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The Recent History of “Contagious Shooting” (1982-2006) and more recent events in Ferguson, Missouri

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In the decade since the “Decade of the Brain,” the neurosciences have acquired a spectacular cache in the humanities and social sciences. One need look no further than the work of Nikolas Rose and Joelle M. Abi-Rached, scholars who argue in their striking volume *Neuro: The New Brain Sciences and Management of the Mind* that governing in the future will occur through the brain.^[i] While for contemporary neuroscientists and neurologists such an expansion of a-disciplinary neuroscience might and probably should represent a crisis in terms of the public face of their science and practice^[ii], I would suggest that when combined with other disconcerting trends in governance, these developments have wider implications in terms of global civil society, policy, common law systems, jurisprudence, and economics. Such a starting place may seem very far away from Ferguson, Missouri. But I think that isn't the case at all. And in this long essay, I'll try to explain why.

Whether people identify with it or not, there are undeniable geneticist qua mechanistic currents now pervasive within media analyses (and hence also public understanding) about how we should manage social, economic, and political decay in urban and rural environments. Much of this discourse justifies both excessive violence against and also the dehumanization of people who, for whatever reason, are identified with the marginal, the poor, the weak, the downtrodden, etc. While it is easy to read part of this brutality as symptomatic of the anti-human nature of neoliberal, global capitalism^[iii], I think it far more convincing to describe growing authoritarianism seen in developed societies as symptomatic of a war against particular forms of public liberty and of a decline in trust in institutional governance. The militarization of the constabulary is only the most dramatic recent demonstration of the militarization of much in the civilian sphere, including science, a process that began during and has continued since the Cold War.^[iv]

It is surprising, of course, to see the advance of this process even up to neuroscience. But only a cursory knowledge of the history of recent neuroscience makes this a particularly credible claim, not least in crass examples of the way knowledge from the civilian neurosciences was mobilized in torture (as detailed by, for instance, by [James Kennaway](#) in *Bad Vibrations*) or in the deployment of the LRAD (long range acoustic device) against public protests, which has been an ongoing police procedure since 2009. Beyond studies of the neuroscience, such thinking has characterized the work of many renowned scholars, including [Sheldon Wolin](#), who, although speaking of statistics and technocracy rather than neuroscience, has painted similarly glum pictures of the nature of growing “inverted totalitarianism.”^[vi] Tempting as it may be to describe neuroscience as the ‘liberatory’ stuff of the search for secular selfhood,^[vii] in this context it is plausible to infer the emergence of such coercive and illiberal strategies and tactics as marking the defining nature of our cultures and encounters with (and beyond) neurodiscourse and neuroscience.

How so? It is obvious that the rhetoric of this science matters and it is mobilized alongside real force. Consider the implicit association test. On the face of it, this psychological test can only provide a cursory understanding of peoples’ propensities towards prejudice. But the way findings from psychological studies using this test are mobilized in the public sphere is often in the service of an apparatus to explain away, among other things, police brutality (and likely in the future instances of person-to-person violence of the kind that killed Trayvon Martin). Automatic and reflexive racism is understood publicly through the findings of tests like these to be a natural precondition of police force and self-defense. The most obvious policy solution – immediately charging police officers with manslaughter or homicide – would likely carry enough force to preempt such tragic episodes, but the very act of naturalizing such discrimination has increased the sense that such crimes are unavoidable, tragic, and require processes permitting circumvention of the law.

I intend such observations to provide this study of “Contagious Shooting” with the flavor of a perhaps too late cautionary tale, not least because many of the details of this case inevitably call attention to the very real and tragic circumstances that have sparked public protests in Ferguson, Missouri. Little in public analysis has spoken to the violence that has plagued interactions between the civilian constabulary and those who pay their salaries. Similarly, little work in the social studies of science and medicine has focused on science as a rhetorical strategy of police power (although there is some scholarship on lie detection). Furthermore, little real analysis has looked at the enormous historical similarity in tactics adopted by the police and their apologists for managing the rhetoric of accountability (although Michelle Alexander’s [The New Jim Crow: Mass Incarceration in the Age of Colorblindness](#) has cast a very wide net in

calling attention to the broader issues I'm exploring here).

As historian Roger Smith has suggested, history, and specifically the history of the neurosciences, may be able to check both the utopian optimism and the authoritarian impulses that underlie this new discourse as it pertains to the practice of neuroscience through the elaboration of a politics of skepticism,^[vii] but I think it is worth underscoring that there is ample evidence all around for the empirically-minded to see what governing through the brain already looks like in circumstances of increasing authoritarianism and repression. It isn't a pretty picture. No one, of course, has described the shooting of Michael Brown as reflexive or contagious – at least not at the time this essay was written. I would anticipate that some mechanistic explanation will appear as the results of the autopsy become publicly known.^[viii] But even more to the point, the implicit logics that underpin police violence of the type that killed the young man (and many before him), is no less mechanistic and deterministic in its assumptions. Equally, critiques of the protestors' behavior in Ferguson since that violent date of Brown's death, mirror similarly dismissive and reductionist tendencies in media analysis. To people familiar with the science and culture wars of the 1980s and 1990s, much of this analysis will sound eerily familiar about debates pertaining to genetics and society. There are, however, differences, not least in that neuroscience calls into question cognitive agency. In the case of genes, such determinism leads to discussions about "destiny" and "potentiality." In the case of brains, such determinism can justify state-sanctioned slaughter. That, putting it mildly, is a very big difference.

Intentional but reflexive

In February of 1999, four police officers in the Bronx, New York, fired 41 shots at Amadou Diallo. He was killed. In 2004 police shot 120 bullets at Winston Hayes, a suspected drug dealer in Los Angeles. Hayes survived. However, a deputy police officer was injured by friendly fire, a further eleven bullets hit police cars, and an additional eleven hit five houses in the neighborhood. One year later police in Los Angeles fired 50 shots at Carl Williams, a suspected drunk driver. In 2006, three police officers in the Bronx shot a pit bull 26 times, and in that same year five officers fired 50 shots at a car filled with unarmed passengers. One of the passengers, Sean Bell, was killed. Experts described all of these cases as examples of "contagious shooting," a condition described in the *New York Times* as "gunfire that spreads among officers who believe that they, or their colleagues, are facing a threat." One that supposedly: "spreads like germs, like laughter, or fear. An officer fires, so his colleagues do, too."^[ix]

The Sean Bell case was one among many similar episodes since 1986 that caused tensions between communities and police officers. Denver,

Cleveland, Baltimore, Los Angeles, Cincinnati, and New York had all had similar incidents. The victims were almost exclusively poor and non-white. Typically the police officers, with only a few exceptions, were white. Thus, “contagious shooting” was almost always a category of accident that sprang-up in the context of racial tensions. Activists in many of the neighborhoods often regarded the police as trigger happy, violent, and racist. Community activists, moreover, saw the police as representatives of a civil authority institutionally predisposed to racism.

The Sean Bell killing touched a nerve. Bell had been at his bachelor’s party on the night before his wedding. Images of Bell’s fiancé, her public statements, and her obvious sorrow made for gripping television. Bell, too, came across in early accounts as a young African American trying to make good in a community where too many men were behind bars. Media commentators, activists, and experts thus sought various ways of categorizing and contextualizing the bitter circumstances. Representatives of the political Left gravitated towards assertions of latent or overt racism. The political Right dwelt upon the rarity with which police officers drew their weapons, the difficulties of being in a situation that called for lethal force, and the horrors of having fired. “Contagious shooting” emerged chiefly in accounts that gravitated towards explanations like these.

ABC News was one of the first organizations to report extensively on the Sean Bell killing. They cast Bell as another 23 year-old male victim of a rare but recurring problem for police departments around the country. Carol Liberman, a forensic psychiatrist and assistant clinical professor at UCLA’s Neuropsychiatry Institute, told ABC News: “when a fellow officer starts shooting it sends off an alarm, warning the others that they must be in lethal danger.... Not only is there ostensibly a killer on the loose...[but]...the other officers who become affected by the ‘contagion’ are responsible for panicking, becoming blinded by the outbursts of gunfire, and not restraining themselves enough to assess the situation.” Another law enforcement expert saw the instance in New York as rather restrained. “This type of contagious shooting happens out West,” he said, “It’s a cowboy mentality. They like to shoot out there.”^[xi]

Expert testimony typically oscillated around this axis of responsibility. While Liberman appealed to an infectious metaphor, she nevertheless maintained that officers were responsible for the discharge of their weapons. However, as the idea of “contagious shooting” became more commonplace, questions about individual responsibility became ever more salient. Increasingly media understanding of the concept hardened around the contradictory notion of a reflexive agency. By the end of January 2007, the *Daily News* argued: “the shootings would never have started at all unless one of the cops thought he was in imminent danger.”^[xii] Of course, fearful police officers had intended to kill armed men. For this reason, the

violence was a terrible accident.

The Rhetoric of Contagious Shooting

In January 2007, the New York Police Department, reacting to noxious public opinion, commissioned a report from the RAND Corporation. The report, which cost \$500,000, focused on firearms training and contagious shooting.^[xii] In an interview with the *Daily News*, Bernard Rostker, PI on the RAND Report, remarked that, “there is not a lot out there, especially on the question of ‘contagious shooting.’”^[xiii]

Underlying these appeals to the accidental nature of these circumstances was concern about the growing perception that the New York Police Department was a racist civil institution. In March 2007, Police Commissioner Raymond Kelly asked RAND for a second report to examine evidence of racial bias in police stop and frisk policies. In a news release, the Associated Press reported that the new RAND report would complement the earlier one by focusing on ways to “reduce the incidence of so-called ‘reflexive’ or ‘contagious’ shooting the phenomenon of officers firing an excessive number of rounds in a chain reaction.” This AP bulletin was the first to describe “contagious shooting” as “reflexive shooting.” It was the first press release to use deterministic language.

That March, a grand jury indicted the officers involved – Marc Cooper, Gescard Isnora, and Michael Oliver. Tensions were extremely high in the community. Reverend Al Sharpton, a community civil rights firebrand in New York City, said that the indictment had not gone far enough. More details of the case also emerged. The event had taken place at the Kalua Cabaret, a topless bar with a history of drug violence and prostitution. The police officers claimed to have heard members of the bachelor party mention guns. The three survivors claimed in court that they had thought the undercover detectives were attempting to steal their car. They had thus tried to use the car to get away from a dangerous situation. Michael Oliver, at whom the driving car was directed, had subsequently shot at the men in the car 31 times. Isnora had fired 11 times. Marc Cooper had fired four times. One of Oliver’s shots had passed through the window of an occupied house. One of Cooper’s had smashed through the window of an occupied train station.^[xiv] Oliver and Isnora thus faced charges of manslaughter, with potential 25-year sentences, and Cooper faced a lesser reckless endangerment charge.

Cooper’s attorney, the *Washington Post* reported, expressed frustration at the decision. “We are outraged,” he stated, “that police officers are being charged for actions taken in the line of duty. That just isn’t right.”^[xv] The New York Mayor’s Office, which had from the beginning deemed the force used excessive, did not concur. Christopher Dunn, the associate legal

director of the New York Civil Liberties Union, placed the event in a much wider legal context. In an interview with a *New York Times* reporter, Dunn stated: “While it’s certainly an aberration to be shot [by a police officer] – much less to be shot at 50 times – the Bell shooting touches on something that is no aberration, which is the police being very aggressive with those in the black community.”^[xvii]

The first article challenging the growing discourse on the neurologically mechanical nature of “contagious shooting” had appeared earlier in a November 2006 article by William Saletan. Saletan, a libertarian skeptic of the arguments being advanced for “contagious shooting” observed that it was natural to seek mechanical explanations. Yet he noted that it was difficult to verify when “contagious shooting” had been coined. He also found that the majority of journalists had referenced the phenomenon in conjunction with explanations for patterns of shooting on basketball courts. Building upon a commonplace hostility to psychiatric diagnoses, Saletan noted that there was something inevitably self-fulfilling about such behavioral explanations:

Once you start describing a behavioral phenomenon as a predictable sequence of events—“post-traumatic stress disorder,” for example—people start reading it as an excuse. Seven years ago, during the Diallo case, a lawyer for one of the accused officers pointed out that “contagious shooting” was in the New York Police Department patrol guide. “I suspect that this phenomenon may play an active role in this case for my client,” he told reporters.

It was a useful line of legal reasoning. As Saletan pithily put it: “You’re not choosing to kill; you’re catching a disease.” A former Captain of the New York Police Department, Edward Mamet, had told CNN news: “It’s sort of like a Pavlovian response. It’s automatic. It’s not intentional.”^[xviii]

On the force of such explanations, Saletan could only sputter: “This mess of metaphors is telling. Nothing can behave like germs, sparks, laughter, fog, instinct, and conditioning all at once. That’s the first clue that “contagious” is being used not to clarify matters, but to confuse them.” He added that the Orwellian point was the fatalistic view that such episodes would happen again. An idea mainstream in American culture at the time was that people killed people – not guns. To Saletan, the black and white legal distinction offered by that commonplace view was becoming unclear: “Contagious shooting blows that argument away. If cops fire reflexively, there’s no moral difference between people and guns. They’re both machines....No responsibility, no freedom.”^[xviii]

The Sean Bell slaying remained prominent in media sources well into 2008. The Bell family, including Bell's former fiancé, had gathered for a candlelight vigil in November of 2007, one year after his death. *The Gothamist* reported that Bell's fiancé told a crowd: "I want justice."^[xix] In court, one author suspected, the legal arguments would fall between "fog of war" claims and the 50 bullets without return fire. Thus, in court, "contagious shooting" defined in the New York Police Department's patrol guide as a "chain reaction of shooting" would be cast in neo-Pavlovian terms, an automatic response. To this proposed neurological explanation, there was no scientific retort. The prosecution could only rely on rhetorical questions about the nature of free will, intentionality, instinct, and hope that jury and judge would understand the Pandora's Box being opened if "contagious shooting" were permitted to stand as a defense for excessive police force.^[xx]

Publicly "contagious shooting" had been all but accepted. Kyle Murphy, a former police officer turned graduate student in journalism at Columbia University, wrote in an opinion editorial that it was obvious that the police officers had felt threatened and that once "contagious shooting took hold it was difficult for the others to stop."^[xxi] These were claims he repeated in a nationally broadcasted interview with National Public Radio – the Public Radio Resource in the United States – days later.^[xxii] Whether it was arguments like these that prevailed is unclear – court testimony, records, and decisions for the trial are not publicly available. In any case, by May 2008, all three of the officers walked.^[xxiii]

The RAND Report

In June 2008 the RAND Corporation finally published its report. Its 114-pages of text chiefly addressed issues of police officer training and usage of non-lethal weapons. It barely analyzed the incidence of "reflexive shooting." Christopher Dunn of the New York Civil Liberties Union criticized the " cursory" treatment of the topic. The Report's lead author, Bernard Rostker, admitted that it had been "nearly impossible to tabulate whether incidents had risen or fallen in recent years", but he averred in *The Sun* that, "contagious shooting is a rare event."^[xxiv]

Indeed that rarity was reflected in the pages of the report. Although the report's authors noted that the NYPD categorized "contagious shooting as intentional reflexive discharges" they also admitted in the executive summary that data on the condition had not been easily located. Nor was there psychological research on decision-making processes that led to firearms discharges among police officers.^[xxv] In the four-page chapter devoted to the topic, the authors noted that the phenomenon could be described as a "mass reflexive response" characterized by many

“intentional reflexive discharges”, which could be distinguished from accidental discharges:

While it is often discussed as a group phenomenon, a single officer can also intentionally discharge his or her weapon out of fear and without knowing specifically what he or she is shooting instead of carefully considering whether the situation meets the requirements for the use of deadly force. Typically, the officer is reacting to the sight and sound of other officers shooting and starts to shoot. *An intentional reflexive discharge may involve as little as a single round being fired...*(my emphasis)

According to the RAND Report’s authors, this phenomenon was well-recorded in psychological studies. This was a claim not substantiated by any specific literature. Interestingly of the only two scientific works cited in support of the chapter’s claims, one of the studies addressed the automatic response of individuals to perceive but cognitively fail to process environmental stimuli. The argument suggested through this selective citation was that police officers were unaware of all they perceived in the environment. Intentional reflexive discharges occurred as a result of individual reaction to contexts not cognitively understood.

While the report argued that such episodes should be tracked and that further training to prevent such episodes be pursued, an implicit subtext in the report was that the police officers had been conditioned to automatically respond in these ways. Rare, unfortunate accidents like the Sean Bell slaying might continue to occur. At the same time, that conditioning prepared officers for circumstances where lethal force was appropriate. In other words, such reflexive behavior saved lives, even if it sometimes resulted in excessive over-response to stimuli. Police officers needed to respond mechanically to danger before their minds comprehended the context. Their response was always appropriate, intentional, and reflexive. Any individual behaving oddly risked triggering a *mass reflexive response*.^[xxvii]

Conclusion

Critics responded to these claims in a variety of ways. Most pointed out that such instances of over-reaction seemed to most adversely affect minorities. In the courts, claims of contagious shooting tended to be dismissed across the United States as unsubstantiated – but there were court cases in which contagious shooting was used as a defense. Fundamentally, the challenge arose around the question of intent. No one wanted to argue that the police officers had intentionally shot and killed innocents. Everyone agreed that they had acted intentionally to protect

themselves. In an instance like this, recourse to a neurological principle substituted for the harder reality that in preparing police officers to protect people, police officer training could lead to tragic outcomes. Perception without cognition equaled almost complete power without culpability.

Historians of neuroscience can puncture the impulses underlying such rhetoric. Criminologists and lawyers have already challenged the empirical veracity of claims of “contagious shooting.” Yet we should understand that governing through the brain might well mean perceiving without cognition. In common law and jury systems that may well be enough to establish a new common doctrine of the nerves – it is certainly enough to overhaul established conventions in jurisprudence. Against such rhetoric, historians can offer the material, social, and cultural context of scientific knowledge. We can argue that the debates that undergird these claims are not new at all, but represent a long history of questioning easily traced back to antiquity, even through all of the disguises of technology, medicine, philosophy, and theology.

The examples of “contagious shooting” offer much as well to understanding the fury and outrage now on display in Ferguson, Missouri. Ferguson is not simply a story of race; nor, for that matter, is the story of “contagious shooting.” Both make clear, however, that it is very easy for the downtrodden and brutalized to see the agency of their oppressors. The oppressors and their apologists, in fleeing to mechanistic, geneticist, and deterministic rhetoric, seek to absolve themselves of accountability for the exercise of power. They perceive without cognitive awareness of their own culpability in the circumstance. In this, however, the police are no more guilty than are those Americans on the Left and Right who sit silently as prisons fill-up with mainly oppressed minority men. They too perceive without cognitive awareness that they participate in racial apartheid.

Science was always supposed to be an ennobling enterprise. But in matters of race and matters of individual self-interest it has often emerged as a tool of oppression rather than emancipation. The analysts who wrote the RAND Report on reflexive shooting were not bad analysts. Nor were they cynics! The scientists who utilize the implicit association test do not do so out of some overt racist agenda. Just as educated people with modest wealth often fail to realize how well off they are in comparison with their poor neighbors, these analysts have failed often to understand that discourse is practice in the public sphere. It makes no difference whatsoever in media accounts that these tests or these metaphors were meant to relay nuance and subtly. What matters is the way they are used; not what they empirically show. This failure to grasp that distance between science and politics is very great, this inability to see that cultural discourse easily trumps evidence, and this blindness to the fact that the exercise of power requires little evidence at all situates our times as

particularly tragic. Ferguson reminds us in the same way that Sean Bell reminded us that there is a real person on the other side of the real or metaphoric gun. It also reminds us that our own silence about these grave matters contributes to the pulling of the trigger. Perhaps that is what we all perceive without understanding. Perhaps that is what it will really mean to govern through the brain.

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[i] Nikolas Rose and Joelle M. Abi-Rached. *Neuro: The new brain sciences and the management of the mind*. Princeton University Press, 2013.

[ii] See: Sally Satel and Scott O. Lilienfeld. *Brainwashed: The seductive appeal of mindless neuroscience*. Basic Books, 2013.

[iii] David Harvey. *Rebel cities: from the right to the city to the urban revolution*. Verso Books, 2012.

[iv] See, for instance, John Krige, *American Hegemony and the Postwar Reconstruction of Science in Europe*. The MIT Press, 2008. Also see Philip Mirowski, "A History Best Served Cold" in edited by Joel Issac and Duncan Bell, *Uncertain Empire: American History and the Idea of the Cold War*. Oxford University Press 2012.

[v] Sheldon S. Wolin, *Democracy Inc. Managed Democracy and the Specter of Inverted Totalitarianism*. Princeton University Press, 2008.

[vi] This is a point that I raise more fully in a forthcoming review in *Social Studies of Science* of Nicholas Langlitz's excellent *Neuropsychedelica: The Revival of Hallucinogen Research since The Decade of the Brain*. University of California Press 2008.

[vii] Roger Smith, *Being Human: Historical Knowledge and the Creation of Human Nature*. Columbia University Press 2007.

[viii] After I wrote this article, CNN.com published an op/ed about the slaying of Michael Brown. Although it does not mention "reflexive shooting", it does mention physiological indicators and also training.
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[xv] Anthony Faiola, "Felony Charges for 2 in Groom's Killing: Indictment of Three N.Y. Detectives in Shooting is Unsealed" *Washington Post*, March 20, 2007, A03.

[xvi] Diane Cardwell and Thomas Lueck, "After Bell, Critics Want Mayor to Broaden Focus on Police" *The New York Times*, March 21, 2007, 1.

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[xviii] William Saletan, "Human Nature: Catch and Shoot: The Perils of Contagious Shooting" <http://www.slate.com/id/2154631/> accessed 4 February 2010 www.slate.com

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[xx] Robert Kolker, "A Bad Night at Club Kalua; In the Sean Bell shooting, 50 bullets and many truths" *New York Magazine*, March 3, 2008.

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[xxii] Lynn Neary, host, "Talk of the Nation: Sean Bell Verdict May Deepen Mistrust of Police" *National Public Radio*, April 29, 2008.

[xxiii] Sean Bell Supporters Angry About Detectives' Acquittal in Wedding Day Killing; <http://www.foxnews.com/story/0,2933,352622,00.html>

[xxiv] Sarah Garland, "Police Use of Stun Guns May Increase" *The Sun* June 9, 2008, 4.

[xxv] Bernard D. Rostker, Lawrence M. Hanser, William M. Hix, Carl Jensen, Andrew R. Morral, Greg Ridgeway, Terry L. Schell, *Evaluation of the New York City Police Department Firearm Training and Firearm-Discharge Review Process* (Santa Monica: RAND Corporation, 2008), p. xxiv

[xxvi] Bernard D. Rostker, Lawrence M. Hanser, William M. Hix, Carl Jensen, Andrew R. Morral, Greg Ridgeway, Terry L. Schell, *Evaluation of the New York City Police Department Firearm Training and Firearm-Discharge Review Process* (Santa Monica: RAND Corporation, 2008).

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