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Published by: College Language Association
Stable URL: https://www.jstor.org/stable/44324404
Accessed: 05-01-2019 18:40 UTC

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Theorizing and Resisting the Violence of Stop and Frisk-Style Profiling

Jesse A. Goldberg

NYPD Officer: “You wanna go to jail?”
Alvin: “What for?”
NYPD Officer: “Shut your fucking mouth, kid.”
Alvin: “What am I getting arrested for?”
NYPD Officer: “For being a fucking mutt. You know that?”
Alvin: “That's a law, being a mutt?”

The above exchange is quoted directly from audio of a New York Police Department Stop and Frisk procedure that was recorded by a teenager from Harlem and released by The Nation in October 2012. This special issue of CLA Journal, “Hand Up. Don’t Shoot,” offers space for thinking and seeing this exchange as both a scene of police procedure and a scene of intense, if not deadly— as happens too often — violence.¹ My essay is provoked by two aspects of this recording. First, I am interested in the same question which Alvin asks the police officers: “That's a law, being a mutt?” Second, I am also interested in the performative nature of Alvin’s interaction with the police officers. I use “performative” both to simply suggest that we witness this interaction as performance and also to insist on hearing the dialogue as “performative speech acts” since for both the police officers and Alvin, “the issuing of an utterance is [an attempt at] the performance of an action” (Austin 6). The officers are trying to contain the movement of Alvin’s body, and as officers of the law and embodiments of the state’s monopoly on violence, they have the appropriate authority to enact the consequence to which their speech acts aim. In response, Alvin’s speech is attempting to resist his body’s containment through performative speech acts — a declaration of rights as an

¹ I would also insist on seeing this scene as indicative of not only the specific policy of Stop and Frisk, but also the de facto practice of racial profiling, such that the abolition of Stop and Frisk as official policy does not negate the need to investigate this exchange.
enactment of resistance to the infringement of those rights. And at the same time, he is brilliantly attempting to build a material archive by provoking the officers to repeat and explain themselves – “That’s a law, being a mutt?” and “You’re gonna punch me in the face?” – as he enables the audio recording feature of his cell phone.

Alvin’s provoking question about the law’s interest in “mutts” is enunciated during a performance in which an actor wearing plain clothing but cloaked in the garb of the legal power of a badge and gun invokes extra-legal reasoning to justify legal action against a young man of color “wearing a hoody on [his] body.” And those two signifiers which supposedly allowed the police officer to read Alvin as a “mutt” – the hoody and the body on which it is draped – draw attention to the way in which costume and embodiment intersect when legal violence is predicated on extralegal reasoning. It is important, then, to attend to the role of both embodiment and costume in moments such as a Stop and Frisk procedure, and these terms suggest analyzing such a procedure through the lens of performance. This essay will think through how we can interrogate questions of race, violence, surveillance, and terror by looking through the frame of performance studies. I will argue that thinking with performance tools enacts a resistance to the periodizing force of law – that is, the impulse to organize “pre-” and “post-” narratives around legal documents (e.g. “pre-Roe v. Wade” or “post-Jim Crow”) – which allows us to reconsider ostensibly separate categories as being coterminous with each other.

In this vein, we might then think of Alvin’s recording as an archived instance of what Diana Taylor would call a “scenario,” a “meaning-making paradigm that structure[s] social environments, behaviors, and possible outcomes [... that] makes visible, yet again, what is already there: the ghosts, the images, the stereotypes” (28). As both a present act playing out and a recognizable framework being reiterated across history, interrogating American culture with the scenario forces us to think of not only performance but also the times, histories, and boundaries of embodiment. In the first section of this essay, I will explore the ways in which thinking race and violence through performance opens the particular Stop and Frisk moment into

2 See Etienne Balibar’s chapter, “‘Rights of Man’ and ‘Rights of the Citizen’: The Modern Dialectic of Equality and Freedom” for more discussion on a declaration of rights as a performative speech act. He reads the Declaration of the Rights of Man as a performative speech act in which the French revolutionaries enacted through their speech their right to have rights. According to Balibar, “the emancipation of the oppressed can only be their own work” (49). It is not my aim to fully align myself with Balibar’s argument, especially this notion, but it is important to keep in mind the central paradox with which Balibar wrestles, even as I push through it: Why is it necessary to declare rights which are presupposed to be natural? Alvin certainly wrestles with this paradox in his question, “That’s a law, being a mutt?” Such a question contains within it the unspoken assumption of the right to be treated with human dignity, but the very utterance of the question in protest to being treated otherwise seems paradoxical given the supposed given-ness of the assumption.
an event that gathers moments across temporal and geographic boundaries. Such gathering begins a chain of moments reaching to other moments, thus supplying a surplus of antecedent events that are not only before, but present in, the moment of the Stop and Frisk. This surplus will be performed by the essay itself through the sheer excessive range of historical events surveyed, specifically in the fourth and fifth sections when I turn to lynchings and the 1943 Zoot Suit Riots, which I will articulate as a form of lynching. Sections two and three think through some of the risks and rewards of the current project and lay out terms that performance theory can mobilize for the difficult task of considering questions of violence both within and outside the terms and boundaries of the law. The final section considers how Alvin may be enacting resistance by drawing on a repertoire of counter-hegemonic practices which contribute to creating an archive of resistance – a counter-archive that can perhaps do more than simply suppress and marginalize.

Bodies (a)cross Time, History, Boundaries

Given the officer’s use of the term mutt – perhaps because the officers could not fix Alvin’s race and so settled on a term denoting impure mixture and inter-species/inter-racial categories as opposed to a more specific racial epithet – it is difficult to analyze this scenario strictly in terms of a perceived single identity, even if it is clear that Alvin is an Other. Given the history this essay will take up and which scholars in various fields attend to regarding the relationship between policing and Black and Latino communities, it might not be far off-base to assert with Imani Perry that Alvin’s body and clothing were witnessed in this scenario as signifiers of “Black ‘lawlessness’ and Latino ‘criminality’” within a dialogue in which “the concept is not simply that greater policing of Black and Latino people is necessary but also that their collective behavior operates as an indicator that rights have been forfeited” (92). Because of this, he found himself vulnerable to violence which would presuppose itself as justified defense of virtue from his vice, vice which would be imagined as an inherent part of the ontology of Blackness or Browness (or “mutt-ness?”) itself.

Harvey Young’s theorizing on the black body asserts that “when popular connotations of blackness are mapped across or internalized within black people, the result is the creation of the black body. This second body, an abstracted and imagined figure, shadows or doubles the real one. It is the black body and not a particular, flesh-and-blood body that is the target of a racializing projection” (7).

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3 I recall a conversation I had with one extremely helpful reader who remarked that the essay has "too much history." My immediate thought was, "Yes, and that's kind of the problem and the point." The scenario, along with "the Black Body," gathers so much history that there can be a sense that there's too much. This essay will grapple with this, rather than try to solve it.
In this scenario, then, the officers are interacting with not only Alvin’s flesh-and-blood body, but also traces of “the black body” which maps racist projections of criminality that stretch back into the past onto Alvin’s physical body in the present. This stretching back is also an act of gathering whereby the scenario in which “the black body” appears gathers to it scenarios that reverberate with similar scripts at different times. This means that the present not only echoes the past, but actually contains the past within it, so that the doubling caused by (the imagination of) “the black body” is a doubling-up of time whereby separation between past and present is thoroughly complicated.

A similar sentiment could be suggested about what one might call “the brown body” – a second body which maps racist projections with a different history onto Alvin’s body in the present. The continued presence of these “second” bodies leads to scenarios when real flesh-and-blood bodies that are ghosted by the black body and/or the brown body might be called “fucking mutts” by an NYPD officer holding his badge and gun, yet conspicuously out of uniform.4 We might ask whether a police officer out of uniform using his speech to arrest (either to interrupt and stop or to handcuff) someone is engaging in a “misfire” since his lack of uniform may make it impossible to establish the specific conditions or circumstances under which his performance may successfully enact its purpose. What if, we may ask, the words are uttered before the badge is revealed?5

These questions begin to highlight the lack of hard division between legal and extralegal action. The police officers in this scenario have defined roles according to the law, but in the moment of encounter, it is reasonable to think that these roles are not clear to all of the players involved – namely, Alvin. It is not difficult to imagine a teenager being frightened by someone in plain clothes telling him to arrest his movement. Before the badge is shown, the utterance could be coming from anyone, not just a police officer. But Alvin’s own body also embodies the tension between the legal and the extralegal insofar as it is both doubled by and read as the (imagined) black and/or brown body. Again, as a “mutt,” the officers can’t seem to decide which racialized imagined body is doubling Alvin, though the term seems to signify something other than white (and something other than human). As such, multiple discreet histories are bodied forth in these second bodies ghosting Alvin in the eyes of the police officers. There is not a big equal sign between the black body and the brown body.

4 It is worth asking whether the police officers are not only conspicuously, but also perhaps "infelicitously" out of costume. This could be pursued by a more extended reading of Lecture II of How to Do Things with Words than I have the space to perform here.

5 My own question recalls Judith Butler’s reading of Althusser on “the hail” in Bodies That Matter: On the Discursive Limits of Sex. See pages 121-122.
In a way similar to how black aesthetics is inevitably intertwined with the law and its enforcement by both legal (arrest and jailing) and extralegal (lynching) means of policing, as Bryan Wagner argues in Disturbing the Peace: Black Culture and Police Power after Slavery, “the black body” is also crossed by law and violence insofar as it holds and perpetuates the memories of racial violence enacted by both legal and extralegal means. Slavery and Jim Crow loom as legal violence perpetuated against flesh-and-blood Black bodies which survives in the post-civil rights era as African Americans remain, according to Nicole Waligora-Davis, in a state of exception characterized by “what is inside and outside the law [...] the byproduct of a suspension of legal norms” (54).

The imagined brown body, too, is produced by a history of real flesh-and-blood bodies existing inside and outside boundaries and subject to a suspension of legal norms, though in distinct ways from the imagined black body. “The brown body” is often read as crossing and is thus crossed by both legal (state lines) and extralegal (i.e. “cultural”) borders which are enforced through both legal (border patrol, household raids) and extralegal (mob assault) violence. While the concept of “borders” in association with Latino identities and brown bodies in general has been called to question for the frequency with which it is invoked – not unlike similar criticisms levied at “performance” – Taylor as well as Joseph Roach offer theoretical frameworks for thinking of “extralegal borders” in a historicized and robust way, as opposed to an empty gesture at popular U.S. American discourses around immigration from Latin American countries.

In thinking about “scenarios of discovery,” in which the scenario of “finding” indigenous peoples is repeated throughout the violence of colonization, Taylor demonstrates how an imperial power could expand its borders onto land occupied by native peoples. Repeatedly, the Spanish, or English, or Dutch, empire could draw new borders across the bodies of colonized natives in the Americas. And yet, Roach writes of how borders can simultaneously expand and contract (Roach 41). To follow the scenario of discovery to another iteration in U.S. westward expansion in the nineteenth century, the U.S. border crossed over flesh-and-blood brown bodies and then the legal border of citizenship receded to take the land from those who occupied it. The imagined brown body, then, like Young’s “black body,” reaches back to a past of violence in the present, and discourse about Latin American immigrants crossing borders illegally, or extralegal, is haunted by the violence of borders crossing bodies legally. Both the black body and the brown body, then, as sites of re-membered experiences, exist at the meeting point of the legal and the extralegal and gather together past and present.

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6 The legal archive records these expanding and contracting borders as the 1848 Treaty of Guadalupe Hidalgo.
Lingering in the (pre-supposed) break between these two forms of violence – legal and extralegal – are two historical performances of violence which help us analyze the Stop and Frisk scenario: lynchings (the mob killings of African Americans from the mid-nineteenth to the mid-twentieth centuries) and the Zoot Suit Riots (the series of assaults by sailors on young people wearing zoot suits in Los Angeles in June 1943). This historical context is not arbitrary. In fact, it is already present in the Stop and Frisk scenario, since “the scenario [...] bridges past and future [...] It’s never for the first time, and never for the last, yet it continues to be constantly reactivated in the now of performance” (Taylor 58). Alvin's audio recording archives the particular memory of his encounter with these officers. But in the moment of encounter Alvin’s body as doubled by “the black body” and/or “the brown body” itself gathers memories of other, older performances of violence against particular black and brown bodies. Witnessing Alvin’s encounter as a scenario opens the possibility of seeing through temporal divides put up by the legal archive. Alvin's archived memory punctures the barrier erected by the law that would supposedly separate his “post-Civil Rights” experience from Jim Crow-era violence, thus opening the floodgates to an excess of racialized violence – an excess of history that cannot be contained by boundaries between periods, spaces, or places.

Some Problems and Promises of Performance

It is worthwhile to dwell for a moment with this conception of violence as horrible as lynching as “performance,” especially given colloquial connotations of performance as signifying something fake or trivial. While performance studies has since its conception tended to draw strength from the potential of performance to do more than signify these colloquial connotations of falseness and artifice, it is necessary to seriously consider the possibilities of losing something of the horror and reprehensibility of lynchings and the Zoot Suit Riots when we think these events through performance theory. On the one hand, as Peggy Phelan and José Muñoz have argued to different extents, performance is ephemeral; thus, in thinking violence as performance, we are always considering a terror to which we don’t actually have immediate access and from which we are therefore somewhat removed. Yet on the other hand, in the moment of disappearance, as both Young and Rebecca Schneider argue, there “remain” certain traces of the performance, and so we are left with the responsibility of attending to a terror we perhaps

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7 See Phelan's Unmarked: The Politics of Performance as well as Muñoz's Cruising Utopia: The Then and There of Queer Futurity and “Ephemera as Evidence: Introductory Notes to Queer Acts.”
can’t immediately touch by touching the remains that touched the event. We study violence as performance through a chain of substitutes or what Roach calls “surrogates” in the hopes of responding responsibly to the terror of violence.

Such analysis, therefore, does not seek to diminish or deny the material reality of these violent acts. Instead, this conception of violence as performance looks to examine the extent to which these acts did violence to more than just the immediate victim of the physical act, but also structured larger communities. For all of the potential problems, this is the promise of performance: “The is/as underlines the understanding of performance as simultaneously ‘real’ and ‘constructed,’ as practices that bring together what have historically been kept separate as discrete, supposedly free-standing, ontological and epistemological discourses” (Taylor 3).

Returning to the opening scenario: the presence of the law embodied by the police officers, the fact that Alvin is outnumbered, and the fact that his clothing is invoked as meriting the use of force are all particular details of this Stop and Frisk procedure that echo back to, and thus pull into the present, memories of racialized mob assaults. When the police officer threatens to punch Alvin in the face and “break [his] fucking arm,” “the black body” gathers the threat of being hanged by a mob and “the brown body” gathers the experience of being stripped and beaten. These are not all the same experience; indeed, there are important differences between a Stop and Frisk procedure, a lynching, and the mob assaults that are remembered by the journalistic-historical archive as the Zoot Suit Riots. Just like any restored behavior can never be an exact replica of its previous instantiation, Alvin’s experience is not the same as the experiences of lynching victims or the victims of the Zoot Suit Riots. I am not drawing an equal sign. I am, however, insisting that we take seriously the reverberations of “past” experiences echoed within Alvin’s audio recording of his “present” experiences.

So the point is that the black body and the brown body as sites/cites of futured memory at least blur the temporal lines separating these different “acts” in the drama of American memory, so that in the moment of the Stop and Frisk, the different and similar violences of lynching and the Zoot Suit Riots are not only echoed, but present. And so the legal (Stop and Frisk) and extralegal (lynching, mob assault) are sutured together in embodied black and/or brown experience.

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8 This distinction between what the black body remembers and what the brown body remembers is both highly important and sometimes overdeterminate of analysis. On the one hand, the black body’s memory of slavery and the brown body’s memory of “discovery” are particular historical experiences. But on the other hand, neither the black body nor the brown body has an exclusive claim on memories of lynching, as Ken Gonzales-Day demonstrates in Lynching in the West, 1850-1935.

9 See chapter two, “Restoration of Behavior,” in Richard Schechner’s Between Theater and Anthropology.
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Once the barrier between past and present is punctured, the barrier between legal and extralegal breaks down, and history floods the Stop and Frisk scenario with lynchings.

**Cultural Logic, Cultural Magic**

When the plain-clothes officers attempt to arrest Alvin's movement through their speech acts, "the black body" brings the present scenario into contact with previous iterations of police officers approaching African Americans after the Civil War. Writing about these moments throughout *Disturbing the Peace*, Wagner traces how police power in the United States — by which he means "a situation where there is at least some pretense to a state monopoly on violence" — developed and defined itself during the latter half of the nineteenth century against the predictable and immanent threat of criminality (7). Beginning in the moment after slavery, Wagner sketches part of what Jared Sexton calls the "long history of 'policing black people" (Sexton 220) by looking to cities such as New Orleans and Atlanta to lay out the contested nature of police powers in the mid-nineteenth century when city police forces were still morphing into the beginnings of the modernized, costumed, armed, and bureaucratic system we know of today. He demonstrates that "far from being anti-mimetic in orientation, the police power has to stage continuously its inevitability before the public" (20, my emphasis).

If, for example, a mayor like Denis Prieur of New Orleans wanted to convince the people of his city that police officers needed to be heavily armed, he had to convince them that they needed protection from an imminent and dangerous threat. This could be accomplished by imagining black superhuman beasts, like the legendary Bras-Coupe of the past or Darren Wilson's account of Michael Brown in the present, or by framing any and all violence by black subjects, even and especially self-defense, as wanton and criminal.10

These arguments are made possible by what Jacqueline Goldsby calls "cultural logic," which is developed and reinforced by narrative. Such narratives as those of the inherently criminal black or brown body are imprinted in collective memory through the work of performance, as Roach argues. In short, narrative is performed enough times until it resides in memory and comes to govern a system of logic, and this process itself is mediated by flesh-and-blood bodies. In this account, such repeated performing aimed at solidifying communal knowledge is a kind of ritual, if indeed "rituals are collective memories encoded into actions" (Performance

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10 Indeed, the very idea of "self-defense" as a justification for the use of violence before the judgment of the law is a concept which is profoundly troubled by its positioning directly at the crossroads of the legal and the extralegal, since the successful (felicitous) invocation of such a defense in a court of law transforms extralegal into legal violence.

11 See Wells-Barnett's reporting on Robert Charles in "Mob Rule in New Orleans."
Studies 52). It is best to quickly turn to a text in which such a ritual performs the kind of cultural magic I want to posit may hold potential to dissolve the barrier between legal and extralegal violence: Shakespeare's The Tempest. I turn to this text in order to explicitly trouble the notion of the Law as “logical” where “logic” reads as “scientific” or “objective” reasoning with the notion of “magic,” or that which seems outside the realm of reason – that which refuses the “law of nature.” Indeed, Prospero is both a sorcerer and a man of the law, and he seeks to control others – be it his daughter Miranda, the magical spirit Ariel, or the native islander Caliban – through repetitive speech acts.

In the case of Caliban – “this thing of darkness [Prospero] acknowledges [his],” the native insists that Prospero was able to conquer the island through his use of magic, which Caliban knows is sourced by Prospero’s books, which remain off stage and which Caliban could not read even if he obtained them. This is suggestive of a Law – where Law is aligned with magic, violence, conquest, and study – that is held in an archive accessible only to a few, leaving those without access the tools with which to do nothing more than curse. In the case of Ariel, throughout the play Prospero ritualistically repeats for the spirit the story about how he saved her from the witch Sycorax upon his arrival. With each recitation, he performs a story as a way of establishing the cultural logic which transforms his tyranny on the island into benevolence, his enslavement of Ariel into freedom. This ritual is an act of magic just as potent as his ability to conjure storms, since through his repeating of the “magic words” that invoke the law of contract – I freed you, so you serve me – he can transform freedom into slavery, and vice-versa. And it is this kind of magic which is at work in a lynching or zoot suit stripping: through the cultural magic of a ritual performance of violence, the extralegal transforms into law, changing in appearance but not substance. Slavery is freedom; assault is justice.12

Ultimately, demonstrating the ritualistic nature of violence is a step toward pressing on this tension between legal violence like Stopping and Frisking a teenager to whom one shows one’s official badge and extralegal violence like chasing down a teenage boy in the name of defending one’s community from criminals and fatally shooting him when he tries to defend himself.13 If the distinction between legal and extralegal violence does indeed break down along the axes of race and policing

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12 To draw out the distinction between cultural logic and cultural magic: cultural logic is the governing epistemology of a culture. Cultural magic is the set of performances and rituals which enact the transformations assumed by the rules of the cultural logic. Thus, contrary to the imagination of the law’s adherence to enlightened rationality, logic is made possible by magic.

13 I allude to George Zimmerman’s killing of Trayvon Martin. While this essay will focus on the legal procedure of a Stop and Frisk as an instance of de facto racial profiling, the specter of the potential for self-defense laws like Stand Your Ground to transform extralegal violence into legal violence haunts my analysis.
because of how bodies cross temporal and spatial boundaries in the moment of performance, then where does that leave people who are doubled by “the black body” and/or “the brown body” in relation to the law – a law which perhaps not only doesn’t protect them, but may even be predicated upon not protecting them?14

The Law of Terror and the Terror of Law

While the myth that only members of the Ku Klux Klan ever committed lynchings has always been just that, it is perhaps impossible to think of lynching without thinking of the KKK’s white hooded costumes. Of course, this essay’s postulation of the breakdown of the legal-extralegal distinction and its focus on policing also brings to mind another costume which it is tempting to think of as exactly opposite to the white hood: the police officer’s blue uniform.

In an entry on her “Prison Culture” blog titled “Scaring Black Children: Night Riders, The New York Times, and Trips to Hospital Emergency Rooms,” activist and educator Mariame Kaba recounts a documentary about Robert F. Williams titled Negroes with Guns: Rob Williams and Black Power and its attention to the infamous “Kissing Case” in Monroe, North Carolina in 1958. In her article, Kaba writes about a particularly horrifying image:

[Eight-year old Dick Simpson and ten-year old James Hanover Thompson] were locked in a cell in the basement. It was dark. They heard people coming down the stairs. The boys looked up to find several “men” dressed in white sheets screaming and yelling at them. The “men” threatened to kill them. Absolutely terrified, the boys screamed for help. They knew about the KKK in Monroe. Even at 8 and 10 years old, they were aware that the Klan killed black people. As the young boys screamed, the “men” pulled off their sheets which revealed their police uniforms. [...] They were afraid of being killed by the Klan, only to find themselves face to face again with the police officers who were their torturers in the first place.

If any image or performative gesture succinctly dissolves the gap between legal and extralegal violence with more force than lynching photographs with courthouses in the background, it is this one. In a moment reminiscent of the moment when the plain-clothed police officers show Alvin their badges, thus revealing the state power in which their bodies are garbed as they threaten to break his arm, Simpson and Thompson witnessed a change in appearance, but not in substance – the result of ritual. If violence is “the performance of waste” (Roach 41), and if the repetition and scripts observable in extralegal lynchings raises such

14 This question is not original. See Joao Costa Vargas and Joy James’s essay, “Refusing Blackness-as-Victimization: Trayvon Martin and the Black Cyborgs.”
performative violence to the level of ritual scenario, then this brief moment of assault and containment in a locked cell in a police station gestures towards the cultural magic performed by the sacrificial expenditure of the ritual violence of lynching. The containment and extermination of black bodies can continue in the form of legal violence because the ritual of lynching has transformed such violence into the quotidian condition of Blackness, has transformed black subjects into criminals in the white imagination, and has transformed extralegal violence into legal policing. But no matter how many times Prospero calls Ariel's slavery freedom, it's still slavery. And no matter whether the men beating and torturing Simpson and Thompson were wearing blue or wearing white, the boys were still being beaten and tortured. Call terrorism policing, but it is still terrorism.

When those boys were being beaten by those police officers, their black bodies carried the experiences of "the black body," and this experience could trace itself back to witnesses or victims of violence such as lynchings – violence enacted by men in both white hoods and business suits. In either case, the violence was staged.

One need only view an archive of lynching photographs to see the kind of spectacle that a lynching is and how it registers as a staged act for an audience. Photographs from the 1916 lynching of Jesse Washington in Waco, Texas, for example, capture a crowd of over 10,000 men, women, and children gazing at Washington's body as it was burned and hanged. The placement of Washington's body at the center of a crowd of people whose attention is focused on the spatial unit at that center is more than suggestive of a staged act complete with script, drama, and an audience. In addition, lynching photographs capture the spaces which served as the stages for these performances of violence, including not only bridges and scaffolds but also courthouses.

Placing such violent participatory ritual in front of a figure of the authority of the law such as the courthouse suggests how post-Civil War American modernity was made possible by black death, as Goldsby constantly reminds her readers and as Wagner argues insofar as formal police forces were supposedly hallmarks of modernization, even as they harkened back to disciplinary practices founded during slavery. In fact, this is one of Goldsby's most forceful arguments:

Seen from this perspective, with our evaluative categories tipped to the south, open to the rural, and cognizant of the unsettling paradox that anti-black mob violence helped shape modern American life, we can then appreciate lynching's fourth challenge to the meaning of modernity: how to value black death as central to our processes for building a nation. (287)
We can read this alongside Wagner's assertion concerning Atlanta's police force that: "We need to see that the police were presented in the Constitution not simply as one of the city's many modern features but rather as the requirement for its modernization" (128-129).

Glancing at these two passages, the repeated invocations of modernity stand out in conjunction with each writer's emphasis on the necessary and sufficient conditions for "modern" society. For Goldsby, killing black people is central to the project of U.S. nation-building and a primary force shaping "modern American life." Wagner recalls that "modern American life" was a construct being actively defined after emancipation, and that one of the necessary conditions posited in this moment of nation-building for achieving a modern society was that "individuals [could not retain] the right to violence," but had to give up such a right to police forces, and thus police forces became a necessary condition for modernization. In contrast, Wagner teases out, this reasoning also meant that slavery was anti-modern, since under that system individuals retained the right to violence. But if police forces were at least in part developed as ways of continuing to control black bodies after emancipation, and if "the post-emancipation black body occupies the intermediary space between slave and citizen" and so "like the legal corridor in which they are contained, black Americans are simultaneously a part of, yet substantively outside, the national body" (Waligora-Davis xiv, 55), then slavery is both anti-modern and modern, despite the law's attempt at rigid periodization via the Thirteenth Amendment. Insofar as the policing practices of the plantation were reinscribed in the policing practices of lynching, Jim Crow, and legal violence that result in the denial of full citizenship to black subjects, slavery continues after emancipation with changed costumes and props, because the script is never thrown out. "Modern American life," then, is made possible by anti-black violence and thus repeats the anti-black violence of slavery in the restored behaviors of surrogate disciplinary figures for the abolished plantation overseers. Thus the black death on which modernity itself is predicated renders the distinction between legal and extralegal violence always already tenuous at best and completely illusory at worst.

And yet, in order to avoid merely flipping the binary script that Perry and Wagner note which labels blacks and Latinos as inherently criminal by reductively asserting that police officers are inherently white supremacists, it is also important to note that in fact police did try to intervene in some lynchings. It is equally important to avoid the reductive conclusion that lynchings were carried out only or primarily by the KKK — a common theme in white American imaginations of history.
Ida B. Wells-Barnett’s writings offer counters to both of these reductive moves. In “A Red Record,” she recounts the efforts of Mayor Trout of Roanoke, Virginia to keep order in his city by commanding the state militia to protect a black man being held in prison on charges of assaulting a white woman. The man was eventually forcibly “taken from three policemen” by a mob of Roanoke citizens, but only after a violent confrontation with the state militia (95-98). While illuminating what kinds of people made up such mobs, Wells-Barnett also offers sobering insight. At the beginning of “Southern Horrors,” she recounts how, following the printing of her editorial in the Memphis-based Black newspaper Free Speech in which she famously wrote that “Nobody in this section of the country believes the old threadbare lie that Negro men rape white women,” The Daily Commercial and the Evening Scimitar printed public letters to the editors of the Free Speech threatening that they be lynched. “Acting upon this advice,” Wells-Barnett writes, “the leading citizens met in the Cotton Exchange Building the same evening, and threats of lynching were freely indulged, not by the lawless element upon which the deviltry of the South is usually saddled – but by the leading business men, in their leading business centre” (30). So just in case photographs of lynchings by mobs of people not covering their faces in white hoods isn’t sufficient, Wells-Barnett offers further evidence that lynchings cannot be contained by a narrative of a pathologically racist minority of KKK members. And just in case such images and accounts were to lead us to think all whites without exception are always actively participating in these lynchings, Wells-Barnett also recounts times when agents of state power did try to intervene and stop these mobs.

But for each account of such efforts, Wells-Barnett offers more of passive observation on the part of police officers when mobs kidnapped lynching victims. One newspaper article she quotes – from the Memphis Commercial – in her recount of the lynching of Lee Walker, states, “The entire performance, from the assault on the jail to the burning of the dead Negro was witnessed by a score or so of policemen and as many deputy sheriffs, but not a hand was lifted to stop the proceedings after the jail door yielded” (102). This can’t be overstated: About 20 police officers, who as embodiments of the law were charged with protecting citizens, witnessed a mob of people break into a jail, drag a man out of it, kill the man, and burn his dead body without intervening. The agents of the law may not be the ones enacting the violence – and thus it is extralegal violence – but they also do not intervene to prevent it. The legal enables the extralegal in this moment, and it is this moment of legal and extralegal intimacy that is gathered by “the black body” into the Stop and Frisk scenario when a plain-clothes officer threatens to break Alvin’s arm.

See (at least) pages 37, 48, 100-105, 117, and 181-82 of On Lynching.
Costume Change

For those familiar with the Zoot Suit Riots of 1943, the idea that police officers would stand by and allow mob assaults on people of color without intervening or arresting the assailters is neither new nor shocking.16 While the assaults were carried out differently than the “performance” described in the Memphis Commercial account cited by Wells-Barnett, the sentence she quotes foreshadows sentences that would be found in newspaper articles in 1943 that reported on the so-called Zoot Suit Riots in Los Angeles, California. For example, in a Washington Post article titled “Zoot-Suiters Again on Prowl as Navy Holds Back Sailors” from June 9, 1943, Julian Hartt reported that “police made no efforts to halt auto loads of servicemen openly cruising in search of zoot-suiters.” So while the Zoot Suit Riots weren’t the same as lynchings as the latter are known through embodied black experience, the bleeding together of these scripts for the roles played by police officers standing by and thus enabling extralegal violence encourages us to view the assaults that are called the Riots as meaningfully connected to, not merely related to, lynchings.

According to accounts by Luis Alvarez and Stuart Cosgrove, police officers were part of the staging of the Riots in their allowance of the actions of the military personnel and their massive arrests of the very young people who were being targeted by the violence of the sailors and soldiers – actors who wore the ultimate symbol of the state’s power in its monopolization of violence in the form of the military uniform. Any telling of the Zoot Suit Riots must recount how members of the U.S. military, dressed in uniform, systematically surrounded Mexican American and Chicano, African American, and Filipino youths, usually brought them out into public if they were not already in the streets, and forcibly stripped them of their clothes, sometimes also cutting their hair, in what can only be described as mob assaults.

Indeed, as is the case when the police officer cites/sights Alvin’s hoody and backpack as a reason for suspicion, costume was fundamental in the staging of a zoot suit stripping. The zoot suits worn by the assaulted young people were effectively rendered illegal following a rationing act in March 1942. Cosgrove writes: “The polarization between servicemen and pachucos was immediately visible: the chino shirt and battledress were evidently uniforms of patriotism, whereas wearing a zoot-suit was a deliberate and public way of flouting the regulations of rationing” (80). The juxtaposition of these uniforms within such a performative act of violence such as stripping one of one’s clothing in public

16 A documentary in PBS’s series American Experience titled Zoot Suit Riots captures this observation through interviews with people of diverse backgrounds – “zoot suiters” and servicemen as well as city residents – who lived through the period of violence.
invokes scripts. Before the pachucos and servicemen meet for the scenario, there already exists in their clothing the scripts dictating the dramatis personae that shall don the costumes. Then, as the performance plays out, what should be seen as an illegal assault by the servicemen is instead witnessed as an enactment of justice, because in wartime loyalty to the state is paramount, and agents of the state ought to enforce such loyalty.

But in the case of “the zoot-suiter,” or “pachuco,” this grafting of meaning onto costume burrowed deeper into the racialized body itself. This is on display throughout Luis Valdez’s play, Zoot Suit. The character El Pachuco makes clear this movement from costume to body when he says, “The Press distorted the very meaning of the word ‘zoot suit.’ All it is for you guys is another way to say Mexican” (80). Additionally, in the film version Valdez directed, one witness for the prosecution testifies about how it was supposed that Mexicans were genetically predisposed to use knives and fight to kill because of their Aztec blood, unlike white youths who were more prone to “fisticuffs.” It is more than simply the fact that the suit is illegal because of a rationing decree. The wearer of the suit is himself presumed criminal and violent. When stripped of his zoot suit, El Pachuco rises in a loincloth to the sound of an Aztec conch, embodying in that moment the heritage which was attacked and laid bare by the violence enacted upon him in a performance where, according to the Los Angeles Times, “procedure was standard.”

This image of El Pachuco rising in a loincloth following his assault makes the point that the focus of the assault isn’t just the suit, and the focus of the Stop and Frisk isn’t just the hoody. Comparing the Zoot Suit Riots to lynchings, Richard Delgado writes, “As with the earlier wave of lynchings, the World War II-era attacks targeted Mexican youths who displayed their identity too proudly and openly” (300). In the scenario of a lynching, the racialized body needs to be stripped of its clothing so that it is laid bare, no longer cloaked in any symbol of wealth, power, or autonomy. In a way, wearing a zoot suit was an indication of one’s access to material resources and leisure time, and such a flaunting of economic ascension on the part of people of color had to be repressed. This gives context for witnessing the power of El Pachuco’s defiance as he rises to the sound of an Aztec conch “with mystic intensity” (Valdez 81).

As this indiginist image of El Pachuco troubles the distinction between costume and the wearer of the costume, the play also punctures the barrier between the legal

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17 And, it should be noted, old scripts of lynchings. There is a history of describing lynchings of black men, at least, as "stripping" the victim of his sexual prowess (Young 180-81).

18 Quoted in Cosgrove, 81. This echoes a sentence from a Free Speech article about lynchings in 1892: "The same programme of hanging, then shooting bullets into the lifeless bodies was carried out to the letter" (Wells-Barnett 61, my emphasis).
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and the extralegal by explicitly recalling lynching. While the role of The Press as
the prosecution and the explicit racism of the judge and witnesses undermine the
trial’s claims on objectivity, one exchange which precedes the trial is particularly
poignant. While visiting Henry in jail, George and Alice say to him:

GEORGE: It’s just the beginning, son. Nobody said this was going to be
a fair fight. Well, if they’re going to fight dirty, so am I. Legally, but dirty.
Trust me.

ALICE: (Passionately.) Henry, no matter what happens in the trial, I
want you to know I believe you’re innocent. Remember that when you
look out, and it looks like some sort of lynch mob. Some of us ... a lot of
us ... are right there with you.

Alice makes the explicit illustration, transforming the people in the courtroom
into a lynch mob and gathering the scenario of a lynching into the scenario of a
court trial. Her comments also throw into question George’s efforts at fighting back
“legally, but dirty.” If legality itself is being collapsed into just another expression
of extralegal violence, what chance is there for George to invoke legal methods of
fighting off the prosecution, especially given the history of the ineptitude of the
law to stop lynchings?

Valdez’s play makes clear the entanglement of the Zoot Suit Riots with
lynchings and the entanglements of legal and extralegal violence. Expanding on
this, Alvarez writes in The Power of the Zoot: Youth Culture and Resistance in World
War II, “The alleged criminality of nonwhite youth [...] justified and required the
use of force – a practice that helped entrench discrimination by law enforcement”
(49). Simply put, repeating this scenario of assault not only did violence to the
immediate physical victims, but also cultivated narratives of the black or brown
subject as always already criminal. Thus, a police power is necessary to control this
threat to law. These criminals need to be stopped and frisked, lest they unleash
their inherent criminality. Alvin cannot walk down the sidewalk without being
ghosted by lynchings or zoot suits.

And so we are left with the results of this ritual violence in the form of
both formal and informal police forces and laws dealing with use of force (read:
violence) that are always positioning themselves in this tension between the legal
and the extra-legal. Indeed, it is right in the middle of this tension that we find
Stand Your Ground laws. And costume and skin color are still all-important. Who
can forget Geraldo Rivera’s March 23, 2012 appearance on “Fox & Friends” in
which he warned black and Latino youth to “leave the hoody home” following the
murder of Trayvon Martin? But it is not just about the hoody, not just about the
script, but also about the embodied performance, the scenario. A white person
wearing a hoody will not be seen in the same way as a person of color. The body on which the hoody is draped matters, even when there’s no hoody, just like El Pachuco’s brown body matters even when he’s not wearing the zoot suit. Roderigo Abad Diaz Ortiz didn’t need to be wearing a hoody to be read as a threat, even if he was apologizing and pulling out of the driveway he had accidently pulled into. And Renisha McBride didn’t need to be wearing a hoody to be read as a threat to be shot through a closed screen door as she pleaded for help after a car accident.

Archiving, and Staging, Resistance

And so this is the landing point of the current essay. But one last clarification in an essay strewn with qualifying statements is necessary. It has not been the purpose of the current project to merely use Alvin’s recording of the assault on his personhood as an occasion for academic theorizing. Instead, the point is that by attending to the scenario of this Stop and Frisk procedure as witnesses equipped with the methodological tools of performance studies we can see Alvin’s assault as not only one in a chain of similar historical abuses, but as an eruption of the unbroken continuity of racist violence that bleeds through the perforated barriers ostensibly put up by the law between legal and extralegal violence or past and present encounters. Then, as witnesses who are positioned to learn from, not merely theorize about, Alvin and those who find themselves in similar scenarios, we can strive towards working with communities within and outside academia to think the possibilities of resistance and livability within this context of continuous violence.

The ritual magic of extra-legal policing resulted in multiple transfigurations. Extra-legal violence morphed into legal violence, slave statutes transformed into self-defense laws like Stand Your Ground, and black and brown bodies, as the objects of sacrificial expenditure on which such ritual magic depends so that it can call on audiences to participate in its perpetuation, are transformed into the always already criminal before committing any crime. This not only leaves people open to being Stopped and Frisked, but also killed, especially in self-defense, because one does not have to feel guilty killing somebody who is already expendable insofar as she is a criminal – insofar as she is beyond the protection of the law.

That leaves us in an admittedly frightening place where the deaths of Trayvon Martin, Roderigo Abad Diaz Ortiz, Renisha McBride, Jonathan Farrell, Jack Lamar Robertson, Oscar Grant, Aiyana Jones, Michael Brown, Eric Garner, Tamir Rice, Tony Robinson, and so many others doubled by the black body or the brown body become verifications that a system of law is actually predicated on the violence
which it ostensibly prohibits. These deaths, which should be tragic because of their extraordinariness, are instead revealed to be tragic in their quotidian-ness.

Thus, Stand Your Ground, as a law which predicates the justification of transforming an extralegal act (killing) into a legal one (self-defense) on the killer’s personal perceptions of danger and threat, is a law which cannot grant equal protection across racial lines because it is race which provides the law with the medium through which to draw the fictional line between legal and extralegal. For example, if, as so many commentators speculated following Trayvon Martin’s death, Martin had turned and killed George Zimmerman in fear of his life as he was being pursued, would he have been able to claim self-defense? Even President Barack Obama, who is usually expressly moderate on questions of race, said that the answer to that question would probably be “at least ambiguous.” Indeed, it is hard to stand one’s ground when one is the ground on which the edifice of the state places the signpost of the law.

In the shadow of this signpost, young people like Alvin, who look like “fucking mutt[s],” are subject to harassment, threats, and physical violence simply because their flesh-and-blood black or brown bodies areghosted by the imagined black or brown body. And the institution that protects the law – the state’s police force – is the institution enacting this violence. Agents of legal violence imagine extralegal violence (the black or brown criminal) as their own justification for actions which are restorations of behaviors seen in historical extralegal scenarios of assault. And since it is historical violence like lynchings that constructs the cultural logic of the criminal black or brown body, the law also predicates its functioning on logic built through continuity across periodization even as the law ostensibly draws strict periodizing lines. In short, Alvin can be Stopped and Frisked in the twenty-first century because it’s already been proven in the nineteenth and early twentieth centuries that his body is inherently criminal, even as the legal archive separates his moment from Jesse Washington’s.

So if this frightening place is our stage, we are left to ask, is it possible to reform or restructure the police system or the prison industrial complex on anti-racist terms? It is not inspiring to note that Ariel never reverses the effects of Prospero’s ritualistic storytelling herself, but instead it is Prospero, the very agent who (re)enslaved Ariel, who eventually negates the results of the ritual and sets the spirit free.

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19 This list of names is unfortunately far from complete. And it becomes more and more “incomplete” each month that passes.
Koritha Mitchell argues that such activism is not only possible, but has historical precedent in early twentieth-century lynching plays that encouraged mourning as an “embodied practice of belonging” (150). Additionally, Young offers stillness as a possible mode of resistance, perhaps most poignantly in his discussion of Muhammad Ali’s refusal to step forward when his name was called in the draft ceremony which he went out of his way to attend. Ali was subjected to medical examinations, to which he consented, and then after he stood still, he was arrested. But even so, Young writes, “[Ali] revealed that he employed the stillness of his own body to critique the notion that his body had to be confined in either the federal military or the federal prison” (114).

What happens when we add a sonic presence to the performance of stillness, as opposed to the power of silence that Young articulates, and look towards “embodied practices of belonging”? Perhaps we re-encounter Alvin. Alvin may have stilled his body to send the message to the police officers that he wasn’t resisting – because embodied black and brown experience carries intimate knowledge of what happens to “mutts” when they appear to “resist” in the eyes of the law – but he did not still his voice. With his cell phone activated to capture audio, he provoked the officers to repeat their threats of violence and explanations for their suspicions and aggression. In this encounter, we may read the officer pinning Alvin’s arm behind his back and threatening to break it and punch him in the face as performing restored behaviors of historical (extra)legal acts of violence, but we also can read Alvin’s employment of reflective repetition as effective resistance to this violence by operating both within and outside its terms. Alvin acts within the law by recording the event in the hopes of archiving a violation of rights granted by the law, but his very accusation is that the violence is being enacted by the very law which should be protecting him. Thus, Alvin’s action of recording resists both the violence he encounters and the presumption of a legal-extralegal divide by lingering in the break as it dissolves. And the recording itself remains as an archive of the resistance.

If such an archive of resistance is built, and if technology widens the repertoire of potential actions that can produce such an archive, then there is potential to intervene in the scenario of racial violence, since the scenario “allows for many possible ‘endings’” (Taylor 28). Just as how Alvin’s individual Stop and Frisk experience gathers patterns of experiences, his own individual resistance makes possible collective resistance by modeling a technique for executing an embodied practice of belonging: an assertion of a humanity that exceeds the confines of the term criminal.
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This essay has gone through a number of revisions over the past two plus years before publication, and I would like to thank a number of individuals for their valuable comments on these earlier drafts including Margo Crawford, Mary Pat Brady, Sara Warner, Lynne Stahl, Nancy Quintanilla, Michaela Brangan, Kaylin Myers, Emily Rials, and Alex Black.

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