

The “Big Black Man” and Other Stories: George Floyd, Stereotypes, and the Shape of Fear

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Before the wide eyes of the mob is ever the Shape of Fear. Back of the writhing, yelling, cruel-eyed demons who break, destroy, maim and lynch and burn at the stake, is a knot, large or small, of normal human beings, and these human beings at heart are desperately afraid of something. Of what?¹

W. E. B. Du Bois, *Black Reconstruction in America*

In “The Shape of Fear,” an essay in his famous work *Black Reconstruction in America*, W. E. B. Du Bois, analyzes the problem of lynching and rising Klan violence in 1935.² Lynching is an extrajudicial execution of Black people without trial, usually conducted in public. It was typically accompanied by torture and the gratuitous infliction of great pain.³ When Sheriffs and other officers of the law attended, they typically did so as tourists.⁴ The law was a winking, tacit presence at these lynchings; these atrocities occurred outside of

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¹ W. E. B. DU BOIS, *BLACK RECONSTRUCTION IN AMERICA* 555 (Henry Louis Gates, Jr., ed., 2007).

² *Id.*

³ EQUAL JUST. INITIATIVE, *LYNCHING IN AMERICA: CONFRONTING THE LEGACY OF RACIAL TERROR* 48–50 (3d ed. 2017), <https://lynchinginamerica.eji.org/report/>.

⁴ *Id.*

the formal structure of the law but on a stage created by its deliberate indifference.⁵

As officer Derek Chauvin pushed his knee into the neck of George Floyd for 9 minutes and 29 seconds,⁶ ignoring George Floyd's anguished pleas, and as other officers stood by armed with badges and guns waving away the incredulous onlookers who tried in vain to intervene, we witnessed a public execution of a Black man, as if we were looking through a window in time.⁷ But now the execution was not committed by Southern farmers draped in bed sheets, but by 21st century policemen in blue.

What compounds the tragedy of George Floyd's death is the overwhelming sense that the atrocity of George Floyd's death is part of a larger systemic pattern. 1,301 Black Americans have been killed by police in the last five years.⁸ Black people are more than three times likelier to die at the hands of police than their white counterparts.⁹ Equally disturbing is the breathtaking lack of any rational justifications for many of the killings. Eric Garner was killed by policeman who had placed him in a chokehold, maintaining it despite the fact that Garner stated eleven times "I can't breathe."¹⁰ Eleven times. Michael Brown was shot despite the fact he was unarmed and, according to three witnesses, had his hands raised in the air.¹¹ Oscar

⁵ *Id.*

⁶ Eric Levenson, *Former Officer Knelt on George Floyd for 9 Minutes and 29 Seconds -- Not the Infamous 8:46*, CNN (Mar. 30, 2021, 6:27 AM ET), <https://www.cnn.com/2021/03/29/us/george-floyd-timing-929-846/index.html>.

⁷ Jelani Cobb, *The Death of Georg Floyd in Context*, NEW YORKER (May 28, 2020), <https://www.newyorker.com/news/daily-comment/the-death-of-george-floyd-in-context>.

⁸ Niall McCarthy, *U.S. Police Shootings: Blacks Disproportionately Affected*, STATISTICA (July 15, 2020), <https://www.statista.com/chart/21857/people-killed-in-police-shootings-in-the-us/>.

⁹ Gabriel Swartz & Jacquelin Jahn, *Mapping Fatal Police Violence Across U.S. Metropolitan Areas: Overall Rates and Racial/Ethnic Inequities, 2013–2017*, PLOS ONE (June 24, 2020), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0229686>.

¹⁰ Ashley Southall, *"I Can't Breathe": 5 Years After Eric Garner's Death, an Officer Faces Trial*, N.Y. TIMES (May 12, 2019), <https://www.nytimes.com/2019/05/12/nyregion/eric-garner-death-daniel-pantaleo-chokehold.html>.

¹¹ Emanuella Grinberg, *Why "Hands up, Don't Shoot" Resonates Regardless of Evidence*, CNN (Jan. 11, 2015, 9:43 AM), <https://www.cnn.com/2015/01/10/us/ferguson-evidence-hands-up/index.html>.

Grant was shot while he was lying prone on the ground—the officer said he thought his gun was taser.¹² Flint Farmer, in Chicago, was shot and killed while holding a cell phone that police claimed appeared to be a gun.¹³ Tamir Rice was killed while playing in a park with nothing more dangerous than a toy machine gun.¹⁴ Philandro Castile was shot when he put his hand in his pocket to retrieve his driver’s license, which a police officer had asked him to produce.¹⁵ Amadou Diallo was shot nineteen times when he reached for his wallet to show officers who had gone to the wrong house he was lawfully on the premises.¹⁶

What Derek Chauvin did appears to me like virulent racial hate. It is tempting to reduce the killing of hundreds of Black Americans over just the past few years to a product of hate. But, as Du Bois suggested, public racial violence, as a systemic pattern, is more complex—it cannot all be reduced to hate.¹⁷ It is equally tempting to say this is entirely a problem of police. This narrative often, if not generally, relies upon an analogy to the role of police and the “paddy-rollers” of the Antebellum South who policed the movements of slaves whenever they left the plantation.¹⁸ In this era, Black

¹² *Cop on Train Shooting: I Mistook Gun for Taser*, CBS NEWS (June 25, 2010, 1:09 PM), <https://www.cbsnews.com/news/cop-on-train-shooting-i-mistook-gun-for-taser/>; see also D. MARVIN JONES, “*We Are Oscar Grant!*” in *FEAR OF A HIP-HOP PLANET* 245, 245–50 (2013).

¹³ *Man Fatally Shot by Police Was Holding Cell Phone*, CHI. TRIB. (June 7, 2011), <https://www.chicagotribune.com/news/breaking/ct-bn-xpm-2011-06-07-29631581-story.html>.

¹⁴ Zola Ray, *This Is the Toy Gun That Got Tamir Rice Killed 3 Years Ago Today*, NEWSWEEK (Nov. 22, 2017, 2:56 PM), <https://www.newsweek.com/tamir-rice-police-brutality-toy-gun-720120>.

¹⁵ German Lopez, *Philandro Castile Minnesota Police Shooting: Officer Cleared of Manslaughter Charge*, VOX (June 16, 2017, 4:15 PM), <https://www.vox.com/2016/7/7/12116288/minnesota-police-shooting-philando-castile-falcon-heights-video>.

¹⁶ See D. MARVIN JONES, *RACE, SEX, AND SUSPICION: THE MYTH OF THE BLACK MALE* 117–23 (2005) for an extensive treatment of the case and see also BRUCE SPRINGSTEEN AND THE E STREET BAND, *American Skin (41 Shots)*, on *THE ESSENTIAL BRUCE SPRINGSTEEN* (Sony BMG 2003).

¹⁷ DU BOIS, *supra* note 1, at 549.

¹⁸ See, e.g., Kimberlé Williams Crenshaw, *Fear of a Black Uprising*, NEW REPUBLIC (Aug. 13, 2020), <https://newrepublic.com/article/158725/fear-black-uprising-confronting-racist-policing>.

people saw the law only as the enemy.¹⁹ In the inner-city today, Black Americans are overpoliced and under-protected, and as chronicled in the cases like *Floyd v New York*, police target inner-city areas hyper-aggressively too often, throwing reasonable suspicion away.²⁰ Against this backdrop of police regularly killing unarmed black men with impunity, many Black Americans continue to see the police—e.g., the law—only as the enemy.²¹

But state-sponsored violence by police against Black Americans is structural. Its roots go deep into the structure of U.S. society itself.²² The roots of police violence go beyond police as an institution into the policies and laws of the U.S. government—such as drug laws that target inner-city neighborhoods for military style campaigns.²³ In *Wardlow v. Illinois*, the Supreme Court enabled this disparity in drug law enforcement by placing the imprimatur of constitutionality on different Fourth Amendment standards for so called “high crime areas.”²⁴ Of course, these “high crime areas” almost

¹⁹ *Id.*

²⁰ *Floyd v. City of New York*, 959 F. Supp. 2d. 540, 664–67 (S.D.N.Y. 2013).

²¹ See, e.g., Mariame Kaba, *Yes, We Mean Literally Abolish the Police*, N.Y. TIMES (June 12, 2020), <https://www.nytimes.com/2020/06/12/opinion/sunday/floyd-abolish-defund-police.html>; Derecka Purnell, *How I Became a Police Abolitionist*, ATLANTIC (July 6, 2020), <https://www.theatlantic.com/ideas/archive/2020/07/how-i-became-police-abolitionist/613540/>; D. Watkins, *No, Obama, We Do Mean “Defund the Police”*: It’s Not a Snappy Slogan, It’s a Demand for Justice, SALON (Dec. 13, 2020, 1:00 PM), <https://www.salon.com/2020/12/13/no-obama-we-do-mean-defund-the-police-its-not-a-snappy-slogan-its-a-demand-for-justice/>.

²² See Bryan Stevenson, *Slavery Gave America a Fear of Black People and a Taste for Violent Punishment. Both still Define Our Criminal-Justice System*, N.Y. TIMES (Aug 14, 2019), <https://www.nytimes.com/interactive/2019/08/14/magazine/prison-industrial-complex-slavery-racism.html> (discussing history of structural racial fear and violence in U.S.).

²³ See Arezou Rezvani et. al., *MRAPs And Bayonets: What We Know About The Pentagon’s 1033 Program*, NPR (Sept. 2, 2014, 6:09 PM), <https://www.npr.org/2014/09/02/342494225/mraps-and-bayonets-what-we-know-about-the-pentagons-1033-program> (discussing the militarization and federal support of local police departments for the explicit purpose of enforcing drug laws).

²⁴ See *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000).

always turn out to be Black, urban, and poor.²⁵ The Court's ruling in *Wardlow*, therefore, creates a kind of constitutional apartheid. This massive targeting of the Black community has led some Americans to call the drug war a war against the Black inner-city poor.²⁶ It has led as well to an *us v. them* mentality.

The roots of police violence go deeper still. They reach into to the economic structure of society in which Black people are disproportionately poor, disproportionately landlocked in urban spaces where work has disappeared, and where their choices for legitimate means of survival are quite limited.²⁷ This socio-economic disparity leads many Black Americans in the midst of a desert of opportunity to drugs or violence and other crimes.²⁸ While most members of these communities are law-abiding, for the dominant society the law-breaking part stands for the whole.²⁹ Police increasingly see these neighborhoods as war zones or communities of criminals, and this perspective feeds the *us v. them* narrative.³⁰ This narrative is then further exacerbated by gentrification. Where affluent neighborhoods border inner city areas there is high level of polarization and

²⁵ Jack T. Vanderford, *Wardlow Revisited: How Media Coverage of Police Brutality Makes Empirical Data More Relevant Than Ever*, 22 U. PA. J. CONST. L. 1523, 1541–42 (2020).

²⁶ For an extensive treatment of the racial implications of the drug war, see generally D. MARVIN JONES, *DANGEROUS SPACES: BEYOND THE RACIAL PROFILE* (2016).

²⁷ See Ta-Nehisi Coates, *The Case for Reparations*, ATLANTIC (June 2014), <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/> (discussing history of redlining and other governmental policies that pushed Black Americans into inner cities and created barriers to Black intergenerational wealth accumulation).

²⁸ See Sogman Kang, *Inequality and Crime Revisited: Effects of Local Inequality and Economic Segregation on Crime*, 45 J. OF 29 POPULAR ECON. 593, 621 (2016) (finding a positive correlation between high concentrations of poverty, such as within inner-cities, and crime).

²⁹ See, e.g., Jonathan Easley, *Trump Casts Inner Cities as 'War Zones' in Pitch to Minority Voters*, HILL (Aug. 22, 2016, 8:42 PM), <https://www.thehill.com/blogs/ballot-box/presidential-races/292283-trump-casts-inner-cities-as-war-zones-in-pitch-to>.

³⁰ See ACLU, *WAR COMES HOME: THE EXCESSIVE MILITARIZATION OF AMERICAN POLICING 2–7* (2014) (detailing militarization of police SWAT in response to perceived threats of crime in urban neighborhoods).

fear by the affluent newcomers of the predominantly Black inner-city poor.³¹

At bottom, at the root of the *us v them* divide, is a narrative or logic in which Black people are stigmatized as inherently dangerous or inherently criminal. During slavery, Black people were literally and legally characterized as beasts, an image that helped to legitimize slavery.³² The regime of segregation comes down “in apostolic secession” from slavery relied upon the same racial mythology and images.³³ It is Gramsci who said in the *Prison Notebooks* that, when the state trembled, we discovered the state was “only an outer ditch, behind which there stood a powerful system of fortress and earthworks[;]”³⁴ therefore, as Du Bois notes, “when men have long been trained to violence and murder, the habit projects itself onto civil life, after peace, an there is crime and disorder and social upheaval”³⁵ While slavery and segregation have been formally “overthrown” in the U.S., the ideology—or, in my terms, the mythology—of slavery has survived. This *us v. them* narrative, the prosecution of the war against drugs as a war against the urban poor, and the systemic racism in the criminal justice system all trace back to the ideology of slavery and the mythology of Black people as beasts. Today however the beast image is only implicit, and the metaphor has simply evolved. Yesterday’s beast has evolved into two primary stereotypes: the stereotype of “the big black man” and the stereotype of “the urban thug.” I will devote the rest of this Article to an exploration of the history and social construction of these two deadly images.

Slavery rested on the premise that the slave was an inferior order of human life. His status in law was explicitly analogized to that of

³¹ Brenden Beck, *The Role of Police in Gentrification*, APPEAL (Aug. 4, 2020), <https://theappeal.org/the-role-of-police-igentrification-breonna-taylor/>.

³² N. Jeremi Duru, *The Central Park Five, the Scottsboro Boys, and the Myth of the Bestial Black Man*, 25 CARDOZO L. REV. 1315, 1321 (2004).

³³ Charles L. Black, *The Lawfulness of the Segregation Decisions*, 69 YALE L.J. 421, 424 (1960).

³⁴ ANTONIO GRAMSCI, SELECTIONS FROM THE PRISON NOTEBOOKS 238 (Quintin Hoare et. al. eds., 1st ed., 1971).

³⁵ DU BOIS, *supra* note 1, at 549.

a beast.³⁶ Thus, the court in *Neal v Farmer* states, "So that slaves were on the footing of a beast or other chattel."³⁷ The slave had no rights, no honor, no power to make any decisions for him or herself.³⁸ Thus, slavery constitutes absolute dominion:

The slave was a dominated thing, an animated instrument, a body with natural movements, but without its own reason, an existence entirely absorbed in another. The proprietor of this thing, the mover of this instrument, the soul and reason of this body, the source of this life was the master. The master was everything for him, his father, his God, which is to say his authority, his duty . . . thus God, fatherland, family existence³⁹

This condition of absolute dominion was unnatural and could only be maintained through violence. More specifically, to maintain the institution of slavery, it was necessary for slave owners to continually repeat the original violent act of transforming a free man into a slave.⁴⁰ Slave owners rationalized the violence of subjugation by the notion that Black people were cursed, "[t]he curse of the Patriarch rests still upon the descendants of Ham."⁴¹ The U.S. rationalized itself into believing the notion that Black Americans were by

³⁶ Duru argues this stemmed in part from the early European notion that Africans were "beasts." Duru *supra* note 32, at 1315. Until the middle of the 17th century, French sailors referred to Africa as the land of the "men with tails." *Id.* While this early conception may play a role, I suspect the equivalence was instrumental, something the dominant society did to rationalize slavery. As Montesquieu sarcastically remarked, "We must not allow negroes to be men, lest we ourselves should be suspected of not being Christians." LYDIA MARIA CHILD, AN APPEAL IN FAVOR OF THAT CLASS OF AMERICANS CALLED AFRICANS 148 (1833).

³⁷ *Neal v. Farmer*, 9 Ga. 555, 581 (1851).

³⁸ ORLANDO PATTERSON, *SLAVERY AND SOCIAL DEATH* 4 (1982).

³⁹ *Id.* Patterson here is quoting Henri Wallon on the meaning of slavery in ancient Greece as a point of comparison to slavery in the U.S. *Id.* Patterson notes, generally, the way that such regimes make "the slave . . . powerless in relation to another individual In his powerlessness the slave [becomes] an extension of his master's power." *Id.*; see also D. MARVIN JONES, *The Curse of Ham, in CRITICAL WHITE STUDIES: LOOKING BEHIND THE MIRROR* 256 (1997).

⁴⁰ See *Neal*, 9 Ga. at 581–82.

⁴¹ *Id.* at 582.

nature “bestial creatures”.⁴² For example, in explaining the rationale for a South Carolina law exonerating the casual killing of negroes, the South Carolina legislature stated,

Negroes and other slaves brought into the people of this Province . . . are barbarous wild savage natures and such as renders them wholly unqualified to be governed by the laws of this province, but that it is absolutely necessary that such other constitutions, laws and orders be enacted . . . as may restrain the disorders, rapines and inhumanity to which they are naturally inclined.⁴³

Slave and beast were tacitly intertwined in law. According to Orlando Patterson, this moral hierarchy was ritualized by whipping.⁴⁴ Many see whipping as brutality, which it is, but it was primarily a means of expressing the master’s honor and slave’s dishonor. Patterson quotes historian Kenneth S. Greenberg explaining that,

“For white southerners, the whip on the back of the slave was a sign of the slave’s bad character” Southerners saw the scars of whipping as permanently marking the slaves as flawed and outside of the community of equals. “The scar, in a sense, spoke for itself—or rather about the man whose body carried it—regardless of the process or the larger set of relations that brought it into existence.”⁴⁵

The fact that the master could do this with impunity illustrates that Black people were outside of the law’s protection: they were objects of the law’s control, not its subjects.⁴⁶ Said another way, George P. Rawick notes in his writings on the Antebellum South

⁴² Duru, *supra* note 32, at 1321–25.

⁴³ STEVE PHILLIPS, BROWN IS THE NEW WHITE : HOW THE DEMOGRAPHIC REVOLUTION HAS CREATED A NEW AMERICAN MAJORITY 49 (2016).

⁴⁴ PATTERSON, *supra* note 38, at 3, 12.

⁴⁵ ANDREW E. TASLITZ, RECONSTRUCTING THE FOURTH AMENDMENT 96 (2006).

⁴⁶ *Id.* at 102–04.

that "[w]hipping was a conscious device to impress upon the slaves that they were slaves."⁴⁷ The normalization of this violence over generations has lasting social implications: The more one is treated as a beast, the more they are seen as and essentialized as beasts.

The myth that Black people were beasts, so instrumental in the perpetuation of slavery, continued long after its abolition. During the Radical Reconstruction period (1867–77), many white writers argued that, without slavery—which supposedly suppressed their animalistic tendencies—Black people were reverting to criminal savagery.⁴⁸ This belief that the newly-emancipated Black Americans were a “black peril” continued into the early 1900’s.⁴⁹ Up until the late nineteenth century, both white and Black Americans were lynched in the South.⁵⁰ Many of the white lynching victims were foreigners or belonged to oppressed groups, for example, Mormons, Shakers, and Catholics.⁵¹ But, in the 1880’s, the nature of lynching changed and was reoriented toward the most extreme means of enforcing Jim Crow laws and customs.⁵² Between 1899 and 1918, over 3,224 people were lynched, most of them “negroes.”⁵³ This violence occurred against the backdrop during the same period of novels, films, and political rhetoric sensationalizing the menace of Black people—and more specifically, the white women’s menace, Black men.⁵⁴

For example, in 1900, Clifton Breckinridge, diplomat and U.S. minister to Russia, issued this dire warning to the nation about the

⁴⁷ PATTERSON, *supra* note 38, at 3.

⁴⁸ DAVID PILGRIM, UNDERSTANDING JIM CROW, 53–54 (2015).

⁴⁹ *Id.*

⁵⁰ *Id.* at 53.

⁵¹ David Pilgrim, *The Brute Caricature*, FERRIS STATE UNIV. (Nov. 2000), <https://www.ferris.edu/jimcrow/brute/>; see also Max Perry Mueller, *The “Negro Problem,” the “Mormon Problem,” and the Pursuit of “Usefulness” in the White American Republic*, 88 AM. SOC’Y CHURCH HIST. 978, 1000 (2019); Rory Carroll, *America’s Dark and Not-Very-Distant History of Hating Catholics*, GUARDIAN (Sept. 12, 2015, 7:00 AM), <https://www.theguardian.com/world/2015/sep/12/america-history-of-hating-catholics>.

⁵² PILGRIM, *supra* note 48, at 53.

⁵³ NAT’L ASS’N FOR THE ADVANCEMENT OF COLORED PEOPLE, THIRTY YEARS OF LYNCHING IN THE UNITED STATES, 1889-1918 10 (1919).

⁵⁴ See, e.g., THOMAS DIXON, THE CLANSMAN: AN HISTORICAL ROMANCE OF THE KU KLUX KLAN 293 (1905); THE BIRTH OF A NATION (David W. Griffith Corp. 1915).

Black race: “When it produces a brute, he is the worst and most insatiate brute that exists in human form.”⁵⁵ Similarly, in 1901, George T. Winston, at a conference addressing the “Negro Question” stated, “When a knock is heard at the door [a white woman] shudders with nameless horror. The black brute is lurking in the dark, a monstrous beast, crazed with lust. His ferocity is almost demoniacal. A mad bull or tiger could scarcely be more brutal.”⁵⁶

In 1905, author Thomas Dixon published his most popular novel, *The Clansman*. In this book, he described Black people as “half child, half animal, the sport of impulse, whim, and conceit . . . a being who, left to his will, roams at night and sleeps in the day, whose speech knows no word of love, whose passions once aroused are as the fury of a tiger.”⁵⁷ The 1915 film *Birth of Nation*,⁵⁸ one of the most popular films of its day, introduces Gus, a Black man (played by a white actor in Black face) as a “monstrous beast in pursuit of Flora, a symbol of white innocence.”⁵⁹

During the era of Jim Crow, the narrative of the bestial Black man as a menace to white womanhood was potentially explosive. It could lead not only to lynching of individual Black people, but to attacks on entire Black communities. In Tulsa, Oklahoma, in 1921, for example, a young white woman falsely accused a Black male of sexual assault.⁶⁰ While the falsely accused man, Rowland, sat in jail, a mob of hundreds of armed, white Tulsans showed up at the courthouse demanding that the sheriff turn him over to them; inflamed, in part, by an vitriolic article that ran that day in the Tulsa Tribune.⁶¹ In the mob violence that ensued, roughly 300 Black people were killed and more than 9,000 Black people were left homeless after

⁵⁵ GEORGE FREDRICKSON, *THE BLACK IMAGE IN THE WHITE MIND : THE DEBATE ON AFRICAN AMERICAN CHARACTER AND DESTINY 1817–1914* (1987)

⁵⁶ George T. Winston, *The Relation of Whites to the Negroes*, 18 ANNALS AM. ACAD. POL. SCI. 105, 109 (1901).

⁵⁷ DIXON, *supra* note 54, at 293.

⁵⁸ *THE BIRTH OF A NATION*, *supra* note 54.

⁵⁹ Charlene Register, *The Cinematic Representation of Race in the Birth of a Nation: A Black Horror Film*, in THOMAS DIXON JR. AND THE BIRTH OF MODERN AMERICA (Michael K. Gillespie, Randall L. Hall, eds. 2006).

⁶⁰ Maggie Astor, *What to Know About the Tulsa Greenwood Massacre*, N.Y. TIMES (July 17, 2020), <https://www.nytimes.com/2020/06/20/us/tulsa-greenwood-massacre.html>.

⁶¹ *Id.*

white mobs destroyed the Greenwood community—the Black neighborhood of Tulsa, which had been a hub of Black prosperity in the U.S. prior to the massacre with its business district dubbed the “Black Wall Street.”⁶² Regardless of producing evidence or facts, this pattern played out over and over again: white mobs would seize Black defendants or attack Black neighborhoods to seek out revenge for alleged rape crimes.⁶³ This pattern continued into the 1950’s.

A particularly gruesome example of such violence occurred in 1955 in Money, Mississippi when White townspeople kidnapped a fifteen-year-old child, Emmett Till, from the house of his Great Uncle “Mose” Wright.⁶⁴ They later brutally tortured him, shot him, killed him, burned his body, and finally threw his body into the river with a millstone around his neck to submerge the evidence of their gruesome crime.⁶⁵ Roy Bryant and Big Jim Milam stood trial, and

⁶² *Id.*

⁶³ *Id.*; see also Deneen L. Brown, *Remembering ‘Red Summer,’ When White Mobs Massacred Blacks From Tulsa to D.C.*, NAT’L GEOGRAPHIC (June 19, 2020), <https://www.nationalgeographic.com/history/2020/06/remembering-red-summer-white-mobs-massacred-blacks-tulsa-dc/> (discussing a several mob lynchings during late nineteen-teens and early nineteen-twenties, including Tulsa Massacre and Rosewood, Florida, Massacre, both of which started as a result of rape or sexual assault allegations made by white women against Black men); Fred Grimm, *Memorial Recalls a Broward Mob Killing that Became a Macabre Public Festival*, SUN SENTINEL (May 3, 2018, 4:00 PM), <https://www.sun-sentinel.com/opinion/fl-op-column-fred-grimm-lynching-memorial-broward-mob-killing-20180503-story.html> (discussing 1935 lynching of Rubin Stacey, a farm worker who was accused of assaulting a white woman in Ft. Lauderdale, Florida); *One Hundred Years Ago, a Lynch Mob Killed Three Men in Minnesota*, SMITHSONIAN MAG. (June 20, 2020), <https://www.smithsonianmag.com/history/one-hundred-years-ago-mob-white-rioters-lynched-three-men-minnesota-180975062/> (discussing 1920 lynching of three Black circus workers in Duluth, Minnesota, after they were accused of raping a white woman); EQUAL JUST. INITIATIVE, *supra* note 3, at 51 (discussing history of lynching in America, generally, and specifically noting that “[n]early 25 percent of the lynchings of African Americans in the South were based on charges of sexual assault. The mere accusation of rape, even without an identification by the alleged victim, often aroused a mob and resulted in lynching. In fact, the definition of Black-on-white ‘rape’ in the South was incredibly broad and required no allegation of force because white institutions, laws, and most white people rejected the idea that a white woman could or would willingly consent to sex with an African American man.”).

⁶⁴ See generally DEVERY S. ANDERSON, *EMMETT TILL: THE MURDER THAT SHOCKED THE WORLD AND PROPELLED THE CIVIL RIGHTS MOVEMENT* (2015).

⁶⁵ TIMOTHY TYSON, *THE BLOOD OF EMMETT TILL*, 62–64 (2017).

at great risk to himself, “Mose” Wright identified each of these men as the ones who came to his house at two o’clock in the morning and kidnapped his nephew, Emmett Till, at gunpoint.⁶⁶ It did no good. At trial, Carolyn Bryant claimed the fifteen-year-old Emmett Till had grabbed her by her waist—a physical assault—made vulgar statements, and “wolf whistled” at her before he left.⁶⁷ In her memoir, Carolyn Bryant later recounted that she embellished the story she told at the trial, using imagery from the classic Southern racist horror movie of the “Black Beast” rapist.⁶⁸ Unsurprisingly, Bryant and Milam were acquitted.⁶⁹

Many people believe these narratives of bestial Black people, and specifically bestial Black men, are merely relics of the Jim Crow era; however, this imagery, operating like a distorting prism, continues to lurk implicitly within the decisions of police, prosecutors and the courts. One classic case is the Central Park Jogger trial.⁷⁰ On April 20, 1989, New York police found the unconscious body of Trisha Meili in a shallow ravine near Central Park’s 102nd Street transverse.⁷¹ She had been brutally beaten and raped.⁷² She remained in a coma, on a respirator, hovering between life and death for almost two weeks.⁷³ Four Black and one Hispanic youths, aged fourteen to sixteen, were found in the park and subsequently questioned.⁷⁴ Among those interrogated were fourteen-year-old Kevin Richardson, fourteen-year-old Raymond Santana, fifteen-year-old Yusef Salaam, fifteen-year-old Antron McCray, and sixteen-year-old Kharey Wise.⁷⁵ After interrogations, which lasted as long as

⁶⁶ *Id.* at 144–47.

⁶⁷ *Id.* at 54, 166–67.

⁶⁸ *Id.* at 6.

⁶⁹ *Id.* at 179.

⁷⁰ Susan Welsh et al., “*I So Wish the Case Hadn’t Been Settled*”: 1989 Central Park Jogger Believes More Than 1 Person Attacked Her, ABC NEWS (May 23, 2019, 3:29 PM), <https://abcnews.go.com/US/case-settled-1989-central-park-jogger-believes-person/story?id=63077131>. For an extensive treatment of this case, see JONES, *supra* note 16, at 41–54.

⁷¹ Chris Smith, *Central Park Revisited*, N.Y. MAG. (Oct. 21, 2002), https://nymag.com/nymetro/news/crimelaw/features/n_7836/index.html.

⁷² *Id.*

⁷³ TIMOTHY JOHN SULLIVAN, UNEQUAL VERDICTS : THE CENTRAL PARK JOGGER TRIALS 19–48 (1992).

⁷⁴ *Id.*

⁷⁵ *Id.*

twenty-eight hours, each of the youngsters confessed to involvement in the attack and rape of Meili.⁷⁶

The rape ignited the smoldering racial fears in New Yorkers because of the 3,254 other rapes reported that year, most of which were of Black women, this one invoked a narrative of white innocence brutally assaulted: The victim was young, white, middle class, and attractive.⁷⁷ For many affluent New Yorkers, this was personal. For example, at the time, Sylvia Asch, a school teacher who regularly jogged near where the attack happened told reporters, "[t]his is our home and I feel like it has just been invaded."⁷⁸ Asch went on to say that "[t]here is no punishment that is suitable for them. They are animals, no doubt about it."⁷⁹ Headlines echoed the theme of bestiality with one newspaper headline exclaiming, "Teen Wolf-Pack Beat and Rapes Wall Street Exec."⁸⁰ Going one better, a columnist for another newspaper objected to merely characterizing the boys as wolves calling them "a bizarre new form of life . . . mutants among us," and concluding that "for now we should stop libeling wolves."⁸¹ Despite this demonization of the youths, there was no evidence tying them to the crime.⁸² No hair, no semen at the scene matched that of any of the youths charged; there were no fingerprints, no blood on the clothes of any of the boys, no telltale skin under the fingernails, no footprints in the mud, and no identification by the victim—Meili had no recollection of the attack.⁸³ The accused youths were

⁷⁶ Alexandra Marsh, *Why Do People Confess to Crimes They Didn't Do?*, CHRISTIAN SCI. MONITOR (Dec. 5, 2002), <https://www.csmonitor.com/2002/1205/p02s01-usju.html>.

⁷⁷ JONES, *supra* note 16, at 45.

⁷⁸ John J. Goldman, *Gang Assault on Woman Stuns N.Y.: Investment Banker, Near Death, Victim of Park Rampage*, L.A. TIMES (Apr. 24, 1989), <https://www.latimes.com/archives/la-xpm-1989-04-24-mn-1684-story.html>.

⁷⁹ *Id.*

⁸⁰ See Joan Didion, *New York, Sentimental Journeys*, N.Y. REV. (Jan. 17, 1991), <https://www.nybooks.com/articles/1991/01/17/new-york-sentimental-journeys/>.

⁸¹ LINDA S. LICHTER ET AL., THE NEW YORK NEWS MEDIA AND THE CENTRAL PARK RAPE 10 (1989).

⁸² Patricia J. Williams, *Lessons from the Central Park Five*, NATION (Apr. 17, 2013), <https://www.thenation.com/article/archive/lessons-central-park-five/>.

⁸³ *Id.* (noting that "A forensic expert testified that the hair samples were 'more consistent' with Caucasian than African-American hair, but the prosecution successfully argued that this meant they were not inconsistent. ").

convicted anyway.⁸⁴ However, in 2001, Mathias Ryes provided a detailed confession to the crime.⁸⁵ Based on this confession, the court threw out the convictions of the Exonerated Five, and they received a 41-million-dollar settlement.⁸⁶

The image of the bestial Black male, though rarely invoked explicitly, is still latent within our culture. In October 1989, Charles Stuart claimed that a six-foot Black gunman with a raspy voice jumped into their car in Roxbury and shot both him and his pregnant wife Carol as they were returning from childbirth classes at a nearby hospital.⁸⁷ The mainstream media in Boston immediately expressed outrage with clear racial overtones.⁸⁸ The Boston police conducted the investigation using indiscriminate stop and frisk techniques and the police, in fact, arrested a Black man named William Bennet based on Charles's description.⁸⁹ But, by January, Stuart's brother Matthew identified Charles as the killer.⁹⁰

Several years later, this latent image of the "bestial black man" had evolved into what one writer, Laurence Vogelmann, calls "the big black man syndrome."⁹¹ It was 12:30 a.m. on March 3, 1991,

⁸⁴ *Id.*

⁸⁵ Alfred Joyner, *Who Is Mathias Reyes? Serial Rapist and Murderer in Central Park Five Series "When They See Us"*, NEWSWEEK (June 4, 2019, 9:18 AM), <https://www.newsweek.com/who-matias-reyes-serial-rapist-murderer-central-park-five-series-when-they-see-us-1442045>.

⁸⁶ Alfred Joyner, *How Much Was the Central Park Five Settlement? "When They See Us" Victims Sued New York City for \$41M*, NEWSWEEK (June 19, 2019, 9:00 AM), <https://www.newsweek.com/central-park-five-settlement-when-they-see-us-41m-1444765>.

⁸⁷ Roberto Scalse, *The Charles Stuart Murders and the Racist Branding Boston Just Can't Seem to Shake*, BOSTON.COM (Oct. 22, 2014), <https://www.boston.com/news/local-news/2014/10/22/the-charles-stuart-murders-and-the-racist-branding-boston-just-cant-seem-to-shake>.

⁸⁸ *Id.*

⁸⁹ Diane Bernard, "They Were Treated Like Animals": The Murder and Hoax that Made Boston's Black Community a Target 30 Years Ago, WASH. POST (July 11, 2020, 7:00 AM), <https://www.washingtonpost.com/history/2020/01/04/they-were-treated-like-animals-murder-hoax-that-made-bostons-black-community-target/>.

⁹⁰ Margaret Carlson, *Presumed Innocent*, TIME (June 24, 2001), <http://content.time.com/time/magazine/article/0,9171,153650,00.html>.

⁹¹ Laurence Vogelmann, *The Big Black Man Syndrome: The Rodney King Trial and the Use of Racial Stereotypes in the Courtroom*, 20 FORDHAM URB. L.J. 571, 573–574 (1993).

and Rodney King and two friends, Pooh Allen and Freddie Helms, were speeding in a Hyundai Excel barreling West on the Los Angeles freeway.⁹² Witnessing the traffic violation, California Highway patrol officers Tim and Melanie Griffin gave chase, reaching speeds of 117 miles per hour.⁹³ When King finally stopped, the officers ordered the occupants out of the car and ordered them to lie face down on the ground.⁹⁴ Instead, according to the officers, King, at six foot-three and two hundred pounds, engaged in bizarre behavior, with one officer noting that "he grabbed his right buttock . . . and he shook it at me."⁹⁵ Moments later, King complied, but by then twenty-one Los Angeles police had arrived.⁹⁶ America witnessed the gruesome beating that followed, captured on observer George Holliday's gritty black and white eighty-one second video.⁹⁷

While King lay defenseless on the ground, officers wielding batons struck him between fifty-three and fifty-six times.⁹⁸ The officers shattered the bones in King's eye socket, broke his leg, broke his cheek bone, and inflicted nine skull fractures.⁹⁹ King was also left with a partially paralyzed face.¹⁰⁰ When asked to explain this brutality, the officers stated, "I think he was dusted [under the influence of the drug 'PCP' or 'angel dust']."¹⁰¹

After a television station broadcast the beating the next day, author Terry McMillian wrote, "I, like millions of others, watched the tape over and over, feeling more enraged each time. 'They'll go to jail,' is what my friends and I kept saying. 'It's an open-and-shut-

⁹² Douglas O. Linder, *The Trials of Los Angeles Police Officers in Connection with the Beating of Rodney King*, FAMOUS TRIALS, <https://www.famous-trials.com/lapd/584-home> (last visited May 7, 2021).

⁹³ *Id.*; Douglas O. Linder, *Excerpts from the LAPD Officers' Trial*, FAMOUS TRIALS, <https://www.famous-trials.com/lapd/581-excerpts> (last visited May 7, 2021).

⁹⁴ Seth Mydans, *Friend Relives Night of Police Beating*, N.Y. TIMES (Mar. 21, 1991), <https://www.nytimes.com/1991/03/21/us/friend-relives-night-of-police-beating.html>.

⁹⁵ Linder, *supra* note 92.

⁹⁶ Houston A. Baker, *Scene . . . Not Heard*, in *READING RODNEY KING: READING URBAN UPRISING* 38, 42 (Robert Gooding-Williams, ed. 1993).

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

case. It's in living color.”¹⁰² But the officers were acquitted and five days of multicultural riots and rebellion followed.¹⁰³ What heightened the violence was a vortex of anger pent up until the verdict; the evidence was incontrovertible: The video showed a man being beaten repeatedly, without visible resistance.¹⁰⁴ Black people experienced this acquittal as a blow to the face, that their own eyes had deceived them.¹⁰⁵ How was this transformation of an innocent victim into a predator interpretation achieved?

The lawyers for the officers argued that the body beaten was itself a source of danger and the beaten body of Rodney King bore an intention to injure.¹⁰⁶ In essence, his large size, and particularly the size of his Black body, established for the Simi Valley jury the vulnerability of the police.¹⁰⁷ Later, one juror reported that Rodney King was in total control of the situation.¹⁰⁸ In essence, the police invoked the image or stereotype of the “big black man,” as Lawrence Vogelmann points out in his article on the case, in order to “obtain an emotional response from the jurors.”¹⁰⁹ The “big black man” is a hybrid. He is, first of all, a man of sorts, a Black brute, lurking in the dark. But he is perceived less a man than as a monstrous beast. Vogelmann notes, “[King] was portrayed as larger than life, with

¹⁰² Terry McMillian, *This Is America*, N.Y. TIMES, May 1, 1992, at A35.

¹⁰³ Anjuli Sastry, Karen Grigsby Bates, *When LA Erupted in Anger: A Look Back at the Rodney King Riots*, NPR (Apr. 26, 2015, 1:21 PM), <https://www.npr.org/2017/04/26/524744989/when-la-erupted-in-anger-a-look-back-at-the-rodney-king-riots>.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ See Richard A. Serrano, *2 Views of Rodney King Drawn by Lawyers*, L.A. TIMES (Mar. 6, 1992), <https://www.latimes.com/local/california/la-me-views-rodney-king-lawyers-19920306-story.html> (noting that defense “focused their arguments to the jury on the high-speed chase before the incident. They emphasized that King’s blood-alcohol level was more than twice the legal limit, and that police believed that King was under the influence of PCP, a dangerous drug that can trigger violent behavior.”).

¹⁰⁷ See Salvatore Arena, *Why the Jurors Acquitted the Cops in the Rodney King Case*, N.Y. DAILY NEWS (May 1, 1992), <https://www.nydailynews.com/news/national/jurors-rodney-king-tape-article-1.2201822> (quoting jurors who felt that King “controlled the action” and was “obviously a danger,” despite indisputable fact that there were four armed officers against King, who was unarmed).

¹⁰⁸ *Id.*

¹⁰⁹ Vogelmann, *supra* note 91, at 573–74.

superhuman strength. It was in this context that jurors, while watching the video of King being brutally beaten, described him as being 'in control.'"¹¹⁰ He had to be stopped because, as Vogelmann pointed out, "the map introduced by the defense so clearly indicated, his 'destination' was Simi Valley."¹¹¹

Du Bois tried to frame the problem of race in terms of a veil between the Black subject and the White world. Ellison tried to frame the problem of racism in terms of the seer and the seen invoking a notion of "invisibility."¹¹² The stereotypes and images invoked by the lawyers became a prism through which the jury viewed the video, a prism of fear which mediated invisibly between the body being beaten and the video. The prism did not render the body invisible but, instead, distorted its shape, so that it was juxtaposed against and indistinguishable from the nightmare shapes of Black savages, Black beasts, animal-like rapists and killers that pollute our collective unconscious. For the jurors, it no longer mattered whether Rodney King was innocent of trying to assault the officers; what was dispositive was how much they were afraid of him. This reasoning from fear is buttressed by a notion that the big Black man or beast is inherently dangerous, inherently criminal.

The "big Black man stereotype" is still with us. Officer Darren Wilson shot Michael Brown despite the fact he was unarmed and, according to witnesses, had his hands up.¹¹³ As Darren Wilson told the story, Michael Brown's body itself was a lethal weapon, "When

¹¹⁰ *Id.* at 574.

¹¹¹ *Id.*

¹¹² See generally RALPH ELLISON, *INVISIBLE MAN* (1952); see also Clint Smith, *Ralph Ellison's "Invisible Man" as a Parable of Our Time*, *NEW YORKER* (Dec. 4, 2016), <https://www.newyorker.com/books/page-turner/ralph-ellisons-invisible-man-as-a-parable-of-our-time> (discussing theme of invisibility in *Invisible Man*, "'I am invisible, understand, simply because people refuse to see me,' Ellison writes in the prologue. The unnamed black protagonist of the novel, set between the South in the nineteen-twenties and Harlem in the nineteen-thirties, wrestles with the cognitive dissonance of opportunity served up alongside indignity.').

¹¹³ Grinberg, *supra* note 11.

I grabbed him, the only way I could describe it is I felt like a five-year-old holding onto Hulk Hogan.”¹¹⁴

Our ideas about race trace back to the 1950’s—a time when white Americans, like southern sheriffs, loosed police dogs on civil rights marchers, or when Klansmen kidnapped Emmett Till for supposedly “wolf whistling” at a white woman.¹¹⁵ This creates the image of race as a decision whose genesis is in racial animus or hate. But racism at its root originates at the level of culture, within the meaning-making and myth-making processes of our society. These images operate like rules within language, a kind of racial grammar telling us to parse people into different groups.¹¹⁶ It is not merely about hate, but about how we see or, more specifically, about the racial lenses we collectively see through. It is against this background that we must understand the case of George Floyd and the problem of structural racism in our criminal justice system. This is to say that, in the context of race, our “past is never dead. It’s not even past.”¹¹⁷ As James Baldwin eloquently wrote,

In our image of the Negro breathes the past we deny, not dead but living yet and powerful, the beast in our jungle of statistics. It is this which defeats us, which continues to defeat us, which lends to interracial cocktail parties their rattling, genteel, nervously smiling air: in any drawing room at such a gathering the beast may spring, filling the air with flying things and an unenlightened wailing. Wherever the problem touches there is confusion, there is danger . . . It is a sentimental error, therefore, to believe that the past is

¹¹⁴ Heather Digby Parton, *Black Bodies Are Not Weapons: Why White Supremacists Insist Michael Brown Was “Armed,”* SALON (Nov. 26, 2014, 7:47 PM), https://www.salon.com/2014/11/26/black_bodies_are_not_weapons_why_white_supremacists_insist_michael_brown_was_armed/.

¹¹⁵ TYSON, *supra* note 65, at 54; Corky Siemaszko, *Birmingham Erupted into Chaos in 1963 as Battle for Civil Rights Exploded in South*, N.Y. DAILY NEWS (May 3, 2012, 9:26 AM), <https://www.nydailynews.com/news/national/birmingham-erupted-chaos-1963-battle-civil-rights-exploded-south-article-1.1071793>.

¹¹⁶ Eduardo Bonilla-Silva, *The Invisible Weight of Whiteness: The Racial Grammar of Everyday Life in Contemporary America*, 35 ETHNIC & RACIAL STUDS. 173, 174 (2012).

¹¹⁷ WILLIAM FAULKNER, REQUIEM FOR A NUN 92 (1951).

dead; it means nothing to say that it is all forgotten, that the Negro himself has forgotten it. It is not a question of memory. Oedipus did not remember the thongs that bound his feet; nevertheless, the marks they left testified to that doom toward which his feet were leading him. The man does not remember the hand that struck him, the darkness that frightened him, as a child; nevertheless, the hand and the darkness remain with him, indivisible from himself forever, part of the passion that drives him wherever he thinks to take flight.¹¹⁸

¹¹⁸ JAMES BALDWIN, *Many Thousands Gone*, in *NOTES OF A NATIVE SON* 28 (1984).