through deterrence. In discursive terms, these individuals are said to be *positioned* to act and speak in this particular way.

Critically, an individual ‘is not positioned in only one way and by only one discourse,’ but instead ‘is ascribed many different positions by different discourses.’⁵⁷ At times, these different discursive positions may come into conflict with each other, positioning an individual to act in contradictory ways. In these cases, the individual subject is said to be *overdetermined*, meaning that the individual ‘is positioned by several conflicting discourses among which conflict arises.’⁵⁸ Because each subject is overdetermined, the individual ‘always has the possibility to identify differently in specific situations. Therefore, a given identity is *contingent* – that is, possible but not necessary.’⁵⁹ Thus we can say that the overdetermination of an individual gives a certain amount of freedom to vacillate between various predetermined positions, allowing for a somewhat wider, though still limited range of possible behaviors and actions.

2.6.2 – Liminality and the Third Space

The concept of overdetermination is can be related to the idea of liminality. Drawing upon the thought of, among others, Homi Bhabha, Pötzsch defines liminality ‘as a potentially disruptive alternative state of being on the border, in-between divided entities, or as the ability to cross borders and access both sides on equal terms.’⁶⁰ A liminal being, or liminal actor as is one who is willing and able ‘to represent, accept and understand what is radically different, and to critically reassess what appears as known, stable and familiar.’⁶¹ A liminal actor could thus be considered an overdetermined individual who is able to shift fully and equally between two or more different positions, and is able to cross borders and communicate equally with both sides. Furthermore, a

⁵⁵ Jørgensen and Phillips, *Discourse Analysis as Theory and Method*, 41.

⁵⁶ Francisco Tirado and Ana Gálvez, "Positioning Theory and Discourse Analysis: Some Tools for Social Interaction Analysis," *Forum: Qualitative Social Research* 8, no. 2 (2007): 5.

⁵⁷ Jørgensen and Phillips, *Discourse Analysis as Theory and Method*, 41.

⁵⁸ *Ibid.*, 43.

⁵⁹ *Ibid.*

⁶⁰ Holger Pötzsch, "Challenging the Border as Barrier: Liminality in Terrence Malick's the Thin Red Line," *Journal of Borderlands Studies* 25, no. 1 (2010): 72.

⁶¹ *Ibid.*

liminal actor can present other positions to individuals, enabling overdetermination. But liminality also takes this a step further.

Pötzsch explains that liminality ‘implicitly question[s] and challenge[s] mutually exclusive discursive divisions between self and other, produced through notions of borders as constitutive barriers.’⁶² Liminal beings ‘question and disrupt notions of borders as barriers and facilitate their reconstitution as zones of contact and negotiation.’⁶³ By doing this, liminal actors enable the realization of Bhabha’s third space.⁶⁴ The third space is a ‘productive space of construction of culture as difference,’⁶⁵ that allows for a recognition of the ambivalent nature of relationships and the multi-dimensional and subjective nature of discourses.⁶⁶ Within this third space, the structure of meaning is seen as the result of an ambivalent process which allows new discourses to be constructed and new positions to be negotiated and adopted. In summary, while an overdetermined actor is an actor that is positioned by two competing discursive frames, a liminal actor can take those two positions and break down the dichotomy between the two, creating an alternative by opening up the Third Space, where new positions can be negotiated and adopted, and new solutions can be reached. Such third spaces subvert naturalized dichotomies by questioning the logic of mutual exclusivity implied by the border as a barrier.

2.6.3 – Creating a Liminal Space and Enabling Overdetermination

Pötzsch defines a liminal space as ‘shared localities where the entities divided by a barrier are forced to meet and interact.’⁶⁷ This is ultimately a critical goal of my thesis, which should be looked at as more than merely an analytical exercise, but instead as a possible tool for peacefully solving disputes between police and the community by bringing conflicting perspectives into contact with each other and presenting alternative discourses and discursive positions. To achieve this goal, I look for moments of overdetermination and liminal actors in my interview data.

Overdetermination can be detected by looking for places where informants seem to contradict themselves. For example, when one of my informants is asked about what causes crime and they say that crime is caused by a lack of accountability, but later when asked how to prevent

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Jonathan Rutherford, "Third Space: Interview with Homi Bhabha," in *Identity: Community, Culture, Difference*, ed. Jonathan Rutherford (London: Lawrence & Wishart, 1990), 209.

⁶⁶ Ibid., 221.

⁶⁷ Pötzsch, "Challenging the Border as Barrier: Liminality in Terrence Malick’s *the Thin Red Line*," 72.

crime they argue that we need to improve the education system, this is a contradiction. On the one hand, the informant is saying that crime is *caused* by failing to hold individuals accountable. On the other, they are saying that crime is *prevented*, not by increasing accountability, but by improving a social service, namely education. Interestingly, these are articulations of different discourses, the Liberal and the Social respectively. When answering these different questions with contradictory answers, the informants are positioned by different discourses, suggesting some level of overdetermination, whether they are conscious of it or not. Liminal actors are those who seem to have adopted a third position, incorporating aspects of both discourses and making a new one. While overdetermination was fairly common, liminal actors were rare among my informants.

In places where overdetermination did not occur in the interview, I take on the role of liminal actor in this thesis and endeavor to present ideas that may *enable* overdetermination or, when possible, construct new discourses and create new positions that can be occupied. This may be done by pointing out where a discourse fails to explain a certain social phenomenon, as for example, where Liberal colorblindness fails to explain a clear pattern of Black overrepresentation in the criminal justice system. It may also be done by offering a new definition or creating a new link that offers a different interpretation, for example by redefining racism as an unconscious prejudice and biased structures, rather than a conscious decision to hate people of a different color. Alternatively, it may also be done by pointing out certain similarities between seemingly contradictory articulations in order to harmonize apparently opposing positions.

Interestingly, the interview itself may have been a sort of third space in which overdetermination could take place. My position as a researcher from Norway, which has a very different approach to policing, crime, and social welfare, may *by* itself have triggered a thought process that led to overdetermination. This relates to transference, discussed in 2.1.3. If my informants changed their positions and said something because they thought that I wanted to hear it, then in this instance I was enabling liminality. Asking questions that encourage critical reflection on their positions and experiences may also have helped to enable overdetermination, as they could come to see the contingency of their positions and understand better how they are constructed.

2.7 – Other Considerations

2.7.1 – Other Limitations

There are several limitations to my research that must be identified. First, the majority of the police officers I interviewed were White males, meaning that I am unable to assess how different

intersectional identities might affect the discourse. Additionally, all of my interviews were, of course, voluntary. This means that all of the officers who spoke to me were willing to do so, perhaps because they had less to be concerned about. It is possible that the police departments that refused to speak to me are the more problematic ones, and were, for that reason, unwilling to allow me to poke my nose into their operations. It may also be possible that my informants were taught to give certain answers or take certain positions when talking to researchers or the press. Because of this, they may not have been expressing their true opinions, but instead merely reflecting an official position. However, as discussed, these articulations are still interesting in discourse analysis, as they are still articulation of different positions in different discourses.

2.2.8 – Positioning Myself

Given that I am a White American, I may have had better access to some informants, especially police officers, than I would have had if I was, for example, a Black American. Briggs draws attention to the social dynamics of interviews and the social context in which they take place, and notes that ‘the roles and power dynamics of interviewer and respondent, and their respective agendas’ saturate the interview.⁶⁸ Thus, my status as a White male student studying in Norway clearly was relevant in the interview, as well as their status as law enforcement officers, lawyers, or activists. Those power dynamics reflect the power dynamics of society as a whole, and affect the questions I asked, and the way informants responded to them, both because of who they are and because of who I am.

It is also critical to reflect on my own role as an analyst. Recognizing that the interview process is itself a discursive act, or an act that articulates and constructs a particular discourse, it is clear that I am participating in the construction of the very discourses that I am seeking to describe. Phillips and Jørgensen note that ‘if we accept that “reality” is socially created, that “truths” are discursively produced effects,’ we are left with a fundamental question: ‘what do we do about the “truth” that we as researcher-subjects produce?’⁶⁹ However, as mentioned earlier, the goal of this thesis is not ultimately to evaluate *the* truth, but rather to identify different discursive articulations of a subjective and contingent reality, and encourage liminality and open up the possibility of overdetermination. The critical point is not only how the discourses are constructed, but also that alternative discourses are engaged with in a liminal space by liminal actors. From this perspective,

⁶⁸ Briggs, "Interviewing, Power/Knowledge, and Social Inequality," 498.

⁶⁹ Jørgensen and Phillips, *Discourse Analysis as Theory and Method*, 21-22.

I can be seen as a liminal actor, mediating between two opposing discourses and enabling overdetermination through the course of the interview and the production of this thesis.

2.8 – Conclusion

In summary, social constructivism holds that people construct interpretations of the world that create meaning and order. These constructions can be called discourses, which are structured ways of talking about the world that give meaning to elements by attaching signs. Laclau and Mouffe assert that these discourses are organized around nodal points, privileged signs that cue the interpretation of other signs. These discourses predispose certain actions and certain ways of organizing society.

I have used discourse analysis to examine the articulations of different discourses in the domain of law enforcement and criminal justice, primarily looking at interview data. To triangulate my data, I have also looked at articulations in other sources, such as news, social media, and academic works. Based on my analysis, I have identified two key discourses that shape discussions on policing and race, each with a different nodal point: the Liberal Individualist discourse, and the Social Collectivist discourse. The following analytical part of my thesis will describe these two discourses and examine how they are articulated in three subject areas: causes of crime, bias and racism, and police conduct and accountability. Each chapter will be divided into three parts. The first will look at the Liberal Discourse and examine how it articulates a certain topic. The second part will look at the same topic as articulated by the Social Discourse. The final section will analyze hegemonic interventions that suppress one or another of these discourses (particularly the Social Discourse), and look for moments of overdetermination or liminal actors.

Chapter 3 – Causes of Crime

One of the fundamental questions that must be answered when dealing with criminal justice is what actually *causes* crime. As Marc Mauer notes, '[h]ow a society chooses to advance public safety is very much a function of how it conceptualizes the problem and the means of producing the outcomes it desires.'⁷⁰ Thus the way we conceptualize criminal behavior and its causes predisposes a certain way of structuring the criminal justice system and preventing crime. This chapter analyzes the discourses underlying discussions about the causes of crime and explores how these discourses enable certain methods of crime control and ways of structuring the criminal justice system.

In the first subchapter, I discuss how the Liberal Discourse constructs crime as the result of rational choices made by individuals. In the second subchapter, I discuss the Social Discourse, which constructs crime as the result of influences from the social environment and lack of support from society. To be clear, this does not mean that one cannot make rational choices *and* be influenced by society. Rather, it is a question of to what extent an individual is influenced by society versus being an independent actor, and a question of what or who needs to change to prevent crime. While the Liberal Discourse suggests changing individual behaviors, the Social Discourse calls for social and structural changes. Rationalist and environmental explanations for crime are not new. This chapter will draw on this previous work where relevant, but also expand upon it by applying a discursive perspective and observing articulations of these Discourses on individual, academic, and political levels to understand how they influence individual actions, academic theories of crime, and policies meant to prevent crime. The final subchapter will examine the hegemonic interventions that suppress the Social Discourse, and look for ways to overcome them and enable overdetermination.

3.1 – The Liberal Discourse: The Rational Criminal

3.1.1 – Introduction

This subchapter analyzes how the Liberal Discourse articulates (which is to say, explains) causes of crime. The Liberal Discourse defines human nature as rational, a concept that is connected to classical criminology theory, which asserts that crime is the result of rational choices. I begin by identifying articulations of the Liberal Discourse in my informants' claims about the causes of

⁷⁰ Marc Mauer, "The Endurance of Racial Disparity in the Criminal Justice System," in *Policing the Black Man*, ed. Angela Davis (New York: Pantheon Books, 2017), 37.

crime and methods for preventing it. Then, I connect these articulations to rational choice theory and classical criminology and the Liberal Discourse. Finally, I observe how this discourse has contributed to U.S. strategies of crime prevention and response, and the results of these strategies.

3.1.2 – Accountability and Crime

One of the questions I asked my informants was what they thought causes crime. Several of them claimed that crime was caused by a lack of accountability. Informant Purple, an experienced police officer, says the reason people commit crimes is ‘because they’re getting away with it,’ adding that ‘[t]here’s no accountability for them anymore.’⁷¹ Informant Green, a high ranking police official, makes a similar claim. Crime, he says, happens because ‘[p]eople will try to get away with anything they can get away with, and if they can get away with something then[...] it’s all right.’⁷² He observes that ‘sometimes the police[...] get very frustrated when the court system seems not to hold people accountable, especially after the police work very hard at trying to hold them accountable.’⁷³ Informant Black, another police officer, believes that ‘it comes down to accountability and parenting,’ rooting the lack of accountability in a failure of parents to teach their children to respect authority and be accountable for their actions.⁷⁴ This may be why Informant Purple asks: ‘Where the hell are the parents of these kids!? There’s no[...] parental accountability.’⁷⁵

If the problem is that people are not being held accountable for their actions, then the solution should be to increase accountability. Informant Black argues that to deal with crime, ‘we need to push back on the accountability aspect of it[...] If you make a mistake, then it’s no one else’s fault but your own... We [want to] blame everyone else for our problems [and] that can’t be the case. You have to learn[...] to take accountability.’⁷⁶

Informant Purple argues that this can be accomplished by installing minimum sentencing guidelines. ‘Right now,’ he notes, ‘the laws read, you know, if you’re convicted of this, this,[...] if these criteria... you can be sentenced to prison for up to 10 years[...] But there’s no minimum[...]

⁷¹ Informant Purple, interview by Matthew Burian, July, 2017.

⁷² Informant Green, interview by Matthew Burian, July, 2017.

⁷³ Ibid.

⁷⁴ Informant Black, interview by Matthew Burian, July, 2017.

⁷⁵ Purple.

⁷⁶ Black.

If they commit a crime, let's hold them accountable.'⁷⁷ Informant Blue, another high ranking police officer, adds that aggressive, proactive policing is necessary to create the fear of accountability. He argues that:

‘when officers start working together and there’s active aggressive enforcement, you can actually prevent crime. You create a fear on the part of the criminal of being caught, and maybe they think twice about committing that crime, or at least they don’t commit it in your community[...].’⁷⁸

In other words, if potential criminals fear being held accountable, they won’t commit a crime.

My informants’ explanations for the causes of crime construct a clear chain of equivalence. The concept of accountability comes up explicitly with Informants Green, Black, and Purple. Here, they connect “accountability,” and more specifically a “*lack* of accountability,” with “criminality.” This connection is also made implicitly in Informant Green’s claim that people ‘will try to get away with anything they can get away with,’ which suggests that people will commit crimes unless they are held accountable for their actions. Likewise, in Informant Blue’s words, fear of getting caught, i.e. fear of being held accountable for ones actions, can cause criminals to ‘think twice about committing’ a crime. Reducing crime is thus a matter of holding people accountable. As I outline in the next section, this thinking is espoused by the classical school of criminology, rooted in the Liberal concept of rationalism and rational choice.

3.1.3 – Liberalism in Criminology: Classical Criminology and Deterrence

What my informants articulated was essentially classical criminology theory. Classical criminology is based on rational choice theory and holds that ‘a person will commit crime after determining if the pain or punishment is worth the pleasure or reward of the act.’⁷⁹ Roland Akers explains that “‘Rational choice’” is based on economic theory derived from the same utilitarian tradition. Both theories assume that human actions are based on “rational” decisions-that is, they are informed by the probable consequences of that action.’⁸⁰ This line of thinking is articulated in Informant Green’s claim that ‘[p]eople will try to get away with anything they can get away with,’ and Informant Purple’s argument that people are continuing to commit crimes because they are

⁷⁷ Purple.

⁷⁸ Informant Blue, interview by Matthew Burian, July, 2017.

⁷⁹ Janice Ahmad and Trqina Emeka, "Rational Choice Theory," *The Encyclopedia of Criminology and Criminal Justice* (2014): 1.

⁸⁰ Ronald Akers, "Rational Choice, Deterrence, and Social Learning Theory in Criminology: The Path Not Taken," *Journal of Criminal Law and Criminology* 81, no. 3 (1990): 654.

getting away with it. Here, it is assumed that the individual is making a rational calculation, weighing the probability of arrest and the severity of punishment against the gains associated with committing the crime. In this way, “accountability” becomes linked with “rationality.”

Furthermore, as Akers points out, ‘The utility premise of rational choice theory has an obvious affinity for the deterrence doctrine in criminology.’⁸¹ The premise of deterrence doctrine is that ‘the rational calculus of the pain of legal punishment offsets the motivation for the crime, [...] thereby deterring criminal activity.’⁸² Valerie Wright identifies two main ways to achieve this: ‘First, by increasing the certainty of punishment, potential offenders may be deterred by the risk of apprehension.’⁸³ This is articulated by Informant Blue, when he argues that ‘active aggressive enforcement’ can make potential criminals ‘think twice about committing that crime.’ The second method Wright identifies is that ‘the severity of punishment may influence behavior if potential offenders weigh the consequences of their actions and conclude that the risks of punishment are too severe.’⁸⁴ This second method is reflected in Informant Purple’s call for minimum sentencing, that is, harsher and longer prison sentences for crimes.

To summarize, my informants articulated a chain of equivalence that connects “criminality” to “accountability” (or a lack thereof). The concept of “accountability” is further linked to the concept of “rationality” via rational choice theory and classical criminology, a link that is also made, though not necessarily explicitly, by some of my informants. Thus, we see rationalism and rational choice theory articulated both in academic theory, as classical criminology, and in the perspectives of police officers working on the ground. This discursive construction of crime positions policy makers and law enforcement officials to favor deterrence-based policies of crime control. In short, by constructing individuals as rational, classical criminology offers an explanation for crime and suggests a solution, specifically deterrence.

Critically, rationalism is a key concept in the Liberal Discourse. Rationalism is often a fundamental assumption of the liberal state, and informs much of its policies. Jenny Stewart observes that ‘the liberal state makes considerable demands upon its citizens, requiring capacities for entrepreneurship and work, self-restraint and discipline and, among the political leadership,

⁸¹ Ibid.

⁸² Ibid.

⁸³ Valerie Wright, "Deterrence in Criminal Justice: Evaluating Certainty Vs. Severity of Punishment " (The Sentencing Project, 2010), 2.

⁸⁴ Ibid.

skill and foresight.’⁸⁵ Based on this line of thinking, Stewart argues that when making public policy, ‘the dominant policy paradigm (or meta policy) of nominally liberal states’ focuses on ‘the stereotyped “economic man”, driven solely by self-interest.’⁸⁶ Stewart observes that the natural extension of this is ‘a public policy based on rational choice’ which, ‘[b]y definition[...] operates through the use of incentives and sanctions’ which assumes ‘that individuals will change their behavior according to their calculation of gain versus pain.’⁸⁷ Thus classical criminology can be seen as an articulation of the Liberal Discourse, enabling deterrence as a method to prevent crime.

3.1.4 – Rationality Meets Reality: The Results of Deterrence

The policy paradigm of deterrence enabled by the Liberal Discourse has had a significant impact on the criminal justice system and crime fighting strategies in the United States. The clearest example of this is the reliance on the penal system for dealing with deviant behavior, which has led to, among other things, high levels of incarceration in the United States, a phenomenon known as mass incarceration. To understand how rationalism and deterrence theory have shaped modern law enforcement and criminal justice, it is necessary to understand the context in which these policies were made.

The documentary *13th* by Ava DuVernay provides a detailed history of the development of the modern prison system, as well as its connection to race (a topic that will be dealt with in the next chapter). For now, it is sufficient to note that much of modern prison policy began during the Nixon and Reagan presidencies (1969-1974 and 1981-1989). In 1971, Nixon called drug abuse ‘public enemy number one’ and pushed for harsher penalties for drug users and sellers, a policy that was continued and strengthened under Reagan.⁸⁸ At around this time, as Mauer explains, the decline of the manufacturing sector in the late Eighties and early Nineties hit urban centers, and particularly communities of color, especially hard. This, Mauer notes, ‘contributed to the development of illicit drug distribution economies in subsequent years.’⁸⁹ Wright observes that the response to rising crime rates associated with the growing drug industry was to crack down harshly on crime. She explains that ‘[u]nder the rubric of “getting tough on crime,” policies such as mandatory minimums, truth in sentencing, and “three strikes and you’re out” have been designed

⁸⁵ Jenny Stewart, "Rational Choice Theory, Public Policy and the Liberal State," *Policy Sciences* 26, no. 4 (1993): 317.

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ Ava DuVernay, "13th," (Netflix2016).

⁸⁹ Mauer, "The Endurance of Racial Disparity in the Criminal Justice System," 37.

to deter with the threat of imposing substantial terms of imprisonment for felony convictions.⁹⁰ In addition to this, Informant Navy, a high ranking and experienced police officer, explains that police departments began to incorporate Broken Windows Theory into policing practices.⁹¹

Broken Windows Theory, first introduced by George Kelling and James Wilson in 1982, is based on the observation that ‘if a window in a building is broken and is left unrepaired, all the rest of the windows will soon be broken.’⁹² This is what Kelling and Wilson would refer to as ‘untended behavior,’ and they suggest that “untended” behavior leads to the breakdown of community controls.⁹³ Thus, policing is a matter of addressing social disorder, criminalizing and cracking down on ‘disreputable or obstreperous or unpredictable people’ such as ‘panhandlers, drunks, addicts, rowdy teenagers, prostitutes, loiterers, the mentally disturbed,’ and of course, vandals, who do things like break windows.⁹⁴ This would require more police walking the streets looking for sources of disorder and dealing with them quickly.⁹⁵ This theory of crime control, which itself has clear roots in deterrence theory, combined with mandatory minimum sentences and the Three-Strikes policy, effectively amounted to a massive criminalization of deviant or unwanted behavior, a zero-tolerance approach, resulting in mass incarceration. Though some of these policies have been changed, their legacy is still noticeable. For example, Mauer comments that ‘[t]he wide spread practice of “stop and frisk” in many large cities is clearly a conscious strategy of police departments, growing out of the “broken windows” theory of crime control.’⁹⁶

Thus, what we see is a trend toward criminalization and harsher sentencing policies. The result is roughly 1.5 million U.S. Americans incarcerated in U.S. state and federal prisons in 2015, leaving the U.S. with an incarceration rate of 670 per 100,000 individuals, the highest in the world, about 1.5 times higher than the next two closest countries, Russia (439/100,000) and Rwanda (434/100,000). In 2015, there were 2.2 million people in U.S. prisons and jails, ‘a 500% increase over the last 40 years.’⁹⁷ And the number keeps rising, as John Whitehead notes: ‘Approximately

⁹⁰ Wright, "Deterrence in Criminal Justice: Evaluating Certainty Vs. Severity of Punishment " 1.

⁹¹ Informant Navy, interview by Matthew Burian, July, 2017.

⁹² George Kelling and James Wilson, "Broken Windows: The Police and Neighborhood Safety," *The Atlantic*, March, 1982.

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Mauer, "The Endurance of Racial Disparity in the Criminal Justice System," 43.

⁹⁷ "Fact Sheet: Trends in U.S. Corrections," 1-2.

13 million people are introduced to American jails in any given year,⁹⁸ and while ‘most are released in days or hours after their arrest[...] others are held for months or more, often because they are too poor to make bail.’⁹⁹ The Sentencing Project report observes that ‘[c]hanges in sentencing law and policy, not changes in crime rates, explain most of this increase. These trends have resulted in prison overcrowding and fiscal burdens on states to accommodate a rapidly expanding penal system.’¹⁰⁰ This can be seen as a direct result of deterrence-based approaches to crime prevention.

Yet the Sentencing Project study notes that there is ‘increasing evidence that large-scale incarceration is not an effective means of achieving public safety.’¹⁰¹ Indeed, a 2012 study by the Pew Charitable Trust¹⁰² analyzed incarceration data and crime trends from Florida, Maryland, and Michigan and ‘found little or no evidence that longer prison terms for many nonviolent offenders produced either incapacitation or deterrence effects,’ meaning ‘the extra time behind bars neither prevented crimes during the period of incarceration nor kept offenders from committing crimes once released from prison.’¹⁰³ The ineffectiveness of incarceration as a deterrent is exemplified by high recidivism rates throughout the United States. According to a Department of Justice Special Report released in 2014, among state prisoners released in 2005, ‘about two-thirds (67.8%) of released prisoners were arrested for a new crime within 3 years, and three-quarters (76.6%) were arrested within 5 years.’¹⁰⁴ It is very difficult to argue that deterrence through incarceration is an effective means of preventing crime when more than half of those who have *already been* incarcerated do not fear returning to prison enough to be deterred from committing crimes again.

3.1.5 – Concluding Comments

As Mauer notes, mass incarceration and the policies that created it are ‘a function of the set of decisions made to treat the crime problem in disadvantaged communities primarily as a criminal

⁹⁸ John Whitehead, "Jailing Americans for Profit: The Rise of the Prison Industrial Complex," *Huffington Post*, October 4, 2012.

⁹⁹ Joshua Aiken, "Era of Mass Expansion: Why State Officials Should Fight Jail Growth," (Prison Policy Initiative, 2017).

¹⁰⁰ "Fact Sheet: Trends in U.S. Corrections," 2.

¹⁰¹ *Ibid.*

¹⁰² Adam Gelb, Ryan King, and Felicity Rose, "Time Served: The High Cost, Low Return of Longer Prison Terms," (The Pew Center on the States, 2012).

¹⁰³ "Prison Time Served and Recidivism," in *Public Safety Performance Project: Fact Sheet* (The Pew Charitable Trusts, 2013).

¹⁰⁴ Matthew Durose, Alexia Cooper, and Howard Snyder, "Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010," in *Special Report* (U.S. Department of Justice, 2014), 1.

justice problem.’¹⁰⁵ In other words, the structure of the criminal justice system, which uses deterrence as the predominant criminal justice method, is a result of how crime has been discursively constructed. In this case, it is enabled by the Liberal Discourse’s definition of human beings as rational, driven by incentives and disincentives, and therefore able to be deterred by the threat of punishment, i.e. prison time. This discourse is articulated by police officers in the field who claim that a lack of accountability is a major cause of crime, and implemented in policies that criminalize undesirable or deviant behavior and impose harsh penalties. But the evidence indicates that this is not an effective approach. Instead, the deterrence approach has resulted in mass incarceration, and also, as I will address in subsequent chapters, a higher likelihood of bias and abuse in certain neighborhoods. If the U.S. wants to institute different, potentially more effective, policies to prevent crime and ensure public safety, there will need to be a shift in thinking and new understanding of human nature. This would require an alternative discourse.

3.2 – The Social Discourse: Society, Structure, and Environment

3.2.1 – Introduction

Where the Liberal Discourse focuses on individuals and the supposedly rational choices they make, the Social Discourse rejects the idea of the individual as fully rational and fully independent and identifies humans as social creatures, dependent on networks of family, friends, communities, and government programs and assistance. It is the failure of these networks and other social supports that pushes individuals into crime. This subchapter explores how informants both inside and outside the criminal justice system articulate this Discourse, and considers what actions and policies should be enabled by it. However, as I argue, because of the dominance of the Liberal Discourse, these policies have not been implemented. Section 3.3.2 discusses why this is.

3.2.2 – The Not So Rational Criminal

When asked about what causes crime, some of my informants drew attention to societal or structural factors. Their answers tended to highlight three areas where social programs have failed: education, treatment for substance abuse, and treatment for mental illness. On the subject of education, Informant Navy argues that in a lot of places, ‘education and access to employment skills has not been part of the environment people grow up in.’¹⁰⁶ He asserts that failing to ‘provide

¹⁰⁵ Mauer, "The Endurance of Racial Disparity in the Criminal Justice System," 37.

¹⁰⁶ Navy.

people with skills they need to be functional in a work environment, and to[...] be able to take care of themselves and their families [is a] really big, big obstacle.’¹⁰⁷ He also notes that this is a multigenerational issue, leading to poverty traps that are difficult to escape from, creating a situation where crime becomes more likely.¹⁰⁸ Informant Triangle, of the American Civil Liberties Union observes that ‘when you’re lower income and you have lower access to resources, then[...] there’s more of a chance that you have crimes of poverty occur.’¹⁰⁹ Informant Red, a police officer, agrees with this assessment. In Informant Red’s experience, crimes like fraud and theft tend to be connected with poverty and a lack of a stable or sufficient income.¹¹⁰ Another chain of equivalence thus emerges. “Education” and “poverty” become linked to “crime” and “criminality.”

The link between education, poverty, and crime is also discussed in a number of academic studies and reports. Ferguson, Bovaird, and Mueller highlight the link between poverty and education, noting that ‘[i]t is well documented that poverty decreases a child’s readiness for school through aspects of health, home life, schooling and neighbourhoods.’¹¹¹ This has a significant effect on high school graduation rates. Russell Rumberger notes that ‘[i]n 2009, poor (bottom 20 percent of all family incomes) students were five times more likely to drop out of high school than high-income (top 20 percent of all family incomes) students.’¹¹² Interestingly, statistics compiled by the Bureau of Justice Statistics (BJS) and published by the Alliance for Excellent Education in 2013 show ‘that 67 percent of inmates in America’s state prisons, 56 percent of federal inmates, and 69 percent of inmates in local jails did not complete high school,’ and these numbers are increasing over time.¹¹³ Comparatively, in 2015, only 12% of the U.S. adult population in general had not achieved at least a high school education.¹¹⁴

The reason for the link between a lack of education and crime is not entirely clear, but Lance Lochner and Enrico Moretti suggest that an education may provide increased opportunity for legitimate means of making a living. They also note that ‘schooling may alter preferences in

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Informant Triangle, interview by Matthew Burian, July, 2017.

¹¹⁰ Informant Red, interview by Matthew Burian, July, 2017.

¹¹¹ H. Ferguson, S. Bovaird, and M. Mueller, "The Impact of Poverty on Educational Outcomes for Children. ," *Paediatr Child Health* 12, no. 8 (2007): 701.

¹¹² Russell Rumberger, "Poverty and High School Dropouts: The Impact of Family and Community Poverty on High School Dropouts," in *The SES Indicator* (American Psychological Association, 2013).

¹¹³ Bill DeBaun and Martens Roc, "Saving Futures, Saving Dollars: The Impact of Education on Crime Reduction and Earnings," (Alliance for Excellent Education, 2013), 2.

¹¹⁴ Camille Ryan and Kurt Bauman, "Educational Attainment in the United States: 2015," in *Current Population Reports* (2016).

indirect ways, which may affect decisions to engage in crime. For example, education may increase one's patience or risk aversion.¹¹⁵ Additionally, education may move an individual into a social environment where crime is not as common, for example a university campus or a professional setting. Whatever the reason may be, it is clear that poverty and a lack of education can be significant contributing factors to crime. Yet, critically, in many ways these are beyond the individual's control, occurring during childhood and influenced by societal factors. While it could be argued that cost-benefit analysis and rationalism do play a role (higher education means better pay, meaning crime has fewer benefits and more costs), this is in many ways different from the suggestion that individuals are simply making rational calculations about whether or not they can get away with crime, and it suggests a different set of solutions, i.e. improving education.

Another explanation of criminality articulated by my informants focuses on drug and alcohol use. As Informant Red highlights, drug and alcohol consumption and addiction are commonly seen in police work, and often go hand in hand with violent crimes. In his words: 'If I go to a call with domestic violence or some sort of disturbance or something like that, if alcohol is not on board, I'm genuinely surprised.'¹¹⁶ This creates another chain of equivalence. "Substance abuse" becomes linked to "violence," "disturbances," and "criminality." This link is supported by a 2015 report by the National Council on Alcoholism and Drug Dependence, which shows that in 2015, '[a]lcohol and drugs [were] implicated in an estimated 80% of offenses leading to incarceration in the United States such as domestic violence, driving while intoxicated, property offenses, drug offenses, and public-order offenses.'¹¹⁷ The frequency with which substance use is associated with crime demonstrates a strong correlation between the two and suggests a causal link.

Untreated mental health issues also connect with crime. Informant Teal, a high ranking police official, explains that 'one of the largest issues that plagues society... that law enforcement is typically involved with, it's when we have to deal with people with a mental health crisis.'¹¹⁸ Likewise, Informant Navy argues that '[i]f you leave somebody who's in mental health crisis or who's got serious addiction issues, very often they're dual diagnosis, they have both, they're going to break the law. There's going to be something you can put them in jail for.'¹¹⁹ This chain of

¹¹⁵ Lance Lochner and Enrico Moretti, "The Effect of Education on Crime: Evidence from Prison Inmates, Arrests, and Self-Reports," *American Economic Review* 94, no. 1 (2004).

¹¹⁶ Red.

¹¹⁷ "Alcohol, Drugs and Crime," (National Council on Alcoholism and Drug Dependence, Inc., 2015).

¹¹⁸ Informant Teal, interview by Matthew Burian, July, 2017.

¹¹⁹ Navy.

equivalence links “mental illness” (as well as “addiction”) to “crime” and once again the link is borne out by a number of studies. According to a report by the Bureau of Justice Statistics, in 2005 ‘56% of State prisoners, 45% of Federal prisoners, and 64% of jail inmates’ had a mental health problem of some kind as defined by the Diagnostic and Statistical Manual of Mental Disorders VI.¹²⁰ Furthermore, the report notes that ‘[a]n estimated 15% of State prisoners and 24% of jail inmates reported symptoms that met the criteria for a psychotic disorder,’¹²¹ defined by the Mayo Clinic as ‘disorders [that] cause detachment from reality — such as delusions, hallucinations, and disorganized thinking and speech,’ for example, schizophrenia.¹²² Fred Osher notes that ‘[t]he number of people with serious mental illnesses who are incarcerated or homeless is three to five times higher than in the general population.’¹²³ For these people, crime is not a rational choice. Rather it is something that comes from untreated mental illness or drug addiction that reaches a crisis point.

3.2.3 – Crime Beyond Our Control

The previous section shows that there are a number of factors that limit an individual’s ability to make rational choices about criminal behavior. For example, on a very basic level, substance abuse significantly limits an individual’s ability to engage in a careful cost-benefit analysis. As Valerie Wright points out, ‘it is unlikely that [people under the influence of drugs] are deterred by either the certainty or severity of punishment because of their temporarily impaired capacity to consider the pros and cons of their actions.’¹²⁴ More broadly, Sun-Ki Chai argues that the very premise of rationalism and rational choice theory ‘contradicts practically the entire empirical literature in social psychology[...] much of which is devoted to showing that quite normal individuals are capable of holding beliefs that are not logically derived from and are even contrary to observable evidence.’¹²⁵ ‘In real life,’ Chai asserts, ‘actors clearly make decisions based on beliefs about their environment that cannot be inferred solely from information, but draw instead from ideology and culture.’¹²⁶ This social understanding of human nature stands in stark contrast to the individual

¹²⁰ Doris James and Lauren Glaze, "Mental Health Problems of Prison and Jail Inmates," in *Special Report* (Department of Justice, 2006), 1.

¹²¹ *Ibid.*

¹²² "Mental Illness," (Mayo Clinic, 2015).

¹²³ Fred Osher, "We Need Better Funding for Mental Health Services," *The New York Times*, May 9, 2016.

¹²⁴ Wright, "Deterrence in Criminal Justice: Evaluating Certainty Vs. Severity of Punishment " 2.

¹²⁵ Sun-Ki Chai, *Choosing an Identity: A General Model of Preference and Belief Formation* (Michigan: University of Michigan Press, 2001), 13-14.

¹²⁶ *Ibid.*, 16.

rationalism of the Liberal Discourse. According to the Social Discourse, human nature is fundamentally shaped by society and full of quirks, biases, and blind spots that produce what can at times be very irrational behavior. Here, education may play a significant role, but also the general culture of the society or community in which an individual lives.

A great deal has been written about the way society and culture can influence criminality. For example, John Hagedorn's book *A World of Gangs: Armed Young Men and Gangsta Culture* looks at how young men can be indoctrinated or enticed into joining criminal gangs,¹²⁷ while Fajnzylber, Lederman, and Loayza's article *Inequality and Violent Crime* explores the relationship between economic inequality and criminality.¹²⁸ A full discussion of this topic goes beyond the scope of this thesis. For now, it is enough to conclude that according to the Social Discourse there are numerous social and environmental factors that influence an individual's actions, criminal or otherwise, that are not strictly rational and therefore unaffected by attempts to deter crime.

3.2.4 – A Failed Society

If deterrence is not a viable option, what can be done to combat crime? While there are certainly a number of social interventions that can be applied to prevent crime, the previous discussion has highlighted three areas of interest in the Social Discourse: education, substance abuse, and mental illness. Given what the evidence shows, it would stand to reason that seriously dealing with these issues would help to prevent a great deal of crime. Yet despite what the evidence shows, and what is clearly known by at least some people in law enforcement, funds and programs to improve education, treatment for substance abuse and addiction, a mental healthcare remain scarce.

Given the size of the United States and the diversity enabled by the federal system, it is difficult to concisely explain the causes of this failure, but what it often comes down to is a lack of funding. Schools, for example, get 90% of their funding from state and local tax revenue, specifically drawn from property taxes. Yet, as a report by National Public Radio explains, the problems with this system is that '[p]roperty values vary a lot from neighborhood to neighborhood, district to district. And with them, tax revenues.'¹²⁹ Thus, one school, surrounded by successful businesses in one of Chicago's more affluent neighborhoods, can spend \$28,639 per student, while

¹²⁷ John Hagedorn, *A World of Gangs: Armed Young Men and Gangsta Culture* (Minnesota: University of Minnesota Press, 2008).

¹²⁸ Pablo Fajnzylber, Daniel Lederman, and Norman Loayza, "Inequality and Violent Crime," *The Journal of Law & Economics* 45, no. 1 (2002).

¹²⁹ Cory Turner et al., "Why America's Schools Have a Money Problem," *National Public Radio*, April 18, 2016.

another school district, less than an hour away, only spends \$9,794 on students.¹³⁰ Critically, a 2016 study found that ‘[o]n average, aggregate measures of per-pupil spending are positively associated with improved or higher student outcomes.’¹³¹ Thus, the more money schools spend on students, the more likely they are to succeed. Yet, a 2016 study by the Center on Budget and Policy Priorities, notes that ‘[a]t least 31 states provided less state funding per student in the 2014 school year[...] than in the 2008 school year,’ while ‘[i]n at least 18 states, local government funding per student fell over the same period.’¹³²

The story of insufficient funding is the same when looking at treatments for mental illness. In an article for the Washington Post, Ana Swanson argues that there is a ‘widespread failure to treat mental illness.’¹³³ Osher notes that after deinstitutionalization occurred in the beginning of the 1950s, ‘[r]esources that once paid for food, clothing, housing and rehabilitation, in addition to psychiatric treatment, didn’t follow the people into the community.’¹³⁴ Despite numerous acts passed by Congress to provide funding for mental health treatment, cuts in federal and state budgets, including a \$4 billion cut in public mental health funding after the 2008 recession, meant that most of it never ended up where it was needed.¹³⁵ As a result, as Osher summarizes, ‘many people do not have access to proven interventions. Too many people have no health insurance; there have been too many budget cuts to treatment dollars, and there are too few providers available to deliver care.’¹³⁶ The result is that many people with mental illnesses have ended up homeless or in jail.¹³⁷

Unlike education and mental health, U.S. federal, state, and local governments actually spend a significant amount of money on tackling drug use. In 2015, the federal government spent roughly \$26 billion dollars on the so called ‘War on Drugs,’ and each year state and local governments spend about that same amount.¹³⁸ However, as noted in a report by the Drug Policy Alliance in 2015, ‘[a] significant majority of this annual budget – roughly 55 percent – is devoted to policies that attempt to reduce the supply of drugs, such as interdiction, eradication and domestic

¹³⁰ Ibid.

¹³¹ Bruce Baker, "Does Money Matter in Education," (Albert Shanker Institute, 2016), i.

¹³² Michael Leachman et al., "Most States Have Cut School Funding, and Some Continue Cutting," (Center on Budget and Policy Priorities, 2016), 1.

¹³³ Ana Swanson, "A Shocking Number of Mentally Ill Americans End up in Prison Instead of Treatment," *The Washington Post*, April 30, 2015.

¹³⁴ Osher, "We Need Better Funding for Mental Health Services."

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ Swanson, "A Shocking Number of Mentally Ill Americans End up in Prison Instead of Treatment."

¹³⁸ "The Federal Drug Control Budget: New Rhetoric, Same Failed Drug War," (Drug Policy Alliance, 2015), 1.

law enforcement.’¹³⁹ In contrast, the study notes that ‘[l]ess than 45 percent is devoted to treatment, education and prevention – what is commonly known as “demand reduction.”’¹⁴⁰ According to this report, ‘[m]uch federal funding for treatment is, in fact, funneled into the criminal justice system – which is far less effective than health-based approaches.’¹⁴¹

The criminalization of drug use is perhaps the most apparent effect of the Liberal Discourse on the criminal justice system. According to a joint report by Human Rights Watch and the American Civil Liberties Union released in 2016, ‘[e]very 25 seconds in the United States, someone is arrested for the simple act of possessing drugs for their personal use[...] amounting to more than 1.25 million arrests each year.’¹⁴² Yet this does not seem to be effective. The Drug Policy Alliance report notes that ‘[d]espite incarcerating tens of millions of people and spending more than a trillion dollars in the past forty years, drugs remain cheap, potent and widely available.’¹⁴³ This is a clear example of the Liberal Discourse positioning policy makers to prefer punitive, deterrence-based methods for dealing with drug use, rather than social programs or interventions designed to rehabilitate. In addition, given that drugs remain widely available, the War on Drugs can be seen as an example of the failures of deterrence.

In stark contrast to the situations described above, if there is one sector of the economy that is not short of funds, it is the prison system. A Report by the Hamilton Project shows that the ‘the United States spent roughly \$80 billion in 2010 on corrections.’¹⁴⁴ To keep up with the rising rates of incarceration, states are increasingly turning to private prisons. According to the market research firm IBISWorld, in 2014, private correctional facilities were a \$4.8 billion industry, earning \$629 million in profit.¹⁴⁵ In other words, while education, mental healthcare, and drug rehabilitation programs are facing budget cuts and shortages, the amount of money being pumped into the prison system is increasing.

These contrasting stories of funding demonstrate how public safety has been discursively defined as a criminal issue, rather than a social issue, and policy makers, positioned by the Liberal Discourse, have chosen to use deterrence, rather than social programs, to prevent crime. Informant

¹³⁹ Ibid.

¹⁴⁰ Ibid.

¹⁴¹ Ibid., 2.

¹⁴² Tess Borden, Brian Root, and Maya Goldman, "Every 25 Seconds: The Human Toll of Criminalizing Drug Use in the United States," (Human Rights Watch, 2016), 10.

¹⁴³ "The Federal Drug Control Budget: New Rhetoric, Same Failed Drug War," 1.

¹⁴⁴ Raphael and Stoll, "A New Approach to Reducing Incarceration While Maintaining Low Rates of Crime," 5.

¹⁴⁵ Martha White, "Locked-in Profits: The U.S. Prison Industry, by the Numbers," *NBC News*, November 2, 2015.

Gold, a law enforcement official who works in the prison system, summarizes that prisons have become ‘the clearing house for resolving the problem on the street, because there isn’t the social programs available, so let’s bring the person to jail, and let’s let the jail figure it out.’¹⁴⁶

3.2.5 – Concluding Comments

This subchapter has explored the Social Discourse and the way that it links a lack of education, drug and alcohol abuse, and untreated mental illness to crime and criminal justice. All of these factors point to significant failures of the social system to provide important services that might reduce crime: quality education for all students, treatment for drug and alcohol addiction and abuse, and care for the mentally ill. This suggests that the social system is failing individuals by not meeting some of their most basic needs.

It is important to observe that, despite evidence that indicates the value of investing in these social programs, this is not the dominant method for ensuring public safety in the United States. Crime continues to be discursively constructed as a result of rational choice, and deterrence is the preferred policy in the U.S. criminal justice system. This is a discursive construction clearly rooted in the Liberal Individualist Discourse. Yet the evidence indicates that deterrence is not effective. Enabling a shift to more effective policies will require a shift in the discourse, a change in the way policymakers and police think about the causes of crime.

3.3 – Overdetermination and Liminality: A Social Shift

3.3.1 – Introduction

This subchapter discusses how such a discursive shift may occur. The purpose is to enable officers and policy makers to adopt a position in the Social Discourse, allowing them to become overdetermined and positioning them to implement different crime control policies that are not based on deterrence. Section 3.3.2 looks at the hegemonic interventions that suppress the Social Discourse and prevent overdetermination. Section 3.3.3 finds moments of overdetermination in my informants’ articulations and explores how to encourage the development of liminal actors.

3.3.2 – Hegemonic Interventions: Soft on Crime

The dominance of the Liberal Discourse and deterrence based approaches to crime prevention is maintained through specific interventions in U.S. politics and media. Politicians who oppose

¹⁴⁶ Informant Gold, interview by Matthew Burian, July, 2015.

harsher punishments for crimes are often labeled “soft on crime,” a pejorative term used mainly by the right-wing as an attack against left-wing politicians. Pat Nolan notes that Democrats can be ‘leery of being labeled soft on crime.’¹⁴⁷ Columnist Dan Henninger, in an interview for the Wall Street Journal, argues that ‘Democrats from the 1960s have been vulnerable to the soft on crime charge,’ and Republicans have been good at using this to win campaigns, including Rudy Giuliani in 1994, Richard Nixon in 1968 with his ‘Law and Order Campaign.’¹⁴⁸

The use of the term “soft on crime” can be seen in a number of conservative publications. For example, an article by Alfred Regnery for Breitbart asks: why are ‘liberals so anxious to turn violent criminals free?’¹⁴⁹ (Note, the term “liberals” here refers to those on the left in US American Politics, and is not related to the Liberal Discourse) The article questions ‘[w]hat is to be gained[...] by having these felons – many of whom will again be trafficking in drugs and committing violent crimes in the process – wandering around our cities, contributing to the heroin epidemic, and leaving thousands of victims in their wake?’¹⁵⁰ The answer, according to Regnery, is that:

‘Liberals just don’t think people should be punished. Crime, in their lexicon, is caused by social injustice. It’s a symptom of all the wrongs of modern society. Instead of punishing wrongdoers, liberals believe, we should cure them of the disease. Their only guilt is that they got caught up in some unfortunate circumstance not of their making, and therefore it is unfair to hold them accountable and punish them.’¹⁵¹

This, the article argues, is that position of the ‘soft-on-crime crowd.’¹⁵² It is also, critically, an almost perfect articulation of the Social Discourse.

This demonstrates how opposition to the Liberal Discourse and deterrence based policies are delegitimized. “Soft on crime” approaches, and those who support them, have been associated with an inevitable rise in crime rates. Those who are soft on crime are *anxious* to free violent criminals, who would commit crimes against ‘thousands of victims.’ This fear based tactic

¹⁴⁷ Pat Nolan, "Conservative and Liberals Join Together for Criminal Justice Reforms," *Huffington Post*, July 13, 2015.

¹⁴⁸ "Opinion: Liberals Go Soft on Crime--Again: Interview of Dan Henninger by Mary Kissel," Wall Street Journal, <https://www.wsj.com/video/opinion-liberals-go-soft-on-crime-again/41361882-4AB5-4CC6-B551-4724C0559B83.html>.

¹⁴⁹ Alfred Regnery, "Why Are Liberals Anxious to Free Violent Criminals from Prison?," *Breitbart*, May 16, 2016.

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid.*

¹⁵² *Ibid.*

effectively delegitimizes opposition to the Liberal Discourse and ensures that it retains its hegemonic status. The problem is, the evidence suggests that deterrence is not necessarily effective, and, as I will discuss in the next section, people are starting to recognize it.

3.3.3 – When Deterrence Fails: Enabling Overdetermination

When talking about what causes crime and how to prevent it, many of my police informants articulated the Liberal Discourse by arguing that accountability and deterrence were necessary for preventing crime. However, it was interesting to note that some informants later made statements about crime and causes of crime that conflicted with their original claims. These contradictions could be signs of overdetermination, indicating that informants were speaking from competing discursive positions made relevant in different parts of the interviews. This section explores these contradictions as potential moments of overdetermination.

Few of my informants were more passionate about the importance of accountability than Informant Purple. Because of this, it came as a surprise when, after vehemently supporting the case for minimum sentencing guidelines and advocating the need to hold criminals accountable, he said, somewhat dejectedly: ‘I don’t believe prison’s a deterrent, I don’t believe that that’s going to change them any. But they’re off the streets for a few years.’¹⁵³ Informant Blue, likewise a proponent of aggressive policing to inspire in potential criminals the fear of being caught, admitted that ‘sometimes the criminal’s mind is just wired differently. Where we generally think of consequences, they just kind of act and the consequences fall where they might fall.’¹⁵⁴ For him, this kind of behavior simply is not rational. While these may not be full moments of overdetermination, they are perhaps the first step. My informants are admitting that maybe criminals are not rational, and therefore deterrence might not be an effective strategy. If they admit this, they may be open to adopting new positions and policies that may *actually* lead to effective crime control. We thus see the hegemonic Liberal Discourse become problematized and weakened.

The further weakening of the hegemonic discourse can be seen in articulations by Informant Black. Informant Black, who earlier argued that it was necessary to ‘push back on the accountability aspect,’ acknowledges the role that drugs, alcohol and mental illness play in causing crime. He explains that ‘[W]e know that we deal with drugs, right? We know that we deal with

¹⁵³ Purple.

¹⁵⁴ Blue.

mental illness, chemical dependency.¹⁵⁵ As Wright has pointed out, people who are under the influence of drugs and alcohol are not responsive to deterrence. The recognition of this further weakens the hegemonic discourse.

It is Informant Blue who carries this line of thinking to its conclusion. When asked later in the interview about broader changes that he would like to see to prevent crime, Informant Blue notes that ‘your number one top issue is[...] drug addiction, by far. And that includes alcohol, too. But, it by far drives the majority of crimes.’ He explains that ‘So, so many of our crimes are tied to just drug addiction[...]’¹⁵⁶ Blue concludes that ‘if you could[...] get one person off of drugs[...] you are [going to] prevent a lot of different crimes.’¹⁵⁷ This is very different from his assertion that aggressive policing can deter crime.

Here, the question being asked to him is relevant. When asked about the causes of crime and how to prevent it, he articulates the Liberal Discourse and links crime to individual behavior, accountability, and rationality, arguing that aggressive policing is necessary to deter crime. Later, after reflecting on the changes that he would like to see on a broader level, he shifts positions and advocates for better treatment for drug and alcohol abuse. This is an articulation of the Social Discourse. Informant Blue can be considered overdetermined, positioned by two competing discourses, though each only makes itself relevant in certain contexts, in this case triggered by the different questions asked in the context of interview as a liminal space. In this way, Informant Blue came to adopt a new position toward the end of the interview, perhaps influenced by the presence of a researcher from Norway, where the Social Discourse seems to be dominant.

With these Informants, their experiences with the failures of deterrence may enable them to adopt a different discursive position in the Social Discourse. Indeed, for Blue it seems that it already has. If it is indeed known that substance abuse and mental illness are common factors in crime, if we are able to acknowledge that not all crimes are committed by rational people, then it should not be difficult to acknowledge that deterrence is not always an effective strategy for dealing with crime. This creates room for adopting a different discursive position, enabling the implementation of different public safety and crime prevention policies, such as social programs to treat drug addiction. In short, it allows a shift toward the Social Discourse.

¹⁵⁵ Black.

¹⁵⁶ Blue.

¹⁵⁷ Ibid.

3.4 – Concluding Comments

In this section, I have shown how the Liberal Individualist Discourse is articulated in criminal justice by police officers and in classical criminology theory, rooted in the Liberal concept of the rational individual and rational choice. This positions police and policy makers to implement deterrence-based approaches to crime control. I have also examined articulations of the Social Collectivist Discourse, which offers different explanations for crime and criminal behavior, pointing to environmental factors or factors outside of the individual's control, such as education. These Discourses offer competing explanations for criminal behavior and predispose different methods to prevent crime, emphasizing different levels on which changes need to occur to prevent crime. While there is evidence of overdetermination and a shift in the dominant discourse in the field of criminal justice, it is clear that policies rooted in the Liberal Discourse remain the preferred method of crime prevention in the United States. This may be because politicians wish to avoid the label "soft on crime." The use of this term as a hegemonic intervention warrants further research, particularly regarding who uses it and why, and what, if any, connection it may have to the growth of the prison-industrial-complex.

The topics discussed in this chapter have critical implications for the remainder of my thesis. The first, and perhaps more critical, effect is that it leads to over policing, meaning that there are more police officers on the streets looking to crack down on crime. As I will discuss in the next chapter, this situation has particularly affected communities of Color. Furthermore, as I will also explain in the next chapter, the focus on the rational individual masks racial bias in policing. It also creates the conditions that make abuses of power and misconduct far more likely, something that will be discussed in Chapter 5. It is for this reason that I argue that, at a fundamental level, the Liberal Individualist Discourse sets the stage for the conflicts playing out in the United States.

Chapter 4 – Bias, Racial Profiling, and Racism

Organizations like Black Lives Matter have drawn renewed scrutiny to law enforcement and its dealings with minority communities in general, and Black Americans in particular, raising concerns about racial profiling, bias, and discrimination in police practices. However, not everyone agrees with Black Lives Matter about the importance of race in policing. The competing attempts to define the role of race in the criminal justice system can be viewed as a discursive struggle in which the dominant Liberal Discourse, which deemphasizes race in favor of “colorblindness,” has been challenged by the Social Discourse, with a collective understanding of race as an influential social category. Once again, neither of these concepts is entirely new. Debates about racism in the United States, and what role it may or may not play in society and criminal justice are common. This chapter expands on these discussions by identifying elements of these Discourses in the articulations of my informants, and connecting them to wider discussions in other parts of society.

The first subchapter presents a brief overview of the overrepresentation of Black Americans in the criminal justice system and in law enforcement incidents (e.g. arrests, traffic stops, shootings, etc.). This is the situation that the Liberal and the Social Discourse explain. The second and third subchapters discuss how the Liberal and Social Discourses respectively explain Black overrepresentation, particularly focusing on how they define the role of race in U.S. society and policing. The final subchapter examines why race is such a difficult topic in the United States and looks for ways to bridge the gap between the two Discourses and enable overdetermination.

4.1 – Understanding the Discussion: A look at the Statistics

4.1.1 - Introduction

The debate over race and policing is centered on a set of statistics and anecdotes (e.g. the Philando Castile case) and how they are interpreted. These statistics and anecdotes constitute strong evidence that Black Americans are overrepresented in the criminal justice system in a variety of ways. To say that Black Americans are overrepresented in the criminal justice system is to say that they are involved in law enforcement or criminal justice related incidents *more* than would be expected based on the percentage of the population that they represent. Overrepresentation would mean that they are *more likely* than others to have these encounters, for whatever reason. These facts are hard to argue with and few try to. Instead of disputing the facts, different discourses assign different causes for and meanings to them.

This subchapter presents a set of commonly cited statistics that demonstrate the overrepresentation of Black Americans in the criminal justice system. However, these statistics should not be looked at as the end of the story or the ultimate truth. Other statistics and facts could be mentioned. This subchapter is merely meant to provide an overview of the situation that each Discourse explains. Additional explanatory facts and statistics will be highlighted as they become relevant in the discussion of the different Discourses.

4.1.2 – A look at the Statistics

Black overrepresentation in the criminal justice system can be seen in a number of ways. First, Black Americans are stopped by police more frequently. For example, of the hundreds of thousands of stops conducted under New York’s stop-and-frisk policy, which reached a height of 685,000 stops in 2013, 87% ‘of those stopped were African American or Latino,’¹⁵⁸ despite representing only approximately 17.7% and 19% of the population of New York respectively (based on 2016 estimates).¹⁵⁹ Similarly, a 2015 study from the Minnesota branch of the American Civil Liberties Union, cited by Informant Triangle, found that, Black Americans were 8.7 times more likely to get arrested or stopped for low level crimes such as loitering, trespassing, traffic tickets, or driving without a license.¹⁶⁰

In addition, Black Americans and other People of Color are overrepresented in prisons. John Gramlich of the Pew Research Center notes that ‘[i]n 2016, blacks represented 12% of the U.S. adult population but 33% of the sentenced prison population[...] And while Hispanics represented 16% of the adult population, they accounted for 23% of inmates.’¹⁶¹ In contrast, he notes that ‘Whites accounted for 64% of adults but 30% of prisoners.’¹⁶² Another way of looking at this is that one in three Black American men are incarcerated at some point in their lives, compared to one in seventeen White American men.¹⁶³

Finally, Black Americans are more likely to be killed by police. According to a 2016 report by the Washington Post, Black Americans account for 24% of fatal shootings by police (again, compared to only approximately 12% of the population). Comparatively, White Americans make

¹⁵⁸ Mauer, "The Endurance of Racial Disparity in the Criminal Justice System," 43.

¹⁵⁹ "Quickfacts: New York," United States Census Bureau, <https://www.census.gov/quickfacts/NY>.

¹⁶⁰ Triangle.

¹⁶¹ John Gramlich, "The Gap between the Number of Blacks and Whites in Prison Is Shrinking," (Pew Research Center, 2018).

¹⁶² Ibid.

¹⁶³ Thomas Bonczar, "Prevalence of Imprisonment in the U.S. Population, 1974-2001," in *Special Report* (Bureau of Justice Statistics, 2003), 1.

up 62% of the population, but only 49% of fatal shootings. As a result, Black Americans are 2.5 times more likely to be shot by a police officer than their White peers.¹⁶⁴

4.1.3 – Concluding Comments

The statistics indicate that something more than chance is at play here. All things being equal, each ethnic/racial group should be represented in arrests, prisons, and shootings proportionately to their representation in the overall population. Yet they are not. So how is this explained? The next two subchapters examine competing discursive explanations for these disparities. Subchapter 4.2 looks at the Liberal Individualist Discourse, which deemphasizes the importance of race and attributes disparities to individual behavior and choices. Subchapter 4.3 looks at this issue from the Social Collectivist Discourse and examines the ways in which race continues to be a salient social group, and outlines how this affects Black Americans and contributes to their overrepresentation in the criminal justice system.

4.2 – The Liberal Discourse: Unbiased Society, Unbiased Policing

4.2.1 – Introduction

In this subchapter I examine how the role of race in the criminal justice system is defined by the Liberal Discourse, specifically how its importance is downplayed. I begin this subchapter by looking into my informants' claims about biased policing, noting how they attribute seemingly biased policing to a suspect's behavior rather than race. Then, I connect these explanations to the concept of colorblindness, which represents another aspect of the Liberal Individualist Discourse.

Before beginning this subchapter, I want to clarify that I am not seeking to accuse any of the police officers who I interviewed of being racist, or even engaging in biased behavior themselves. I do not have any data to suggest that this is the case for any of the individuals I talked to, and many of my informants were genuinely aware of race issues and worked to deal with them. Nonetheless, their assumptions about racism and bias reflect a wider set of beliefs that can mask discrimination in other contexts.

¹⁶⁴ Wesley Lowery, "Aren't More White People Than Black People Killed by Police? Yes, but No.," *The Washington Post* 2016.

4.2.3 – Spinning Statistics and Not Seeing Race

A number of my police informants claim that, despite what the statistics seem to say, police are not biased. Informant Purple explains that ‘you can spin statistics whatever way you want.’¹⁶⁵ In this case, statistics are being spun by politicians to tell the public ‘that we [police] are profiling and being[...] over aggressive in our dealings with’ minorities.¹⁶⁶ This, he insists, is not the case. Informant Black argues that ‘no police officer goes out[...] someday and thinks, “All right, I’m going after this group of people, or if I can find[...] some individual to stick it to today, then I’m going to do that.”[...] I mean, it just simply is not the case.’¹⁶⁷ Informant Black’s articulation of bias or racism makes it sound like it is a choice that officers are actively making. This links to the Liberal understanding of individuals as rational. By linking the concepts of “bias” or “racism” to “thought” or “conscious decisions,” Informant Black is able to dismiss the possibility that police officers are biased, as it is very likely true that most officers *do not* consciously, rationally, plan to target members of a minority group. The concept of rationality is also detectable in a statement by Informant Blue. He explains: ‘[I]f I’ve ever had where I felt like I was[...] going to take an action based on who was driving the car, or race, I’ll turn the other way.’¹⁶⁸ Once again, the idea that is being expressed here is that bias is conscious, or at least that it can be detected on a conscious level, rather than being implicit. It assumes that people have full understanding of and control over their actions and motivations. Because an officer is able to detect his or her own biases, he or she is able to avoid acting on them.

But if they are not acting on bias, what *are* police officers basing their decisions on? Informant Green calls a police officer’s ability to detect criminal behavior a ‘sixth sense.’ As he explains: ‘Police officers are really good at what they do, and sometimes they know that something’s amiss even though they can’t articulate in real specifics.’¹⁶⁹ Informant Black uses a similar explanation. In his words: ‘You start seeing patterns, right? You see, you know, A+B=C. You know, like, if I see a number of indicators, then[...] I probably have a pretty good indicator that there’s something criminal afoot here.’¹⁷⁰ It is not clear what this sixth sense includes, but the

¹⁶⁵ Purple.

¹⁶⁶ Ibid.

¹⁶⁷ Black.

¹⁶⁸ Blue.

¹⁶⁹ Green.

¹⁷⁰ Black.

focus seems to be on behavior, or other rather nebulous indicators, which, as Informant Green puts it, the officers cannot always articulate.

Several of my informants explained that they look at behavior. Informant Purple asserts that instead of profiling race, officers are ‘profiling behavior.’¹⁷¹ For example, he explains that sometimes an officer will recognize someone who is driving with a revoked license and pull them over to tell them that they cannot be driving. But as soon as the officer leaves, the person gets back in their car and drives off again, only to be pulled over a few minutes later by another officer for the same reason. The fact that the driver is Black is unrelated to the fact that he has just been pulled over twice. Rather, it is his decision to drive despite being told not to, i.e. the way he decides to behave, that has resulted in him being targeted.¹⁷² Similarly, Informant Silver, a lawyer associated with the Minnesota Police and Peace Officers Association, argues that when people get pulled over, ‘maybe it’s because they’re the ones that are committing the traffic violations.’¹⁷³ The idea reflected here is that people are pulled over (or arrested) not because they are being targeted, but because they’re doing something wrong. Thus, according to my informants, in cases where a Black driver is pulled over, or a Black pedestrian is stopped and frisked, it is not because they are Black, but because they are engaged in suspicious behavior that officers are picking up on.

Furthermore, according to Informant Purple, much of the time, when pulling someone over, an officer does not even *know* the race of the person until *after* they have pulled them over.¹⁷⁴ This was the case during one of my ride-alongs with the police. We pulled over a driver for swerving repeatedly over the center line, but from where I was sitting in the front I could not see the driver and did not know his race until we looked up his registration information.¹⁷⁵ It can be difficult to actually see the driver and determine race, especially at night, so it may indeed be that in some situations where it appears that the officer is targeting someone based on their race, it is impossible for them to have done so because the race of the person was not known until after the fact.

Thus, Informant Green concludes that racial minorities are ‘not overrepresented in prisons and in shootings and crimes because the police are bigots and picking on them. They’re overrepresented because they choose to be overrepresented by their actions.’¹⁷⁶ There is merit to

¹⁷¹ Purple.

¹⁷² Ibid.

¹⁷³ Informant Silver, interview by Matthew Burian, July, 2017.

¹⁷⁴ Purple.

¹⁷⁵ Matthew Burian, "Field Notes."

¹⁷⁶ Green.

the idea that Black overrepresentation is not solely due to biased law enforcement. Kelly Welch notes that a number of studies show that ‘Blacks are indeed involved in a disproportional amount of crime in general and violent crime in particular.’¹⁷⁷ A 2009 study found that ‘the overrepresentation of blacks among offenders admitted to state prisons occurs because they commit a disproportionate number of frequently imprisoned (i.e., violent) crimes.’¹⁷⁸ While this picture can be complicated somewhat (see the discussion in the next subchapter, and in section 4.4.4), it is critical to recognize that biased policing may not be, by itself, the sole driving factor behind Black overrepresentation in the criminal justice system, and indeed according to the Liberal Discourse, it is not a factor at all.

To summarize, in my informants’ answers we see a chain of equivalence around the “individual.” This individual is linked to concepts like “behavior” (e.g. Informant Purple’ notion of ‘profiling behavior’) and “decisions” or “choices” (e.g. by Informant Green’s claim that people are overrepresented because they choose to be based on their actions) which are in turn linked to “rationalism,” as discussed in the previous chapter. Conspicuously absent from this chain of equivalence is the concept of “race” which several of my informants (e.g. Green, Black, and Purple) explicitly de-link from the individual, denying that it has any influence on when, why, and how police interact with individuals.

4.2.5 – Colorblindness and Liberalism

The unimportance of race, or the claim that a person does not see race, is another part of the Liberal Discourse, which emphasizes individual actions and behaviors and deemphasizes social groups. This is the concept of colorblindness. Sarah Florini explains that colorblindness reflects ‘neoliberalism’s prioritization of the individual,’¹⁷⁹ and recasts race ‘as an individual personal trait that should be understood as largely irrelevant to public life.’¹⁸⁰ In other words, the Liberal Discourse’s emphasis on the individual *as an individual* mutes the influence of race as a social categorization on an individual’s life. In a discourse of colorblindness, race is not viewed as a significant factor, and if race is not significant, racial discrimination and bias cannot occur.

¹⁷⁷ Kelly Welch, "Black Criminal Stereotypes and Racial Profiling," *Journal Of Contemporary Criminal Justice* 23, no. 3 (2007): 278.

¹⁷⁸ Casey Harris et al., "Are Blacks and Hispanics Disproportionately Incarcerated Relative to Their Arrests? Racial and Ethnic Disproportionality between Arrest and Incarceration," *Race and Social Problems* 1, no. 4 (2009): 187.

¹⁷⁹ Sarah Florini, "This Week in Blackness, the George Zimmerman Acquittal, and the Production of a Networked Collective Identity," *New Media & Society* 19, no. 3 (2017): 440.

¹⁸⁰ *Ibid.*

My informants articulated this by denying the relevance of race and instead focusing on behavior that is consciously engaged in, for example by driving after being told not to, as Informant Purple described. If criminality is a matter of individual behavior, the officer is not profiling them because they are Black, but instead profiling behavior that is rationally chosen by the individual. And if crime is a consciously and rationally chosen thing, then the overrepresentation of Black Americans in the criminal justice system must be, as Informant Green says, because they are *choosing* to engage in crime more. Racial bias can be dismissed as simply “playing the race card” (see 4.4.3), and rearticulated as a colorblind “sixth sense” or the observation of proven patterns.

4.2.6 – Concluding Comments

In this subchapter, I have discussed how some of my police informants dismiss the possibility that race has any influence on their actions or the actions of their colleagues. My informants claim that they are looking for criminal behavior, not at race, and that the overrepresentation of Black Americans is therefore caused not by biased policing, but by the fact that individual Black Americans are making choices to commit crime. Race plays no role in this. This claim is an articulation of the Liberal Individualist Discourse, which prioritizes the individual and mutes the relevance of social groups, like race. When referring to race, this is known as colorblindness, which holds that an individual’s race does not affect how they are treated or their life.

There is evidence that Black Americans are more involved in crime. However, this is not the end of the story and colorblind explanations for overrepresentation that draw on individualism and rational choice fail to explain noticeable patterns or provide a deeper causal link. These patterns indicate that *something* is making Black Americans as a group more likely to commit crimes. Recognizing this requires recognizing the influence of social category, which would require adopting a different discursive position.

4.3 – The Social Discourse: Race as an Influential Social Category

4.3.1 – Introduction

Contrary to the claim that race has no effect on police practices is the argument that officers *do* see race, and are more likely to be suspicious of Black Americans and use force against them. This is race as defined by Social Collectivist Discourse, where race is understood as a social category that people see and make judgements based on, affecting how people are treated. This subchapter explores this Discourse and analyzes how it interprets police behavior and explains Black

overrepresentation in the criminal justice system. I begin this subchapter by discussing how Black Americans are perceived as more violent or prone to crime. In the following section, I look at how this affects Black overrepresentation and policing. Finally, I link this to the Social Collectivist Discourse, which defines race as an active social category and emphasizes the collective experiences of Black Americans as racialized subjects in U.S. society.

4.3.2 – Perceptions of Black Criminality

There seems to be an implicit assumption in U.S. society that Black Americans are more likely to be criminals. Informant Circle, a young woman of color and participant in the Black Lives Matter movement explains that ‘if you’re driving and[...] a cop sees you and you’re Black, you know that you have a higher chance, without doing anything wrong, that you’re going to get pulled over’¹⁸¹ She adds that ‘if you’re Black[...] you’re already 50% of a suspect.’¹⁸² Informant Circle is expressing the idea of Black Criminality. Welch argues that ‘In American society, a prevalent representation of crime is that it is overwhelmingly committed by young Black men,’ creating the stereotyped image of a young Black man as ‘an ominous criminal predator’¹⁸³ As Mauer (cited in Welch) explains, ‘Whites have long viewed criminal behavior as an inherent characteristic of Blacks.’¹⁸⁴ Welch attributes this perception to ‘the sheer number of Blacks represented in crime statistics and the criminal justice system.’¹⁸⁵ As, mentioned earlier, Black Americans, particularly men, are more likely to be imprisoned than their White counterparts, and are, indeed, more likely to be involved in crime. What this leads to, however, is the stereotyping of Blacks, particularly Black men, as being inherently more dangerous, or more likely to be criminals.

Perceptions of Black behavior as being more violent or criminal are well documented in U.S. society. Renée McDonald Hutchins observes that ‘[i]mplicit biases against black Americans are confirmed by decades of scientific research.’¹⁸⁶ For example, she notes that a number of studies show that ‘Black men are routinely perceived as more aggressive, violent, and dangerous than other people,’ and that ‘ambiguous conduct is perceived as more threatening when performed by black boys.’¹⁸⁷ From a discursive perspective, this could be seen as a chain of equivalence that connects

¹⁸¹ Informant Circle, interview by Matthew Burian, July, 2017.

¹⁸² Ibid.

¹⁸³ Welch, "Black Criminal Stereotypes and Racial Profiling," 276-77.

¹⁸⁴ Ibid., 276.

¹⁸⁵ Ibid., 277.

¹⁸⁶ Renée McDonald-Hutchins, "Racial Profiling: The Law, the Policy, and the Practice " in *Policing the Black Man*, ed. Angela Davis (2017), 108.

¹⁸⁷ Ibid.

the element “black male” to signs such as “aggressive,” “violent,” “criminal,” and “suspicious.” This may position officers to be more prone to stop and interact with Black Americans, particularly men, and be more likely to view their actions as hostile or threatening, making them more likely to respond with force.

With this in mind, it is possible to reexamine Informant Green’s idea of a “sixth sense” of criminal behavior and Informant Black’s indicators of crime mentioned in the previous subchapter. To what extent might race be part of those indicators, or part of the feeling, which cannot be articulated, that something is not right? The evidence just cited would suggest that race may indeed play a role in a police officer’s perception of something being “amiss” or “afoot,” though perhaps they are not aware of it. How exactly that plays out in policing is the subject of the next section.

4.3.3 – Racial Profiling and Policing

The discursive construction of Black Criminality may influence patterns of policing on individual and systemic levels. On an individual level, it leads to racial profiling. The definition of racial profiling is subject to some debate, and the difficulty of defining it is matched by the difficulty of identifying and measuring it in the real world.¹⁸⁸ To use one definition, the American Civil Liberties Union defines profiling as ‘the discriminatory practice by law enforcement officials of targeting individuals for suspicion of crime based on the individual's race, ethnicity, religion or national origin.’¹⁸⁹ Using this definition, it is possible to evaluate the evidence suggesting that Black Americans are 8.7 times more likely to get stopped for minor offences, such as speeding or loitering. The critical point that Informant Triangle emphasizes is that ‘many of these[...] offences are very subjective.’¹⁹⁰ For example, she asks: ‘What does loitering look like? Is it two people who are hanging on the street corner who are causing problems? Or is it just two people who are hanging on the street corner having a conversation?’¹⁹¹ Black’s Law Dictionary defines loitering in a legal sense as ‘to be slow in moving, to delay, to linger, to saunter, to lag behind.’¹⁹² This definition is incredibly vague. What does sauntering look like? How do we know if one is delaying or lagging behind? So, the question becomes, do Black Americans simply loiter more? Or, alternatively, is it that police officers are more likely to perceive Black Americans as loitering?

¹⁸⁸ Ibid.

¹⁸⁹ "Racial Profiling: Definition," American Civil Liberties Union.

¹⁹⁰ Triangle.

¹⁹¹ Ibid.

¹⁹² "Loiter," in *Black's Law Dictionary* (St. Paul, Minnesota: West Publishing Company, 1979), 849.

Loitering can be seen as a discursive construct. The neutral activity of being in a location has been constructed as the crime of loitering rather than simply the benign activity of passing time. The evidence suggests that within this discursive construction, the same act (being in a location) is more likely to be constructed as a crime (loitering) when Black people are involved. This may explain why, of the 191,000 stop-and-frisks that took place in New York in 2013, approximately 87% of which were targeted against Black or Latino males, ‘92 percent did not result in an arrest and guns were found in less than 1 percent of all cases,’ and though Blacks and Latinos were more likely to be stopped than Whites, they ‘were only about half as likely to be found in possession of an illegal weapon.’¹⁹³ Apparently the sixth sense of crime is somewhat hyperactive, especially when it comes to Black and Latino males. This supports Informant Circle’s articulation of Black Americans as suspects who have done nothing to merit suspicion. As an example of this in action, on April 12, 2018, two Black men were arrested at a Starbucks in Philadelphia for trespassing after ‘a store manager called the police because they were sitting in the store without placing an order.’¹⁹⁴ Police came and arrested the two men, who ‘said they were waiting for a friend who arrived just as they were taken away in handcuffs.’¹⁹⁵ Interestingly, another patron ‘said she had been there for hours without making a purchase,’¹⁹⁶ yet this did not prompt anyone to call the police.

Evidence also suggests that when officers do interact with Black Americans, they are more likely to use force, even when it is not necessary. A study by Ronald Fryer, released in 2016 (and revised in 2018) found that ‘[e]ven when officers report civilians have been compliant and no arrest was made, blacks are 21.2 percent more likely to endure some form of force in an interaction.’¹⁹⁷ As mentioned earlier, this may have to do with the fact that Black Americans, particularly men, are perceived as more aggressive, and therefore officers feel that more force is needed to subdue them.

Furthermore, not only are Black Americans more likely to be stopped and arrested, they are also more likely to receive harsher punishments for the same crimes. A 2017 report by the United States Sentencing Commission found that between 2008 and 2016, ‘Black male offenders received sentences on average 19.1 percent longer than similarly situated White male offenders during the

¹⁹³ Mauer, "The Endurance of Racial Disparity in the Criminal Justice System," 43.

¹⁹⁴ Damien Gayle, "Arrest of Two Black Men at Starbucks for 'Trespassing' Sparks Protests," *The Guardian*, April 16, 2018.

¹⁹⁵ *Ibid.*

¹⁹⁶ *Ibid.*

¹⁹⁷ Roland G. Fryer, "An Empirical Analysis of Racial Differences in Police Use of Force," *National Bureau of Economic Research: Working Paper*, no. 22399: 39.

Post-Report period.’¹⁹⁸ It is hard to argue that this is a result of the choices of individual Black men, or that race plays no role in what appears as a fairly clear pattern of discriminatory practices. Instead, it seems that biased logic plays a role from the moment of arrest until sentencing.

On a systemic level, this perception of Black criminality also affects patterns of police deployment. Informant Triangle explains that communities with many People of Color tend to be more heavily policed. According to her, police claim that this is because these are the places where more crime is taking place, but she argues that this becomes ‘a circular thing.’¹⁹⁹ If officers look hard enough for crime, and if there are enough of them looking, then eventually they will find it, and they will find a lot of it. This justifies sending in more officers who find more crimes, which they argue means that more officers are needed.²⁰⁰ Critically, this logic may be what leads to the mass incarceration of Black Americans and the higher instances of police using lethal force against them, something that will be discussed in the next chapter. Informant Triangle argues that:

‘when you have People of Color that are getting targeted more often for arrests, you’re going to have more negative interactions with the police, you’re going to have more opportunities for there to be excessive force and police shootings in communities of color[...].’ and ‘of course when you concentrate a lot of police in a community of color, you’re going to arrest and you’re going to interact with more People of Color and you’re going to see these higher, disproportionate number of arrests of People of Color.’²⁰¹

In other words, racial profiling is built into the very logic of the system and exacerbates existing problems, making overrepresentation inevitable.

4.3.4 – Conclusion: The Collective Experience of Black Americans

This subchapter indicates that, contrary to the claims of some of my informants, race continues to be a very real, influential social category. Being Black makes one more likely to be considered dangerous or criminal and it results in Black Americans being targeted by the police more often. This is something that is experienced by Black Americans *because* they are Black. This is, as Florini articulates, ‘an understanding of race that is collective, historically grounded, and rooted in

¹⁹⁸ "Demographic Differences in Sentencing: An Update to the 2012 Booker Report," (United States Sentencing Commission, 2017), 2.

¹⁹⁹ Triangle.

²⁰⁰ Ibid.

²⁰¹ Ibid.

the shared experience of navigating the United States as racialized subjects.’²⁰² In this understanding, “Blackness” is seen ‘as a salient social and cultural category grounded in a shared socio-historic position.’²⁰³

This discourse is exemplified by the multimedia podcast, *This Week in Blackness!* (TWiB!). After the death of Trayvon Martin in February of 2012, many Black Americans called into a live broadcast to express ‘their grief and anger.’²⁰⁴ Florini observes that ‘TWiB! callers largely reject colorblindness and its emphasis on the individual, instead constructing themselves as members of social group [sic] whose lives are shaped by the experience of structural racism.’²⁰⁵ This can be seen as a rejection of the Liberal Discourse and its focus on the individual. Instead, this could be considered an articulation of the Social Collectivist Discourse, which defines social groups, such as race, as active categories relevant in public and social life, and validates the collective experiences of people in these categories.

4.4 – Overdetermination and Liminality: Race, Class, and Crime

4.4.1 – Introduction

Having discussed the way these two Discourses define the role of race in policing, the question is now: how do we reconcile these two perspectives? How do we address the collective experiences of Black Americans, while still recognizing the experiences of police officers who *do* see suspicious behavior and *do* avoid acting on bias? This subchapter attempts to answer this question, recognizing that it is not simple, and that such an answer will likely not be found in this thesis alone, if at all. I begin by briefly illustrating the complexity of the discussion of race and racism in the criminal justice system. I then analyze why race is so difficult to talk about in the first place, looking at the hegemonic interventions that suppress assertions of racial bias. I conclude by constructing a new discourse that acknowledges that overrepresentation is driven by *both* criminal behavior among Black Americans *and* racial bias in criminal justice and society as a whole. This new discourse can enable overdetermination and move the discourse in a more productive direction.

²⁰² Florini, "This Week in Blackness, the George Zimmerman Acquittal, and the Production of a Networked Collective Identity," 441.

²⁰³ *Ibid.*, 445.

²⁰⁴ *Ibid.*, 440.

²⁰⁵ *Ibid.*, 446.

4.4.2 – A Complex Picture

This chapter is not meant to provide a conclusive discussion on racism, bias, and race in the United States criminal justice system. Such a conclusion would be difficult to reach. If anything, this chapter shows that this is a highly nuanced issue. The chain of cause and effect is complex, and while it is certain that race and bias play some role in this process, the exact nature of that role is unclear and contentious.

To illustrate this complexity, I turn to the difficult question of what role race plays in the use of lethal force by police officers. As mentioned earlier, Fryer found that police are more likely to use non-lethal force against Black Americans. However, Fryer also notes that ‘on the most extreme use of force – officer-involved shootings – we are unable to detect any racial differences in either the raw data or when accounting for controls.’²⁰⁶ If this is the case, then Black overrepresentation in police shootings could be explained simply by the fact that they have more encounters with police. As Informant Triangle points out, if Black Americans have more encounters with police, then, statistically, they are going to be killed by police more often, even if the probability in any individual encounter is the same. And indeed, according to FBI statistics, Black Americans accounted for 28.1% of arrests in 2016.²⁰⁷ This can be explained by the fact that, as mentioned previously, Black Americans are more likely to be involved in crime. However, this doesn’t explain *why* Black Americans are more likely to be involved in crime. To complicate this further, a study of police use of lethal force by the Washington Post found that while in ‘the majority of cases in which police shot and killed a person who had attacked someone with a weapon or brandished a gun, the person who was shot was white,’ three in five ‘of those killed after exhibiting less threatening behavior were black or Hispanic.’²⁰⁸ This may have to do with the evidence, cited above, that behavior is more likely to be seen as aggressive or threatening when carried out by a Black male.

The point of this is to indicate that while bias clearly does play a role in *some* uses of force by police, it does not *always* do so, and it does not always do so in the same way. The role of race and racism is highly nuanced, shifting from one case, if not one study, to the next. Conversations about race should reflect this nuance. Blanket assertions of racism are no more helpful than blanket

²⁰⁶ Fryer, "An Empirical Analysis of Racial Differences in Police Use of Force," 39.

²⁰⁷ "Arrests by Race," (Federal Bureau of Investigation, 2012).

²⁰⁸ Kimberly Kindy, Marc Fisher, and Julie Tate, "A Year of Reckoning: Police Fatally Shoot Nearly 1,000," *The Washington Post*, 26 December, 2015.

assertions that racism does not exist. Recognizing this complexity could enable a more fruitful conversation about race. Yet, as I will explain in the next section, nuanced discussions about race in the United States are often difficult.

4.4.3 – Hegemonic Interventions: The Race Card

Part of the reason nuanced discussions about race are so difficult is that U.S. Americans have vastly different ideas about race and racism. A report by the Pew Research Center, released in 2016, found that there are massive differences between how White and Black Americans think about race. The study found that:

‘blacks are more likely than whites to say black people are treated less fairly in the workplace (a difference of 42 percentage points), when applying for a loan or mortgage (41 points), in dealing with the police (34 points), in the courts (32 points), in stores or restaurants (28 points), and when voting in elections (23 points). By a margin of at least 20 percentage points, blacks are also more likely than whites to say racial discrimination (70% vs. 36%), lower quality schools (75% vs. 53%) and lack of jobs (66% vs. 45%) are major reasons that blacks may have a harder time getting ahead than whites.’²⁰⁹

In short, U.S. Americans have vastly differing ideas about the prevalence and role of racism in the United States.

Part of this may have to do with a narrow definition of racism. Arlie Russell Hochschild, in her study on Tea Party supporters in Louisiana, notes that many of her informants define a racist person as ‘a person who used the “N” word or who “hates” blacks.’²¹⁰ This ties in with Informant Black’s claim, where he implies that racist policing involves *planning* to go out and target minority groups. If racism is defined as a conscious, planned behavior, or evidenced only in explicit manifestations such as the use of the “N” word or direct violence against minorities, then it can indeed be argued that racism is not particularly common in the United States, as most people would not admit that they hate Black Americans (and indeed probably do not, as racism is much more complex than hate), target them for violence, or use the “N” word. In this way, more subtle forms of racism and racial bias in the United States often go undetected.

²⁰⁹ "On Views of Race and Inequality, Blacks and Whites Are Worlds Apart," (Pew Research Center, 2016), 5-6.

²¹⁰ Arlie Russell Hochschild, *Strangers in Their Own Land: Anger and Mourning on the American Right* (The New Press, 2016), 146.

Based on this narrow definition, anything that falls short of this cannot be considered racism, and charges of racism and bias can be suppressed by the Liberal Discourse of colorblindness. As Florini explains, ‘within the discourse of colorblindness, those who assert race as an important axis of social and cultural life are themselves cast as racist through their insistence on “seeing race.”’²¹¹ Charges of racism are often considered “playing the race card.” Ruth White explains that playing the race card is often seen as ‘defaulting to race as an “excuse” for whatever it is that transpired,’²¹² while Charles Blow argues that the term implies ‘that people often invoke race as a cynical ploy to curry favor, or sympathy, and to cast aspersions on the character of others.’²¹³ Claiming that a person is “playing the race card” when they point out racism shuts down the conversation by implying that an individual is making up their experiences of discrimination or casting themselves as a victim to avoid taking responsibility for something or to benefit from their status as a minority.

A different definition of racism may enable a more nuanced look at race in the United States and enable overdetermination. Mary Shawn Copeland, argues that ‘Racism[...] does not rely on the choices or actions of a few individuals; rather racism infiltrates, permeates, and deforms the institutions of politics, economy, culture, even religion,’ creating a sort of ‘pseudo-rationality.’²¹⁴ In discursive terms, “racism” becomes linked to concepts like “structure,” and “institutions,” as well as “attitudes” and “beliefs.” Critically, these attitudes and beliefs are often implicit or unconscious, meaning that they are, by definition, irrational (or perhaps, sub-rational). Racism can thus be looked at not only as conscious decisions to be biased, but as taken for granted truths and structures that subtly, implicitly, shape behaviors and discriminate against groups of people, perhaps manifesting itself as a “sixth sense” of crime that is more attuned to Black behavior. From a constructivist perspective, racism may be considered a type of hegemonic discourse. The unconscious assumption is that Black Americans are aggressive or more prone to crime. It seems that many people are not even *aware* that they are making this connection, and this is precisely what a hegemonic discourse is: an unquestioned, unexamined set of beliefs.

²¹¹ Florini, "This Week in Blackness, the George Zimmerman Acquittal, and the Production of a Networked Collective Identity," 452.

²¹² Ruth White, "The Race Card: The Scariest Card in the Deck," *Psychology Today*, November 20, 2012.

²¹³ Charles Blow, "Stop Playing the ‘Race Card’ Card," *The New York Times*, March 19 2015.

²¹⁴ Mary Shawn Copeland, *Enfleshing Freedom: Body, Race, and Being* (Fortress Press, 2010), 100.

4.4.4 – The Liminal Discourse: Class, Race, and Crime

In this section, I take the role of the liminal actor, allowing for the intervention of the third space in which aspects of my informants' articulations from different discourses can be brought together to create a bridge between them, constructing a liminal discourse that recognizes the complexity of the situation and incorporates the definition of racism discussed above. On the one hand, there is a discourse that acknowledges that while individual criminal behavior is important, not all crime is a result of individual choices, and that things like social class can play a role, though race is still not considered an important factor. On the other, there is the claim that racism drives police to target Black Americans for arrest and violence and is therefore primarily responsible for Black overrepresentation. Bridging the two perspectives requires recognizing the complex interplay between race, class, and criminality, and how all of these affect policing.

The first discourse I look at acknowledges the influence of socio-economic class on policing and criminality, though it still denies the role of race. Two of my police informants argued that Black overrepresentation in the criminal justice system may be a result of poverty, which is more common in the Black American community. Here, a race issue is rearticulated as a class issue. Informant Blue notes that poorer people 'don't have the ability to afford nicer vehicles, so they drive[...] crappier vehicles, which means they're going to have more[...] equipment issues, things like that, which means that we're probably going to stop them at a higher rate, more frequently.'²¹⁵ The fact that they are Black is unrelated to being pulled over for a traffic violation, instead, it is their socio-economic status that plays a role in this encounter, although Informant Blue does argue that this points to broader issues in society related to race and socio-economic status, though he does not elaborate.²¹⁶ Likewise, Informant Teal explains:

'We[...] stop people based on their behavior or based on... the failure of their vehicle... Now, to me that goes back to a class system. People with means can afford well-working vehicles. People without means might not be able to. So, do we stop probably more people who are poorer than who[...]are wealthy? Probably[...] In many[...]communities, those who are poorer tend to be People of Color, so that might be a consideration as to why more People of Color are being stopped proportionately[...] And so... if we are stopping more People of Color, ok,

²¹⁵ Blue.

²¹⁶ Ibid.

well, then, why? Is it because, “O, there’s a Black guy and I’m going to go stop him?” Or, is it because, “There’s a guy driving a vehicle that doesn’t have any break lights”?’²¹⁷

There is validity to this argument. According to estimates based on the Census Bureau’s March 2016 Survey, approximately 24% of Black Americans live in poverty, compared to 9% of White Americans.²¹⁸ In other words, a disproportionate number of Black Americans are living in poverty, and that may affect the quality of their vehicles and the likelihood that they will be pulled over. Beyond just traffic stops, the previous chapter’s discussion on the link between poverty, education, inequality, and crime can explain why Black Americans are more likely to be involved in crime and therefore more likely to be arrested. This helps to explain the overrepresentation of Black Americans without relying on race as a factor. Yet my informants do not explain the apparent link between race and class, that is, *why* Black Americans are more likely to be in poverty. Instead, Informants Teal and Blue both rearticulate race as socio-economic class. It is not racism that drives interactions between Black Americans and the police, rather, it is poverty, and poverty is merely coincidentally related to race.

This is the articulation of a sort of liminal discourse that exists in-between the Social and the Liberal. They are not articulating the Liberal Discourse’s concept of rationalism, nor focusing solely on behaviors or choices (recall that in the previous chapter, Informant Teal articulated the Social Discourse, while Informant Blue was overdetermined). Instead, they articulate the Social Discourse when they emphasize the relevance of socio-economic status, which is in many ways beyond the individual’s control. Yet they *are* still articulating Liberal colorblindness. The problem with this is that poverty cannot explain why Black Americans are more likely to be stopped and frisked, or why police use force more often when arresting them. Bias in these cases still has not been explained. More importantly, this still does not provide explanations for why Black Americans are more likely to live in poverty. To explain these things, it is necessary to recognize that socio-economic status is not race neutral.

As my informants acknowledge, Black Americans are more likely to live in poverty than their white peers. Yet this is not merely incidental. Drawing on the Social Discourse, it can be seen that race plays a role in making Black American more likely to live in poverty. Slavery in the

²¹⁷ Teal.

²¹⁸ "Poverty Rate by Race/Ethnicity," (The Henry J. Kaiser Family Foundation).

United States put Black Americans in a bad position to begin with, and, though slavery may have ended, Kristin Helmore argues that ‘[s]lavery’s legacy remains.’²¹⁹ Helmore asserts that ‘[m]ost experts[...] agree it is racism that underlies the major social and economic problems affecting the black community. It is racism that has segregated many blacks in inner-city ghettos,’ and resulted in ‘inadequate schools, housing, and job opportunities’ for Black Americans.²²⁰

The detrimental effects of racism in society can be seen in a number of ways. One example is employment discrimination. A 2017 study found that when applying for jobs ‘whites receive on average 36% more callbacks than African Americans,’ even when ‘[a]ccounting for applicant education, applicant gender, study method, occupational groups, and local labor market conditions.’²²¹ Even when Black Americans do get hired, they are frequently paid less. A report for the Economic Policy Institute finds that:

‘[a]s of 2015, relative to the average hourly wages of white men with the same education, experience, metro status, and region of residence, black men make 22.0 percent less, and black women make 34.2 percent less. Black women earn 11.7 percent less than their white female counterparts.’²²²

As a result, ‘[a]ccording to a new Pew Research Center analysis of data from the U.S. Census Bureau, in 2014 the median adjusted income for households headed by blacks was \$43,300, and for whites it was \$71,300.’²²³ Discrimination also persists in the housing sector. A 2012 report by the U.S. Department of Housing and Urban Development found that while ‘well-qualified minority homeseekers[...] are just as likely as equally qualified white homeseekers to get an appointment and learn about at least one available housing unit[...] when differences in treatment occur, white homeseekers are more likely to be favored than minorities.’²²⁴ This leads to the formation of poor Black neighborhoods.

Given that, as discussed in the previous chapter, property values affect funding for education, poverty in Black communities tends to decrease the quality of education for Black

²¹⁹ Kristin Helmore, "Racism: A Main Cause of Innercity Poverty," *The Christian Science Monitor* 1986.

²²⁰ *Ibid.*

²²¹ Lincoln Quillian et al., "Meta-Analysis of Field Experiments Shows No Change in Racial Discrimination in Hiring over Time," *Proceedings of the National Academy of Sciences* 114, no. 41 (2017): 10870.

²²² Valerie Wilson and William Rodgers, "Black-White Wage Gaps Expand with Rising Wage Inequality," (Economic Policy Institute, 2016).

²²³ "On Views of Race and Inequality, Blacks and Whites Are Worlds Apart," 8.

²²⁴ Margery Austin Turner et al., "Housing Discrimination against Racial and Ethnic Minorities 2012: Executive Summary," (Washington, D.C.: The Urban Institute, 2013), 1.

children. A 2012 study for the Center for American Progress found that ‘schools with 90 percent or more students of color spend a full \$733 less per student per year than schools with 90 percent or more white students,’²²⁵ and in general, ‘across the country schools spent \$334 more on every white student than on every nonwhite student.’²²⁶ But poverty alone does not explain the gap in education funding. David Mosenskis, in a study of schools in Pennsylvania, found that ‘[a]t any given poverty level, districts that have a higher proportion of white students get substantially higher funding than districts that have more minority students,’ meaning that disparities in funding for education continue to exist even when accounting for poverty levels.²²⁷ Likely as a result of this, the study from the Center for American Progress observes that only 54% of Black Americans have graduated high school, compared to 78% of White Americans.²²⁸ It is important here to recall that in the previous chapter it was demonstrated that there is a strong correlation between lack of a high school diploma and likelihood of incarceration.

This evidence indicates that race plays a role in keeping Black Americans in poverty, or at least in exacerbating poverty, and in maintaining inequality between Black and White Americans. The evidence that suggests a link between poverty, a lack of education, and crime provides a reason for Black overrepresentation in the criminal justice system and the higher involvement in criminal activity among Black Americans. This shows how racial bias actually pushes Black Americans into situations where crime becomes more likely. This is where problems with the police come in. Informant Triangle summarizes the problem thus:

‘So, when you combine the fact that[...] this is an over-policed community, a low income community, there’s going to be more crime in it. There’s more crime in it because not only are you seeing more crime, but more crime could also be being committed because of the fact that[...] when you’re lower income and you have lower access to resources[...] then there’s more of a chance that you have crimes of poverty occur[...] Then you’re kind of putting yourself in the cycle that you’re never getting out of.’²²⁹

²²⁵ Ary Spatig-Amerikaner, "Unequal Education: Federal Loophole Enables Lower Spending on Students of Color," in *Progress 2050: New Ideas for a Diverse America* (Center for American Progress, 2012), 4.

²²⁶ *Ibid.*, 7.

²²⁷ Gillian White, "The Data Are Damning: How Race Influences School Funding," *The Atlantic*, September 30, 2015.

²²⁸ Spatig-Amerikaner, "Unequal Education: Federal Loophole Enables Lower Spending on Students of Color," 8.

²²⁹ Triangle.

The recognition that race affects socio-economic status completes the construction of this new discourse by addressing the issue of race and responding to the Liberal Discourse's colorblindness. This new discourse explains overrepresentation thus: Poverty predisposes people to crime. Black Americans are pushed into poverty, and therefore crime, by racism on a societal level. Police officers respond to the disproportionate number of crimes committed by Black Americans. This develops and reinforces stereotypes of Black Criminality, which affects how they interact with Black Americans, causing them to be more alert to Black behavior and be more likely to perceive it as criminal, and so the cycle continues. In this way, the discourse actually predisposes what police officers notice and how they interpret it, making them vigilant to the actions of Black Americans, and more likely to perceive those actions as suspicious or aggressive. This liminal discourse thus creates a chain of equivalence that links "race" with "social class" and "criminality."

4.5 – Concluding Comments

The problem of racial bias in the United States is both polemic and complex. This chapter has demonstrated that the Liberal Discourse deemphasizes race and rearticulates seemingly biased policing as profiling based on behavior and a "sixth sense" of crime. But this fails to account for patterns that suggest that race continues to influence the criminal justice system from the moment an individual first interacts with a police officer to sentencing in court. The Social Discourse highlights these patterns and emphasizes the salience of race as a social category that has a noticeable impact on an individual's life, particularly with regard to the criminal justice system.

Yet, as discussed in subchapter 4.4, exactly when and how race and racial bias affects the criminal justice system is a complex issue. A nuanced definition of racism that includes both individual implicit biases and broader structural biases can account for some of these problems and may enable overdetermination. It can also form a discourse that connects race, social class, and criminality together as mutually influencing factors that affect individual criminal behavior, police behavior, and patterns of policing as a whole. Recognizing this allows us to understand racism as a hegemonic discourse, a set of unquestioned biases that affect social behaviors and organizations. This allows us to address the systemic barriers faced by Black Americans and promote a more just and equitable society.

Chapter 5 – Police Conduct and Accountability

In this final analysis chapter I look at police conduct and accountability for misconduct, specifically looking at use of force. This chapter will focus on the use of lethal force, incidences where people have actually died as a result of police action. This is not to discount the occurrence or seriousness of inappropriate uses of non-lethal force that take place (the case of Homan Square in Chicago is one such example²³⁰), but the use of lethal force draws more attention and is somewhat easier to track, meaning there is more material to analyze. These cases are framed in different ways by the different discourses, from their frequency, to the way the criminal justice system handles them. As I will demonstrate in this chapter, the Liberal Discourse articulates these moments as rare, individual cases, dealt with by a fair judicial system. The Social Discourse takes the focus away from the individual cases and instead looks at the systemic and social factors that allow these events to continue and how the system fails to hold officers accountable for misconduct.

Before delving into this topic, it is necessary to reflect on the terminology associated with it. The words we use to articulate an event have different discursive potentials, as each term carries with it a set of connotations inviting varying emotional responses. For the purposes of this chapter, unless quoting an informant or source, I will use a specific set of terms intended to be as neutral as possible. “Police misconduct” will be used as a general term to describe inappropriate actions taken by police officers, or a failure to act appropriately. “Use of force” can be both lethal and non-lethal, and refers to the application of any kind of force or violence by police officers. “Unnecessary use of force” refers to when force is used in a situation that does not call for it. “Use of excessive force” refers to the use of force in cases where force is called for, but when that use of force exceeds what is required. For the most part, this chapter will look at cases of use of lethal force, and the debate about when and under what circumstances this use of lethal force is necessary or justified, as well as discussion about the criminal justice system’s ability to hold officers accountable for unnecessary uses of lethal force. Excessive and unnecessary uses of non-lethal force will be discussed when appropriate, but they are not the main focus.

²³⁰ Spencer Ackerman, "Homan Square Revealed: How Chicago Police 'Disappeared' 7,000 People," *The Guardian*, 19 October 2015.

5.1 – The Liberal Discourse: The Uncommon Non–Problem of Use of Force

5.1.1 – Introduction

The position taken by the majority of my police informants was that instances when lethal force is used by police officers are rare, most often justified, and effectively handled by the criminal justice system. When discussing this topic, the Liberal Discourse’s emphasis on rationality is apparent, especially in discussions about jury decision making. Additionally, a new sign is introduced in this discussion: a construction of the justice process as inherently neutral, meaning that court’s decisions must be fair. In this subchapter, I explore articulations of the Liberal Discourse in my informants’ discussions of police misconduct and the use of lethal force. I begin by discussing how my informants frame the frequency and appropriateness of the use of lethal force. Then, I examine how my informants evaluate the ability of the criminal justice system to handle cases of potential misconduct when the use of lethal force may not have been necessary, linking their claims to the Liberal Discourse’s conception of the criminal justice system as neutral, fair, and rational.

5.1.2 – The Uncommon Use of Lethal Force

Use of lethal force by police is regularly discussed in the news, and the names and faces of people killed by police are heard and seen at many Black Lives Matter protests. Yet despite this, my police informants uniformly insist that such incidents are not common. As Informant Navy says, ‘it’s being characterized now, that there is a broad, regular abuse of minorities and minority communities by the police, as a regular part of their patterns and practices. And, you know, I would beg to differ.’²³¹ Informant Teal claims that ‘the overwhelming majority of law enforcement officers and organizations are clearly working[...] above board, and are doing things the right way.’²³² Informant Black adds that ‘[c]ontrary to popular belief[...] those of us who get into law enforcement don’t invest our own time and our money in the careers to, to throw it away by violating someone’s civil rights[...] We understand that there are very serious, um, repercussions to actions...’²³³ Interestingly, in this articulation we once again see the Liberal Discourse’s emphasis on rationality. Informant Black seems to suggest that misconduct is based on a rational choice. A cost/benefit analysis that takes place, where officers weigh the potential costs to their

²³¹ Navy.

²³² Teal.

²³³ Black.

careers against, apparently, the benefits of engaging in misconduct, e.g. killing a person. According to Informant Black, the costs usually outweigh the benefits.

Informants Green and Blue blame media for the widespread perception that police are violent. Informant Green explains: 'If you were to watch T.V. you'd think we're shooting people every day, and that's not true[...] Matter of fact, we show quite a lot of restraint.'²³⁴ Informant Blue adds that media 'perpetuates[...] the belief that[...] there's these rogue cops out there. We're looking to shoot and kill people. We're beating people up. We're bad people. And it just isn't true.'²³⁵ In short, according to my police informants, the use of lethal force, necessary or otherwise, and misconduct in general is actually uncommon. These instances have been blown out of proportion by media and protestors.

How do these claims hold up when tested against reality? A database compiled by the Washington Post provides an overview of the situation over the last three years. There were 995 people killed by police in 2015,²³⁶ 963 in 2016,²³⁷ and 987 in 2017.²³⁸ So, is this a lot? This averages to 981.7 people killed by police per year, and 2.7 uses of lethal force per day. This seems to contradict Informant Green's claim that police are not shooting people every day. However, a Time Magazine article from 2015 notes that there are roughly 680,000 police officers working in the United States.²³⁹ If we assume that only one cop is involved in each use of lethal force, and that a cop does not use lethal force twice in a year, this means that approximately 0.1% of police officers in any given year use lethal force. So, in that sense, Informant Green is correct, the overwhelming majority of police officers are not shooting people every day, or indeed every year.

Moreover, the 981.7 average deaths per year, when compared to the U.S. population of approximately 323 million, represents about 0.0003039% of the population. In other words, an individual's chances of being killed by the police in any given year are exceedingly low. Even for Black Americans, the chances of being killed by the police are only about 0.00076% (if they are 2.5 times more likely to be killed by police use of lethal force, as discussed in the previous chapter). Looking further back in time, a 2012 report by the Bureau of Justice Statistics released in 2012 found that between 2003 and 2009 there were 4,813 people killed by police (an average of 687

²³⁴ Green.

²³⁵ Blue.

²³⁶ "Police Shootings 2015 Database."

²³⁷ "Police Shootings 2016 Database."

²³⁸ "Police Shootings 2017 Database."

²³⁹ Karl Vick, "What It's Like to Be a Cop in America: One Year after Ferguson," *Time*, August 24, 2015.

deaths per year).²⁴⁰ Critically, '[t]he report noted that those 4,800 arrest-related deaths came during a period in which the FBI estimated that there were nearly 98 million arrests made nationally. That's .005 percent of all arrests.'²⁴¹ This means that even within the context of arrest, an individual's chance of being killed is extremely low, and this is not even taking into account the traffic stops and other interactions that do not result in arrest that take place each year.

Finally, a report released by the Washington Post in 2015 'found that the kind of incidents that have ignited protests in many U.S. communities — most often, white police officers killing unarmed black men — represent less than 4 percent of fatal police shootings.'²⁴² Instead, '[t]he Post found that the great majority of people who died at the hands of the police fit at least one of three categories: they were wielding weapons, they were suicidal or mentally troubled, or they ran when officers told them to halt.'²⁴³ So even in the unlikely event that an individual is killed by a police officer, it is highly unlikely that they were killed for doing nothing. In other words, not everyone killed by the police, indeed not even most of them, are like Philando Castile, discussed in the introduction to this thesis. So, when looking at the use of lethal force, my police informants are largely correct. In the bigger picture, they are not common.

5.1.3 – A Liberal Conception of Justice: Due Process and the Case of Philando Castile

So use of lethal force by the police is not necessarily common. But what about those cases when police *do* use lethal force unnecessarily, when, for example, they shoot an unarmed person, choke a man to death, or a person dies of mysterious causes in police custody? According to some of my police informants, the system is able to handle these unique cases and dispense justice. Take the case of Philando Castile. This event took place in the area where I conducted my field work, and the acquittal of the officer who killed him occurred just a month before my research began, and it clearly had an impact on both the community and on the officers I talked to.

Many people both in Minnesota and elsewhere in the country were clearly upset by the decision, something at least two of my police informants could not understand. Informant Green explained to me passionately that:

²⁴⁰ Gene Demby, "What We See in the Eric Garner Video, and What We Don't," *National Public Radio*, July 29, 2014.

²⁴¹ *Ibid.*

²⁴² Kindy, Fisher, and Tate, "A Year of Reckoning: Police Fatally Shoot Nearly 1,000."

²⁴³ *Ibid.*

‘[t]hey want [the officer] to be found guilty, no matter what the due process is, we follow due process. He was charged, and he was, he went to court and he had a judge and there was a jury there and the jury said, “Not guilty.” That’s due process... I’m sorry that you’re upset and you didn’t get the answer you want, but then, don’t be crying to say, “Well, forget about that. Let’s just go and find him guilty anyways.’”²⁴⁴

Informant Black echoes this position, arguing that:

‘people aren’t interested, I believe, my personal belief, in, you know, it... it doesn’t matter what the outcome is, what the, you know, what the... as long as the... They’re interesting in their own personal outcomes, regardless of... whether it’s fair or not[...] If... If it doesn’t rule in your favor, then, then you’re upset about it. And you have a right to be upset about it, but that doesn’t mean that there’s this big conspiracy... You know, that’s why we have due process.’²⁴⁵

In my informants’ answers, particularly in the case of Informant Black, we see the concept of “due process” connected with the concept of “fairness.” The assumption is that if due process is followed, the result will be “fair,” or we could say “just.” Justice means following due process, and the process ensures justice.

This is justice as defined by the liberal discourse, which constructs the system as inherently fair and neutral. Percy Lehning argues that ‘[t]he neutrality of the state is one of the main values for a liberal political order.’²⁴⁶ This neutrality is often expressed by the idea that “Justice is blind.” Bradley Knox explains that the concept of “blind justice” (exemplified by depictions of the blindfolded Lady Justice) signifies ‘an “honest” justice that does not consider any individual based on his or her social class related to wealth, fame, health, etc.’²⁴⁷ One could add to this race (drawing on the concept of colorblindness) or profession. In other words, there is an assumption that the criminal justice process is fair, that the conclusion that is reached is just, uninfluenced by the identity of the defendant or the victim.

²⁴⁴ Green.

²⁴⁵ Black.

²⁴⁶ Percy Lehning, "Liberalism and Capabilities: Theories of Justice and the Neutral State," *Social Justice Research* 4, no. 3 (1990): 199.

²⁴⁷ Bradley A. Knox, "The Visual Rhetoric of Lady Justice: Understanding Jurisprudence through 'Metonymic Tokens'," *Inquiries Journal/Student Pulse* 6, no. 05 (2014).

Drawing together the previous paragraphs, we can develop another chain of equivalence in the Liberal Discourse. Informants Green and Black implicitly link the concept of “justice” and “fairness” to “due process.” The link between “justice” and “due process” is transferred to a broader picture of the “criminal justice system” as a whole, which is linked to the concept of “neutrality” by ideas and images such as the blindfolded Lady Justice, which, as Knox and Lehning note, are key components of the Liberalism, or the Liberal Discourse. Thus, when my informants argue that people should accept the outcome of the Castile trial, it may be because they have constructed the criminal justice process, i.e. due process, as inherently “just.” The result of a trial is just because it was produced by due process.

It is interesting to note that concepts of rationalism also appear in Liberal understandings of justice. For example, this is reflected in Informant Red’s desire to see a wider use of body cameras by police officers. Informant Red explains that citizens ‘should absolutely be able to audit what I’m doing as a government official.’²⁴⁸ For him, ‘[o]ne of the big reasons that the police, basically are able to do their job is because the public has faith in that what we’re doing is correct, and that we’re honorably and honestly doing that,’ and body cameras are a way to ensure that that is the case.²⁴⁹ The push to use body cameras reflects, in part, the Liberal notion of rationalism, the idea that all we need is more information and then the court will be able to impartially (neutrally) dispense justice. This may also influence why my informants believe that due process is able to produce a just result, as they assume that juries and judges are able to rationally and impartially weigh the evidence and come to a rational conclusion about what happened.

5.1.4 – Concluding Comments

In summary, the Liberal Discourse articulates police use of lethal force as rare, isolated incidents that are most often justified. The criminal justice system is constructed as a fair and rational system when dealing with potential cases of misconduct. All of this taken together constructs the problem of police misconduct as not much of a problem. It does not occur often, and when it does, it is usually justified. If it were not justified, due process would take care of it. As I will discuss in the next subchapter, the Social Discourse defines police use of lethal force and constructs the criminal justice system very differently.

²⁴⁸ Red.

²⁴⁹ Ibid.

5.2 – The Social Discourse: Biased Society and an Unfair System

5.2.1 – Introduction

The Social Discourse is the discourse that constructs the idea that ‘the system is rigged against justice for victims of police terror.’²⁵⁰ It connects different cases of police use of force together as a pattern of police violence against civilians. More critically, it draws attention to the way the criminal justice system, and society in general, is tilted in favor of police officers, making holding officers accountable for misconduct difficult. It is this emphasis on society and structures that places it within the Social Discourse. As I discuss in this chapter, while the Social Discourse perhaps exaggerates the regularity of police use of lethal force and the “brutality” of police officers, it does point out valid concerns in the criminal justice system vis a vis the ability to hold police officers accountable for misconduct.

In the first section, I describe how my informants frame uses of lethal force as common and unacceptable. In the next two sections, I analyze how societal and structural influences may make the criminal justice system less fair when dealing with police use of force. I first outline how the judicial system and jury trials are tilted in favor of police, making convicting officers very uncommon. In the next section, I examine how the structure of the criminal justice system creates conflicts of interest and power imbalances that insulate police officers from accountability.

5.2.2 – Police Are Shooting People

From all of my informants outside of the police profession, there was a clear assertion that police use lethal force far too often and that it is rarely, if ever, justified. Informant Circle, for example, notes that problems won’t go away unless there are no more police. She argues that whatever changes are made, ‘there’ll still be police there, in turn[...] those police will still be shooting Black people.’²⁵¹ While attending a meeting of Communities United against Police Brutality, the leader of the meeting mentioned that as of July of 2017, police had already killed 663 people, prompting one woman to say that police are ‘like animals,’ to which another woman responded: ‘That’s insulting to animals.’ Another attendee asserted that police basically had the mindset of serial killers.²⁵² These reactions reveal two things. The first is an assumption that police use of lethal force is common. As has been mentioned in the previous subchapter, this number is actually very

²⁵⁰ Kirkos and Ellis, "Philando Castile Shooting: 18 Arrested as Thousands Protest Verdict."

²⁵¹ Circle.

²⁵² Burian, "Field Notes."

small compared to the overall population, and the number of police that use lethal force in any given year is quite low. What is more interesting is the second assumption: that police shootings are somehow animalistic, examples of senseless violence or “police brutality.” This may link to the term itself. Brutality is derived from the word ‘brutal,’ which Merriam-Webster defines as ‘suitable to one who lacks intelligence, sensitivity, or compassion: befitting a brute.’²⁵³ Brute is defined as ‘characteristic of an animal quality, action, or instinct.’²⁵⁴ Thus the term itself has connotations of “animal,” “unintelligent,” “compassionless,” and “insensitive.” When an action is framed like this, the actor comes to be perceived in an inhuman, animal, or sociopathic light.

This may be because, from this perspective, the use of lethal force is *never* justified. Informant Triangle summarizes this position:

‘I think, um, that it’s very, very, very rare that I would ever think it would be ok to shoot somebody. I[...] feel like it doesn’t matter if it’s suicide by cop, it doesn’t matter if the person has a gun, it doesn’t matter if the person has a knife. There, I think there’s still plenty of opportunity for the police to resolve that without killing the individual.’²⁵⁵

Informant Triangle argues that too often, the mindset of police officers is “‘We need to solve it now. If he or she doesn’t immediately listen to me, I’m gonna start shooting.’”²⁵⁶ Thus, Informant Triangle says that we too often see officers shouting at suspects to ““Drop the weapon!” or “Have your hands raised!” and if they don’t comply, there’s immediately shots fired.’²⁵⁷ So, from this perspective, even a relatively small number of deaths is too much, because the use of lethal force is almost never necessary, much less justified. This sets up a chain of equivalence that associates police officers with “brutes” and “serial killers,” and police use of force with “unjustified,” “unnecessary,” “brutality,” and “animalistic.”

5.2.3 – Benefit of the Doubt and Lack of Police Accountability

Despite the claim that the use of lethal force is never justified, very few officers ever seem to be arrested, charged, or convicted for wrongfully killing someone. To track officer related crimes and convictions, Philip Stinson, a criminologist at Bowling Green State University, created the Henry

²⁵³ Brutal, in *Merriam-Webster* (Online).

²⁵⁴ Brute, *ibid.*

²⁵⁵ Triangle.

²⁵⁶ *Ibid.*

²⁵⁷ *Ibid.*

A. Wallace Police Crime Database.²⁵⁸ According to Stinson's data 'from 2005 to 2014, only 48 on-duty officers have been charged for murder or manslaughter for the use of lethal force.'²⁵⁹ Even when charged, convictions are very rare. Stinson's data finds that '[s]ince 2005, no judge has ever convicted an officer of murder or manslaughter while using lethal force in the line of duty.'²⁶⁰ If the use of lethal force is so rarely justified, why is it that police are never held accountable?

To answer the question of why police officers are not often convicted for unnecessary use of lethal force, it is necessary to understand U.S. case law and the standards to which officers are held. Two U.S. Supreme Court Cases set the standards for judging police use of force: *Tennessee v. Garner* (1985) and *Graham v. Connor* (1989). In *Tennessee v. Garner*, the court concluded that lethal force 'may not be used unless it is necessary to prevent the escape [sic] and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.'²⁶¹ In *Graham v. Connor*, the standard of *objective reasonableness* was established. The decision reads:

'The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation.'²⁶²

Informant Triangle argues that these decisions give 'way too much latitude to the police' because 'if the officer is able to demonstrate that they feared for their life, the Supreme Court cases said, then they're allowed to shoot somebody.'²⁶³ There are several reasons that this may be problematic. The first problem relates to the standard of objective reasonableness outlined in *Graham v. Connor*. It is necessary to consider whether or not juries will question the reasonableness of an officer's decisions and actions. Informant Triangle argues that the public puts 'a stronger trust in a police officer's word over another's,' and that 'more often than not, police get the benefit of the doubt, more than another person.'²⁶⁴ Informant Silver, a defense attorney with

²⁵⁸ Philip Matthew Stinson, "The Henry A. Wallace Police Crime Database," (Online: Bowling Green State University, 2017).

²⁵⁹ Safia Samee Ali and William Sherman, "Why Police Officers Often Aren't Convicted for Using Lethal Force," *NBC News*, July 30, 2016.

²⁶⁰ *Ibid.*

²⁶¹ *Tennessee V. Garner*, United States Supreme Court, 83-1035 (March 27, 1985).

²⁶² *Graham V. Connor*, United States Supreme Court, 87-6571 (May 15, 1989).

²⁶³ Triangle.

²⁶⁴ *Ibid.*

experience defending police officers, agrees, and adds that ‘police officers have an advantage in going to trial because they’re police officers and jurors do not like to convict police officers.’²⁶⁵ This calls into question whether the criminal justice system is truly blind to the identity of the defendant, as Liberal conceptions of justice hold. When we combine the low threshold set by the U.S. Supreme Court with the public’s willingness to accept the word of a police officer, we can see how the criminal justice system actually benefits police officers, making holding them accountable and achieving some kind of justice difficult.

The second problem is that racial bias and stereotyping can play a role in threat perceptions. Recall that Black Americans, particularly men and boys, are often viewed as more aggressive. This may result in police officers being more likely to feel fear when interacting with Black Americans, which could explain why Black Americans are disproportionately represented in police use of lethal force, and it may make juries more sympathetic to an officer’s claim of feeling threatened in that situation. Informant Triangle explains that ‘when you talk about, “All they need to do is have fear,” then of course things like[...] implicit or explicit bias are going to come out.’²⁶⁶ The question then becomes ‘[w]ell, ok, are you scared because they’re Black, or are you scared because they’re a threat?’²⁶⁷ Critically, fear, much like bias, is difficult to prove, and juries are left with only the word of the officer, and apparently juries often trust an officer’s word.

Even the rationalist belief that body cameras will lead to more information which will lead to justice has been shown to be somewhat problematic. The case of Daniel Shaver from January 2016 provides an example. Shaver’s death was caught on the body camera of the officer who shot him. The video shows Shaver sobbing and literally begging for his life while crawling on his hands and knees toward a police officer who had been holding him at gun point and yelling a series of instructions at him for several minutes. While this incident was caught on the officer’s body camera, the officer involved was still acquitted of a second-degree murder charge.²⁶⁸ After watching this video, one has to wonder how this officer could have been acquitted. This case and others (see, for example, Samuel DuBose²⁶⁹) demonstrate that video evidence of officers engaged in what should objectively be considered unreasonable use of lethal force is not necessarily going to produce a

²⁶⁵ Silver.

²⁶⁶ Triangle.

²⁶⁷ Ibid.

²⁶⁸ Wesley Lowery, "Graphic Video Shows Daniel Shaver Sobbing and Begging Officer for His Life before 2016 Shooting," *The Washington Post*, December 8, 2017.

²⁶⁹ German Lopez, "The Failure of Police Body Cameras," *Vox*, July 21, 2017.

conviction. This is not to say that body cameras cannot be useful. For example, in Los Angeles, body cameras have recorded officers planting evidence on suspects, which ‘led the local prosecutor to drop dozens of cases involving the officers’ shown in the videos.²⁷⁰ Still, the information provided by body cameras does not seem to have guaranteed that justice prevails in all circumstances. At the very least, it is difficult to say that video evidence has consistently affected the standard to which police officers are held, or made juries more likely to question the objective reasonableness of their actions.

5.2.4 – Entangling Influences and Structural Issues

Even beyond biases and preferences that interfere with rational and fair decision making, according to the Social Discourse, the structure of the system also precludes the realization of justice as defined by the Liberal Discourse. For example, as Informant Triangle points out, the Bureau of Criminal Apprehension (BCA), which is, among other things, tasked with investigating cases of police misconduct ‘has almost always seemed to come out on the side of law enforcement... many times when [the ACLU] thought they shouldn’t have.’²⁷¹ Part of the reason is that ‘[t]he BCA is closely tied with law enforcement, [in] a number of ways,’ most importantly in that ‘the BCA is reliant on law enforcement departments employing them[...] in order to get their funding.’²⁷² Informant Triangle argues that because of this, it is unlikely ‘that the BCA could somehow be so independent that they’re going to[...] all of a sudden start to[...] challenge, and[...] hold it’s essential colleagues or organizations it relies on for work accountable.’²⁷³

Furthermore, Informants Teal and Triangle both agree that another problem is the power of police unions. Informant Teal directed me to a Washington Post report released in August of 2017, which found that since ‘2006, the nation’s largest police departments have fired at least 1,881 officers for misconduct that betrayed the public’s trust, from cheating on overtime to unjustified shootings.’²⁷⁴ However, the report notes that ‘departments have been forced to reinstate more than 450 officers after appeals required by union contracts.’²⁷⁵ In other words, almost a quarter (24%) of officers fired for misconduct have been brought back to work, including an ‘officer who sexually abused a 19-year-old [woman] in his patrol car,’ and another officer who had ‘shot and killed an

²⁷⁰ "An Lapd Officer Accidentally Filmed Himself Putting Cocaine in a Suspect’s Wallet," *Vox*, November 14, 2017.

²⁷¹ Triangle.

²⁷² *Ibid.*

²⁷³ *Ibid.*

²⁷⁴ Kimbriell Kelly, Wesley Lowery, and Steven Rich, "Fired/Rehired," *The Washington Post*, 3 August, 2017.

²⁷⁵ *Ibid.*

unarmed man.’²⁷⁶ Informant Teal argues that this has not been helpful for dealing with the problems faced by police departments. Because of this, Informant Triangle argues that ‘police unions are entirely too strong,’ and points to the arbitration process and the difficulties of firing a police officer.²⁷⁷

Informant Teal adds that on top of this, ‘there are plenty of examples where officers haven’t been truthful, or where organizations have covered things up that they shouldn’t have.’²⁷⁸ He sees this as deeply problematic. In his words, ‘we’re not doing ourselves any favors by allowing for those practices to continue...’²⁷⁹ Informant Triangle further adds that there is also a serious lack of professional oversight, since, unlike the bar association for lawyers, the Police Officer’s Standard and Training (POST) board ‘don’t see it as their job to investigate and to[...] take away somebody’s license’ if they have been repeatedly fired or found guilty of misconduct.²⁸⁰ In other words, the actual structure of the system is set up in such a way that it fails to provide oversight, and thus it fails to truly hold officers accountable for misconduct.

5.2.5 – Concluding Comments

As this subchapter has shown, the Social Discourse highlights how the Liberal construction of the justice system is faulty. Instead of linking “the criminal justice system” to “fair,” “just” or “unbiased,” the Social Discourse constructs the criminal justice system as “biased” toward police and therefore inherently “unjust.” Bias in favor of police officers exists on the level of individual attitudes, where police officers are given the benefit of the doubt and the reasonableness of their actions is unquestioned, and at a systemic level, where conflicts of interest and union protections insulate officers from accountability. In short, biases in society and structure make holding police officers accountable for misconduct difficult, if not impossible.

5.3 – Overdetermination and Liminality: A Community Discourse

5.3.1 – Introduction

This chapter has demonstrated that there is a significant divergence between the Liberal and the Social Discourses, both in terms of how the frequency of police killings is framed, and how they

²⁷⁶ Ibid.

²⁷⁷ Triangle.

²⁷⁸ Teal.

²⁷⁹ Ibid.

²⁸⁰ Triangle.

construct the justice system. Protests by organizations such as Black Lives Matter and Communities United against Police Brutality are manifestations of the discursive struggle to frame police use of force. The question now becomes, how can U.S. society peacefully negotiate a new discourse? How can we enter into a liminal space where new positions can be adopted and reforms implemented? This final subchapter seeks to provide some answers to this question. The subchapter begins by highlighting overdetermined individuals and liminal actors from my interviews. Then, I connect discussions of police use of lethal force to broader discussions about violence in the United States to provide a context for the conflict. Finally, I offer suggestions for a way forward, drawing on ideas from my informants both inside and outside of the police.

5.3.2 – Necessary Evils: Liminality and Overdetermination

On the subject of accountability, Informant Green, who was one of the most eager to assert that police officers were not doing things wrong and that due process provided justice, admits that there are ‘some officers[...] who seem to have shot and killed people and it looked like, well, that was a bad call on the officer’s part, but yet they’re very seldom held accountable for that judgement, too.’²⁸¹ This may constitute a moment of overdetermination, that is, a moment where he is positioned by two competing discourses. Here, he steps out of his position in the Liberal Discourses and recognizes that the system sometimes is not entirely fair. He clearly articulated this position because of my presence, adding after saying this ‘I’m trying to give you on the both sides [sic].’²⁸² In this case, as the researcher, I could be considered the liminal actor that enabled overdetermination, however briefly. He may have realized that I would be skeptical of what is frankly a rather dubious claim that holding police officers accountable for misconduct is not a problem and thus he added this statement. This may have been particularly relevant in this context because of the recent acquittal of the officer who shot Philando Castile, which many considered to be a case of an officer not being held accountable for making a “bad call.”

On the subject of police shootings, Informant Navy provided a nuanced, explanation of the controversy that seems to represent and evaluate both perspectives, making him a liminal actor. Informant Navy admits that not all shootings are justified. He acknowledges that, ‘[s]ome of them

²⁸¹ Green.

²⁸² Ibid.

are[...] criminal. Some of them are mistakes. Some of them are over-reaction because of fear, or misperception.’²⁸³ But this is not the end of the story. Informant Navy explains that:

‘[t]here is no such thing as an acceptable use of force when you view it. When you look at a perfectly legitimate, and even now you use the word necessary, use of police force, be it physical, be it deadly, it’s always something that’s fairly repugnant to look at, and people are seeing these things in media now, and because they find themselves repelled, they’re assuming that these things are not legitimate, or necessary action on the part of police.’²⁸⁴

This is an interesting insight. Here, Informant Navy links police use of force with seemingly conflicting signs: “unacceptable” and “repugnant,” but also “legitimate” and “necessary.” Informant Navy does not articulate these events as either purely unproblematic or purely brutality. Instead, he articulates them in a chain of equivalence that depicts police shootings as a sort of “necessary evil,” or perhaps more accurately, a “necessary tragedy.” This is an interesting moment of liminality. Navy expresses that he understands, and indeed agrees with, assertions that police use of force is “unacceptable” or “repugnant,” yet he also represents the idea that it *is* sometimes “necessary” or “legitimate.” Far from having the mindset of serial killers, my conversations with police officers made it very clear that the use of lethal force *is not* something that they take lightly. As Informant Navy told me: ‘I know a lot of police officers over the years who’ve been in deadly force situations. I know very few of them that didn’t deal with issues afterwards.’²⁸⁵ Critically, if we acknowledge that the use of lethal force is unacceptable, even when necessary, we acknowledge that it is important to start looking for ways to reduce its occurrence, or reduce the number of times when it is necessary.

5.3.3 – Understanding Violence and Fear

To do this it is necessary to understand violence in the United States, because this is the context in which police operate and make “split-second decisions” about whether or not to use lethal force. It is critical to understand that the United States as a whole is an unusually violent country. According to FBI statistics, in 2016 there were approximately 17,250 murders in the United States, with a murder rate of 5.3 per 100,000 people.²⁸⁶ Comparatively, in the same year the United

²⁸³ Navy.

²⁸⁴ Ibid.

²⁸⁵ Ibid.

²⁸⁶ “Crime in the United States, 2016: Murder,” in *Uniform Crime Report* (Federal Bureau of Investigation, 2017).

Kingdom had a murder rate of .99 per 100,000,²⁸⁷ and Australia had a rate of 1 per 100,000, which seems to have remained stable since 2014.²⁸⁸ Even Canada, relatively high compared to other countries, had a rate of 1.68 per 100,000.²⁸⁹ The deeper causes for the abnormally high murder rates in the United States are beyond the scope of this thesis, but gun ownership and gun culture certainly play a role.

Gun ownership is fairly common in the United States, at least relative to other countries. A survey by Pew Research Center, released in 2017, found that ‘three-in-ten American adults say they currently own a gun.’²⁹⁰ Furthermore, 72% of gun owners say that they own a pistol or a handgun (as opposed to a shotgun or a hunting rifle).²⁹¹ Interestingly, 67% of gun owners say that personal protection ‘is a major reason they personally own a gun.’²⁹² Whether or not these guns are useful for self-defense is a separate issue, but they certainly play a role in murders. In fact, ‘[g]un homicides are a common cause of death in the United States, killing about as many people as car crashes.’²⁹³ In 2016, of the 15,070 homicides in the United States for which data was available, 11,004 (73%) were committed using a firearm, most of them handguns.²⁹⁴

Perhaps because of this, police officers at times fear for their safety, something that Informant Black explicitly mentioned during our interview. He explains that there are cases of ‘cops being ambushed, being walked up and shot in their squad cars while they’re writing reports, [or] ambushed on the street by snipers.’²⁹⁵ According to reports from the National Law Enforcement Officers Memorial Fund, an average of 158 officers died each year between 2000 and 2017 (excluding 2001, where the terrorist attacks of September 11th likely produced an anomalous spike in deaths).²⁹⁶ While this only accounts for approximately 0.023% of police officers (using Time Magazine’s number of 680,000), it is still significantly more likely than the 0.0003039% of civilians killed by officers, and if citizens can be concerned about being killed by the police despite the very low probability, then we can at least try to understand why police officers might also be

²⁸⁷ Emma Wright, "Homicide," (Office for National Statistics, 2017).

²⁸⁸ "Homicide in Australia," Australian Institute of Criminology, <http://www.crimestats.aic.gov.au/copyright/>.

²⁸⁹ Jean-Denis David, "Homicide in Canada, 2016," (Statistics Canada, 2017).

²⁹⁰ Kim Parker et al., "America's Complex Relationship with Guns," (Pew Research Center, 2017).

²⁹¹ Ibid.

²⁹² Ibid.

²⁹³ Kevin Quealy and Margot Sanger-Katz, "Comparing Gun Deaths by Country: The U.S. Is in a Different World," *The New York Times*, June 13, 2016.

²⁹⁴ "Murder, by State, Types of Weapons, 2016 ", ed. Federal Bureau of Investigation (2017).

²⁹⁵ Black.

²⁹⁶ "Year-by-Year Breakdown of Law Enforcement Deaths Throughout U.S. History," ed. National Law Enforcement Officers Memorial Fund (2018).

concerned for their safety. Informant Triangle argues that this fear may position officers to be more likely to use force. She explains that: ‘an officer is more likely[...] to kill somebody[...] and to get that heightened way when they view every interaction as, “This person could kill me.”’²⁹⁷ Thus we are left with a situation of mutual fear, caused by high levels of violence and partially perpetuated by the presence of guns in the United States. People are afraid to be shot by the police, and the police are afraid to be shot by people. Yet, as a number of my informants said, at the end of the day, everyone just wants to get home safely. So, how can we ensure that this happens?

5.3.4 – A Way Forward

A number of steps could be taken to reduce the frequency with which police use lethal force, and make the system fairer when assessing whether or not the use of force was justified. Addressing the systemic problems discussed in sections 5.2.3 and 5.2.4, for example setting up an independent body to investigate police misconduct and weakening the power of unions, could be helpful for addressing problems of police accountability. However, while these may provide accountability after the fact, it is not clear that they will actually *prevent* misconduct or unnecessary use of force. Critical changes will need to be made to police practices and society to deal with this issue.

Informant Triangle calls for changes in police training that would make the use of de-escalation tactics more common. She believes that any situation can be resolved without the use of lethal force if police used de-escalation tactics, and applied the concept of ‘space and distance and time.’²⁹⁸ In her words: ‘if the officer were to back up, were to give time for the situation to resolve[...] if they were to assess the surroundings,’ they would use lethal force much less frequently.²⁹⁹ The goal, she says, is that police should be ‘taking two, three, four, five, six, seven, eight, nine, ten, however many minutes [they] need, thirty, to calm this person down.’³⁰⁰

She notes that such changes had taken place in the city of Camden, New Jersey. She explains that ‘as a result of... lack of money, and lawsuits by organizations like the ACLU,’ Camden, New Jersey ‘basically had to completely reform their police department.’³⁰¹ As a result, they saw a decreased number of complaints and, to her knowledge, no police shootings.³⁰² This is an approach that Informant Green agrees with. He explains that he tells officers who work with

²⁹⁷ Triangle.

²⁹⁸ Ibid.

²⁹⁹ Ibid.

³⁰⁰ Ibid.

³⁰¹ Ibid.

³⁰² Ibid.

him that ‘during normal operations and throughout the day, maybe you want to make a little more effort in explaining why you do the things that you do so they understand.’³⁰³ He argues that helping people understand why the police are doing what they are doing, instead of just demanding compliance can help reduce conflicts with the police.³⁰⁴ Likewise, Informant Navy mentions that much of this training is going on in Minnesota, where officers are learning that ‘if you communicate, work through time, let things settle, there will actually be fewer violent encounters.’³⁰⁵ He adds that ‘[w]e try to train our officers that, when confronted with a threat, when possible, take cover, contain the situation, and communicate.’³⁰⁶

Changing police practices to decrease the use of lethal force may be one way of improving relations between communities and the police, but reconstructing the very role of police on a discursive level may also by itself be a means to this end. Here, I take the role of the liminal actor to open up the third space and construct a new discourse, one that rearticulates the role of police as partners with the community in the public safety process.

It is important to note here that we have seen two competing constructions of policing. On the one hand is the Liberal Discourse, which constructs police as “enforcers of the law” there to provide, or *impose* “accountability” on an otherwise lawless public, with the assumption that if they were not there people would just be committing crimes because they would “get away with it.” Because of this, whatever actions they take are justified because they are providing order. On the other hand is the Social Discourse, which articulates police as “brutal terrorists” with the mindset of “serial killers.” For various reasons, both of these discourses are problematic. In terms of the Liberal Discourse, it has become apparent that the imposition of accountability via deterrence is an ineffective, if not counterproductive policy. Moreover, this kind of thinking may *position* police officers to be more likely to use excessive or unnecessary force. For an example of how this might work, we can think of the Stanford Prison Experiments.³⁰⁷ Yet looking at the Social Discourse, the statistics do not support the idea that they are serial killers, nor necessarily brutal. Furthermore, the use of the term “police terror” carries with it a particular set of connotations, associated with groups like ISIS or Al Qaeda. The use of these terms homogenizes a wide range

³⁰³ Green.

³⁰⁴ Ibid.

³⁰⁵ Navy.

³⁰⁶ Ibid.

³⁰⁷ “Demonstrating the Power of Social Situations Via a Simulated Prison Experiment,” (American Psychological Association, 2004).

of responsibilities and activities carried out by a diverse group of people, and demonizes (and thus alienates) the very people it will be necessary to work with to implement reforms. If we rearticulate police through a Community Discourse, we construct them as *partners* in public safety.

The first step for articulating this Community Discourse is to dissolve the discursive construction of the police and the community as respective “Others.” Shenna Chestnut Greitens notes that social distance between police and the community makes violence easier and more likely to occur. She explains that ‘[e]xclusivity creates incentives for violence by making members of the internal security apparatus into social outsiders and turning repression into a question of violence against an out-group rather than fellow in-group members.’³⁰⁸ She adds that ‘members of the security apparatus who lack regular interaction or social identification with the people they are policing are likely to perceive a lower social and psychological cost to violence’³⁰⁹ Thus, breaking down the dichotomy between “police” and “community” may help to reduce instances of police use of force.

The next step is to rearticulate police and the community as *partners* in providing public safety. Community policing may provide the key to this construction. A U.S. Department of Justice, Bureau of Justice Assistance brief on community policing explains that:

‘Community policing is, in essence, a collaboration between the police and the community that identifies and solves community problems. With the police no longer the sole guardians of law and order, all members of the community become active allies in the effort to enhance the safety and quality of neighborhoods.’³¹⁰

The report goes on to add that ‘Trust is the value that underlies and links the components of community partnership and problem solving’ and ‘will allow police to form close relationships with the community that will produce solid achievements,’³¹¹ and adds that ‘[e]ffective community policing depends on optimizing positive contact between patrol officers and community members.’³¹²

In short, this discourse constructs a chain of equivalence that links “policing” with “trust,” “partnership” and, critically, “community,” which is the nodal point of this discourse. This can

³⁰⁸ Sheen Chestnut Greitens, *Dictators and Their Secret Police: Coercive Institutions and State Violence* (Cambridge: Cambridge University Press, 2016), 51-52.

³⁰⁹ *Ibid.*, 52.

³¹⁰ “Understanding Community Policing: A Framework for Action,” (Bureau of Justice Assistance, 1994), VII.

³¹¹ *Ibid.*

³¹² *Ibid.*, 14.

help close the gap between police and communities, breaking down the dichotomized other. The evidence suggests that this is not only more effective for reducing crime, but also makes police less likely to use lethal force. Thus, improving police–community relations might, by itself, be a method of reducing violence and improving public safety. It is also important to note that more positive contact between police and minority communities may help to reduce stereotypes and racial biases, following Allport’s Contact Theory.³¹³

Fortunately, this Discourse is not merely hypothetical, and community policing has been adopted by a number of police departments with positive results. Informant Triangle told me that Columbia Heights, Minnesota had implemented changes like this and saw dramatic improvements. She explains that with a growing population of immigrants and People of Color, Columbia Heights was ‘seeing a lot of negative interactions with the police, and they’re like, “That’s not the community we want to be,” and they made a decision.’³¹⁴ She says that the Columbia Heights police department decided, “‘We don’t want to be a police department that[...] has a reputation for being assholes.’[...] And you can see the difference there.’³¹⁵ A 2013 article by a local newspaper describes how the Columbia Heights police chief sent officers ‘into school gymnasiums, storefronts and church potlucks,’ and ‘started more than 10 ongoing community policing partnerships.’³¹⁶ As a result, ‘the city’s crime rate dropped to a 25-year low.’³¹⁷ Informant Triangle adds that Columbia Heights has also ‘seen a decrease of, like, 60% of complaints about the police department in the last four or five years.’³¹⁸ Informant Teal discussed similar changes in his department, and, critically, he noted that these reforms are not unique. In his words: ‘Nothing that we’re doing is novel. We all steal from one another.’³¹⁹ The trends indicate that positive developments are taking place.

Of course, not all the developments are positive. As of May 3, 387 people have been killed by police in 2018.³²⁰ If the remaining nine months see the same number of uses of lethal force, the police are on track to kill approximately 1,300 people, around three hundred more than the previous

³¹³ Thomas Pettigrew, "Intergroup Contact Theory," *Annual Review of Psychology* 49 (1998).

³¹⁴ Triangle.

³¹⁵ Ibid.

³¹⁶ Shannon Prather, "Columbia Heights Police Officers Get out into the Community," *Star Tribune*, January 15, 2013.

³¹⁷ Ibid.

³¹⁸ Triangle.

³¹⁹ Teal.

³²⁰ "Police Shootings 2018 Database," in *The Washington Post* (2018).

three years. More alarming is the increasing militarization of the police, who are allowed to purchase surplus military equipment, including grenade launchers, armored vehicles and bayonets (President Obama made this illegal in 2015, but this prohibition was reversed in August of 2017 by Donald Trump).³²¹ These trends, and other instances of police misconduct (for example, abuse of civil asset forfeiture, or aggressive execution of weak search warrants³²²) continue to be a problem, and further research on these topics is warranted.

5.4 – Concluding Comments

My police informants, positioned within the Liberal Discourse, construct police use of force, lethal or otherwise, as a rare event, almost always justified by the circumstances. On the rare occasion when a police officer's conduct is in question, the justice system is able to come to a just decision that people should accept. That is why we have due process, after all. In contrast to this, some of my informants took the position that police shootings were *never* justified. Moreover, as several of my informants (e.g. Triangle, Silver) noted, social and structural factors make holding officers accountable for misconduct very difficult. Because of its emphasis on broader social and structural patterns, this position is part of the Social Discourse.

Both of these Discourses can contribute to the discussion on police conduct. While police use of lethal force is relatively rare, and occasions when they use it “unnecessarily” are rarer still, this does not mean that it is necessarily not a problem. There are a number of occasions on which juries and the justice system seemed to have failed to critically question a police officer's word, or otherwise failed to hold the officer accountable for what could have been considered objectively *unreasonable* behavior. Changes to the existing legal structure may be helpful, but may also fail to address the underlying factors that cause police to use force, particularly lethal force. Changes to police practices may better equip police to handle these situations. More critically, a new discursive construction of the role of policing, which defines their role as partners with the community in improving public safety, may improve relations with the community and create an atmosphere of trust and reduce concerns for safety.

³²¹ Adam Goldman, "Trump Reverses Restrictions on Military Hardware for Police," *New York Times*, August 28, 2017.

³²² Ryan Devereaux, "'Do Not Resist': The Police Militarization Documentary Everyone Should See," *The Intercept*, October 12, 2016.

Chapter 6 – Conclusion

6.1 – A Liminal Space

Early on a cold, December morning in 2017, a group of people gathered in a local coffee establishment in a city in Minnesota to talk about policing, race, and criminal justice. There were several police chiefs present, all of them White men, and a group of middle aged Black women, all professionals in different fields. There were usually more of them, they told me, but this early in the morning, maybe some of them had decided to sleep in. They chatted for a while, talking about new jobs and renovations being done to houses, while everyone ordered their drinks, but eventually they got down to business. They began by discussing the recent shooting of Justine Damond, who had been killed by a police officer in the city of Minneapolis, Minnesota on July, 15 of that year (while I was conducting my fieldwork).

Damond had called the police to report a possible sexual assault in the alley by her house. When the officers showed up, Damond was outside waiting for them, apparently to direct them to the source of the disturbance. According to the officer in the driver's seat, he 'was startled by a loud noise just before Damond approached the open driver's side window' and at this point the other officer, sitting in the passenger seat, fired across his partner, through the driver's side window, hitting and killing Damond. The officer has since been charged with third-degree murder, though at the time of this writing, the trial is yet to take place.³²³

The conversation in this coffee shop on this December morning was civil, friendly, even. The women listened as the chiefs explained to them about the process of investigation that would take place. They discussed the inevitable jury trial, and speculated about what they would decide. They all chatted about the complexities of hiring qualified police officers, which was becoming more difficult as fewer and fewer qualified people wanted to become police officers, and they considered ways to address this issue.

The organizer of the meeting was one of my informants. He explained to me via email that the meetings started when a 'resident[...] sent me an email asking whether it was safe for her family to travel [through the city I work in...] To better answer her concerns, I invited her in for a conversation where we talked about various social issues that were in the news i.e.

³²³ Daniella Silva and Corky Siemaszo, "Officer Who Fatally Shot Justine Damond Is Charged with Murder," *NBC News*, March 20, 2018.

police/community relations etc.³²⁴ From there, they began organizing regular meetings. After my initial interview with this informant, I expressed interest in attending and he extended the invitation for me to come to the December meeting when I was back from Norway for winter break.

Naturally, the attendees asked me about what I was doing there. I explained to them that I was a student from Norway looking into policing and community relations. Upon hearing this, they excitedly told me about the meeting I was attending. This group meets once every other month for ‘open dialogue’ with ‘no hidden agenda.’ In fact, they told me that there was no agenda at all. It was just a place for people to get together and have coffee and talk. As they explained to me, the purpose was ‘developing relations and bridging gaps.’ One woman told me that while they did not always agree, the important thing was having respect and seeing other perspectives. Another attendee added that in a lot of other settings ‘you already know your position.’ ‘Here,’ she explained, ‘it’s not like that.’ It seemed that a liminal space had been created here, a space where ‘entities divided by a barrier are forced to meet and interact,’³²⁵ a space where barriers are dissolved and new positions can be negotiated and constructed.

6.2 – Summary

The liminal space I discovered in that coffee shop in December is a live representation of what I have attempted to create in this thesis: a space where different perspectives can be discussed and critically analyzed and new solutions can be presented. My thesis has analyzed the Liberal and the Social Discourses in three different subject areas: causes of crime, bias, and police misconduct.

When discussing causes of crime, I have illustrated how the Liberal Discourse applies the concept of the rational individual and rational choice, positioning police and policymakers to implement deterrence-based approaches to crime control that seem to be largely ineffective. On the other hand, I noted that the Social Discourse points to environmental factors or factors outside of the individual’s control, such as poor quality education or a lack of proper healthcare for vulnerable individuals. This positions people to argue for reforms to a broad range of social programs. I suggested that a recognition of the failures of deterrence and a closer examination of the not-so-rational causes of crime, such as mental illness and drug addiction, may help the U.S. shift toward more effective public safety solutions.

³²⁴ In order to avoid revealing the identity of this informant, the code name has been withheld.

³²⁵ Pötzsch, "Challenging the Border as Barrier: Liminality in Terrence Malick’s the Thin Red Line," 72.

On the subject of bias, I observed that the Liberal Discourse deemphasizes race and instead attributes seemingly biased policing to profiling based on behavior and a “sixth sense” of crime. In contrast, the Social Discourse highlights clear patterns in material reality that suggest that race continues to influence the criminal justice system from the moment an individual first interacts with a police officer to the sentence passed down in court. This Discourse emphasizes the salience of race as a social category that has a noticeable impact on an individual’s life, particularly with regard to the criminal justice system. I suggested that the adoption of a third, liminal discourse with a nuanced understanding of the connections between race, class, poverty, and crime may help U.S. police, policymakers, and society come to terms with lingering racism in the United States and address racial injustice in the criminal justice system and society as a whole.

On the final subject of police use of force, I examined how the Liberal Discourse constructs police use of force, lethal or otherwise, as a rare event, almost always justified by the circumstances. On the rare occasion when a police officer’s conduct is in question, the justice system is able to come to a just decision that people should accept. The Social Discourse emphasizes broader social and structural factors that make holding officers accountable for misconduct very difficult. Changes to the existing legal structure may be helpful for reducing these problems, along with changes to police practices. Furthermore, reconstructing the role of police from imposers of accountability to partners in providing public safety through the implementation of community policing may help avoid problems before they begin and contribute to more effective and less violent policing.

6.3 – What Now?

6.3.1 – Reforms and Liminal Spaces

This thesis is just one part (and not a very big part) of a much larger discussion that is taking place in U.S. society, one that is long overdue. Fortunately, as the group meeting that I attended in December shows, the discussion is happening. And it is not happening only here. For example, in 2017 in Wichita, Kansas, more than 800 people turned up for a picnic jointly hosted by Black Lives Matter and the city police department. The picnic was an ‘opportunity to have open conversations with law enforcement.’³²⁶ A.J. Baohannon, a Black Lives Matter organizer, explained: ‘First thing

³²⁶ Elyse Wanshel, "Black Lives Matter Protest Becomes Bbq and Real Talk with Police," *Huffington Post*, July 25, 2016.

we want to do is break that boundary and break that barrier, the second thing we want to do is start that conversation.’³²⁷ These liminal spaces are an important step in the peace process and they should be encouraged.

Of course, if we want to promote a more peaceful and just society, talking is not enough. Serious changes need to be made to police practices, the criminal justice system, and U.S. society as a whole. Education inequality must be addressed if Black Americans living in poverty have any hope of improving their lives. There must be better funding for treatment programs for mental illnesses and drug addiction and the War on Drugs should probably come to an end. These reforms could prevent a lot of crimes and save a lot of lives. Community policing should be paired with more training in de-escalation tactics to reduce incidence of police use of force, both lethal and non-lethal, and prevent other forms of misconduct. These are just some of the reforms that should take place to make the United States a more peaceful and just society for all people, and some of them already are happening, but more progress still needs to be made.

6.3.2 – Further Research

While I have endeavored to explore these topics in as much detail as possible, there are inevitably things that must be left out. Further research can and should be conducted on a number of topics. First, much of my focus was on the interactions between police and Black Americans. More attention could be given to interactions with other minority groups, especially Hispanic Americans (both immigrants and non-immigrants) and Muslim Americans. Second, the trend toward privatizing the U.S. prison system and the growth of the prison-industrial-complex is an important (and many would say, alarming) trend in U.S. criminal justice. An analysis of the discourse behind this trend, for example how the Liberal Discourse and “soft on crime” rhetoric is used to support or justify this move, is clearly warranted. More research could also be done on jury decision making, both regarding police use of force and other cases. It would be interesting to examine how the race, profession, and/or gender of the victim and/or the accused affect jury perceptions of guilt or innocence, and what role the discursive constructions of particular groups plays in this process. Excessive and unnecessary uses of non-lethal force and other forms of misconduct were not covered fully in this thesis, and additional research of these topics and the way they are discursively framed would shed light on this important subject. Further research could also be done on the way

³²⁷ Ibid.

that the discursive construction of the criminal justice system positions law enforcement officials in such a way that abuse become inevitable, drawing on, for example, the Stanford Prison Experiments. Finally, the regular use of military equipment by the police is a concerning trend that should be carefully and critically examined. Though it is beyond the scope of this thesis, I would be curious to see if a sort of Police-Soldier Discourse was being constructed in which “the public” becomes linked to “the enemy,” “the neighborhood” with “warzone,” and “police officer” with “soldier.”

6.4 – Concluding Comments

This thesis does not contain the “Truth.” It is not the final word on policing, race, racism, or criminal justice. It is not supposed to be. These are complex topics, and there are certainly more than two perspectives on them. What I have attempted to do is present a reflection on the discursive constructions that frame discussions about these topics in the United States. My hope is that this thesis can encourage people to critically reflect on their positions. Perhaps it will confirm what they already know. Perhaps it will make them angry. Or perhaps it will encourage a shift, large or small, that can bring about the change that is necessary to make the criminal justice system, and U.S. society, just a little more peaceful.

Works Cited

Merriam-Webster. Online.

- Ackerman, Spencer. "Homan Square Revealed: How Chicago Police 'Disappeared' 7,000 People." *The Guardian*, 19 October 2015.
- Ahmad, Janice, and Trqina Emeka. "Rational Choice Theory." *The Encyclopedia of Criminology and Criminal Justice* (2014): 1-5.
- Aiken, Joshua. "Era of Mass Expansion: Why State Officials Should Fight Jail Growth." *Prison Policy Initiative* (2017).
- Akers, Ronald. "Rational Choice, Deterrence, and Social Learning Theory in Criminology: The Path Not Taken." *Journal of Criminal Law and Criminology* 81, no. 3 (1990): 653-76.
- "Alcohol, Drugs and Crime." *National Council on Alcoholism and Drug Dependence, Inc.* (2015).
- Ali, Safia Samee, and William Sherman. "Why Police Officers Often Aren't Convicted for Using Lethal Force." *NBC News*, July 30, 2016.
- "Arrests by Race." Federal Bureau of Investigation, 2012.
- Baker, Bruce. "Does Money Matter in Education." *Albert Shanker Institute* (2016).
- Black, Informant. By Matthew Burian (July, 2017).
- Blow, Charles. "Stop Playing the 'Race Card' Card." *The New York Times*, March 19 2015.
- Blue, Informant. By Matthew Burian (July, 2017).
- Bonczar, Thomas. "Prevalence of Imprisonment in the U.S. Population, 1974-2001." *Bureau of Justice Statistics* (2003).
- Borden, Tess, Brian Root, and Maya Goldman. "Every 25 Seconds: The Human Toll of Criminalizing Drug Use in the United States." *Human Rights Watch* (2016).
- Briggs, Charles. "Interviewing, Power/Knowledge, and Social Inequality." Chap. 24 In *Inside Interviewing: New Lenses, New Concerns*, edited by James Holstein and Jaber Gubrium, 495-506: Sage, 2003.
- Bryman, Alan. *Social Research Methods*. 5th ed. Oxford: Oxford University Press, 2016.
- Burian, Matthew. "Field Notes."
- Chai, Sun-Ki. *Choosing an Identity: A General Model of Preference and Belief Formation*. Michigan: University of Michigan Press, 2001.
- Circle, Informant. By Matthew Burian (July, 2017).
- Copeland, Mary Shawn. *Enfleshing Freedom: Body, Race, and Being*. Fortress Press, 2010.
- "Crime in the United States, 2016: Murder." *Federal Bureau of Investigation* (2017).
- Cruikshank, Jørn. "The Role of Qualitative Interviews in Discourse Theory ". *Critical Approaches to Discourse Analysis across Disciplines* 6, no. 1 (2012): 38-52.
- David, Jean-Denis. "Homicide in Canada, 2016." *Statistics Canada* (2017).
- DeBaun, Bill, and Martens Roc. "Saving Futures, Saving Dollars: The Impact of Education on Crime Reduction and Earnings." *Alliance for Excellent Education* (2013).
- Demby, Gene. "What We See in the Eric Garner Video, and What We Don't." *National Public Radio*, July 29, 2014.
- "Demographic Differences in Sentencing: An Update to the 2012 Booker Report." *United States Sentencing Commission* (2017).
- "Demonstrating the Power of Social Situations Via a Simulated Prison Experiment." *American Psychological Association* (2004).

Devereaux, Ryan. "'Do Not Resist': The Police Militarization Documentary Everyone Should See." *The Intercept*, October 12, 2016.

Durose, Matthew, Alexia Cooper, and Howard Snyder. "Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010." *U.S. Department of Justice* (2014).

DuVernay, Ava. "13th." Netflix, 2016.

"Fact Sheet: Trends in U.S. Corrections." *The Sentencing Project* (2017).

Fajnzylber, Pablo, Daniel Lederman, and Norman Loayza. "Inequality and Violent Crime." *The Journal of Law & Economics* 45, no. 1 (2002): 1-39.

"The Federal Drug Control Budget: New Rhetoric, Same Failed Drug War." *Drug Policy Alliance* (2015).

Ferguson, H., S. Bovaird, and M. Mueller. "The Impact of Poverty on Educational Outcomes for Children. ." *Paediatr Child Health* 12, no. 8 (2007): 701-06.

Florini, Sarah. "This Week in Blackness, the George Zimmerman Acquittal, and the Production of a Networked Collective Identity." *New Media & Society* 19, no. 3 (2017): 439-54.

Fryer, Roland G. "An Empirical Analysis of Racial Differences in Police Use of Force." *National Bureau of Economic Research: Working Paper*, no. 22399 (January, 2018).

Gayle, Damien. "Arrest of Two Black Men at Starbucks for 'Trespassing' Sparks Protests." *The Guardian*, April 16, 2018.

Gelb, Adam, Ryan King, and Felicity Rose. "Time Served: The High Cost, Low Return of Longer Prison Terms." *The Pew Center on the States* (2012).

Gold, Informant. By Matthew Burian (July, 2015).

Goldman, Adam. "Trump Reverses Restrictions on Military Hardware for Police." *New York Times*, August 28, 2017.

Graham V. Connor, United States Supreme Court, 87-6571 (May 15, 1989).

Gramlich, John. "The Gap between the Number of Blacks and Whites in Prison Is Shrinking." *Pew Research Center* (2018).

Green, Informant. By Matthew Burian (July, 2017).

Greitens, Sheen Chestnut. *Dictators and Their Secret Police: Coercive Institutions and State Violence*. Cambridge: Cambridge University Press, 2016.

Hagedorn, John. *A World of Gangs: Armed Young Men and Gangsta Culture*. Minnesota: University of Minnesota Press, 2008.

Harris, Casey, Darrell Steffensmeier, Jeffrey Ulmer, and Noah Painter-Davis. "Are Blacks and Hispanics Disproportionately Incarcerated Relative to Their Arrests? Racial and Ethnic Disproportionality between Arrest and Incarceration." *Race and Social Problems* 1, no. 4 (2009): 187-99.

Helmore, Kristin. "Racism: A Main Cause of Innercity Poverty." *The Christian Science Monitor*, 1986.

Hochschild, Arlie Russell. *Strangers in Their Own Land: Anger and Mourning on the American Right*. The New Press, 2016.

"Homicide in Australia." Australian Institute of Criminology, <http://www.crimestats.aic.gov.au/copyright/>.

James, Doris, and Lauren Glaze. "Mental Health Problems of Prison and Jail Inmates." *Department of Justice* (2006).

Jørgensen, Marianne, and Louise Phillips. *Discourse Analysis as Theory and Method*. SAGE Publications, 2011.

Kelling, George, and James Wilson. "Broken Windows: The Police and Neighborhood Safety." *The Atlantic*, March, 1982.

- Kelly, Kimbriell, Wesley Lowery, and Steven Rich. "Fired/Rehired." *The Washington Post*, 3 August, 2017.
- Kennedy, Merrit. "Hundreds Protest after Minnesota Officer Found Not Guilty in Philando Castile Death." *National Public Radio*, June 16, 2017.
- Kindy, Kimberly, Marc Fisher, and Julie Tate. "A Year of Reckoning: Police Fatally Shoot Nearly 1,000." *The Washington Post*, 26 December, 2015.
- Kirkos, Bill, and Raph Ellis. "Philando Castile Shooting: 18 Arrested as Thousands Protest Verdict." *CNN*, June 17, 2017.
- Knox, Bradley A. "The Visual Rhetoric of Lady Justice: Understanding Jurisprudence through 'Metonymic Tokens'." *Inquiries Journal/Student Pulse* 6, no. 05 (2014).
- Kvale, Steinar, and Svend Brinkmann. *Interviews: Learning the Craft of Qualitative Research Interviewing*. Second ed.: Sage, 2009.
- Laclau, Ernesto, and Chantal Mouffe. *Hegemony and Socialist Strategy: Towards a Radical Democratic Politics*. London and Brooklyn: Verso, 1985.
- Leachman, Michael, Nick Albares, Kathleen Masterson, and Marlana Wallace. "Most States Have Cut School Funding, and Some Continue Cutting." *Center on Budget and Policy Priorities* (2016).
- Lee, Raymond. *Doing Research on Sensitive Topics*. Sage, 1993.
- Lehning, Percy. "Liberalism and Capabilities: Theories of Justice and the Neutral State." *Social Justice Research* 4, no. 3 (1990): 187-213.
- Lochner, Lance, and Enrico Moretti. "The Effect of Education on Crime: Evidence from Prison Inmates, Arrests, and Self-Reports." *American Economic Review* 94, no. 1 (2004).
- Black's Law Dictionary*. Fifth ed. St. Paul, Minnesota: West Publishing Company, 1979.
- Lopez, German. "The Failure of Police Body Cameras." *Vox*, July 21, 2017.
- . "An Lapid Officer Accidentally Filmed Himself Putting Cocaine in a Suspect's Wallet." *Vox*, November 14, 2017.
- Lowery, Wesley. "Aren't More White People Than Black People Killed by Police? Yes, but No." *The Washington Post*, 2016.
- . "Graphic Video Shows Daniel Shaver Sobbing and Begging Officer for His Life before 2016 Shooting." *The Washington Post*, December 8, 2017.
- Mauer, Marc. "The Endurance of Racial Disparity in the Criminal Justice System." In *Policing the Black Man*, edited by Angela Davis. New York: Pantheon Books, 2017.
- McDonald-Hutchins, Renée. "Racial Profiling: The Law, the Policy, and the Practice ". In *Policing the Black Man*, edited by Angela Davis, 2017.
- "Mental Illness." Mayo Clinic, 2015.
- "Murder, by State, Types of Weapons, 2016 ". edited by Federal Bureau of Investigation, 2017.
- Navy, Informant. By Matthew Burian (July, 2017).
- Nolan, Pat. "Conservative and Liberals Join Together for Criminal Justice Reforms." *Huffington Post*, July 13, 2015.
- "On Views of Race and Inequality, Blacks and Whites Are Worlds Apart." *Pew Research Center* (2016).
- "Opinion: Liberals Go Soft on Crime--Again: Interview of Dan Henninger by Mary Kissel." *Wall Street Journal*, <https://www.wsj.com/video/opinion-liberals-go-soft-on-crime-again/41361882-4AB5-4CC6-B551-4724C0559B83.html>.
- Osher, Fred. "We Need Better Funding for Mental Health Services." *The New York Times*, May 9, 2016.

Parker, Kim, Juliana Menasce Horowitz, Ruth Igielnik, Baxter Oliphant, and Anna Brown. "America's Complex Relationship with Guns." *Pew Research Center* (2017).

Pettigrew, Thomas. "Intergroup Contact Theory." *Annual Review of Psychology* 49 (1998): 65-85.

"Police Shootings 2015 Database." In *The Washington Post*, 2015.

"Police Shootings 2016 Database." In *The Washington Post*, 2016.

"Police Shootings 2017 Database." In *The Washington Posts*, 2017.

"Police Shootings 2018 Database." In *The Washington Post*, 2018.

"Poverty Rate by Race/Ethnicity." The Henry J. Kaiser Family Foundation.

Prather, Shannon. "Columbia Heights Police Officers Get out into the Community." *Star Tribune*, January 15, 2013.

"Prison Time Served and Recidivism." *The Pew Charitable Trusts* (2013).

Purple, Informant. By Matthew Burian (July, 2017).

Pötzsch, Holger. "Challenging the Border as Barrier: Liminality in Terrence Malick's the Thin Red Line." *Journal of Borderlands Studies* 25, no. 1 (2010): 67-80.

Quealy, Kevin, and Margot Sanger-Katz. "Comparing Gun Deaths by Country: The U.S. Is in a Different World." *The New York Times*, June 13, 2016.

"Quickfacts: New York." United States Census Bureau, <https://www.census.gov/quickfacts/NY>.

Quillian, Lincoln, Devah Pager, Ole Hexel, and Arnfinn H. Midtbøen. "Meta-Analysis of Field Experiments Shows No Change in Racial Discrimination in Hiring over Time." *Proceedings of the National Academy of Sciences* 114, no. 41 (2017): 10870-75.

"Racial Profiling: Definition." American Civil Liberties Union.

Raphael, Steven, and Michael Stoll. "A New Approach to Reducing Incarceration While Maintaining Low Rates of Crime." *The Hamilton Project* (2014).

Red, Informant. By Matthew Burian (July, 2017).

Regnery, Alfred. "Why Are Liberals Anxious to Free Violent Criminals from Prison?" *Breitbart*, May 16, 2016.

Rumberger, Russell. "Poverty and High School Dropouts: The Impact of Family and Community Poverty on High School Dropouts." *American Psychological Association* (2013).

Rutherford, Jonathan. "Third Space: Interview with Homi Bhabha." In *Identity: Community, Culture, Difference*, edited by Jonathan Rutherford, 207-21. London: Lawrence & Wishart, 1990.

Ryan, Camille, and Kurt Bauman. "Educational Attainment in the United States: 2015." (2016).

Silva, Daniella, and Corky Siemaszo. "Officer Who Fatally Shot Justine Damond Is Charged with Murder." *NBC News*, March 20, 2018.

Silver, Informant. By Matthew Burian (July, 2017).

Smith, Mitch. "Minnesota Officer Acquitted in Killing of Philando Castile." *The New York Times*, June 16, 2017.

Spatig-Amerikaner, Ary. "Unequal Education: Federal Loophole Enables Lower Spending on Students of Color." *Center for American Progress* (2012).

Stewart, Jenny. "Rational Choice Theory, Public Policy and the Liberal State." *Policy Sciences* 26, no. 4 (1993): 317-30.

Stinson, Philip Matthew. "The Henry A. Wallace Police Crime Database." Online: Bowling Green State University, 2017.

Stoddart, Mark. "Ideology, Hegemony, Discourse: A Critical Review of Theories of Knowledge and Power." *Social Thought & Research* 28 (2007): 191-225.

Swanson, Ana. "A Shocking Number of Mentally Ill Americans End up in Prison Instead of Treatment." *The Washington Post*, April 30, 2015.

Teal, Informant. By Matthew Burian (July, 2017).

Tennessee V. Garner, United States Supreme Court, 83-1035 (March 27, 1985).

Tirado, Francisco, and Ana Gálvez. "Positioning Theory and Discourse Analysis: Some Tools for Social Interaction Analysis." *Forum: Qualitative Social Research* 8, no. 2 (2007).

Triangle, Informant. By Matthew Burian (July, 2017).

Turner, Cory, Reema Khrais, Tim Lloyd, Alexandra Olgin, Laura Isensee, Becky Vevea, and Dan Carsen. "Why America's Schools Have a Money Problem." *National Public Radio*, April 18, 2016.

Turner, Margery Austin, Rob Santos, Diane K. Levy, Doug Wissoker, Claudia Aranda, and Rob Pitingolo. "Housing Discrimination against Racial and Ethnic Minorities 2012: Executive Summary." *The Urban Institute* (2013).

"Understanding Community Policing: A Framework for Action." *Bureau of Justice Assistance* (1994).

Vick, Karl. "What It's Like to Be a Cop in America: One Year after Ferguson." *Time*, August 24, 2015.

Wanshel, Elyse. "Black Lives Matter Protest Becomes Bbq and Real Talk with Police." *Huffington Post*, July 25, 2016.

Welch, Kelly. "Black Criminal Stereotypes and Racial Profiling." *Journal Of Contemporary Criminal Justice* 23, no. 3 (2007): 276-88.

White, Gillian. "The Data Are Damning: How Race Influences School Funding." *The Atlantic*, September 30, 2015.

White, Martha. "Locked-in Profits: The U.S. Prison Industry, by the Numbers." *NBC News*, November 2, 2015.

White, Ruth. "The Race Card: The Scariest Card in the Deck." *Psychology Today*, November 20, 2012.

Whitehead, John. "Jailing Americans for Profit: The Rise of the Prison Industrial Complex." *Huffington Post*, October 4, 2012.

Wilson, Valerie, and William Rodgers. "Black-White Wage Gaps Expand with Rising Wage Inequality." *Economic Policy Institute* (2016).

Wright, Emma. "Homicide." *Office for National Statistics* (2017).

Wright, Valerie. "Deterrence in Criminal Justice: Evaluating Certainty Vs. Severity of Punishment " *The Sentencing Project* (2010).

"Year-by-Year Breakdown of Law Enforcement Deaths Throughout U.S. History." edited by National Law Enforcement Officers Memorial Fund, 2018.

Appendix

Interview Guide for Police Informants

Introduction:

Thank you very much for agreeing to an interview with me.

As I mentioned earlier, I'm conducting this interview as part of a series of interviews for my Master's thesis in Peace and Conflict Transformation at the University of Tromsø in Norway.

My thesis is trying to examine the methods and challenges of modern policing in Minnesota and what is being done, or needs to be done to meet these challenges.

My questions are all asking for your own opinion and experiences, and I am not expecting that you will be speaking for the entirety of Minnesota's law enforcement community, or the law enforcement community as a whole.

With your permission, this interview will be recorded. I will be the only one that listens to the recording, and transcripts will be anonymized.

You have the right to withdraw from this project at any time. At that point, all information you have given will be destroyed.

Do you have any questions or concerns before we begin?

Questions

What motivated you to work in law enforcement?

Can you describe the process that you had to go through to get to this position?

PROMPT: Application, screening, training, etc.

What would you say is the main purpose of policing?

PROMPT: Crime prevention? Apprehension?

FOLLOW UP: (IF THE MENTION SEVERAL THINGS) How would you rank the importance of these things? Why would you rank them that way?

What are the most common kinds of crime in this area?

FOLLOW UP: What kinds of crime are the biggest threat?

FOLLOW UP: Do you think that crime in the Twin Cities is accurately portrayed in local media?

PROMPT: Do they perhaps over emphasize certain crimes?

In your experience, what are some of the major causes of crime in America in general, and Minnesota in particular? Especially violent crime.

PROMPT: Inequality? Poverty? Bad decision making? Armed society?

How would you recommend dealing with those causes?

What do you feel are the major challenges facing law enforcement (and police departments in particular) in the coming years?

PROMPT: Opioid Crisis, Gun Violence, Gang Violence, Poverty...

Do you feel like these challenges are well understood by the wider community? Do you think that most people outside of law enforcement are aware of these challenges?

FOLLOW UP: Do you think that most people are sympathetic to your concerns?

Do you think that these concerns and voices of police in Minnesota have been fairly represented in news media?

FOLLOW UP: Which outlets have been more accurate? Which haven't?

FOLLOW UP: Why do think that is? In what way are they more or less accurate or fair?

How does law enforcement work to deal with these challenges?

FOLLOW UP: Who do you work with to face these challenges?

FOLLOW UP: Do you think that these efforts are enough?

FOLLOW UP: Are there any changes that you would like to see implemented?

PROMPT: In law, society, or in police practices?

Are you receiving support for other organizations or groups in tackling these challenges?

PROMPT: The state?

FOLLOW UP: (IF YES) What kind of support, and is it helpful?

Conclusion

Are there any other thoughts you would like to share with me, before we conclude?

All right, well, thank you very much for your time. Within the next couple of days, I will be typing up a transcript of this interview. I can send it to you when I am finished and you can let me know if you have any further comments then. Otherwise, feel free to get in touch with my at any time if you have more to add!

Interview Guide for Informant Triangle

Introduction

It is (DATE) and this is an interview with informant _____

Thank you very much for agreeing to an interview with me.

As I mentioned earlier, I'm conducting this interview as part of a series of interviews for my Master's thesis in Peace and Conflict Transformation at the University of Tromsø in Norway.

My thesis is trying to examine the methods and challenges of modern policing in Minnesota and what is being done, or needs to be done to meet these challenges.

My questions are all asking for your own opinion and experiences, and I am not expecting that you will be speaking for the entirety of Minnesota's law enforcement community, or the law enforcement community as a whole.

With your permission, this interview will be recorded. I will be the only one that listens to the recording, and transcripts will be anonymized.

You have the right to withdraw from this project at any time. At that point, all information you have given will be destroyed.

Do you have any questions or concerns before we begin?

Questions

The ACLU statement put out following the death of Philando Castile says "police failed to protect and serve" Castile. Can you explain how police failed to protect and serve, in this case and in others?

It also says "Philando became the 123rd Black person to be killed by U.S. law enforcement this year. We know there is a better way to police, an approach that doesn't leave us with disproportionately high numbers of people of color injured and dead." Likewise, the ACLU statement after the acquittal of Yanez calls Castile's death "part of a disturbing national pattern of officers using excessive force against people of color." Can you explain what it means to say that we have a disproportionately high number of people of color injured and dead and describe this pattern that is described in the statement?

FOLLOW UP: Why are we seeing this disproportionate number of people of color injured or killed?

Looking at that initial statement, the statement concludes. “The ACLU of Minnesota joins the NAACP, and others in their demand for an independent investigation of Philando's killing by a truly independent entity. We do not believe that the Bureau of Criminal Apprehension is that independent entity because the recent history of the BCA suggests that it is incapable of conducting a thorough and objective investigation into this tragic event.” Why did the ACLU believe that the BCA was not capable of conducting the investigation?

What factors do you think were most influential on the jury’s decision in the Castile case?

The ACLU statement after the acquittal of officer Yanez, the ACLU statement references two Supreme Court decisions that allowed police to use deadly force. Can you describe what impact those two decisions had on policing and on the country?

What are the changes that need to be made in law, society, government, policing, etc. that can help solve some of this issues you’ve described?

What is the ACLU doing in Minnesota to bring those changes about?

FOLLOW UP: Who is the ACLU working with to implement these changes?

FOLLOW UP: When devising and implementing these changes, does the ACLU work with or consult with law enforcement officials? If so, in what capacity? If not, why not?

What are the major challenges or obstacles in the way of implementing these changes?

FOLLOW UP: How does the ACLU work to overcome these challenges?

Looking at media coverage of the Castile case, and of this issue in general, do you think that coverage is accurately reflecting the issue as you see it?

What parts of society are most understanding of these issues? What parts aren’t?

Conclusion

Are there any other thoughts you would like to share with me, before we conclude?

All right, well, thank you very much for your time. Within the next couple of weeks, I will be typing up a transcript of this interview. I can send it to you when I am finished and you can let me know if you have any further comments then. Otherwise, feel free to get in touch with my at any time if you have more to add!

Note

In order to protect the identities of Informant Silver and Informant Circle, their interview guides have been withheld.

