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“An Autistic Man Lives Here Cops No Excuses... Oh Yes He Is Black Too”¹:
Cognitive Disability, Race and Police Brutality in the United States

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¹ This quote is taken from signs painted on the garage and in the yard outside an autistic man's home in Nevada. The signs were posted by his mother following police assault of her autistic son. The various signs in full read: 'Autistic man lives here cops no excuses,' 'Attention an autistic man lives here he does not know what a cop is or what a gun is he makes loud noises he will not hurt you he does not understand words or commands!! Oh yes: he is black too.'

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ABSTRACT

This thesis explores the relationship between race and cognitive disability in police brutality cases. For the first time in academia, it systematically investigates cases where police officers have used excessive force against individuals with cognitive disabilities, using of *The Guardian* newspaper's database on police killing and independently conducted research. It draws on the literature on the role of mental illness in police brutality cases, as well as historical literature on race and cognitive disability to inform conclusions on the criminalisation of people of colour with cognitive disabilities; ultimately showing how a historically entrenched and mutually reinforcing racist and ableist system has criminalised mentally disabled people of colour, making them more likely to be perceived as dangerous by police.

Table of Contents

| | |
|--|-----------|
| Introduction | 1 |
| Theoretical Framework | |
| Human Rights | 7 |
| Critical Criminal Justice and Policing | 10 |
| Differentiated Sites of Confinement: Prison as the Surrogate Asylum?..... | 14 |
| “Waste Humanity:” Economic Productivity, Race and Mental Disability..... | 19 |
| A Peculiar History: Cognitive Disability, Race and Criminalisation..... | 25 |
| Methodology..... | 32 |
| Results and Discussion | 38 |
| Conclusion..... | 47 |

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INTRODUCTION

In July 2016, at the height of the “Black Lives Matter” mobilizations against police killings, a behavioural therapist named Charles Kinsey was shot in the leg by Miami police. A few days after the incident, the Dade County police union confirmed that the officer was, in fact, aiming for Arnaldo Rios, who was with Kinsey at the time of the shooting. Kinsey had followed Rios after he had wandered from his care facility, Mactown Panther Group Home. In attempting to justify the use of force in this incident, the police officer claimed that Rios was behaving strangely, did not obey commands, and appeared to be holding a weapon in his hand. Moreover, a police union representative claimed the officer was also concerned for Kinsey’s safety and was therefore trying to protect Kinsey’s from Rios.² Arnaldo Rios is twenty-six years old and has Autism. The weapon he was carrying was in fact a toy truck³. Rios’ family claimed he suffered from severe trauma since the incident, including night terrors, a loss of appetite, insisting on wearing the same bloodied shirt and repeatedly returning to the site of the incident whilst shouting “I hate the police. I hate the police.” His cognitive function also deteriorated to the point that he reverted to “baby talk.”⁴

The incident garnered significant public attention due to its timeliness - it immediately followed the deaths of Philando Castile and Alton Sterling at the hands of police - and because it was caught on video by a bystander and quickly circulated online. While many media outlets focused on the shooting of Kinsey - a black man - family members of those with autism spoke

² Bill Chapell, “North Miami Officer Was Aiming at Man with Autism, Union Chief Says,” *NPR News*, July 22, 2016, accessed June 20, 2017.

³ Melissa Chan, “Florida Cop Who Shot Therapist Aiming for Autistic Patient and Missed, Officials Say,” *Time*, July 21, 2016, accessed Dec 5, 2016.

⁴ Carol Marbin Miller, “Mom of Autistic Man at Center of Charles Kinsey Shooting: My Son is Traumatized,” *Miami Herald*, July 23, 2016, accessed June 20, 2017.

out about the heightened vulnerability of cognitively disabled individuals, such as Arnaldo Rios, to police brutality. For example, activist Holly Robinson Peete argued that the incident confirmed her worst fears for her autistic black son, RJ. Specifically, she described her “nightmare” situation, in which RJ gets pulled over by police while driving:

“Will he get nervous or scared? Will he process the officer’s cues properly? If not, will the officer not see my sweet, special son, but instead perceive him as a threat or a “bad dude”?...Will he mistake RJ’s quirkiness or difficulty making eye-contact for non-compliance? RJ loves to wear his hoodies — sensorily, he loves the way the hoods feel on his head. Will that cause an officer to stereotype him? RJ stims. (That is short for self-stimulating.) It can include flapping and tics and sudden movements, which petrify me for him when I imagine him one-on-one with a cop. Will the officer know what “stimming” is?”⁵

The deviant responses presented by cognitively disabled individuals and the unpredictable actions of police officers that Robinson Peete described have also been highlighted by advocacy groups. The organisation “Autism Speaks” has written a list on its website of behaviours displayed by individuals with ASD (Autistic Spectrum Disorder) that can exacerbate interactions with law enforcement. These include an inability or unwillingness to respond to commands such as “stop”, being unable or unwilling to speak or answer questions and avoiding eye contact. Furthermore, since more than three-quarters of autistic individuals experience sensory perception issues, like RJ, they are prone to overreacting or underreacting to loud noises or bright lights, such as police sirens or police officers shouting.⁶ The organisation further notes that autistic

⁵ Holly Robinson Peete, “Autism and Police: My Plan to Protect My Driving-Age Son,” *The Huffington Post*, Feb 15, 2017.

⁶ Autism Speaks, “Information for Law Enforcement,” accessed Dec 5, 2017.

individuals may engage in repetitive behaviour such as rocking, spinning, stimming, running away, or wandering somewhere dangerous.⁷ This focus on deviant behaviour of cognitively disabled individuals has meant that advocacy groups have concentrated their efforts on producing educational materials for police departments, as well as providing training sessions for law enforcement on how best to recognise and interact with cognitively disabled individuals. The focus on improving police training by advocacy groups has caused them to neglect the underlying connection between cognitive disability and criminalisation. Indeed, it is important to note that the majority of interactions between individuals and police do not end in violence, but often end in arrest and imprisonment. It is therefore telling that, the Bureau of Justice Statistics recorded the most common disability self-reported by prisoners in both jails (3 in 10 inmates) and prisons (2 in 10 inmates) as cognitive.⁸ It is this relationship between police and prison that is often missed by advocacy organisations and that constitutes a focal point of this thesis.

Despite this overwhelming concern among grassroots activists about the relationship between cognitive disability and police brutality, and the overrepresentation of cognitive disabilities in the criminal justice system, public discourse and academia has ignored the issue.⁹

⁷ Ibid

⁸ Jenifer Bronson, Laura M. Maruschak, Marcus Brezofsky, “Disabilities Among Prison and Jail Inmates, 2011-12.” *U.S Department of Justice, Bureau of Justice Statistics*, Dec 2015. The BJS describes cognitive disability as a “broad term used to describe a variety of medical conditions affecting different types of mental tasks, such as problem solving, reading comprehension, attention and remembering. A cognitive disability is not the same as a mental disorder... Examples of cognitive disabilities include Down syndrome, autism, dementia, attention deficit disorder, learning disorders, intellectual disabilities, or traumatic brain injury.”

⁹ This thesis uses the definition of “cognitive disability” as defined by the BJS. It uses the American Psychiatric Association’s definition of mental illness: “refers collectively to all diagnosable health conditions involving significant changes in thinking emotion and/or behaviour, distress and/or problems functioning in social, work or family activities.” ‘Serious’ mental illness is described as “mental, behavioural or emotion disorder (excluding developmental and substance use disorders) resulting in serious functional impairment... Examples of serious mental illness include major depressive disorder, schizophrenia and bipolar disorder,” see: American Psychiatric Association, “What is Mental Illness,” accessed Aug 1, 2017. ‘Mental disability,’ is used in the thesis as an umbrella term for both types of disorders.

One newspaper report notes that “people with autism are seven times more likely to encounter police than ‘neurotypical’ individuals, or those without developmental disabilities, according to autism experts,” but besides this there is no statistical data that quantifies the negative interactions between people with cognitive disabilities and police officers.¹⁰ This thesis aims to address this lacuna through a systematic investigation of cases where police officers have used excessive force against people with cognitive disabilities. Furthermore, I draw on the rich and valuable debate in scholarly literature on the role of mental illness in excessive use of force by law enforcement, as well as historical literature on cognitive disability and race, to inform discussions on the criminalisation of people of colour with mental disabilities.

Ultimately, I argue that a historically entrenched and mutually reinforcing racist and ableist system has criminalised mentally disabled people of colour, making them more likely to be perceived as dangerous by police. It is important to emphasise here that racism and ableism are not identical systems of oppression. As both Rios’ case and RJ’s hypothetical case highlight, there are unique and undeniable challenges for individuals with mental disabilities when interacting with police, precisely because of their disability.¹¹ And yet, it is equally important to acknowledge that in both these cases disability and race have been constructed as dangerous in similar and reciprocal ways. This sheds light on exactly why black cognitive disability has, for so

¹⁰ The report did not include a reference and therefore the methodology or reliability of the statistic could not be verified. Adrienne Hurst, “Black, Autistic, and Killed by Police,” *Chicago Reader*, Dec 17, 2015, accessed May 30, 2017.

¹¹ It is important to emphasise here that I do agree with the position of Critical Disability scholars who see disability as socially constructed, in the sense that bodies and minds derive meaning and social significance from political, cultural and economic structures that dictate and structure social life. In this way, it is not because of the disability *per se* that individuals with cognitive disabilities are more vulnerable to police violence, but rather, it is because the behaviour of those with cognitive disabilities has been socially constructed as ‘deviant’ or ‘dangerous’ that individuals with cognitive disabilities experience excessive force by police. Having said this, I want to avoid falling into the trap of many Critical Disability scholars who diminish the very material challenges for those with disabilities, in favour of emphasising the socially contingent nature of disability.

long, remained invisible both in academic and lay discussions of police violence. This failure to redress black cognitive disability not only means that we have an incomplete picture of U.S. policing practice, but we also do a disservice to those whose lives are shaped by the intersection of race and disability.

Part I underscores the importance of the human rights framework for this project, particularly its dual focus on respecting individuals' right to be different - whether because of race, disability, gender etc. - while ensuring that rights and basic state obligations are afforded to all despite these differences. However, it departs significantly from the traditional conception of human rights as well as the approach taken by dominant human rights groups in addressing police violence, establishing instead a more critical framework for understanding police power. I also see race and disability not as background conditions to the existing debate on police brutality but as mutually constitutive axes through which to understand excessive use of force by police.

Part II explores the criminalisation of disability by describing the functional and statistical link between prisons and asylums both at the point of their formation and following the process of deinstitutionalisation of the 1960s and 70s.

Part III explains how the simultaneous decline of the welfare and asylum state, combined with underinvestment in community care for the mentally disabled has increased interactions between law enforcement and mentally disabled individuals. I also consider the history of state intervention for people with cognitive disabilities through the lens of political economy.

In Part IV, I argue that the important diagnostic distinctions between mental illness and cognitive disability need to be accounted for by scholars and advocates interested in the policing of individuals with mental disabilities. I therefore focus exclusively on cognitive disability in this

section, examining how people with cognitive disabilities have been associated with dangerous criminality from the mid-nineteenth till the mid-twentieth centuries. Additionally, I delineate the historical processes that bind race and cognitive disability, in order to show how ideas of blackness, cognitive disability and criminality were woven together within U.S policing practices.

In Part V, drawing on *The Counted* database from the Guardian newspaper and independently conducted research, I attempt to quantify the number of cases where police officers used excessive force against cognitively disabled individuals of colour. This section considers the methodological and theoretical challenges implicit in such an endeavour that have rendered people of colour with cognitive disabilities invisible both in academia and in wider society.

Part VI describes some key cases found in the study and contextualises them in the literature described in Parts III-V. I conclude by summarizing the findings of my research and suggesting new directions for the study of policing, race, and cognitive disability.

I. Theoretical Framework

This thesis departs from the traditional conception of human rights and the mainstream approach by human rights practitioners to challenging police brutality. By using a Foucauldian framework for understanding crime and delinquency, this thesis has a more critical view of policing and state power: one which sees police violence not as an anomalous problem that can be solved through better laws or more judicious police officers, but as an essential element of police function. This provides important insight for explaining why individuals with cognitive disabilities are more vulnerable to police brutality.

Human Rights

There is significant lack of agreement both within academia and advocacy on the nature and purpose of human rights. The conceptualisation of human rights used here can be situated roughly in the “protest school.”¹² The widely accepted, orthodox, definition of human rights- “the natural school” sees human rights as absolute, inalienable entitlements. Since human rights exist independently of societal recognition and subsequent endowment, individuals *always have* human rights. This position of the natural school minimises the long historical struggle of minority groups not only in their quest to enjoy particular rights, but in changing the very definitions of rights. Unlike this passive concept of human rights - *given* to the individual - the “protest school” sees human rights as *fought* for.¹³ In other words, human rights are only realised

¹² Marie-Bénédicte Dembour, “What are Human Rights? Four Schools of Thought,” *Human Rights Quarterly* 32, no. 1 (2010).

¹³ *Ibid*, 2

through continuous struggle. Crucially, since injustice is omnipresent, this process of struggle is never-ending. Thus, rather than being tangible rights, human rights should be seen as a framework for articulating claims by and on behalf of the oppressed in order to challenge the status quo. The importance of the protest school's position lies in its ability to situate human rights in a specific power structure and places emphasis not on the abject "right" but on the grassroots demand for them.

The French philosopher Michel Foucault argued that common to grassroots struggles is questioning the status of the individual: "on the one hand, [resistance movements] assert the right to be different, and they underline everything which makes individuals truly individual. On the other hand, they attack everything which separates the individual, breaks his links with others, splits up community life, forces the individual back on himself, and ties him to his own identity in a constraining way."¹⁴ It is this dialectical relationship between the individual and the collective that makes the human rights framework particularly useful in examining the role of race and cognitive disability in excessive use of force by police; it accounts for distinctions in identity (in this case race, class and disability) that help explain social oppression and state violence, yet simultaneously requires us to ground analysis in the wider paradigm of a shared humanity. The intersectional approach to human rights used here considers social oppression based on identity categories as intertwined. Thus, disability is not considered a context, magnifier or an additive category to race that helps analyse the oppressive conditions that underlay police brutality. Instead of being discrete factions, race, class and disability are seen

¹⁴ Michel Foucault, "The Subject and Power," *Critical Inquiry* 8, no. 4 (1982): 781. For a discussion on Foucault's approach to human rights see: Ben Golder, *Foucault and the Politics of Rights* (Stanford: Stanford University Press, 2015).

here as mutually constitutive vectors through which to understand excessive use of force by police.

The human rights framework is particularly important to the discussion of race and disability, since racism and ableism have historically been used to deprive individuals of their rights. Before cognitive disability was seen as a medical or educational category, it functioned primarily as a legal judgement aimed at stripping individuals of their civic status.¹⁵ For example, courts determined whether individuals were mentally competent to stand trial, make contracts, manage and inherit funds or marry.¹⁶ These restrictions stand today, with a total of thirty states and the District of Columbia maintaining laws that can limit people with mental disabilities from voting if they have been deemed “mentally incapacitated” by a court.¹⁷ Similarly, African American history has not only included a fraught contestation of citizenship but also of humanity. Thus, by historically labelling both people of colour and people with disabilities as ‘unfit’ for citizenship, the very notion of citizenship in the U.S. has been shaped by racist and ableist boundaries.¹⁸ Considering that human rights were first conceptualised to identify the minimum state duties and obligations for people outside of the conventional citizenry - the ‘stateless’¹⁹ - a human rights

¹⁵ This is particularly important considering the liberal philosophical tradition which sees rational thought as a precondition for citizenship. Social contract theory, in particular, assumes that only rational agents are subject to justice and should be free from state coercion, see: Cynthia A. Stark, “Respecting Human Dignity: Contract Versus Capabilities,” in *Cognitive Disability and its Challenge to Moral Philosophy*, eds. Eva Feder Kittany and Licia Carlson (Hoboken: Wiley-Blackwell, 2010). A similar argument is made by Michel Foucault, *Madness and Civilisation: A History of Insanity in the Age of Reason* (New York: Random House, 1965), in which he argues that insane asylums were constructed to bring “madness under the rigid and unbending control of reason.”

¹⁶ Penny L. Richards, “Thomas Cameron’s ‘Pure and Guileless Life,’” in *Disability Histories*, eds. Susan Burch and Michael Rembis (Urbana: University of Illinois Press, 2014), 36.

¹⁷ Kimberly Leonard, “Keeping the ‘Mentally Incompetent’ from Voting,” *The Atlantic*, October 17, 2012, accessed April 20, 2017.

¹⁸ Jess Waggoner, “‘Oh Say Can You ___’: Race and Mental Disability in Performances of Citizenship,” *Journal of Literary & Cultural Disability Studies* 10, no.1 (2016): 89.

¹⁹ Hannah Arendt, *The Origins of Totalitarianism* (New York: Harcourt, Brace & World, 1966).

framework is particularly important for discussions on cognitive disability, race and excessive use of force by police.²⁰

Despite the utility and importance of the human rights framework to studying police killings in the U.S., human rights practitioners and scholars have too often limited themselves to a surface level analysis of this human rights problem. Generic efforts that simply identify a violation, victim, perpetrator and remedy have had only a limited effect on challenging excessive use of force by police. It is therefore imperative to draw on a wide variety of scholarship from historians, sociologists, critical race theorists and disability scholars to gain a *deeper* understanding of how racism and disability have developed as mutually reinforcing factors that shape the negative outcomes of police interactions.

Critical Criminal Justice and Policing

This intersectional and multi-disciplinary approach to human rights necessarily sees policing as more than a mere street interaction; rather, policing constitutes a crucial mechanism of enacting state power. This perspective is largely drawn from Foucault's *Discipline and Punish*, in which he argues that the construction of the penitentiary was crucial for the development of the modern state because it allowed the ruling class to discipline and control the population at all times, as opposed to "in fits and starts."²¹ Under this new system of criminal justice, the creation

²⁰ The relationship between civil rights and human rights is particularly complex. Therefore, a comprehensive discussion on this is beyond the scope of this thesis. See: Giorgio Agamben, *Means Without End: Notes on Politics* (Minneapolis: University of Minnesota Press, 2000), 15-29; Hannah Arendt, *The Origins of Totalitarianism*. For insight into how the recognition of humanity for the black population in the U.S. simply transformed rather than mitigated white supremacy and racial oppression, see: Saidiya V. Hartman, *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth - Century America* (New York: Oxford University Press, 1997).

²¹ David W. Garland, *Punishment and Modern Society: A Study in Social Theory* (Oxford: Oxford University Press, 1990), 136.

of “delinquents,” that is, members of the lower classes who have been constructed by those in power to be abnormal, dangerous and inherently criminal - has functioned as the main “technique” of enacting power. Physically segregating delinquents from the rest of society allows the ruling classes to easily control popular behaviour. Importantly, the police force has an essential role in this disciplinary apparatus, as police supervision was the prime mechanism of creating and isolating the delinquent.²² Thus, the police and penitentiary are “chronological twins” for there would be no modern prison system without the general surveillance by law enforcement.²³ In fact, Foucault argues, the three terms of ‘delinquency’, ‘police’ and ‘prison,’ while separate entities, support one another in such a way that they form “a circuit that is never interrupted.”²⁴ In this way, policing is inextricably linked to the process of criminalisation and incarceration. Therefore, interrogating the incarceration of the mentally disabled population, as well as the wider processes that tied mental disability to ideas of dangerousness and criminality (or in Foucauldian terms ‘delinquency’), is an integral part of this thesis.

Additionally, the framework I employ does not subscribe to the conventional view of policing (inherent in many human rights analyses) which sees the role of the police as merely enforcing the law. Rather, policing is the key dimension of state power, to the extent that it is “synonymous with government itself.”²⁵ As Foucault argues, the power of police is not derived from principles of justice or from judicial power: “Police is in no way thought of as a sort of instrument in the hands of judicial power, as a sort of way of really applying regular justice... it is

²² Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Vintage Book press, 1977), 280.

²³ Michel Foucault, *The Punitive Society: Lectures at the College de France, 1972-1973* (New York: Palgrave Macmillan, 2013), 135.

²⁴ Foucault, *Discipline and Punish*, 282.

²⁵ Markus Dubber, *The Police Power: Patriarchy and the Foundations of American Government* (New York: Columbia University Press, 2005), 82.

not the King acting through his apparatus of justice; it is the King acting directly on his subjects.”²⁶ Police power is not only synonymous with sovereign power, but by this very nature, must be unlimited and undefinable. Indeed, early policing was marked by its expansive domain of control, entrusted with regulating the public health and social welfare of the populace as well as the marketplace. In the liberal modern state, in which government is self-limiting, these domains of control were relegated to other state institutions, yet the essential powers of police remained. The modern police were no longer only entrusted with eliminating existing danger for the necessity of public welfare. Instead, police had the power to remove anyone (or anything) they *deem* to be a threat, regardless of whether that person actually poses a threat.²⁷ In other words, the modern police were distinguished by its preventative rather than merely responsive role. This too was seen as a necessary power for maintaining public order and welfare. It is because the police are entrusted with responding to *potential* threats that their power must be wide-ranging, as Chief Justice Taney argued, “[in] all matters of government and especially of police, a wide discretion is necessary. It is not susceptible of an exact limitation, but must be exercised under the changing exigencies of society.”²⁸ Hannah Arendt, similarly, makes a connection between the “necessity” that governs the political sphere - including the police - and violence: “force and violence are justified in this sphere because they are the only means to master necessity.”²⁹ In this way, expansive power and violence, or the threat of violence, are embedded in the foundation of the police.

²⁶ Michel Foucault, *Security, Territory, Population: Lectures at the College de France, 1977-78* (London: Palgrave Macmillan, 2009), 339.

²⁷ Dubber, *The Police Power*, 113.

²⁸ Chief Justice Roger B. Taney as cited in Dubber, *Police Power*, 119.

²⁹ Hannah Arendt, *The Human Condition* (Chicago: University of Chicago Press, 1958), 31.

It is important to emphasise that, while policing under the liberal state was drastically different from monarchic policing, it is nevertheless still inextricably tied to sovereignty. The modern, liberal governmentality was, in many ways, a continuation of ‘police’ with “modified terms and conditions,” whereby the basic principles underlying police power were fundamentally unquestioned.³⁰ Specifically, the exercise of power by police is subtler, opting for constant surveillance of a population as opposed to frequent repressive violence. Thus, police power has not changed but has become more invisible; the expansive network of law serves to obscure this power: “liberalism disguises its effects; state power is concealed by its bureaucratic structure, a law-administration continuum divorced from but conditioned by the State, obscuring its effect.”³¹ In other words, liberalism naturalised police power.

Taking the expansive and normalised power of the police as a basis, this thesis moves beyond the conventional questions of human rights inquiries into police brutality - was the use of force justified/legal/legitimate? - but rather interrogates the very interaction between law enforcement and the populace (in this case the black mentally disabled population) that often leads to lethal outcomes.³²

³⁰ Kevin S. Jobe, “Policing the Demos: Foucault, Hegel & Police Power in Waller V. City of New York,” *New Formations* 84, no. 84-85 (2015): 99.

³¹ Andrew Johnson, “Foucault: Critical Theory of the Police in a Neoliberal Age,” *Theoria* 61, no. 4 (2014): 24.

³² It is for this reason that I have deliberately not included a definition of “police brutality” or “excessive use of force.”

II. Differentiated Sites of Confinement: Prison as the Surrogate Asylum?

Considering the interconnected nature of policing and incarceration, this section explores the conceptual and statistical link between asylums and prison. I argue that the intimate relationship between the two institutions indicates that people with mental disabilities have historically been, and continue to be criminalised, and by extension have higher interactions with police. Furthermore, this process of criminalisation is heightened for people of colour. Scholars have established an enduring link between blackness and criminality as early as the nineteenth century, and psychiatry tied violent mental illness to blackness in the 1960s and 1970s.

Prisons and asylums for the mentally disabled worked within the same disciplinary system aimed at producing particular subjects, subjugating them, and controlling the overall population.³³ Indeed, the two operate under a shared logic of segregation for the betterment of society. Historically, the penitentiary and the asylum - along with the almhouse - were constructed in near conjunction as part of a new system of differentiated confinement. The fact that these institutions were constructed at the same time suggests that early American society was not merely reacting to new psychiatric knowledge, but rather had more broader motivations for segregation:³⁴ namely, imposing social control and order in a chaotic and unstable new republic. Furthermore, both institutions were constructed under a humanitarian rationale, which emphasised the redeemable aspect of each person under institutional authority. Psychiatrists and

³³ Foucault, *Discipline and Punish*, 231.

³⁴ David J. Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic* (Boston: Little, Brown and Company, 1971), xxi.

their philanthropic supporters saw insanity as a disease, and the asylum was a necessary and effective tool to reach a cure.³⁵ Similarly, advocates of the penitentiary, in part, saw it as a humanitarian alternative to the public torture and execution system of punishment. More importantly, this new form of punishment had the explicit aim of producing “changes in body and mind, which are absolutely necessary to reform obstinate habits of vice.”³⁶ This was deemed crucial in a republic where there was no sovereign to inspire absolute obedience.³⁷ Thus, the American prison was created to reform deviant individuals into “republican machines.”³⁸ It is important to emphasise that the penitentiary and asylum do not simply segregate pre-existing ‘deviants;’ rather, they actively produce this class as a subject of knowledge through ‘professionalization.’ In this way, ‘madness’ is constructed and supported by science and the psychiatrist, and the ‘delinquent’ is constructed and supported by the science of criminology. The close conceptual and historical relationship between the prison and the asylum suggests that there is a continuity of spatial exclusion and confinement between the two institutions.

Beyond this conceptual marriage between the prison and the asylum, however, exists an important statistical link. At the historical moment when the prison population began to rise in the U.S. (in the 1960s and 1970s), economic considerations, in addition to growing concern over poor conditions in mental health institutions, led to a significant drop in patient intakes at mental institutions and the eventual closure of asylums - a process now referred to as

³⁵ Ibid, 131

³⁶ Benjamin Rush, *Essays, Literary, Moral and Philosophical* (Philadelphia: Thomas and William Bradford, 1806), 138; Michael Meranze, *Laboratories of Virtue: Punishment, Revolution, and Authority in Philadelphia, 1760-1835* (Chapel Hill: North Carolina Press, 1996).

³⁷ Lisa Guenther, *Solitary Confinement: Social Death and its Afterlives* (Minneapolis: University of Minnesota Press, 2013), 7.

³⁸ Rush, *Essays*, 14.

‘deinstitutionalization.’ The “mass exodus”³⁹ of mentally ill persons from state hospitals to their communities was met with punitive policies that forced the same population into prisons and jails. It is therefore unsurprising that the “largest inpatient psychiatric facilities in the [U.S.] are jails with the LA, Rikers and Cook County each individually housing more persons with mental illness than any [current] psychiatric institution.”⁴⁰ Indeed, according to the latest estimates, more than half of all prison and jail inmates have a mental health problem.⁴¹ This phenomenon seems to be the missing piece in the puzzle of modern day mass incarceration, for it implies that the U.S. is experiencing a continuity of confinement rather than an incarceration explosion.⁴² This connection was made particularly clear when many asylums were converted into prisons in order to accommodate the booming incarcerated population.⁴³

It is important to emphasise that the punitive consequences of deinstitutionalisation were not equally distributed, but were determined by the insidious mix of racism and ableism. While the demographics of mental institutions at the point of deinstitutionalisation differ widely from the modern-day demographics of the prison population, a change in asylums at the point of deinstitutionalisation suggests a connection between race, mental illness and criminality. First, the rate of ethnic and racial minorities in mental institutions was increasing at the point of deinstitutionalisation. A study of mental hospitals in six states between 1968 and 1978 found that

³⁹ Richard Lamb, “Mentally Ill Persons in the Criminal Justice System: Some Perspectives,” *Psychiatric Quarterly* 75, no. 2 (2004): 111.

⁴⁰ Michael Rembis, “The New Asylums: Madness and Mass Incarceration in the Neoliberal Era,” in *Disability Incarcerated: Imprisonment and Disability in the United States and Canada*, eds. Liat Ben-Moshe, Chris Chapman and Allison C. Carey (New York: Palgrave Macmillan, 2014), 189

⁴¹ Doris J. James and Lauren E. Glaze, “Mental Health Problems of Prison and Jail Inmates.” *U.S. Department of Justice, Bureau of Justice Statistics*, Dec 14, 2006.

⁴² Bernard Harcourt, “From the Asylum to the Prison: Rethinking the Incarceration Revolution,” *Texas Law Review* 84, no. 7 (2006): 1752.

⁴³ Nirmala Erevelles, “Crippin’ Jim Crow: Disability, Dis-Location, and the School to Prison Pipeline,” in *Disability Incarcerated: Imprisonment and Disability in the United States and Canada*, eds. Liat Ben-Moshe, Chris Chapman and Allison C. Carey (New York: Palgrave Macmillan, 2014), 83

the percentage of whites among admitted patients decreased from 81.7 percent to 68.3 percent.⁴⁴ Second, prior to this point, mental illness was, for the most part, not conceptualised as an aggressive or violent disorder. For example, in the 1930s and 1940s schizophrenia was often a diagnosis for middle-class white women, and was therefore represented in popular culture as a disorder in which early life trauma - coupled with the stress of modern living - left homemakers unable to fulfil their wifely and motherly duties. However, by the 1960s and 1970s, at the height of the civil rights movement, patients diagnosed with schizophrenia were disproportionately black and now described as “paranoid, delusional and violent.”⁴⁵ This clinical perception of black mental illness and criminality permeated into public discourse, with mainstream newspapers describing schizophrenia as a condition of angry black men. Advertisements for anti-psychotic medication depicted angry black men with a clenched fist mimicking the Black Power sign, or used images of African tribal masks at the precise point in time when Malcolm X advocated for a form of Pan-Africanism.⁴⁶ We can therefore see that “deinstitutionalization did not simply dictate which patients the state free; it also decided which patient the state held onto,”⁴⁷ either through the penitentiary or through the few remaining mental institutions. Crucially, these patients deemed as dangerous and therefore in need of institutional segregation were disproportionately black, initiating a process of close association in American society

⁴⁴ Henry J. Steadman et al., “The Impact of State Mental Hospital Deinstitutionalization on United States Prison Populations, 1968-1978,” *Journal of Criminal Law and Criminology* 75, no. 2 (1984): 479

⁴⁵ Jonathan Metzl, *The Protest Psychosis: How Schizophrenia Became a Black Disease* (Boston: Beacon Press, 2009), 57.

⁴⁶ Advertisements for the antipsychotic drug Haldol in 1974 depicted a black man with clenched fists under the headline “assaultive and belligerent?” See: Archives of General Psychiatry 31, no. 5 (1974): 732-33. Advertisements for Thorazine and Stelazine in the same period depicted tribal artefacts or masks, see: Archives of General Psychiatry 33, no. 2 and 9 (1976): back cover and Archives of General Psychiatry 35, no. 1 (1976): 94-95. As cited in Metzl, *The Protest Psychosis*.

⁴⁷ *Ibid*, 16

between blackness and violent insanity.⁴⁸ This perception of dangerousness must be understood within the context of the broader historical connection between blackness and criminality that was established at least as early as emancipation and persists today.⁴⁹

The overlap between the asylum and penitentiary clearly shows that individuals with mental disabilities have been closely associated with deviancy. This has undoubtedly shaped contemporary policing practice, as mentally disabled individuals are more likely to interact with police officers and are therefore disproportionately represented in prisons and jails. However, as was shown by the example of schizophrenia, the criminalisation of mental illness - and its association with dangerousness in particular - is not race neutral.

⁴⁸ Ibid, ix

⁴⁹ See: Khalil Gibran Muhammad, *The Condemnation of Blackness: Race, Crime and the Making of Modern Urban America* (Cambridge: Harvard University Press, 2010); Angela Davis, *Are Prisons Obsolete?* (New York: Seven Stories Press, 2003); Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: New Press, 2010).

III. “Waste Humanity”: Economic Productivity, Race and Mental Disability

This section investigates the criminalisation of mental disability through a political economic lens. I argue here that the increased interactions between law enforcement and individuals with mental disabilities can be explained by the lack of resources for community care following deinstitutionalisation. I place this insight into the wider political economic context of early capitalism and contemporary neoliberalism, arguing that the classification of mental disabilities, and the subsequent confinement of this population, is rooted in the capitalist imperative of labour.

Deinstitutionalization operated under the assumption that while the asylum had not been successful for treating mental illness, the community would be able to take care of the mentally ill. However, paradoxically, national and local legislatures were (and continue to be) reluctant to pass legislation, or to fully implement legislation, that requires spending tax money on community-based care.⁵⁰ Indeed, a retrenchment in the welfare state proceeded deinstitutionalization, reaching a zenith in the neoliberal austerity measures of the 1990s that, amongst other things, limited access to healthcare. This relationship between material resources and criminalisation was first identified by Loïc Wacquant.⁵¹ He uses Pierre Bourdieu’s two

⁵⁰ Burton Blatt, *The Conquest of Mental Retardation* (Austen: Pro-Ed, 1987), 230. Furthermore, many citizens blocked the implementation of community care programs. Neighbourhood groups used tactics such as destroying group homes under construction, threatening employees or fellow residents, and using zoning ordinances to prevent the development of group homes. See: Richard Hogan, “Community Opposition to Group Homes,” *Social Sciences Quarterly* 67 no.2 (1986); Laura Kastner, N. Dickon Reppucci and John Pezzoli, “Assessing Community Attitudes Toward Mentally Retarded Persons.” *American Journal of Mental Deficiency* 84 no.2 (1979); Richard C. Schreenberger, *A History of Mental Retardation: A Quarter Century of Promise* (Baltimore: Brookes, 1987).

⁵¹ Loïc Wacquant, *Punishing the Poor: The Neoliberal Government of Social Insecurity* (Durham: Duke University Press, 2009).

concepts of controlling the lower classes populations: the “left hand” of the state, which has the aim of expanding opportunities through social programs such as public healthcare, housing and education; and the “right hand” of the state, which aims to control the population through the judiciary, penitentiary and policing.⁵² As reductions in the left hand of the state persisted throughout the late half of the twentieth century, the carceral right hand of the state swelled and became active and intrusive in low class urban communities.⁵³ The resource problem of treatment for mental illness extends to cognitive disabilities. For deinstitutionalisation had an implicit expectation that parents, particularly mothers, should identify the disability and then enact extensive therapeutic regimes in their homes. This of course presupposed a level of education, income, and flexibility that is absent for many families.⁵⁴ Considering that class oppression and racial oppression have always been intertwined in the U.S., parents of colour are more likely to lack the resources for obtaining a disability diagnosis and subsequently implement effective therapies. Absent these therapeutic resources for both mental illness and cognitive disabilities, the police are typically the first and only resource in communities that can respond to situations involving individuals with mental illness and cognitive disability.

Thus, the criminalisation of those with mental disabilities can also be conceptualised as a problem of political economy. Indeed, in his analysis of mass incarceration, Loïc Wacquant not only argues that there is a reciprocal relationship between welfare and prison, but also that this is

⁵² Pierre Bourdieu, “The Abdication of the State,” in *The Weight of the World: Social Suffering in Contemporary Society*, ed. Pierre Bourdieu et al. (Cambridge: Polity Press, 1999), 218-219

⁵³ Loïc Wacquant, “Ordering Insecurity: Social Polarization and the Punitive Upsurge,” *Radical Philosophy Review* 11, no.1 (2008): 15. The ‘urban’ is an important factor in the policing of black individuals with cognitive disabilities. Foucault argued that modern policing is inextricably tied to urbanization: “police, is essentially urban and market based, see: Foucault, *Security, Territory, population*, 336.

⁵⁴ Allison C. Carey, “Parents and Professionals: Parents’ Reflections on Professionals, the Support System, and the Family in the Twentieth-Century United States,” in *Disability Histories*, eds. Susan Burch and Michael Rembis (Urbana: University of Illinois Press, 2014), 67.

based on a gendered division of labour. While poor black women remain in “ghetto” communities, often as heads of households, and are subject to control through the welfare system, their male counterparts are controlled by law enforcement on the streets and the prison.⁵⁵ Furthermore, since deindustrialisation and the collapse of U.S. manufacturing, the black male population that had originally moved to the urban north in order to work in factories, became economically redundant, and thus it was much easier to remove them altogether from mainstream society (and into prison).⁵⁶

Wacquant’s analysis, which sees human beings as economic potential - so intrinsic to the function of capitalism - is not only important for explaining the over incarceration and policing of black men since deindustrialisation, it can also explain the incarceration and policing of people with mental disabilities. Foucault argues that it was the bourgeois “imperative of labour” that made confinement - in the almshouse, prison, and crucially, the asylum - necessary in the first place.⁵⁷ Indeed, the ability to work was embedded in the classification and subsequent confinement of people with disabilities in the early capitalist U.S. Republic.⁵⁸ While it was

⁵⁵ This is not to say that black women are not subject to control through the “right hand” of the state. In fact, black women are the fastest growing demographic in the prison and jail populations. However, incarcerated men still outnumber incarcerated women. See: Jamiles Lartley, “Women in Jails are the Fastest Growing Incarcerated Population, Study Says.” *The Guardian*, Aug 17, 2016.

⁵⁶ Loïc Wacquant, “The Penalisation of Poverty and the Rise of Neo-Liberalism,” *European Journal on Criminal Policy Research* 9, no. 49 (2001); Loïc Wacquant, “Deadly Symbiosis: When Ghetto and Prison Meet and Mesh,” *Punishment & Society* 3, no. 1 (2001); Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (Berkeley: University of California Press, 2007).

⁵⁷ Michel Foucault, *Madness and Civilisation: A History of Insanity in the Age of Reason* (New York: Routledge, 2006), 43

⁵⁸ Not only did disability categories emerge in a capitalist system that required a robust labour force, but the emergence of the police force is closely tied to capitalism too. See: Mark Neocleous, *The Fabrication of Social Order: A Critical Theory of Police Power* (London: Pluto Press, 2000). Furthermore, Foucault argues that the early police forces were responsible for regulating the labour force: “the objective of police... would be to see to the activity of the population. With regard to the able-bodied, the policy will be to put to work those who can work, and only to provide for the needs of the disabled poor,” see: Foucault, *Security, Territory, Population*, 325, 335.

relatively straightforward to determine whether people with physical disabilities can be put to work, differentiation based in psychiatric and cognitive disability proved more challenging. Therefore, medical, psychological and educational professionals had the responsibility of sorting out the economically productive from the unproductive by ascribing differing diagnoses.⁵⁹ Confinement (and to some extent even modern community-based interventions) was predicated on an understanding of ‘cure’ as economic productivity and independence.⁶⁰ Meanwhile, institutions themselves functioned under an economic productivity rationale. Paul Popenoe and Roswell Hill Johnson, academics working in the 1920s, argued that the cognitively disabled individuals they termed as “waste humanity” should be made profitable:

“feeble-minded men are capable of much rough labor. Most of the cost of segregating the mentally defective can be met by properly organizing their labor, so as to make them as nearly self-supporting as possible. It has been found that they perform excellently such work as clearing forest land, or reforesting cleared land, and great gangs of them might profitably be put at such work.”⁶¹

This perception that individual worth was inextricably tied to dis/ability and economic potential permeated immigration policy in the early twentieth century. An immigration law passed in 1907 described restrictions on immigration for “persons...who are found to be and are certified by the examining surgeon as being mentally or physically defective, *such mental or physical defect being of such a nature as to affect the ability of the alien to earn a living.*”⁶²

⁵⁹ Chris Chapman, Allison C. Carey and Liat Ben-Moshe, “Reconsidering Confinement: Interlocking Locations and Logics of Incarceration, *Disability Incarcerated: Imprisonment and Disability in the United States and Canada*, eds. Liat Ben-Moshe, Chris Chapman and Allison C. Carey (New York: Palgrave Macmillan, 2014), 7.

⁶⁰ Ibid

⁶¹ Paul Popenoe and Roswell Hill Johnson, *Applied Eugenics* (New York: MacMillan, 1927), 192.

⁶² Ibid, 303. Italics added for emphasis.

This link between economic utility, race and disability has roots in slavery. Breach of warranty court records in the antebellum South indicate that mental disability - “soundness” - was dependent on a slave’s ability to understand and perform his or her duties.⁶³ Crucially, mental disability was treated differently to illness, for the presence of a “disease” was often understood as being curable and therefore did not constitute a breach of warranty. Thus, the definitions of mental disability that was established by the white population, for the white population, did not apply to the slave population.⁶⁴

We can therefore see that there is a deep-seated connection between capitalist economic structures, race and mental disability. For both individuals of colour and individuals with mental disability an inability to produce - in the economic sense - determines the likelihood of confinement. There is an apparent dualism in the neoliberal capitalist context: on the one hand care for the mentally disabled has been commodified with the expansion of private care agencies and facilities as well as pharmaceutical options; on the other hand, for those who do not have access to this, prison and the asylum function as mechanisms of segregating this economically redundant “surplus” populations - “museum[s] for the collection and exhibition of the varied specimens making up the refuse of a capitalist society.”⁶⁵

The political economic lens to criminal justice that emphasises the economic productivity of individuals, not only explains why individuals with cognitive disabilities have historically been placed in confinement; it also explains how socio-economic status and access to therapeutic

⁶³ Dea H. Bosner, “Unfit for Ordinary Purposes: Disability, Slaves and Decision Making in the Antebellum American South,” in *Disability Histories*, eds. Susan Burch and Michael Rembis (Urbana: University of Illinois Press, 2014), 203

⁶⁴ *Sloan v. Williford*, 25 N.C. 307 (N.C. 1843)

⁶⁵ Andrew T. Scull, *Decarceration: Community Treatment and the Deviant: A Radical View* (Englewood Cliffs: Prentice-Hall, 1977), 106; Gilmore, *Golden Gulag*.

resources influence the likelihood that an individual with cognitive disabilities will interact with law enforcement.

IV. A Peculiar History: Cognitive Disability, Race and Criminalisation

This thesis has thus far focused on mental disabilities in a general sense and has predominantly drawn on literature exploring mental illness, incarceration, institutionalisation and policing. Where appropriate I have used the literature on mental illness to inform similar conclusions on cognitive disability. I take up the diagnostic differences between the cognitive disability and mental illness explicitly here, and therefore consider the former separately from the latter. Specifically, I track the historical process that tied cognitive disability to dangerousness and criminality in the nineteenth and twentieth centuries. I also argue that, not only did notions of dangerousness permeate into conceptualisations of cognitive disability and race, but that the notion of blackness itself has been shaped by the historical discourse of cognitive disability. Crucially, this association has effects in contemporary policing practices, not only increasing interactions between law enforcement and cognitively disabled black individuals but also increasing the likelihood of a violent or lethal encounter.

There are important similarities between mental illness and cognitive disability that must be acknowledged. As was shown earlier in the thesis, the logic of deviance underlying both individuals with cognitive disabilities and those with mental illness has meant that the two groups occupied the same historically segregated spaces: the almhouse, the asylum and the penitentiary. Deinstitutionalisation and shrinking resources for treatment have had a significant impact on both groups. Additionally, disability - particularly mental disability - is characterized by its fluidity, as Brenda Brueggemann notes: 'disability stabilizes most in its instability. The definition of disability always begins (and probably ends, too) in its ambiguity, in its

indeterminate boundaries.”⁶⁶ The slipperiness and socio-historically contingent nature of mental disability implies that cognitive disabilities and mental illness should not be conceptualised as two dichotomous categories. This is bolstered by the fact that a cognitive disability does not preclude a mental illness and vice versa; and the two can share symptoms. Nevertheless, differentiation between them is nearly as long as their respective histories. The first U.S. Census that attempted to quantify disability in 1840 established categories for the deaf, blind, dumb and, importantly, the ‘idiot’ and ‘insane.’⁶⁷ This categorisation was not only based on a real functional difference - challenges facing those with cognitive disabilities are distinct from those confronting people with mental illness and vice versa - but it also implies a difference in social significance. In other words, as much as we can use some of the lessons of mental illness to inform cognitive disability, we must recognise that cognitive disability and its various iterations of mental retardation/ feeble-mindedness/idiocy have been shaped by historical, social and cultural forces in a specific manner that is divergent from mental illness.

The history of cognitive disability has been shaped by distinct links to criminality and social deviance. Throughout the nineteenth and early twentieth centuries in particular, experts established the cognitively impaired as unpredictable individuals presenting various dangers to the public. For example, physician and superintendent at Pennsylvania Training School for Feeble-Minded Children, Isaac Kerlin, argued that “moral idiots” are “the degenerate offspring of an intemperate or otherwise offending parent. His cognitive disability involved impairment of the moral faculty...if not appropriately disciplined and trained, the moral idiot was likely to be a

⁶⁶ Brenda Brueggemann, “Enabling Pedagogy,” in *Disability Studies: Enabling the Humanities*, eds. Sharon Snyder, Brenda Brueggemann and Rosemaire Garland Thomson (New York: Modern Language Association of America, 2002), 319.

⁶⁷ Interestingly, these differentiations applied to both the white and black slave populations.

thief and a liar, an arsonist, and possibly even a murderer.”⁶⁸ Similarly, Samuel Gridley Howe, a notable social reformer, abolitionist and educator for the blind, argued that moral idiots were dangerous because they did not have the capacity to understand and follow the law: “that condition in which the sentiments, the conscience, the religious feeling, the love of neighbor, the sense of beauty, and the like, are so far dormant or underdeveloped, as to incapacitate the person from being a law unto himself. . . . Idiots of this character are not to be found in our almshouses, but they are often found in our prisons.”⁶⁹

Importantly, the hereditary aspect of cognitive disability implied in the definition of moral idiocy was especially important since it fanned the flames of the growing American eugenics movement in the early twentieth century. While some scholars and practitioners used the link between criminality and cognitive disability to garner support for ‘rehabilitative’ institutions aimed at ‘curing’ individuals, proponents for eugenics insisted on the inevitability to criminality that required more radical solutions. For example, eugenicist Walter E. Fernald argued that the ‘feebleminded’ should be sterilized and kept in institutions due to their criminality:

“the feeble-minded are a predatory class, never capable of self support or managing their own affairs. . . . they cause unutterable sorrow at home and are a menace and danger to the community. . . . Every feebleminded person, especially the high-grade imbecile, is a potential criminal, needing only the proper environment and opportunity for the development and expression of his criminal tendencies.”⁷⁰

⁶⁸ Andrew Dilts, “Incurable Blackness: Criminal Disenfranchisement, Mental Disability, and the White Citizen,” *Disability Studies Quarterly* 32, no. 3 (2012).

⁶⁹ Samuel Gridley Howe, *Report Made to the Legislature of Massachusetts, Upon Idiocy* (Boston: Coolidge & Wiley, 1848), 20.

⁷⁰ Walter E. Fernald (1925) as cited in David A. Nibert, “The Political Economy of Development Disability,” *Critical Sociology* 21, no. 1 (1995): 65/

In addition to painting cognitive disability as violent and criminal, eugenics advocates saw cognitively disabled men specifically as sexual predators, which, they used in turn, to justify surgical castration and sterilisation.⁷¹ As one of the physicians who supported castration for cognitively disabled men argued: “what is not fully recognised is the fact that mental defectives suffer not only from exaggerated sexual impulses, but from mental and moral debility...leaving them greater slaves to the impulse of the moment.”⁷² The eugenics movement achieved some morbid success, with states such as New York adopting sterilization laws in the early twentieth century that aimed to examine the conditions of the feeble-minded and the criminal in institutions, to determine whether the procreation of such an individual would produce a feeble-minded or criminal child, and if so, to perform a sterilization operation.⁷³ It is estimated that around 50,000 people with disabilities, or otherwise labelled ‘defective’ were either forcibly or voluntarily sterilized between 1925 and 1955.⁷⁴

Statistical evidence was crucial in proving a link between cognitive disability and criminality. For example, research conducted in prisons in 1877 concluded that most inmates are classified as ‘feeble-minded’ and therefore “the *evidence points unmistakably* to the fact that mentally defective children often have immoral tendencies, that they are greatly lacking in self-

⁷¹ Michelle Jarman makes a connection between this aspect of eugenics and lynching, which also used the narrative of Black men as sexual predators against white women to justify racial violence. Jarman additionally notes that the eugenics movement was not only based on ableism but on explicit racism, see: Michelle Jarman, “Dismembering the Lynch Mob: Intersecting Narratives of Disability, Race and Sexual Menace,” in *Sex and Disability*, ed. Robert MacRuer (Durham: Duke University Press, 2012).

⁷² Martin W. Barr, “Some Notes on Asexualisation: With a Report on Eighteen Cases,” *Journal of Nervous and Mental Disease* 51, no. 3 (1920): 232. It is important to note that Barr’s analysis one again presents cognitive disability in direct opposition to rationality, in the sense that cognitively disabled individual do not have the rational capacity to regulate their animalistic impulses.

⁷³ Italics added for emphasis. Stanley Powell Davies, *Social Control of the Feeble-minded: A Study of Social Programs and Attitudes in Relation to the Problems of Mental Deficiency* (New York: Columbia University Press, 1923), 62.

⁷⁴ Daryl Paul Evans, *The Lives of Mentally Retarded Persons* (Boulder: Westview Press, 1983).

control... thus they drift into ways of crime at an early age.”⁷⁵ More than forty years later, Dr. V.V. Anderson, a doctor who would later specialise in autism treatment, made a strikingly similar argument in a study published in 1919: “the feeble minded furnish the substantial nucleus of that most expensive body of individuals that clog the machine of justice, who spend their lives in and out of penal institutions.”⁷⁶ Furthermore, statistics on the number of cognitively impaired men who were convicted for sex crimes, were used to persuade legislators to implement eugenics reform and confine the “feeble minded” to segregated institutions. In the same way, crime statistics were used by scholars after emancipation to argue that African Americans were unfit for freedom. Khalil Gibran Muhammad argues that crime statistics and the trend in migration from north to south were brought together in the late-nineteenth and early-twentieth-century academic discourse to prove that black people posed an exceptional threat to modern society.⁷⁷ When biological arguments for the inferiority of African Americans were no longer socially accepted, liberal scholars still essentialised differences between black and white crimes. Drawing on statistical evidence, they argued that criminality amongst the black population was rooted in cultural and environmental forces that were fundamentally different from white immigrants: according to the criminologist Frances Kellor, “the negroes’ crimes show an absence of racial and personal responsibility, and are the outgrowth of an impulse rather than of well laid plans and complicated schemings.”⁷⁸ In this way, crime was “written into”⁷⁹ both cognitive disability and race.

⁷⁵ Ibid, 4

⁷⁶ Ibid, 53-4

⁷⁷ Muhammad, *Condemnation of Blackness*, 7.

⁷⁸ Frances Kellor as cited in Muhammad, *Condemnation of Blackness*, 100.

⁷⁹ Muhammad, *Condemnation of Blackness*.

Not only did notions of criminality permeate evolving categories of race and disability, but notions of disability - particularly cognitive disability - shaped understandings of race. The concept of disability has been used to justify racial discrimination by attributing disability, and by extension inferiority, to African Americans.⁸⁰ In conjunction with the studies conducted immediately after emancipation that used criminal statistics to determine the inherent inferiority of African Americans, studies and papers were written to determine the lunacy or idiocy of ‘free negroes.’ A common argument used by proponents of slavery was that African Americans simply lacked sufficient intelligence to participate in democratic society on an equal basis with white Americans. Studies presented ‘evidence’ that ‘mulattos’ had a higher intelligence than ‘pure’ blacks in order to prove that superiority of whiteness, whilst other studies showed the opposite in order to claim that products of ‘race mixing’ were more defective than members of either races in their ‘pure’ form.⁸¹ Furthermore, proponents of slavery aimed to show that freedom had actually disabled slaves. For example, John C. Calhoun argued that “the number of deaf and dumb, blind, *idiots*, and insane, of the negroes in the States that have changed the ancient relation between the races [is] seven times higher than in the slave states.”⁸² Similarly a delegate to Congress argued that the ratio of “insane free negroes” and “insane slaves” was seven to one.⁸³ This connection between people of colour and cognitive disability extended beyond the emancipation era. In a book published in 1940, “Heredity and Social Problems,” Leonas Burlingame argues that: “in proportion to their number, Negroes contribute far too few persons of high ability and far too many who are low normal or deficient in their ability. Mexicans are

⁸⁰ Douglas C. Bayton, “Disability and the Justification of Inequality in American History,” in *Disability Studies Reader, Fourth Edition*, ed. Lennard J. Davis (New York: Routledge, 2013), 33.

⁸¹ *Ibid*, 37

⁸² John C. Calhoun, “Mr. Calhoun to Mr. Pakenham,” in *The Works of John C. Calhoun*, ed. Richard K. Cralle (New York: D.Appleton, 1888), 337.

⁸³ Dilts, “Incurable Blackness.”

the second most serious race problem. They are of distinctly low mental calibre...⁸⁴ These various studies that criminalised race and disability index the ways in which understandings of race, ability, and criminality have been shaped by one another, and the threat presented by disability and criminality have been connected to notions of racial inferiority.⁸⁵

During the twentieth century, mental disability, race and class came together to criminalise a specific group, namely, low-class African Americans, which in turn, has shaped contemporary policing practice. Thus, there has been a long history of cultural and political currents that brought “the ideas of blackness, criminality and mental disability...into close connection, mutually supporting each other under a regime of biopolitics.”⁸⁶ Unfortunately, few scholars have attempted robust investigations into this particular type of biopolitics.

⁸⁴ Leonas Burlingame, *Heredity and Social Problems* (New York: McGraw-Hill, 1940): 257.

⁸⁵ Dilts, “Incurable Blackness.”

⁸⁶ Ibid

V. *Methodology*

There are several obstacles that make the quantification of Black Americans with cognitive disabilities brutalised by police particularly difficult. First, while the excessive use of force by police against communities of colour is not a new phenomenon, the availability of reliable and systematic data on these incidents is relatively recent and therefore remains scant. Since police departments are not obliged to report incidents of violence and homicide by officers to the federal government, the exact number of these incidents and the details surrounding them are largely unknown.⁸⁷ The quality and quantity of information on instances of police brutality varies significantly by case, with some garnering significant public attention and therefore a thorough investigation, whilst others elicit a one sentence report with basic information missing. Nevertheless, recent efforts by journalists, civil society members and the Department of Justice to quantify police killings have confirmed the racial disparity in arrest related deaths, with young black men nearly nine times more likely to be killed by police than other Americans.⁸⁸ However, few of these outlets include aggregated data or statistics on disability.

Second, there are significant racial disparities in cognitive disability diagnosis, making the very populations most likely to suffer from excessive use of force by police least likely to be diagnosed. Since people of colour still have significantly lower health insurance rates and are more likely to receive worse care than white Americans, black Americans are less likely to be

⁸⁷ Legislation passed in 2014 requires local police departments to report all deaths in custody to the Justice Department or lose ten percent of federal funding. However, the law has largely been ignored by police departments with little material consequences. See: Jon Swaine, "Police will be Required to Report Officer-Involved Deaths Under New US System," *The Guardian*, Aug 8, 2016, accessed Sep 9, 2017.

⁸⁸ Jon Swaine and Ciara McCarthy, "Young Black Men Again Faced Highest Rate of Police Killings in 2016," *The Guardian*, Jan 8, 2017, accessed Sep 10, 2017.

seen by a competent medical professional to secure a cognitive disability diagnosis.⁸⁹

Furthermore, when African Americans are seen by medical professionals, they are more likely to be misdiagnosed as having a behavioural or psychotic disorder.⁹⁰ Indeed, the representation of some cognitive disorders such as autism as “middle-class white” disorders means that people of colour do not fit the mould for cognitive disability.⁹¹ Autism presents a good example of the disparity between black and white cognitive disability diagnoses. The average age for autism diagnosis is four-years-old, yet black children are diagnosed as much as eighteen to twenty-four months later.⁹² Whilst this does not seem like a large enough gap to be significant, it is a critical considering that early intervention significantly increases the likelihood of better functioning. The late diagnosis is based on the fact that black children are 2.6 times less likely to receive an autism diagnosis on their first speciality care visit, they are more likely to be wrongly diagnosed with conduct or adjustment disorders.⁹³

Paradoxically, however, black students in racially desegregated schools are disproportionately labelled as having a mild mental retardation and are more likely to be placed in special education and remedial classes. Although black students constitute only seventeen per cent of the total school enrolment, they comprise thirty-three percent of those labelled ‘mentally

⁸⁹ Carmen DeNavas-Walt, Bernadett D. Proctor and Jessica C. Smith, “Income, Poverty, and Health Insurance Coverage in the United States: 20012.” *United States Census Bureau*, accessed December 15, 2016.

⁹⁰ David S. Mandell, “Disparities in Diagnoses Received Prior to a Diagnosis of Autism Spectrum Disorder.” *Journal of Autism Development Disorder* 37, no. 9 (2006); Robert C. Schwartz and David M. Blankenship, “Racial Disparities in Psychotic Disorder Diagnosis: A Review of Empirical Literature.” *World Journal of Psychiatry* 4, no. 4 (2014).

⁹¹ Carrie Arnold, “Autism’s Race Problem.” *Pacific Standard*, May 29, 2016, accessed, December 18, 2016; Steve Silberman, “The Invisibility of Black Autism.” *Undark, Truth, Beauty, Science*, accessed December 13, 2016; Claudia Hilton et al. “Brief Report: Under- Representation of African Americans in Autism Genetic Research.” *Journal of Autism Development Disorder* 40 (2010): 634.

⁹² Hilton et al. “Brief Report: Under- Representation of African Americans,” 634.

⁹³ Ibid

retarded.’⁹⁴ Crucially, these classifications are referred to as ‘judgement’ categories because there is no accompanying physical diagnosis that can account for or confirm the professional’s opinion that the child is cognitively disabled. Thus, judgement diagnoses have little weight beyond the classroom. The racial disparity in types of diagnosis results in some black children being labelled cognitively disabled due to racial stereotypes of inferior intellect on the part of teachers, while other black children are unable or are misassigned a cognitive impairment. These children are disproportionately represented in the juvenile justice system. Between thirty and thirty-five percent of individuals held in juvenile detention centres have a special education disability, with learning disabilities being the most common.⁹⁵

The problem of invisibility extends to the academic level. Critical Race Theorists, including those examining forms of state violence such as police brutality, at best “relegate disability to the margins”⁹⁶ of their analysis and at worst neglect the role of ableism altogether. Similarly, while disability scholars frequently assert their analytical debt to Critical Race Theory, they continue to centralise the experiences of white disabled bodies in their work, to the extent that whiteness grounds the discipline even though it, more often than not, it remains unmentioned.⁹⁷ The use of ‘bodies’ here is intentional, for disability studies has also been criticised for prioritising physical

⁹⁴ Nirmala Erelles and Andrea Minear, “Unspeakable Offenses: Untangling Race and Disability in Discourses of Intersectionality,” *Journal of Literary & Cultural Disability Studies* 4, no. 2 (2010): 131.

⁹⁵ Christopher A. Mallett, “The ‘Learning Disabilities to Juvenile Detention’ Pipeline: A Case Study.” *Children & Schools* 36, no. 3 (2014); Michael Rozalski, Marilyn Deignan and Suzanne Engle, “The World of Juvenile Justice According to the Numbers,” *Reading & Writing Quarterly* 24 (2008); Xia Wang, Thomas G. Blomber, Spencer Li, “Comparison of the Educational Deficiencies of Delinquent and Non-Delinquent Students,” *Evaluation Review: A Journal of Applied Social Research* 29 (2005); Norman A. White and Rolf Loeber, “Bullying and Special Education as Predicators of Serious Delinquency,” *Journal Research in Crime and Delinquency* 45 (2008).

⁹⁶ Christopher M. Bell, *Blackness and Disability: Critical Examinations and Interventions* (Michigan: Michigan State University Press, 2011), 3.

⁹⁷ Christopher M. Bell, “Introducing White Disability Studies: A Modest Proposal,” in *The Disability Studies Reader* (2nd ed.), ed. Lennard J. Davis (New York: Routledge, 2006), 275.

forms of disability at the expense of mental disabilities, with scarce literature on cognitive disability in particular.⁹⁸ This theoretical split that insists on either a disability or a racial lens of analysis is reflected in statements and reports of police killings. For example, the Los Angeles Chief of Police commented on the fatal shooting of a homeless black man, Brendon Glenn: “even if race is a small part of this, which I don’t think it is, they’re certainly outweighed by the mental health issues.”⁹⁹ Thus, police officers seek to diminish what is considered a more divisive and political issue of race, in favour of the medical and individual issue of disability.¹⁰⁰ Similarly, reports of police brutality often briefly mention or down-play the disability of an individual killed by police, and thus neglect the distinctive position of mentally disabled black people vis à vis the police. This erasure of disability, Lennard Davis argues, is a common problem in the media reporting of racial violence: “whenever race and disability come together... ethnicity tends to be considered so much the ‘stronger’ category that disability disappears altogether.”¹⁰¹ The effect of these multiple exclusions is that African Americans with cognitive disabilities rarely appear in scholarly literature or in public consciousness. In this way, people of colour with cognitive disabilities experience “one of the dangers of standing at the intersection... the likelihood of being run over.”¹⁰² Given this systematic invisibility, attempting to quantify the number of black Americans with cognitive disabilities who have been killed by police, requires a careful methodology that recognises “the work of reading black and disabled

⁹⁸ Liat Ben-Moshe, “The Institution Yet to Come: Analyzing Incarceration Through a Disability Lens,” in *The Disability Studies Reader* (4th ed.), ed. Lennard J. Davis (New York: Routledge, 2013), 133.

⁹⁹ Associated Press and Snejana Farberov, “LAPD Chief ‘Very Concerned’ by Police Shooting of Unarmed Homeless Black Man on Crowded Venice Beach Street,” *The Daily Mail*, May 6, 2015.

¹⁰⁰ Michelle Jarman “Dismembering the lynch mob,” 90.

¹⁰¹ Lennard J. Davis, *Bending Over Backwards: Disability, Dismodernism and Other Difficult Positions* (New York: New York University Press, 2002), 147.

¹⁰² Ann DuCille, *Skin Trade* (Cambridge: Harvard University Press, 1996), 83.

bodies...is *recovery* work,”¹⁰³ and therefore relies on suggestive ‘evidence’ in addition to formal medical diagnoses, yet simultaneously, strives not to ‘write in’ a disability when there is none.

A preliminary examination of newspaper reports, interviews, medical examiner reports and police statements garnered through a google search¹⁰⁴ of the following phrases: “police,” “shot,” “kill,” “brutality,” “beat up,” “lawsuit,” “intellectual disability,” “cognitive disability,” “low IQ,” “illiterate,” “autism” and “speech impaired,” was used to identify cases of cognitive disability and police brutality. Then, I used *The Guardian* newspaper’s online database of police shootings to try and find incidents where police may have killed people with cognitive disabilities but those disabilities went unrecorded. *The Guardian* established *The Counted* database specifically to tackle the large information gap on police shootings by aggregating newspaper reports on police killings from 2015 and 2016 by name, age, gender, race/ethnicity of the victim; as well as in what geographic state the victim was killed; if the victim was armed and in what way he or she was killed (gunshot, taser, death in custody etc.). This database was selected, since, alongside *The Washington Post*, *The Counted* is considered the most comprehensive and reliable source of information on police shootings.¹⁰⁵ In order to narrow the number of cases for examination, only incidents involving black men who were unarmed or placed as “other” in the armed category

¹⁰³ Bell, *Blackness and Disability*, 3.

¹⁰⁴ Using “google” search engine to find primary resources poses significant problems that must be acknowledged. There are numerous factors built into the google algorithm that determine the results of a search including, how many and which other websites link to a page, how much traffic it receives, and how often a page is updated. Furthermore, google aims to personalise search results, which means different users are presented with different results based on their perceived interest. This has fuelled allegations that google’s algorithm prioritises extremist websites, and that the search engine has too much power in influencing opinions, attitudes, beliefs and behaviours. See: Olivia Solon and Sam Levin, “How Google’s Search Algorithm Spreads False Information with a Rightwing Bias,” *The Guardian*, Dec 16, 2016.

¹⁰⁵ A few notable limitations of the Guardian database: it has a short time frame- the last two years and only includes fatal incidents of police brutality. Furthermore, it relies on newspaper reports, with varying accuracy and detail, for information and thus does not account for cases not included in the media.

were selected.¹⁰⁶ This reduced the number of cases to 103 out of a total 1092 deaths in 2016 and 121 cases out of a total 1146 deaths in 2015. After scanning for explicit mentions of disability in the description, and finding none, the relevant newspaper reports, medical examiner reports, police statements, and family statements were examined for each case, looking for any mention of a mental disability. Considering the interrelationship of cognitive disability and mental illness described in Part II, both cases of mental illness and cognitive disability were recorded.

¹⁰⁶ Examining the database in full is a notable area for further research.

VI. Results and Discussion

The preliminary Google search indicates that there are at least twenty-three cases where police have used excessive force against individuals with cognitive disabilities.¹⁰⁷ Nine of these cases (41%) were against black individuals, four were Hispanic (18%), one was of Middle-Eastern origin and the rest were white (32%). Nine of the cases were lethal. Consistent with observations about the disparity in medical diagnosis, just over half of the black individuals had an ASD diagnosis. By contrast, every white individual bar one - a homeless man - had a confirmed diagnosis of either ASD or Down's Syndrome.

Seventeen-year-old Marcus Abrams was travelling home from the Minnesota state fair when he was severely beaten by two Metro Transit officers. Abrams and his friends were "horsing around," stepping on and off the light railway tracks.¹⁰⁸ Suspecting that Abrams was inebriated, the officers requested to see his ID and when he responded that he did not have one, proceeded to detain him. Reports by the officers claim that Abrams resisted arrest, did not comply with orders and attempted to strike and punch the officers. Therefore, the use of force by law enforcement was justified. Abrams has several interrelated disability diagnoses, including Aspergers, ADHD, seizures and he is considered legally blind. His mother explained how his disabilities affected the incident, "he has the mind of a 12-year-old... even if he doesn't look like that... just by talking to him they should have known that something in his mind was not

¹⁰⁷ I recognize that the sample size here is too small to draw firm conclusions. However, as mentioned earlier, the hurdle of invisibility clearly requires the absence of 'evidence' not to be considered evidence of absence. Furthermore, this paper should be seen as a first step in data collection that should be built upon through further research.

¹⁰⁸ Amber Randall, "Police Sued After Allegedly Body Slamming Autistic Teen," *The Daily Caller*, Sep 13, 2016, accessed June 20, 2017.

right.”¹⁰⁹ Abrams’ autism means that he has difficulties understanding the intentions and feelings of others, while his sensory problems means he especially does not like people to touch him or invade his personal space.¹¹⁰

Reginald “Neli” Latson’s case similarly shows the problems of atypical responses to law enforcement. Police tried to arrest Latson after he refused to provide his name and ID outside of the public library following a complaint by a citizen that a suspicious looking hooded man was loitering outside (he was waiting for the library to open). Due to Latson’s autism and low IQ of 69, his heightened instincts of ‘fight or flight’ meant that instead of cooperating with law enforcement he began running away, and when that failed, assaulted the police officers.¹¹¹ Additionally, Latson’s case shows the propensity of authorities to downplay the role of disability in favour of race. Stafford County Prosecutor Eric Olsen argued that Latson’s autism is “an aspect of convenience. When his advocates want him to be retarded, he is.” In reality, Olsen argues, Latson’s assault of a police officer was not a function of his disability, “he is a person with autism who also has hate, this racial hate and this hate for law enforcement.”¹¹²

Due to Latson’s cognitive disability, it has been deemed unsafe for him to spend his time in the general jail population and he has therefore been kept in solitary confinement. Solitary confinement can have devastating psychological consequences for neuro-typical adults but for those suffering from mental disabilities the deterioration is typically much worse. Crucially, it was only at this point that Latson’s case became a human rights concern. Since it was Latson

¹⁰⁹ Mary Lynn Smith, “Mother: Metro Transit Police Injured Autistic Son in St. Paul,” *Star Tribune*, Sep 1, 2015.

¹¹⁰ Mara H. Gottfried, “Autistic 17-year-old Mishandled by Metro Transit Police, Family Says,” *Twin Cities Pioneer Press*, Sep 1, 2015.

¹¹¹ Ruth Marcus, “Why is Reginald Latson Being Denied the Help He Needs,” *The Washington Post*, Nov 28, 2014.

¹¹² Ibid

who assaulted the police officers and not vice versa, the police interaction was deemed appropriate by advocacy groups. The perspective of human rights used in this thesis, which assumes a more critical and broader view of police power, sees the very interaction between Latson - a cognitively disabled black man - and law enforcement as a human rights concern. A letter by Autism Speaks to the Governor of Virginia urged him to use his clemency power to assure Latson's transfer to a secured therapeutic facility. In other words, from the prison to the asylum. Interestingly, the letter highlighted the importance of diagnosis for the cognitive disability advocacy community:

“Autism Speaks...will not involve itself in any matter where there is evidence that the defendant's ‘autism’ is, in reality, a pretextual excuse that is ‘diagnosed’ or ‘discovered’ only *after* the arrest of the defendant. Such defendants impair our cause, and serve only to confuse or offend the public. Neli Latson, however, has a long standing autism diagnosis and his inappropriate reactive behaviors are manifestations of that diagnosis.”¹¹³

In other words, a long-standing diagnosis provides the golden ticket to clemency. This is problematic considering the vast under-diagnosis within the Black community, which is, of course, more likely to be stopped by police and is overrepresented in the criminal justice system. For example, Donnell Thompson was killed by law enforcement after they mistook him for a carjacking suspect. Like Latson and Abrams, Thompson did not respond to commands to stand up, show his hands, and put them behind his head.¹¹⁴ Unlike Latson however, Thompson did not seem to have a long-standing diagnosis of autism. Rather, his parents claimed that he had learning disability, the mental age of sixteen and that he attended classes for the mentally

¹¹³ Bob Wright and Suzanne Wright, “Autism Speaks Letter on the Reginald Latson Case,” *Autism Speaks*, Dec 16, 2014, accessed July 23, 2017.

¹¹⁴ James Queally, Cindy Chang and Veronica Rocha, “Man Shot to Death by L.A. County Deputy was not a Carjacking Suspect, Officials Say,” *Los Angeles Times*, Aug 9, 2016, accessed July 28, 2017.

disabled at El Camino College. Similarly, Steven Eugene Washington was shot by police after he did not respond to commands and seemed to be reaching into his waistband for what officers believed was a weapon.¹¹⁵ Like Thompson, he did not seem to have a formal cognitive disability diagnosis, rather his relatives claimed that he suffered from learning disabilities and was generally afraid of strangers due to his mental capacity.

Data from *The Counted* indicates that there were at least seventeen cases of police killings of those with mental disabilities in 2015 and twenty-three cases in 2016 (total of forty cases). Of these, three had a cognitive disability diagnosis: Traumatic Brain Injury, Attention Deficit Disorder and Seizures, and six others had ‘evidence’ of a cognitive disability diagnosis. For example, family members claimed that the individual had suffered from “learning disabilities,” could not understand laws or was “childlike” in their behaviour. Or, previous court records and school records stated that the individual suffered from cognitive disabilities. Eleven individuals had a reported mental illness diagnosis and one was assigned a diagnosis (acute psychosis) from an autopsy. Perhaps consistent with the literature which claimed that Schizophrenia became a black and dangerous disorder at the turn of deinstitutionalisation, the majority of diagnoses from *The Counted* data included Schizophrenia. Specifically, two were diagnosed with Bipolar and Schizophrenia; one with Paranoia and Schizophrenia; two with Paranoid Schizophrenia; three with Schizophrenia and four with Bipolar. The rest of the cases did not seem to have a formal diagnosis however there was significant evidence to suggest the individual suffered from mental illness. For example, reports of an unspecified “mental illness”, “mental health issue,” or that the individual was experiencing a “mental health crisis,” or “psychotic episode.” Other reports included family members and friends who claimed the individual was especially “depressed” at

¹¹⁵ Jason Song, “The Homicide Report: Steven Eugene Washington, 27,” *The Los Angeles Times*, March 23, 2010, accessed July 28, 2017.

the time of the incident, or reports which indicated the individual was “suicidal” or claimed he had attempted “suicide by cop.” Furthermore, these cases included vague and unclear terminology on disability: “mentally disabled,” “disabled”, “mental problem,” “mental confusion,” and “emotionally disturbed.” As well as reports that the individual had previously been committed to a psychiatric facility, or had received psychiatric care in prison or jail.

Two cases show the fluid and ambiguous nature of cognitive disability and mental illness. Kevin Matthews was wanted on a misdemeanor warrant for stealing a can of Red Bull and was shot during a struggle with a police officer.¹¹⁶ While Matthews was diagnosed with Bipolar and Schizophrenia, his parents claim he could not understand laws and rules and had a “childlike” way of moving through the world, both symptoms consistent with cognitive disability.¹¹⁷ Similarly, Dalvin Hollins was shot in the back by police officers as he was allegedly fleeing from robbing a pharmacy. The officer claimed that he thought Hollins was reaching for a weapon, but later confirmed that he was unarmed. Reports claimed that Hollins was diagnosed with Bipolar and was taking medication prescribed by a psychiatrist.¹¹⁸ His stepfather, however, claimed that he had “learning disabilities his whole life” and “had trouble learning in school and retaining information.”¹¹⁹ There are varying and potentially contradictory implications that can be drawn from these cases. There could be a misuse of terminology either from the reporter or from the family members; the symptoms of mental illness and cognitive disability are so similar in some

¹¹⁶ Gus Burns, “Dearborn Police Officers Cleared in Fatal Shootings of Kevin Matthews, Janet Wilson,” *Michigan Live*, Dec 21, 2016, accessed July 28, 2017.

¹¹⁷ Leonard N. Fleming, “Family of Police Shooting Victim Wants Answers,” *The Detroit News*, Jan 1, 2016, accessed July 27, 2017.

¹¹⁸ Abc15.com Staff, “Tempe Police ID Officer Who Shot Robbery Suspect Dalvin Hollins,” *ABC 15 Arizona*, July 29, 2016, accessed July 29, 2017. AND; Ray Stern, “Killed Just for Being a N---: Activist, Family, Upset Over Clearing of Officer Who Shot Teen Robber,” *Phoenix News Times*, April 27, 2017, accessed July 29, 2017.

¹¹⁹ Logan Newman, “Family of Teen Shot Dead by Tempe Police Officer Decries Lack of Prosecution,” *AZ Central*, April 27, 2017, accessed July 29, 2017.

cases that they are indistinguishable; the individual suffered from both disorders; or there was a misdiagnosis of a mental illness when, in actuality, the individual had a cognitive disability. It must be emphasised that all these are speculative. However, they do indicate the complex relationship between mental illness and cognitive disability diagnosis generally, and particularly for racial minorities.

A few cases indicate that law enforcement are indeed the primary resources in communities that respond to situations involving individuals with mental disabilities. For example, Terrence Coleman's mother had called an ambulance for her son. According to the emergency medical technicians who responded to the call, Coleman initially cooperated with them but then turned violent and pulled a knife from his bag. Fearing for their lives the EMTs called law enforcement for back-up, who claimed that the use of force was justified due to Coleman's violent behaviour. Coleman's mother disputes these accounts, and claims that her son was unarmed and had not tried to hurt anyone: "he wasn't thinking about attacking anybody! He was thinking about getting the hell out of the house. He didn't want to go in the ambulance."¹²⁰ According to reports, the police were called to Coleman's home on four other occasions due to Coleman's mental illness, one of which was after he had harmed himself with a knife.¹²¹ Although the Boston Police Commissioner, William Evans, unequivocally justified the use of force by law enforcement, he also made a specific connection between the incident and lack of resources for the mentally ill, claiming that more needs to be done for those with mental health issues and specifically that the "poor kid wasn't obviously getting the services that he needed."¹²² Michael Noel, who had

¹²⁰ Nicole Fleming and John Hilliard, "Family Disputes Police Account in Killing of South End Man," *The Boston Globe*, Oct 30, 2016, accessed July 29, 2017.

¹²¹ Jan Ransom, "EMTs Feared for Their Lives in Altercation with Mentally Ill Man," *The Boston Globe*, Nov 2, 2016, accessed July 29, 2017.

¹²² Ibid

Paranoid Schizophrenia, was in the midst of a “psychological breakdown” when his mother called local law enforcement for assistance to take him to the hospital.¹²³ Like Coleman, this was not the first time that law enforcement were called to Noel’s home. Deputies had responded to his mother’s call to help her with her mentally ill son three times previously, but were crucially unarmed.¹²⁴ Lastly, Lavall Hall’s mother, Catherine Daniels, called law enforcement at around 5am to get help with her Schizophrenic son. Daniels claimed she was scared after she woke up to find her nearly naked son outside with a broomstick, which police interpreted to be a weapon.¹²⁵ Like the other two cases, Hall had a history of interactions with law enforcement in his home. For law enforcement, the fact that Lavall’s mother called law enforcement was an indication that the use of force was justified: “We were dispatched by the mother at her request...He was a violent person she was afraid of.”¹²⁶ Unsurprisingly, Daniels disagrees with this assessment, claiming: “If I had known they were going to kill my child, I never would have called them.”¹²⁷ Furthermore, in two more cases- Robert Dentmond and Arteir Porter- the individuals called law enforcement themselves, claiming to be suicidal and thinking of harming themselves or others. The prevalence of these cases in reporting has garnered significant scholarly research, with experts arguing that they represent a “suicide by cop” phenomenon: “whereby a suicidal subject, with intent to die and understanding the finality of the act engages in a consciously, life-threatening behaviour to the degree that it compels a police officer to respond with deadly

¹²³ Ben Norton, “Before Alton Sterling, Louisiana Police Killed Mentally Ill Black Man Michael Noel- and 37 Others Since 2015,” *Salon*, July 9, 2016, accessed, July 29, 2017.

¹²⁴ Ibid

¹²⁵ Sasha Goldstein, “‘Get on the F---ing Ground or You’re Dead!’ Dash Cam Captures Miami Gardens Cop Fatally Shoot Mentally Ill Black Man Armed with Broomstick,” *New York Daily News*, April 9, 2015, accessed July 29, 2017.

¹²⁶ Charles Rabin, “How a Broomstick- Swinging, Mentally Ill Man Ended Up Shot Dead by Police,” *Miami Herald*, Feb 16, 2015, accessed July 29, 2017.

¹²⁷ Ibid

force.”¹²⁸ Data attempting to quantify these cases varies significantly considering the ambiguity of the term, however, conservative estimates suggest that approximately 10-13 percent of officer involved shootings are suicide by cop.¹²⁹

Law enforcement seem to be the primary responders to cases of individuals with cognitive disabilities in poor communities of colour too; thereby reaffirming the connection between lack of resources for care and increased police intervention. Stephon Watts’ family used to call him “baby,” they described how he used to “stroke his mother’s arm, press her skin to his cheek, and declare how soft it was.” Despite his caring and childlike nature, like many autistic individuals at adolescence, Watts also suffered from aggression and poor concentration. When he did not take prescribed medication to mitigate this he was prone to fits of anger and isolation from his family members. When this happened, Watts’ family would rely on emergency services for help. Indeed, his father claimed that “social workers and doctors advised him to contact the police when Stephon needed immediate psychiatric care.”¹³⁰ They therefore called police nine times in the last four years of Watts’ life. His father however claimed that due to his personal suspicion and fear of law enforcement, many of these calls did not result in interactions, for he would take his son to the car and drive around before police would arrive.¹³¹ In this way, the day Watts was killed was not unlike the other times his family had called law enforcement. Watts was in the midst of a fight with his father about access to the computer (he had hidden it as punishment after Watts refused to go to school that day). Exasperated and angry with his son, Watts’ father called police to try and help calm him down, but instantly regretted it. In fact, he dialled the dispatchers and told them that he had overreacted and not to send help, but the police were

¹²⁸ American Association of Suicidology, “Suicide by Cop.” 2014.

¹²⁹ Range Hutson et al., “Suicide by Cop,” *Annals of Emergency Medicine* 32, no. 6 (1998).

¹³⁰ Hurst, “Black, Autistic and Killed by Police.”

¹³¹ Ibid

already on their way. Watts' father presents a conundrum for many black parents of cognitively disabled children, desperately needing help to care for their children while recognising that the very people entrusted with this responsibility have the capacity to kill or seriously wound their children. These cases clearly indicate that a 'crisis' moment for those with mental disabilities is framed as a public safety concern in need of control by law enforcement. Crucially, this is determined by both racial and class status. Thus, authorities in all these cases do not deny psychiatric care altogether, rather accessing the care available to them through medial emergency services comes hand in hand with the presence of law enforcement.

CONCLUSION

Following accounts by family members of individuals with cognitive disabilities about the vulnerability of their loved ones to police brutality, this thesis aimed to systematically investigate and quantify the number of cases of excessive use of force by police by using data from *The Counted* database and an examination of newspaper reports, interviews, medical examiner reports and police statements. Clearly, the lack of data on police brutality generally and the systematic invisibility of disability particularly for raced subjects limits the data available on this group of individuals. It is therefore difficult to draw firm conclusions about the impact of police brutality and cognitively disabled black individuals. This potential lack of statistical evidence should not be interpreted as evidence of absence, rather, it indicates that this an area of much needed research. This thesis has not only sought to initiate research into these matters, but it has also highlighted the narratives and voices of mentally disabled individuals of colour and those closest to them. Thereby reminding us of the underlying humanity of each person that lies beneath the data. However, merely unmasking an otherwise invisible group “in and of itself does not erase a history of silence nor does it challenge the structure of power and domination...that determines what can and cannot be seen.”¹³² Furthermore, we should be cautious of relying on statistical data. As was shown earlier in the thesis, statistics on crime, race and disability have historically been used for varying ends. For this reason, it is important to contextualise the data in existing literature and examine what the connection between race and cognitive disability tells us about the power structures inherent to the U.S policing and criminal justice systems more

¹³² Evelyn Hammonds, “Black W(holes) and the Geometry of Black Female Sexuality” in *The Black Studies Reader*, eds. Jacqueline Bobo, Cynthia Hudley and Claudine Michel (New York: Routledge, 2004), 312.

broadly. Indeed, this thesis has shown that cognitively disabled individuals of colour are more likely to be interpreted as threatening to police because of a historically entrenched and mutually reinforcing racist and ableist system that has criminalised black people with mental disabilities.

