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Stop, Search and Violate: "The Anti-Blackness of Stop and Search Policing in Contemporary Europe"

Name: Krista King
Date: 15th of August 2022
Supervisor: Prof. Dr. Sandra Ponzanesi
Second Reader: Dr Rebecca Smyth

Abstract – Keywords

Abstract:

This research demonstrates the undeniable link between the anti-Black sentiments - once justifying the colonial expansion, extraction, and violence - and the racially discriminatory stop and search policing powers in contemporary Europe. The anti-Black sentiments deriving from coloniality are at the core of securitisation, surveillance and policing which influences how the highly discretionary stop and search policing powers are implemented throughout Global North. Borrowing from the Anglophonic approach to race, this thesis challenges the European race/colour-blindness by introducing a postcolonial and Critical Race Theory reading of legal and policy documents, as well as the contemporary public and political debates surrounding the racially motivated over-policing of Black and brown bodies in the post-George Floyd Europe. By tracing the anti-Blackness of surveillance and policing, along with the Anglophonic history of stop and search policing the research creates a comparison point for three case studies looking at racially discriminatory stop and search policing in contemporary France, the Netherlands and the United Kingdom. As the historical and theoretical analysis shows, the core of surveillance and policing is *the fact of Blackness*, and as such this thesis aims to show how the narrative of race/colour-blind Europe is in fact a destructive fallacy. At best this narrative denies the experiences of Black and brown bodies of discriminatory over-policing, and at worst this denial is creating *bare-life* conditions in which Black and brown bodies are subjected to necropolitical policing power. The critical and postcolonial lenses used in this research recognise that stop and search policing does not happen in a vacuum, but that the colonial anti-Black history of surveillance and policing enables this necropolitical policing power. Focusing on case studies in Europe, this thesis challenges the narrative of the European race/colour-blind narrative, calling for more critical engagement with Europe's shared colonial history.

Keywords: anti-Blackness, coloniality, discriminatory policing, necropolitics, population management powers, race/colour-blindness, stop and search policing

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1. Introduction

The contemporary injustices, inequalities, and disparities that Black and people of colour face in their daily lives is a continuum that of colonial expansion, and transatlantic slave trade and this connection is addressed regularly by scholars, activists and organisations. This colonial connection to the contemporary forms of racialised police brutality has less often been theorised about in Europe. This research will contribute to this the knowledge gap, by looking at the anti-Blackness of stop and search policing in contemporary Europe. This racially discriminatory policing power implemented disproportionally against Black and brown communities, derives from the way in which the phenomenology of Blackness is perceived in the Global North. I will trace how Blackness has been narrated during pre-colonial and colonial times, and throughout this research, I will show how these dynamics continue to justify racialised surveillance and policing today.

The European Parliament recognised on the 19th of June 2020, that the killing of George Floyd, an unarmed Black man, by police officer Derek Chauvin, in the U.S. state of Minneapolis, sparked "…massive demonstrations and protests against racism and police brutality all over the US, as well as around the globe" (European Parliament, 2020, p. 3). These worldwide demonstrations, more commonly known as the Black Lives Matter (hereafter: BLM) protests, became a politically hot topic. The European Parliament discussed the effect that the BLM protests had in the EU, as follows:

> "…in some EU Member States the protests strengthened the movement against racism that targets black people and people of colour, and also led to the recollection of Europe's colonial past and its role in the transatlantic slave trade; …these injustices and crimes against humanity should be recognised at EU and national level, and be addressed at institutional level…" (2020, p. 4).

This research will proceed to invoke these sentiments of "recognising Europe's colonial past" and how the unaddressed colonial anti-Blackness of policing and surveillance manifests itself as a racialised population management in contemporary Europe.

Drawing and analysing the Anglophonic history of stop and frisk policing in the U.S. and stop and search policing in the UK I will construct a comparative framework to which contemporary case studies can be compared to. By focusing on case studies of contemporary France, The Netherlands, and the UK and how stop and frisk/search policing is implemented, I will argue that not only is this form of policing a necropolitical practice that systematically discriminates against Black and brown bodies but that it also derives from a colonial need to

control racial populations. Stop and frisk/search policing is often the first point of contact between the civilian being stopped and questioned and the coercive power of the state (Delsol & Shiner, 2015). This first point of contact thrusts the civilian into the realm of the criminal justice system as previous research has concluded that youth who have been stopped, searched, questioned or warned by the police were much more likely to be arrested in the future (CCR, 2012; Flacks, 2020; Wiley & Esbensen, 2016). As such I argue that stop and search policing functions as a necropolitical marker, deployed against the (*Black) Other*, that subjects these civilians to further policing, criminalisation and eventually to bare-life conditions.

The reason why I hold that a further inspection of stop and frisk/search powers is important is that it derives from the colonial need to control bodies deemed dangerous and disposable. This is done through increased surveillance and policing, which has its roots in anti-Blackness. This thesis then, looks to answer the research question: *How does the colonial legacy of anti-Blackness guide stop and search policing in contemporary Europe?* With this question I hope to draw more focus on the entanglement of the colonial history of slavery, the colonial legacy of racism, and the contemporary forms of institutional racism in the criminal justice system of contemporary Europe, where often race and racism are seen as the thing of the past, and non-relevant due to a portrayal of modernity being race/colour-blind. This research will attempt to show that the anti-Black sentiments, race, and racism that appeared in (pre-)colonial Europe to justify the colonial conquest, are still relevant and present in contemporary Europe. These anti-Black concepts travelled from Europe to the new world with the colonizers and took on extreme segregationist and racist form in the US where the period of slavery lasted until the 19th century and segregation was legally enforced until the 1960s. While various critical theories and research has shown that the contemporary criminal justice system and the prison industrial complex are only an extension of slavery and the Jim Crow laws in the U.S. specifically (Alexander, 2010; Browne, 2015; Kitossa, 2020), I hold that the anti-Blackness has affected the security and policing of Global North as a whole.

Stop and frisk/search policing powers have been argued to be a gendered and racialised policing practice (Brunson & Miller, 2006; Davis, 2017a; Davis, 2017b; Kwate & Threadcraft, 2017; Stevenson, 2017). Angela J. Davis holds that throughout American history, from slavery to the present day, the Black male has been policed more than anyone else. Or better yet: “black men are policed and treated worse than their similarly situated white counterparts at every step of the criminal justice system, from arrest through sentencing” (Davis, 2017a, p. 2). This thesis acknowledges that Black men are not the only people whom arbitrary state powers are deployed

against in a discriminatory manner. As Davis lists: "Black women, Latino/a men and women, Native Americans, and other people of color also experience violence at the hands of the state and discriminatory treatment in the criminal justice system, as do people who are gay, lesbian, and/or transgender" (2017a, p. 3). However, this study focuses on stop and frisk/search policing and relies on former findings and the assumption is that this policing practice disproportionally affects Black, young men.

Feminist and other critical scholarship demonstrate how class, race, and gender inequalities cannot be understood in a vacuum, but are rather historically shared and intertwined. Black women have been overpoliced in the U.S. since the War on Drugs[1] policies of the 1970s and 1980s (Alexander, 2010; Brunson & Miller, 2006; Spade, 2015). In the 1990s Kimberlé Crenshaw (1991) showed how legal scholarship was blind to intersecting inequalities, opening the door to understanding how the combination of oppressions such as racism, sexism, and ableism can hold people back in the white, patriarchal, heteronormative societies of Global North to varying degrees. Black men are most often seen as the group who are burdened with the presumption of guilt and dangerousness (Stevenson, 2017) resulting in them being over-represented in statistics of imprisonment, and the murder at the hands of law enforcement officers (Davis, 2017a). As I will come to show throughout this research, law enforcement officers enjoy a vast amount of discretion when conducting stop and frisk/search policing and this allows them to over-police particularly Black young men.

Methodology and theoretical framework

The research acknowledges that there is a continuity from colonialism to the present social configurations (Kitossa, 2020), meaning that legal scholarship and criminology, while maintaining values of objectivity and neutrality, should be understood as situated (Haraway, 1988). The dominant intellectual frameworks for these scholarships were established at a point in time in the Global North when normality and naturality were seen through the prism of white

[1] War on Drugs originally launched by President Nixon in the 1970s, drastically escalated During Ronald Reagan's presidency. Multiple strategies were created under Raegan's presidency, such as increased anti-drug enforcement spending and creating a federal task force to demonise and criminalise drug use and drug users. Many of these policies targeted the Black population, plunging them into unemployment, criminalisation, and crime, as well as restricting their access to social benefits. Michelle Alexander (2010) traced how the War on Drugs took its shape under Ronald Reagan's presidency and how after the policies that emerged, such as social assistance programmes were denied from people who had committed drug related crimes, and this affected mostly the Black communities in the U.S. An example that Alexander (2010) gives of a gendered effect of the War on Drugs policies is the criminalisation of the Black single mothers as "welfare queens" living of off the government. This demonisation, frequent in the public and political discourse of the time, resulted in the demolition of the social welfare programmes affecting the Black single mother families disproportionally.

western presuppositions (Blagg & Anthony, 2019). By introducing a postcolonial and a critical framework to criminological and legal scholarship of policing, I can inspect the issues through a lens that recognises the continuing impacts of colonialism and imperialism on contemporary discriminatory issues in policing. Critical Race Theory (CRT) has confronted "…law's complicity in the violent perpetuation of a racially defined economic and social order" (Douzinas and Gearey 2005, p. 259 cited in Möschel, 2011, p. 1649) and along with Möschel (2011), I hold that a CRT approach to legal and criminal justice issues in Europe is useful. Europe presents itself as a colour/race-blind society, completely reluctant to frame issues in terms of race (Möschel, 2011). The critical lens of CRT, postcolonial-, and trans theories used in this thesis help to challenge this reluctance, borrowing from the race-conscious Anglophonic approach.

This research is comparative in nature; by analysing the Anglophonic history of stop and frisk/search policing, there will be a comparison point to show how public and political debates have resulted in discriminatory policing policies. This research looks at three European countries: France, the Netherlands, and the UK to show that in both Anglophonic and non-Anglophonic nations the contemporary racially discriminatory policing does not happen in a vacuum, but that these nations share the colonial and imperial history that has narrated Blackness as criminal. The different sets of phenotypes present in humans, determined by the environment and climate, became to be harnessed by what W.E.B Du Bois called the "Color Line"[2] (cited in Wynter, 2003, p.315). The Color Line then became inherent institutionally and discursively between the whites and non-whites, with a hierarchical structure from the highly regarded fair complexion of the "Caucasoid" to the "barely evolved near-primate status of black-skinned peoples" (Wynter, 2003, p. 318). Blackness became systematically stigmatised and socially inferiorisised, all the while dynamically producing material deprivation within this segment of people to both serve to verify their natural inferiority and legitimate the white western as the epitome of the human.

The narrative surrounding the phenotypical differences and the humanist thought about the rationality of the white human and the sub/irrationality of the Black non-human developed during the eighteenth and the nineteenth century, when slavery increasingly required justification (Jackson, 2020). I borrow from Zakiyyah Iman Jackson (2020) that the secular iconographical approach to Blackness as an animal in the animal/human distinction has

[2] This Color Line is "a line drawn between the lighter and the darker peoples of the earth, and enforced at the level of social reality by the law likely instituted relation of socioeconomic dominance/subordination between them" (Wynter, 2003, p. 310).

resulted in the narration of Blackness as irrational, bestial and criminal, and this is then used to justify the need for states to control the *phenotypical other*. This animal/human distinction has been central to criminalising Blackness, and in this study, I attempt to show that this criminalisation deriving from anti-Black sentiments is still relevant to stop and search policing, as it largely relies on the discretion of the individual officer. In the post-2020 world, social justice movements have forced inter-governmental institutions and organisations to acknowledge contemporary forms of racism, but many nation states have not taken steps to confront the colonial legacy of anti-Black sentiments, which I hold, colours our understanding of crime and criminality.

In this research, the Anglophonic history of stop and frisk/search policing is traced by analysing the anti-Black discourses mobilised in public and political spheres that resulted in laws and policies allowing a racially discriminatory form of policing through stop and frisk/search powers. This then offers a comparison point for the case studies of how in contemporary France, The Netherlands, and the UK stop and search policing can be understood as a form of racialised population management. In the case studies, secondary resources, such as reports from both governmental and non-governmental organisations (NGOs), legal texts in the form of acts, laws and legislations, and news articles are analysed. Where there are already released statistics on stop and search policing, the results are presented and analysed.

The UK is present in both the theoretical framing of the historically discriminatory way of constructing stop and search policing and in a case study where the contemporary discrepancies of this form of policing are looked at. The justification for this is twofold; The UK's Anglophonic approach to race has resulted in the state gathering disaggregated data, something the two other nations do not do, and this offers a quantitative look into the discriminatory way in which stop and search policing is applied contemporarily. The other reason is that by analysing the history of stop and frisk/search policing in both the U.S. and the UK contexts I challenge the main argument mobilised often by European nations, which is that racist policing is an issue only in the U.S. due to their history with slavery. By analysing relevant content in both locations, I attempt to show that both locations share a colonial history that affects the way in which Blackness is policed.

The thesis is divided into two chapters; the theoretical framework (2.) and the main analysis chapter (3.). In the introduction of the theoretical chapter, I will present the larger framework through which I will approach the research question, holding that anti-Blackness is at the core of contemporary securitisation and policing. Here the overarching theoretical

framework is that of Achille Mbembe's "*Necropolitics*" (2003). Mbembe (2003) furthered Michel Foucault's concepts of biopolitics and biopower by arguing that sovereignty has control over the mortality of subjects as well as the power to define those lives worthy of living. The necropolitical framework sees the sovereign action concerned with the material destruction of either individuals or populations. The reason I rely on Mbembe's *Necropolitics* over Foucault's biopolitics is that the Necropolitical approach to policing recognises the history of coloniality, and the contemporary importance of the material conditions of race and racism, conditions that have been argued to be secondary and at times non-existent in Foucault's theorisation (Stoler, 1995).

Next, I will present the thoughts and theories of Saidiya Hartman and Simone Browne, as I try to dissect how security cannot be understood without its anti-Black core. This chapter will also borrow from Fanon and Ahmed, that the material condition of Blackness makes it impossible to disappear into the *sea of whiteness*, and as default the non-white person will "stand out and stand apart" (Ahmed, 2007, p. 159) from the surrounding institutional whiteness in the Global North. Here I emphasise what Fanon (1986) called the "epidermal condition of Blackness" holding true, as for law enforcement the non-white other not only stands out due to the colour of their skin but the "historicity" that is attached to the epidermal appearance.

Then I will turn to how the concept of *crime* and can be mobilised and weaponised by the state to start controlling certain segments of the population. Here I will draw from Dean Spade's *Modes of Power* in which he furthers from Foucault's theory on *power* by expanding how the state's mobilisation under the disguise of *crime and criminality* makes the racialised population management acceptable. In the final part of the first chapter, I will introduce stop and frisk/search policing by tracing the history of this arbitrary state power in the US (2.2) and the UK (2.3). Showing how the policing powers have come to be utilised in a time of social anxiety and moral panics about race relations is telling and gives a wider framework to be utilised in the case studies in the following chapter.

In the main analysis chapter (3.), I will look at how stop and search policing can be understood as anti-Black policing tool in contemporary Europe. The chapter starts with a theoretical look to understand anti-Black racism in the European context (3.1). Race and racism are often denied as a non-European concept, as something that happens elsewhere, and this section intends to show how anti-Black racism is also present in Europe and how it affects policing and law enforcement institutions. The following section (3.2) holds a policy analysis of the most recent reports and resolutions by European institutions, organisations, and NGOs

regarding racist policing in Europe. Most of the documents were prompted by the killing of George Floyd in the March of 2020 and the BLM protests that followed. This short analysis shows the contemporary discourse surrounding racism and racist violence by law enforcement institutions towards racialised minorities in Europe. In the three final sections of this chapter, I will look at how stop and search policing is contemporarily affected by the colonial anti-Black sentiments in the UK (3.3) France (3.4), and the Netherlands (3.5). Stop and search policing is a multifaceted action, and as such this research is not trying to explain or pinpoint an only reason to why an individual is stopped and searched by law enforcement officers. Instead, this thesis is showing how the lack of critical engagement with the anti-Black history of policing and surveillance has resulted in necropolitical policing powers targeting that of Black and brown bodies disproportionally in contemporary Europe.

2. The theoretical framework: Necropolitics and condition of bare-life

Michel Foucault coined the term *biopower* which describes the way that governments exercise sovereignty to control and regulate the health and life of their population to maximise economic productivity. Foucault insists that the mechanisms of biopower are embedded in the way in which all states function. Achille Mbembe (2003) builds onto this notion of *biopower* his theoretical framework called *necropolitics*. Mbembe holds that sovereignty has control over the mortality of subjects as well as the power to define those lives worthy of living, and he holds that *necropolitics* as a sovereign action is concerned with the material destruction of either individuals or populations. This is done through violence, neglect and exclusion (Mbembe, 2003) and the destruction does not have to be literal, but can also be seen as a civil, social or political death of the subject (Flacks, 2020). The presupposition for both biopolitical and necropolitical powers is the distribution of the population into groups. Foucault reasoned that this biologically understood hierarchy of people, now more commonly known as racism, is what enables the usage of biopower as justifiable. Achille Mbembe (2003) holds that the same is true when it comes to the justification of necropolitical assertations by the governments.

While race is not a physical, anthropological or genetic fact, it is still a useful fictional construction that is both mobile and inconsistent (Mbembe, 2017). This constructed race, according to Mbembe (2017), makes it possible to define population groups, and these groups are then understood as carrying differing levels of risks. These population groups, carrying on them differing levels of risks then, are marked simultaneously as generalised calculations of risks and probabilities to prevent dangers inherent to them. How the government intervenes then is by neutralising these populations pre-emptively by immobilising, incarcerating and deporting these populations that carry higher levels of risks (Mbembe, 2017). Arguably, race functions as a security device, based on the biological rootedness of the perspective, and according to Achille Mbembe (2017) was most noticeable in the regimes of historical colonies and in the regimes which practised apartheid. This is because the nation needs to define differing levels of risks between groups to ensure their elimination before they can pose a threat to the hegemonic rule. The fear that the hegemonic rule has is the fear of a radical transformation of mechanisms, of the redistribution and reproduction of life itself. This fear comes from the haunting that will drive modernity from its beginning to end, according to

Mbembe, and this haunting is the possibility of a "revolt of slaves"[3] (2017, p. 37). The differing levels of risks then are attributed to especially the *phenotypical other*, the Blackness that haunts the white hegemonic rule.

I hold that stop and frisk/search policing should be understood as a necropolitical action, as it engages in material and non-material destruction of racialised populations in an attempt to control the bodies that have been historically seen as carrying a higher level of risks. While stop and frisk/search powers have a long history, the use of these powers has been increasing since the turn of the century. In the post-9/11 era, most states throughout the Global North have made the stop and frisk/search powers easier for law enforcement officers to use on the streets and on the roads, causing an increase in this form of policing. Often hailed as a "necessary" function of crime fighting and crime prevention (Flacks, 2020), more and more law enforcement agencies have taken the approach where stop and frisk/search policing is treated as a deterrent to criminal activity (Cooper, 2018; Terrill, 1989).

This pre-emptive policing has been historically identified as a slippery slope, as it is based on policies making policing and prosecuting easier. Under these conditions then, even *undesirable behaviour* can eventually be classified as a criminal offence (Terrill, 1989). Simon Flacks argued in his 2020 article *Law, necropolitics and the stop and search of young people* that the stop and frisk/search powers are indeed used in a necropolitical way, to contain and criminalise those perceived as possible threats to the social order, in a highly visible way. This highly visible way in which disproportionally Black bodies are targeted should be understood as beyond crime and social control according to Flacks (2020). Flacks' focus is on the stop and searches powers used in the UK, where the powers are disproportionally used on "young Blacks" (Flacks, 2020; Terrill, 1989; Waddington, et al., 2004) and where the powers have been under scrutiny for being more often than not used on speculative basis, not meeting the necessary threshold of 'reasonable suspicion'. Black individuals were more likely to be stopped and searched than their white counterparts by law enforcement officers in the UK according to Flacks (2020), and youth were more likely to be searched than older people. As criminal justice initiatives and measures are often racialised, Flacks notes it appropriate to apply Achille Mbembe and Giorgio Agamben's theorisation here, to understand how these conditions are creating death-making and bare-life existence. The stop and search powers can be understood

[3] The fear of a singular radical transformative event that would redistribute the global system of labour and the reproduction of life itself (Mbembe, 2017).

through a necropolitical framework, to function in the way the U.S. slave patrols once did, by marking out or distinguishing those bodies deemed worthy, or unworthy of life (Flacks, 2020).

Naa Oyo A. Kwate and Shatema Threadcraft (2017) looked into the contemporary disparities in stop and frisk policing in the US in their article *Dying Fast and Dying Slow in Black Space* arguing that this form of policing is not only unconstitutional but also constitutes a public health problem. Stop and frisk policing keeps producing and reproducing Blackness as a metonym for a disorder, risk, and crime while simultaneously transforming the urban spaces from a resource to a source of danger, essentially operating as a process of *death world* (Kwate & Threadcraft, 2017). Achille Mbembe (2003) defined Necropolitics as the sovereignty's ability to determine who lives and who dies, the necropolitical power of stop and frisk powers marks the environment where Black bodies mingle, bringing with it material and non-material death. When looking at stop and frisks carried out by the New York Police Department (NYPD), Kwate & Threadcraft (2017) found that 75% of all combined NYPD stops were done on Black and Latinx individuals although the demographics of Black and Latinx make up 30% of the whole New York City (NYC) population. The trend observed in the UK that the stop and search powers were used pre-emptively to deter criminal activity, was also found in the US. Cooper (2018) finds this trend alarming, as it is unconstitutional to use stop and frisk powers when the threshold of "probable cause" is not met, but also the power was never intended by the courts to be used in such a fashion. This same arbitrary way of using the power was observed by Kwate & Threadcraft (2017), as they concluded that 88% of stop and frisks done by the NYPD never resulted in summons or arrests.

In the U.S. then, the same rings true that Flacks noted in the UK; stop and frisk powers eventually mark the bodies seen as disposable. The reason that Achille Mbembe's (2003) *necropolitics* can be argued to make a convincing case, particularly in the U.S. context, is because of the high amount of deaths of Black people at the hands of the police. The "death by law enforcement officers" has been reported as the third leading cause of violence-related deaths of young Black men in the US, making these young Black men twenty-one times as likely to die in this manner compared to their white counterparts (Kwate & Threadcraft, 2017). Through qualitative data Kwate & Threadcraft (2017) emphasise that through the stop and frisk tactics the streets of Black communities are turned into a form of prison, making this form of policing a "necropower". Kwate & Threadcraft emphasise that Black people are subjected to necropower constantly, not only when being slain. The recognition here is that the cases of brutality and killings are the most severe form of this, but that there is another form which

hinges the body towards death. While the stop itself might only last a few minutes and might not cause any physical injuries, this undermines the chance for Black people to live a normal life (Kwate & Threadcraft, 2017). Frisking, detaining, and humiliation should be understood as an extension of the "necropower" of stop and frisk/search policing, degrading Black life, attributing to the condition of bare-life (Mbembe, 2003).

National statistics in the U.S. and the UK show that stop and frisk/search policing is implemented in a discriminatory manner. In the UK, the Home Office reported during 2019-2020, that Black people were 4 to 6 times more likely to be stopped and searched than their white counterparts (Home Office, 2020). While this rate has fallen from the all-time highest rate of Black people being searched at the rate of 9.5 times as likely as their white counterparts in 2017/18 (Home Office, 2020, p. 18), being stopped at the rate of 4 to 6 times as likely as the majority is still highly discriminatory. A report released by European Network Against Racism (ENAR) in 2021 investigated racialised police brutality in Europe that discovered that in France, Black and North African people were twenty times more likely to be stopped and searched than white people (ENAR, 2021). There is a need to inspect this specific policing method in other European nations, as recent studies show that institutional racism in the police is an issue and violence from the law enforcement officers towards those stopped and searched is more prevalent when the individual stopped is Black or a person of colour, especially so when the individual is Black or of North African Heritage (ENAR, 2021).

2.1. Surveillance, policing and crime as anti-Black concepts

This thesis is guided by understanding the notion of *crime* as a carefully constructed concept that enables the management of certain segments of the population through a behaviour that has been criminalised, as "…crime is anything that a group in power chooses to prohibit" (Adler, 1976, p. 155). After showing how securitisation and the criminal justice institutions should be understood as having an anti-Black history, and how this is reflected on the morals and rules according to which these institutions operate on, I will move on to how the one-on-one policing on the streets should be understood from the theoretical framework of phenomenology. Here I will shortly present Franz Fanon's epidermalization and Sara Ahmed's phenomenology of Whiteness, while building an argument that on the streets of the Global North, the epidermal condition of the *Black deviant other* acts as an eye catcher to the law enforcement officers. This phenomenological basis then enables the state powers to enforce what Dean Spade (2015) has coined as "*population management"*-powers and "*perpetrator/victim"-power* as crime has become synonymous with Blackness. Through these state powers that Spade looks at, the state can deploy powers to control a segment of people, and here I hold that the stop and frisk/search policing powers becomes the perfect state power for racialised population management.

Most humanist thought surrounding the *animality* of Blackness developed during the eighteenth and nineteenth century, when there was a need to keep justifying the slave trade and the enslaving of Black people (Hartman, 1997; Jackson, 2020; Wynter, 2003). The justification most often relied heavily on the narrative of animality of the African's (Jackson, 2020, p. 26), and I hold that this narrated animality justified the ever expanding need to control Blackness and this is where the criminalisation of Blackness becomes imperative. In her book *Scenes of Subjection* (1997) Saidiya Hartman looks at how the recognition of the humanity of the enslaved became to eventually justify their ever-increasing punishment through legal means. This recognition of Blackness as being part of "universal humanity" is important when it comes to, understanding how Blackness has been narrated as deviant and how this took its form in the legal context of the USA. Jackson emphasises that Hegel's theory of *universal humanity* "has influenced the culture of rights and law, including human rights law…" (2020, p. 31), and here it is important to look into Hartman's research into the status of the humanity of the enslaved.

Hartman emphasises that the *humanity* that the enslaved got through legal means, was selective as it "nullified the captive's ability to give consent or act as agent and, at the same time, acknowledged the intentionality and agency of the slave but only as it assumed the form

of criminality" (1997, p. 80). Hartman notes, that this objecthood of the enslaved and this newly legal recognition of humanity were technically two sides of the same coin as the will of the enslaved was criminalised. The criminal liability of the enslaved was paradoxical, as their rights were not recognised above their objecthood. The submission of the enslaved was required to all white people, while having no ability to witness or protect oneself against white people in civil or criminal cases. The laws prohibited the use of self-defence of the enslaved against white people; essentially the laws subjected the enslaved to the absolute control of and authority of every white individual as well as the state (Hartman, 1997). These laws started to appear as there was a growing fear of organised resistance, criminalising the actions of the enslaved (Reichel, 1988). Acts of resistance such as revolting, running away, theft, as well as destruction of property by the enslaved were all criminal offences punishable by death.

The controlling and policing of slaves took different forms in different states in the U.S.; in seventeenth century South Carolina, for example, anyone could apprehend, chastise, and send home any enslaved person who had run away, and if they did not take this action, they could face being fined for neglecting their duty (Reichel, 1988). In Virginia in the beginning of the eighteenth century, it was made legal for anyone to "kill or destroy" a runaway slave without the pursuer getting accused of any crime (Reichel, 1988). But towards the nineteenth century a more centralised approach was taken towards the controlling of the enslaved. The increased fear of the slaves as a "dangerous class", according to Reichel (1988), invoked the establishment of slave patrols. Here I would like to turn to how the *slave patrolling* can be understood as one of the first organised law enforcement movements in the United States and how the slave patrolling appeared from the need to control the enslaved that became to be narrated as criminal and dangerous. I will turn to look more into how slave patrolling justified the controlling of Black bodies and how through criminal laws this policing was maintained with the Jim Crow system of segregation. This racially targeting form of control, I will argue, derives from the need to keep controlling Black bodies, even after the Emancipation Proclamation. Here the narrative surrounding the need to control the animality of the Black bodies, shifted. Blackness essentially became synonymous with danger and criminality, thus justifying the excessive policing of the ontology of Blackness.

In her book *Dark Matters: On the Surveillance of Blackness* (2015) Simone Browne theorises how the ontological conditions of Blackness are at the core of the theory of surveillance, especially in racializing surveillance. Racializing surveillance, according to Browne "is a technology of social control where surveillance practices, policies, and

performances concern the production of norms pertaining to race and exercise a "power to define what is in or out of place"" (2015, p. 16). These are the forms of surveillance that reify boundaries along racial lines, where this reifying of race has a discriminatory outcome that often manifests as a violent treatment of the racialised. Browne (2015) emphasises that surveillance should not be seen as inaugurated, performed by new technologies such as drones and automated facial recognition systems, but rather surveillance should be seen as ongoing, with anti-Blackness and racism underlining and sustaining the contemporary forms of surveillances. Browne (2015) holds that the heart of the theory of surveillance, is the role of surveillance in the slavery and transatlantic slave trade archives. Though the centrality of transatlantic slavery to the theory of surveillance is undertheorize, according to Browne (2015), she holds that the historical and contemporary conditions of Blackness can help us to understand the conditions of surveillance.

Surveillance can be argued to have emerged from the archives of slavery and transatlantic slave trade (Browne, 2015), it is arguable that the institutions and practices built on the theory of surveillance keep producing and reproducing anti-Black sentiments. As such then, I hold that anti-Blackness has become to function as the basis for surveillance, securitisation and policing, or as Simone Browne has phrased it: "Surveillance is nothing new to black folks. It is the fact of antiblackness" (2015, p. 10). In the next section of this chapter I will focus on how the criminal justice system is based on anti-Blackness, holding that the function of *crime* in the society is for the state to distribute unequal amounts of power and life changes in the society (Kitossa, 2020; Spade, 2015).

Anti-Blackness has become the undeniable fact of surveillance, the reason for this is that the formation of surveillance cannot be understood outside of the historical formation of slavery (Browne, 2015). It is also important to understand that the history of violent regulation of Blackness, according to Browne (2015), begets violence in the post-slavery era through the cumulative white gaze working as the totalizing surveillance. The contemporary criminal justice system of the Global North largely relies on different forms of surveillance, and here I propose that the basis of that the way Browne theorises the anti-Blackness of surveillance is parallel to the contemporary criminal justice system in the Global North. This same outlook is shared by Tamari Kitossa, who holds that chattel slavery, and the contemporary criminal justice system are flip sides of Western democracy's coin of capital (Kitossa, 2005; Kitossa, 2020). The anti-Black history of the contemporary criminal justice system of the U.S. has been theorised by many, but most notably by the legal scholar Michelle Alexander, who was able to

connect the racist history of chattel slavery, Jim Crow laws, and segregation to the 21st century and mass incarceration that largely affects Black Americans.

Alexander theorises in her book *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (2010) that the white planter class, as the minority who came to occupy the lands of the Native Americans, used slave patrolling as one of the main "racial bribes" to strategically extend special privileges to poor whites in an effort to eliminate the future alliances between Black slaves and poor whites. According to Alexander, this generated the personal stake of the poor white communities into the race-based system of chattel slavery – while the social status of the poor whites did not improve, in comparison to the enslaved, they were in a racially privileged position, which they sought to expand (2010). After slavery, the idea of race lived on, according to Alexander (2010), becoming to define the state and criminality. Under this race-based system, the system of surveillance and policing of Blackness took off and in the southern states of the now United States of America the first official and organised slave patrol was founded in 1704 (Brucato, 2020). Simone Browne (2015) holds that the plantation surveillance (slave patrols, instruments of punishments, and plantation regulations) that emerged under American chattel slavery was a form of totalising surveillance, with conditions of terror and violent regulation of Blackness. Here the policing or surveillance of Blackness took its most extreme form as all white people had the task of surveillance, and policing of the Black bodies (Alexander, 2010; Browne, 2015).

As there is a line of continuity from colonialism and slavery to the present social configuration (Kitossa, 2020), the totalising surveillance created through white gaze should be understood as subjective. Whiteness holds the power to mark anything out of norm as criminal in the context of the criminal justice system; Kitossa notes that in multiple interviews and research conducted with police forces, civil rights groups, courts, press, police officers, and ex-police officers, the results show that "the identities of Black, indigenous peoples and people 'of colour' are strong cues for the presumption of 'criminality'" (2020, p. 15). Here Fanon's (1986) epidermalization rings true, as the Black, indigenous, and person of colours' body becomes an object of the white hostile gaze - racialized and marked. The corporal schema of the bodies marked by the white gaze crumble and are replaced by the *racial epidermal schema* that identify their existence with the "legends, stories, history and above all *historicity*…" (Fanon, 1986, p. 112). This imposed racial epidermal schema, with its historicity, then marks these bodies as responsible for their bodies, their race, and their ancestors according to Fanon. They essentially carry the stereotypes and racialised tropes on their skin, as Fanon describes:

"… I discovered my Blackness, my ethnic characteristics; and I was battered down by tom-toms, cannibalism, intellectual deficiency, fetichism, racial defect, slave-ships, …" (1986, p. 112). The totalising gaze of whiteness upholds stereotypes racial and racist about Blackness, imposing these on to the Black bodies, or as David Theo Goldberg summarises: "I am racially characterized, therefore I (am presumed, expected, in fact seen to) think (or not) and act accordingly. And perhaps I do, self-consciously or not" (2009, p. 8).

Fanon's theorisation of the phenomenology of Blackness has come to define understanding of how the ontologically one's body interacts with its surroundings. Sara Ahmed looked famously at this surrounding whiteness in her article *A phenomenology of whiteness* (2007) where she concluded that whiteness is an ongoing history, which orientates bodies in specific directions, affecting both how they take up space, and what they can do in this space. Due to the colonial history whiteness has become to describe, what Ahmed addresses as "the very 'what' that coheres as a world" (2007, p. 150). This is most present in in institutional whiteness, where institutions are shaped by both ontological whiteness (white bodies) but also the historicity of whiteness. According to Ahmed (2007), whiteness has largely been described as invisible and unmarked which leaves the *other* exposed, making them appearing deviant against this white invisibility. The *other* (here the non-white bodies) not only feel uncomfortable, exposed, visible, and different; both invisible and hyper-visible at the same time (Ahmed, 2007, p. 159). As the non-white bodies do not pass as white, they stand out and stand apart.

While there is an argument to be made that surveillance is always racialised in a way that targets Black and brown bodies, Simone Browne (2015) emphasises that the history of colonial expansion, transatlantic slave trade and slavery has structured both institutions and social relations in a way that privileges whiteness. The epidermalization of the non-white bodies by imposing the race on the body (Browne, 2015) in this white world, or by the *sea of whiteness*, a term coined by Ahmed (2007), makes the racialised body a target when it comes to surveillance. John Fiske uses an example of whiteness of surveillance:

> "street behaviors of white men… may be coded as normal and thus granted no attention, whereas the same activity performed by Black men will be coded as lying on or beyond the boundary of the normal, and thus subject to disciplinary action" (1998, quoted in Browne, 2015, p.17).

Standing out and standing apart under policing and surveillance is problematic, and throughout history race and ethnicity has been used as a valid reason for the law enforcement agencies to

be suspicious of, stop, search, and card these individuals throughout the global north (Kitossa, 2020). How then does the definition of *crime* keep reinforcing this disproportioned surveillance of Blackness?

Dean Spade's Book *Normal Life: Administrative Violence, Critical Trans Politics, and the Limits of Law* (2015) introduces critical trans politics as the practice of resistance. Critical trans politics follows the women of colour feminism and critical race theory as it also refuses to take for granted national stories about social change "that actually operate to maintain conditions of suffering and disparity" (Spade, 2015, p. 1). In its ability to both name and refuse state violence, I hold critical trans politics as an important addition to the theoretical framework of this thesis. The common social causes that Spade lists as the political agenda of critical trans politics is *police and prison abolitionism*, and here I would like to turn to Spade's *Three Modes of Power* to further understand the Anti-Blackness of the criminal justice systems of the Global North.

According to Spade (2015), the legal change in the form of *rights* has not brought about enough transformation, but rather keeps marginalising and discriminating on the basis of sex, race, and disability. Here he raises the question of the desirability of legal recognition of other minorities since anti-discriminatory laws and hate-crime laws can be considered as failing to fulfil their function as providing change. The fallacy of the United States as a fair and neutral democracy, according to Spade (2015) is a destructive and patriotic narrative. Social movements have challenged this narrative by recognising the U.S. as a settler colony that has a legal system that hierarchises and categorises people on the basis of gender, race, national origin and ability to produce population with differing levels of vulnerability to harm, such as violence, economic exploitation and poverty (Spade, 2015).

According to Spade (2015), crime in the U.S., and arguably throughout the Global North (Kitossa, 2020), is understood through a *perpetrator/victim* model; a perpetrators choice to commit wrongful actions against the victim. The dominant narrative that insists that *crime* is an individualised choice made by people with bad intentions (Spade, 2015), has largely been the way in which criminology and states deal with crime and punishment. Tamari Kitossa (2020) argues that the criminological discipline is an authoritative project maintaining the fallacy of *crime* and *criminality* in order to justify statecraft's targeted policing of certain bodies. In his 2020 article *Authoritarian Criminology and Racist Statecraft* Kitossa calls for the challenging the ontological reality of crime, noting that there is no validity beyond instrumentalism of statecraft when it comes to the notion of *crime*. Crime according to Kitossa

can be understood as a "focal point of moral outrage, ideologically for the state to justify the ongoing racket of statecraft" (2020, p. 11). This has also been theorised by other scholars, that the Global North governs through crime, by essentially deploying the category of *crime* to legitimate interventions that have other motivations (Baker, 2010; Simon, 2007; Simon, 2020).

Crime allows the mobilisation of different agencies to *protect* citizens from the "manufactured domestic enemy", through creating these feelings of insecurity and fear. Kitossa holds that crime and crime fighting justifies the usage of policing and punishment technologies (such as fingerprinting, carding, passes and writs of permission) that do not fall far from the systemised ways of maintaining apartheid, slavery, and colonialism: "Through persuading all citizen-subjects, for 'their own safety', to accept submission (because consent is not an option) to searches, seizures and biographic databasing, racial profiling and 'carding' are pretexts for managing the whole 'herd'" (2020, p. 7). The objectivity of criminology and criminologists needs to be contested as they avoid engaging with the history of colonialism, slavery, and genocide, almost in an amnestic way (Kitossa, 2020). As criminologists and the field of criminology justify the state's spending and development of their crime fighting technologies, the fact that criminal law should be understood more through the distribution of power than fighting harm (Kitossa, 2020) becomes an important fact to be engaged with. This research attempts to make a critical intervention to the way in which criminology narrates policing, suggesting that there is a need for critical self-evaluation on the objectivity of policing.

The categorisation of people based on their gender, sex, ethnicity, national origin, etc. by the state powers to determine their vulnerability, becomes problematic. This categorisation essentially distributes unequal life changes by hierarchising people to those deemed vulnerable (need of state protection) and those deemed as dangerous (need of punishment and policing). Spade (2015) looks at how this then turns to the idea of the national population (ones that meet the norm of each characteristics category) having to be protected from the those seen as the *dangerous other* (ones that classified outside of the norm of the characteristics categories) who are seen as either threat or as a social drain, depending on the time, place, and surrounding social and political upheavals. While this narrative works in the favour of the majority, the population seen as the *other* quickly becomes excluded from programs that distribute life changes and become targeted by punishment and increased surveillance in the form of state violence (Spade, 2015). Increased criminal punishments and imprisonment, racist drug laws, (forced) sterilisations, and immigrant enforcement have become the often-seen reactions from the state powers when the *other* is seen as threatening the national population.

Building on Michel Foucault's work on *power*, Spade (2015) looks at *Three Modes of Power* through which the legal system and the criminal justice system in the U.S. can be seen discriminating, distributing unequal life changes, and allocating security and insecurity in the society. These *Three Modes of Power* that Spade theorises the distribution of life changes in the society are: the *perpetrator/victim power*, which Spade (2015) characterises as the most familiar way of thinking *power* within the liberal rights-focused framework as it excludes and Subtracts from the individuals labelled as perpetrators. Here the individual perpetrators are punished for their violations, as well as there is the possible subtraction of the rights (opportunities, property, health(care), etc.) of these individuals is taken away.

The second *Mode of Power* that Spade (2015, p. 52) lists is a *disciplinary power*. This mode of power, according to Spade, is disciplinary mode of power that maintains for example racism, and transphobia in the society by operating through norms that produce ideas about how people should look, act and be. Through the disciplinary norms we learn to behave and to avoid certain types of behaviours in order to avoid being labelled those qualities that are discouraged in the society. The third and final *Mode of Power*, per Spade is the *population-management power*: through which the society distributes differing levels of life chances by producing and reproducing security and insecurity within the population. This mode of power Spade notes is the least understood one, as he argues that population-management power impacts the whole population (with differing levels), as this is undertaken through the logic of promoting the health or security of the nation.

Spade (2015) notes that the perpetrator-victim power inscribes most criminal laws and the ways in which crime is understood in the U.S., and the same framework can be argued to be repeated throughout the Global North (Baker, 2010; Kitossa, 2020). Crime is seen as an individual choice, as incidents of intentional, individualised negative actions such as violent acts (Spade, 2015). While most crime and harm has been understood through this prism of an individual evil perpetrator seeking to do harm, this does not correspond to the multidimensional reality of racism, sexism, homophobia, transphobia, and ableism according to Spade (2015). This simplistic view on crime prevents a wider analysis on societal conditions. The unequal conditions experienced by the whole population goes unnoticed when the individual's actions are on the hyper focus. I argue that the perpetrator-victim model through which crime and criminality is understood, also lacks the self-criticism as not all bodies are seen objectively in the *sea of whiteness* of the global north. Because in the U.S. lexicon 'Blackness' and 'criminality' are seen as wedded (Bassichis & Spade, 2014), understanding criminality as an

ontological reality becomes impossible. Hartman (1997) notes, that in the legal context of the U.S., blackness became to be seen as criminal, as the state essentially projected all culpability of wrongdoing onto the enslaved, and white violence became to be seen as a necessary and proportionate response to the threatening agency embodied by Blackness.

As shown earlier, different bodies carry on them a differing level of markers that are more likely seen as indication of criminality (Browne, 2015; Kitossa, 2020; Spade, 2015). The *perpetrator-victim* power that sees *crime* as an individualised choice, justifying the punishment and policing of individuals deemed as criminal. While policing and criminal laws are seen as objective entities, protecting everyone's rights, here I want to point to the impossibility of this fact. It has been theorised that non-white bodies *stand out* and *stand apart* as they are hypervisible in a white space (Ahmed, 2007), which makes these bodies the once who are always stopped by both physical and by non-physical actions as Sara Ahmed (2007) has shown us. Ahmed argues that the action "Hey you!" emphasises the out of place-ness of the non-white body:

> "For bodies that are not extended by the skin of the social, bodily movement is not so easy. Such bodies are stopped, where the stopping is an action that creates its own impressions. Who are you? Why are you here? What are you doing? Each question, when asked, is a kind of stopping device: you are stopped by being asked the question, just as asking the question requires that you be stopped. A phenomenology of 'being stopped' might take us in a different direction than one that begins with motility, with a body that 'can do' by flowing into space." (2007, p. 161)

As surveillance techniques, and the history of policing can be connected to history of anti-Blackness, there should be an acknowledgement that several surveillance tactics are prone to be more focused on Black bodies or as Simone Browne (2015) argued surveillance can be seen as racializing surveillance; a technology of social control that controls the surveillance practices, performances, and policies by defining what belong to the space and what does not. Furthermore, the more the individual law enforcement officers have discretionary powers, the the officers will enforce some laws against some people, some of the time. As such then the perpetrator-victim model of power, can be argued to crossly overlook these societal conditions that make Black and other non-white bodies more prone to surveillance and policing.

The population management powers, that Spade (2015) argued to be the least comprehended mode of power, functions not in the traditional way of deploying laws (prohibiting or permitting), but by distributing differing levels of security and insecurity within

the population. The technologies that maintain this mode of power are broad based programmes that functions through the logic of promoting security and healthcare of the nation, seemingly acting through neutral criteria. Such technologies that maintain this population management power are for example social welfare programmes, criminal punishment systems, identity documentation programmes, etc. (Spade, 2015). These technologies are seen as protecting and enhancing the life of the national population, simultaneously marking the characteristics of the *societal others* that are seen as threats and drains to the wider national population.

One of the main examples Spade (2015) gives of the population management powers technologies is the social welfare system in the U.S. Laws - portrayed as neutral and objective - cannot have explicit racial and gender exclusion in them, rather ideas about gender and race are commonly mobilised to support programmes and social policies. This happened under Ronald Raegan's presidency in the 1980s when he invoked the image of the system cheating Black single mothers as "welfare queens" (Spade, 2015) which played a huge part in dismantling social assistance programmes during the 1980s and 1990s. This trope helped to dismantle the poverty alleviation programmes in the U.S., while simultaneously criminalising the social situation and social status of Black single mothers. A more fitting example of population management powers in relation to anti-Blackness of securitisation and policing, is the mythology of Black criminality. This mythology according to Spade (2015) has justified a range of different institutional and social policy reactions, ranging from War on Drugs policies to exclusion from social benefits (such as public housing and higher education), and prison sentencing enhancements. The effectiveness of this mythology in the U.S. society (as well as in the other nations of the global north) has been an undeniably effective one.

Already in the 1970s Robert Staples argued that the link between race and criminality that the criminologists have been interested in for the past hundred years, has resulted in multiple theories suggesting a link between "racial membership and criminal activity" (Staples, 1975, p. 14). Staples rather than feeding to the trope of the colonial mindset of these criminologists, hold that there should be an understanding of race and crime through a colonial model. Here race should be treated as a political identity, as "it defines the way in which an individual is to be treated by the political state and the conditions of one's oppression" (Staples, 1975, p. 14). Staples emphasises that it is indeed the white cultural values which have ascendancy over the Black cultural values, defining behaviours and values as *criminal*, *legitimate*, or *good*, *bad* depending on the ruling class. An interesting point that Staples (1975) raises is that when it comes to the ruling class's administration powers in relation to crime and

criminality is that there seems to be no ontological consistency to which crimes carry with them the highest of penalties. White collared[4] crimes involving millions of dollars go often unpunished or carry with them only light punishments, in relation to crime defined as street crime. These crimes, that Staples (1975, p. 16) polemically holds, involving only "nickels and dimes", carry with them heavier penalties. Here then the combination of societal values, that can be argued to dictate what acts become to be coded as criminal, and the inability of the legal system (law enforcement agents, and agencies) to see their likeness as the stereotypical *criminal* lays out how the perpetrator-victim approach to crime results not only in discriminatory policies but also in discriminatory ways of enforcing laws within the wider population. Hence, I hold that the stop and frisk/search policing emerges in the intersection of the perpetrator-victim and population management powers.

The stop and frisk/search powers that law enforcement agencies have is one of the most essential tools of controlling the presumed Black criminality. Individuals who are stopped, questioned, and searched, are likely to be targeted to the procedure periodically and are more likely to be incarcerated (Flacks, 2020; Kwate & Threadcraft, 2017). The population management power here then has a two-fold effect on the Black bodies; not only are Black people more likely to stopped, searched, and questioned routinely, due to the presumed Black criminality, but also changes are made to social welfare and public assistance programmes, restricting the access of Black communities to these, so by distributing unequal life changes.

Here I propose that the stop and frisk/search policing powers should be seen as a manifestation of racialised surveillance tactics targeting disproportionally Black and brown bodies. Stop and frisk/search policing has been characterised as part of anti-Black enterprise inflicted by the militarized police (Gossett, 2014) and I insist that the result of stop and frisk/search policing inflicts such degrees of pain on to Black bodies and communities that it essentially creates a form of *death-world*[5]. In these death worlds the conditions are that of the *living dead* due to the way that the state powers simultaneously both over-police and under-protect these communities. In this context, the state powers can exclude bodies and subtract their opportunities as a form of punishment, simultaneously the state powers distribute differing levels of life changes through security and insecurity. In the next section I will look at how stop and frisk/search policing became popular under Ronald Reagan's presidency and

[4] Edwin Sutherland (1945) coined the term *white collar crime* in 1945 when looking at corporate crime. Sutherland famously argued that the legal system could not comprehend the businessmen as the stereotypical criminal, often resulting in lesser and at times non-existent penalties.

[5] Term coined by Achille Mbembe in *Necropolitics* (2003): "…new and unique forms of social existence in which vast populations are subjected to conditions of life conferring upon them the status of *living dead*.

under Margaret Thatcher's United Kingdom, drawing parallels as well as comparisons between the two.

2.2. From *Terry Stops* and stop and frisk policing in the U.S.

Stop and frisk/search powers have a different history when it comes to the U.S. and the UK. In these two sections (2.2 & 2.3) I will trace how this form of policing emerged in both locations and how during the 1970-80s became a widely used policing tactic under Ronald Reagan's War on Drugs campaign and under Margaret Thatcher's "law and order agenda". In the U.S. stop and frisk policing has been traced to the Jim Crow period and the *Black Codes* while the stop and search policing was already used in the 17th and 18th century England known as part of the sus-laws. I will trace the differing histories between stop and frisk policing and stop and search policing, showing how the emergence of these policing methods in the 1970s and 1980s had the similar anti-Black connotations to it, targeting mainly Black youth in both locations. The stop and frisk/search policing has been acclaimed as "essential" (Flacks, 2020) and described by leading criminal procedure authorities as "a practically perfect doctrine" (Butler, 2014). This form of policing keeps up the stark contrast of the Black communities as under-protected and over-policed, as the more and more militarised police targets racial minorities eroding confidence in the police (Adams, et al., 2022). Here I look to trace the history of the stop and frisk/search policing, building up to how this form of policing should be seen as a necropolitical population management power.

In the U.S. stop and frisk policing has been argued to be a central site to inequality, discrimination, and abuse of power, and is a policing tactic that is a continuum to slavery, lynching, and racialised police brutality (Alexander, 2010; Browne-Marshall, 2013; Butler, 2014) that can all be seen as part of the same racial subordination scheme (Butler, 2014). The difficulty of seeing the continuum by some, according to Paul Butler (2014) is due to the idea that the prior mechanisms seem to have been motivated by actual racial animus, but the stop and frisk policing appears to serve a legitimate non-racial purpose. Here Butler notes that this only shows the difference between modern forms and older forms of racial subordination, missing the point that the mechanisms of racial subordination serve the same larger purpose of "keeping Blacks in their place" (2014, p. 68). Since the Great Depression, white racists started to rely exclusively on the state apparatus to carry out the violent battle of white supremacy, and this was most present in how the municipality and metropolitan police forces were essentially given the *carte blanche* in their daily acts to brutalise the Black people and Black communities (Marable, 2015 [1983]). Manning Marable (2015 [1983]) argued back in 1983, that essentially the criminal justice system as a whole became to be the modern instrument to perpetuate white hegemony.

Prior to 1968, there was no official doctrine to conduct policing in a form of stopping, questioning, and frisking. After slavery the criminal laws known as *Black Codes*[6] resulted in the conviction of freed Blacks, adults and children alike, as minor offences came to be an offence punishable by long sentences. This was done in an effort to curb the shortage of manpower that the former slave-owners were under as, according to Adams, et al. (2022) the county sheriffs were known to hire out Black vagrants to white employers to work off their punishment, thus essentially re-enslaving the freed Black men, women, and children. During this period, Blacks were not permitted to move freely in the society: "Police officers were bound to uphold the social order and were often called upon to harass, physically intimidate, and arrest Blacks" (Adams, et al., 2022, p. 270). Adams et al., identify this moment in time to have birthed the stop and frisk policing, as the focus of the police departments was in ensuring Blacks remained in their place, not being permitted to enter places outside of their geographical area. Blacks thought to be out of there area were stopped, questioned, and searched by the police, birthing this racialised policing tactic (Adams, et al., 2022) that has since been widely adopted by the Global North.

The origin of the stop and frisk policing derived from the legal case of *Terry v. Ohio* (1968)[7]. In this court case it was ruled that if the police officer has reasonable suspicion that the individual is armed, engaged, or about to be engaged in a criminal conduct, the officer may stop and detain the individual shortly for a pat-down search of outer clothing (Adams, et al., 2022, p. 270). The *Terry stops* were intended to protect the law enforcement officers from harm during the eventual legitimate stop, however under the political and social witch-hunt of Ronald Reagan's War on Drugs, the *Terry stops* became to be used as an investigative tool, designed to uncover, and prevent any wrongdoing and to combat the rise in drug-related offences. The Terry stop doctrine that was framed by the power to stop and search a person based on reasonable suspicion of imminent danger to the officer or the public, became to be

[6] "Black codes were designed to control freedmen and freedwomen by making many activities that had previously been classified as petty offenses (and that remained petty offenses when committed by Whites) into serious crimes when committed by Black adults and children (e.g., loitering, breaking curfew)… Police generated enough arrests for violating Black codes that the number of Black inmates in southern prisons skyrocketed…in Mississippi, for example, the number of Black inmates tripled between 1874 and 1877" (Cooper, 2015, p. 1189).

[7] "Therein, the Court considers a case where a white police officer observed two black men take turns peering into a store window, consult with a white man, and then peer into the store window again. The officer grabbed the men and patted down the outsides of their clothing to determine whether they had weapons. The issue was whether a weapons charge should be dismissed on grounds that the stops and frisks of the suspects violated the Fourth Amendment. The Terry Court held that the police may stop and frisk people upon reasonable suspicion that a crime is afoot rather than probable cause that a crime is afoot." (Cooper, 2007, p. 541).

"…stopping any person, male or female, for any reason" (Browne-Marshall, 2013, p. 113). This seemed to already be acknowledged by the Justices as the footnote of this case stated:

> "…While the frequency with which "frisking" forms a part of field interrogation practice varies tremendously with the locale, the objective of the interrogation, and the particular officer, it cannot help but be a severely exacerbating factor in police-community tensions: "This is particularly true in situations where the "stop and frisk" of youths or minority group members is motivated by the officers' perceived need to maintain the power image of the beat officer, an aim sometimes accomplished by humiliating anyone who attempts to undermine police control of the streets*"* (*Terry v Ohio* (1968) cited in Browne-Marshall, 2013, p.113).

Terry stops and the aggressive behaviour of police officers during Terry stops became to typify the police conduct in the 1960s, as the hyper-vigilance of officers was fuelled further by the civil unrest of the time, and the War on Drugs would only encourage and facilitate this behaviour further (Weinstein & Quinn, 1998).

During Ronald Reagan's presidency, the War on Drugs originally launched by President Nixon in the 1970s, drastically escalated. Multiple strategies were used to re-dedicate the U.S. to this cause, including increased anti-drug enforcement spending and creating a federal task force to demonise and criminalise drug use, and drug users (Cooper, 2015). In October of 1982, Reagan officially announced his administration's War on Drugs, practically increasing the budget overnight for federal law enforcement agencies (Alexander, 2010). Between 1980 and 1984 the FBI's anti-drug funding increased by over one thousand precent, from $8 million to $95 million (Alexander, 2010). While there was an increase to "fight the War on Drugs", Michelle Alexander (2010) notes that a drastic contrast was created by the fact, that funding for agencies who were responsible for drug treatment, education and prevention was drastically reduced. For example, the National Institute on Drug Abuse's federal budget was cut back by 500%, between 1981 and 1984, while the Department of education's anti-drug funds were reduced by 450% (Alexander, 2010). As the budget increased for the law enforcement agencies, more personnel were hired, and the police started to become increasingly militarised. During the War on Drugs, the Posse Comitatus Act[8] was dismantled, sanctioning a greater collaboration between the military and the police, essentially having the

[8] "Passed in 1878, the Posse Comitatus Act made it a felony for the Armed Forces to perform the law enforcement duties of the civilian police…The law was passed in the aftermath of the US Civil War to maintain a clear division between the Armed Forces and domestic law enforcement, and recognized that the Armed Forces and the civilian police had distinct functions: While the Armed Forces are designed to destroy the enemy, civilian police are charged with protecting civilians and keeping the peace using as little force as possible" (Cooper, 2015, p. 1191)

ban on the U.S. Army's ability to train police departments in urban warfare being lifted in 1993 (Cooper, 2015). Cooper (2015) holds that the stop and frisk policing proliferated during the War on Drugs in particularly impoverished predominantly Black and Latino communities.

Butler (2014) argues that stop and frisk policing is comparable to *torture-lite*, as this is a violent assertation of police dominance of the streets. Butler defines *torture-lite* as an action that induces hopelessness and despair, actions on the behalf of police officers that demonstrate humiliation and control. The stop and frisk policing of minority communities, Butler (2014) holds, causes injuries similar to torture-lite, not always physical, but deep-rooted emotional distress and desperation. In Butler's study, qualitative data shows that the many people who have gone through the stop and frisk procedure, not only have had the pat down happen to them multiple times, but also are driven into emotional despair of not wanting it to happen again. People have reported actively trying to avoid the police, as well as confining themselves indoors in order to completely avoid the possibility of being stopped and frisked. This according to Paul Butler amounts to state enforced terrorism, as innocent people are having to restrict their freedom out of the fear of being publicly terrorised, or as generating "…pain one-on-one, deliberately, up close and personal, in order to break the spirit of the victim-in other words, to tyrannize and dominate the victim", so by amounting the actions of the police as that of a work of a torturer (Butler, 2014, p. 69).

The stop and frisk policing increased police presence in the improvised Black and brown communities, and the presence has been recorded to be tormenting. In the qualitative interviews analysed by Cooper (2015), majority of the interviewed reported physical violence on behalf of the law enforcement officers, in forms of extensive gratuitous physical violence and sexual violence, and the searching of undergarments and rectum during stop and frisks to locate hidden drugs often in plain sight, in public spaces, where passer-by's could witness everything. Not only are these actions humiliating but they are also against the *Terry stop doctrine* that stated the following: "the officer may stop and detain the individual shortly *for a pat-down search of outer clothing"* (Adams, et al., 2022, p. 270, emphasis added). Law enforcement officers have been reported to believe that some level of violence is normative in impoverished Black and Latino communities, meriting a less aggressive intervention. This same response was observed when it came to the level of domestic abuse – law enforcement officers believed levels of it to be normative in these communities. This has been observed to result in longer response times from the law enforcement agencies when civilians call for help (Cooper, 2015).

Cooper notes that the War on Drugs policing tactics, such as the stop and frisk policing, appear to increase police brutality, while simultaneously failing to make progress in curbing street-level drug activity as well as increasing the unresponsiveness of the law enforcement agencies in relation to civilian calls. The New York Police Department (NYPD) reported in 2006 that it did nearly 60,000 stop and frisks to individuals suspected of drug activity – only 6% resulted in arrest and of those stopped 72% were Black. Dean Spade's theorisation of population management and Achille Mbembe's Necropolitics provides an interpretation of the situation. The Black and Latinx communities are inherently seen as criminal, justifying increased policing, but at the same time they are not seen as deserving of the state protection, due to the "normative level of violence". This results in the construction of bare-life conditions of these communities, justifying the racially discriminatory over-policing of the community, while not providing social security.

2.3. From 'sus laws' to stop and search in the UK

The stop and search policing practice has long roots in English policing. Jonah Miller (2019) looked at how the stop and search policing was already practiced in the 17th and 18th century England and was further codified by the 1824 Vagrancy Act. This act allowed the stopping, searching, and arresting of every individual that was deemed as a '*suspected* person' and "was found in 'any place of public resort, or any avenue leading thereto, or any street, or any highway or any place adjacent to a street or highway; with intent to commit an arrestable offence' on the grounds that they 'shall be deemed a rogue and vagabond'" (Miller, 2019, p. 54). A few years later the Metropolitan Police Act of 1839, further stated that the police could stop, search, and detain any person "who may be reasonably suspected of having or conveying in any manner anything stolen or unlawfully obtained" (Miller, 2019, p. 54). These two legislations gave the police the discretionary power of stopping anyone deemed suspicious, and according to Miller, this resulted in the over policing of young Black men. Miller raises the question of police discretionary powers, which have been historically seen by the early modern English law as a solution rather than as a problem. This model, according to Miller, derives from the older histography of discretion that allowed the elites to maintain their hegemony through a selective use of policing powers. Selective punishment and mercy were most clearly present in the 17th and 18th century stop and search policing, that was used selectively to maintain the control on the streets which was made possible by the fact that there was no statutory foundation to this type of policing, prior to 1824 (Miller, 2019).

When the stop and search policing came to the attention of academics, activists, and journalists in the 1970s and 1980s, the law enforcement officers were operating under the 'sus laws' that were codified by the 1824 Vagrancy act and the 1839 Metropolitan Police Act (Miller, 2019). The law-and-order rhetoric became more eminent in the UK in the 1970s, mirroring that of President Nixon's and Vice President Agnew's campaign that called for crime control against "mugging, robbery and rape" (cited in Hall, et al., 1978, p. 274). In the UK this similar law-and-order rhetoric started take on, most notably affecting the restricted migration policies with the *Immigration Act* passed in 1971, that was a result of extensive anti-immigration lobbying and the rapidly rising tempo of declaring a warfare between the law enforcement officers and the Blacks inhabiting the areas branded as *ghetto* or the *British Harlem's* (Hall, et al., 1978). The right-wing sentiments and the law-and-order agenda of Margaret Thatcher's campaign played into the crowing fears of crime, as well as to the concern that the British nation was under a threat, both internally and externally. According to Hall et

al., (1978) the *moral panics* of the time, fed into the law-and-order narrative, creating and feeding the feelings of unsafety – the threat to the society came from within, and the only way to curb this was by 'general exercise of authority' with the expense of some liberties. The *moral panics* that Hall et al., are referring to is the moral panics of mugging that emerged in the beginning of the 1970s and paved the way to the mobilisation of law and policing.

Hall et al., (1978) argue that in the 1972-3 to the beginning of 1980s the *Black mugger* appears. While the *mugger* is not synonymous to the Black youth, the term mugging became synonymous to 'Black crime'. During this time, the link between race and crime became to be explicit both in official and public consciousness, as politicians were quick to make this connection as well: "Mugging is a criminal phenomenon associated with the changing composition of the population of some of Britain's larger cities" (Enoch Powell's speech in Daily Telegraph 12th of April 1976, cited in Hall, et al., 1978, p. 327). Here again the discourse is that the nation is under a threat from within because of the criminality that goes hand in hand with Blackness. Margaret Thatcher became the head of the Conservative Party in 1975 and was elected as the Prime minister in 1979. Under her leadership, Thatcher elevated the issue of law and order to a problem that came to be embedded in her political agenda (Terrill, 1989). The UK saw four policing acts under Margaret Thatcher, which recodified the stop and search practices, that were largely used, but had little to no statutory foundation until the beginning of the 1980s.

In 1981, the British Parliament passed two acts that had consequences for the way in which the stop and search policing method was utilised, as well in the way in which the Black population was further policed in the UK. The *British Nationality Act of 1981* was a continuum to the latest *Immigration Act* passed a decade earlier, and its main purpose was to clarify who had the unrestricted right to enter the country (Terrill, 1989). This act further restricted the obtaining of English citizenship by individuals who came from the former English colonies. The restrictions according to Terrill (1989) were multifaceted, but the main reason for the restriction of citizenship was that there was a dwindling in the availability of unskilled jobs within the UK, and unemployment was on the rise. Here also the myth of the Black mugger comes to play a huge part, I hold. As Hall et al., noted, during the 1970s the mugging crisis and the Black criminality started to appear as synonyms in the public and political discourse. A new baseline according to Hall et al., was established in relation to the acceptability of extremist statements about the race relations in public debate when Enoch Powell proposed that the government could offer a £1000 *bounty* to immigrant families in return for repatriation

to their homeland. This debate brought the baseline ever closer to the adoption of an official policy of racial discrimination (Hall, et al., 1978).

Since the Immigration Act of 1971, required all Commonwealth and colonial citizens to have an entry certificate before being eligible to move into Britain, essentially categorising commonwealth immigrants and foreign workers under similar status. Terrill argued that a further inspection into the *Immigration Act of 1971* and the *British Nationality Act of 1981* show that the legislations largely put an end to the Black migration to Britain, and that the Acts are inherently racist and in parts directed at the Blacks of the former colonies and the Commonwealth (1989, p. 436). The reason why this act should be understood as one of the epitomical moments for stop and search policing, is that the enforcement of these acts was left for the police forces, and this was done through identity checks. Terrill (1989) cites that it was a concern that to which extent would the police use their discretionary authority at enforcing this legislation and would this lead to over policing of the Black and brown communities.

The *Criminal Attempts Act* that was passed by the parliament in the same year as the *British Nationality Act* became to illustrate the Government's position on law-and-order. Here the distinction between individual and collective rights was exemplified as the: "commitment to upholding the individual's right (not to have one's car broken into or stolen or one's pocket picked) rather than the collective rights of a group (who fit a police profile of a suspected thief)" (Terrill, 1989, p. 442) is spelled out. This act codified the *moral panics* that Hall, et al., (1978) argued was taking Britain by storm, as within this legislation the restriction of collective rights was justified to ensure the safety of the individual. The *Criminal Attempts Act* of 1981 is important for two reasons; it increased the discretionary authority of the police and made clear that the group's rights might have to be essentially "violated" to serve the rights of the individuals. This Act also made it clear that the entities that had raised concerns of the over policing and discriminatory usage of the 'sus laws' to justify stopping and searching of Black youth had no legal ground to do so – the discretionary power stayed with the law enforcement officers.

The most revolutionary legislation for stop and search policing in the UK was passed in 1984. *The Police and Criminal Evidence Act* (PACE) replaced the myth that the British police were "'citizen in uniform' with no special powers beyond the ordinary member of the public" (Delsol & Shiner, 2015, p. 4). In PACE the code of practice was inscribed under which stop and search powers can be legally deployed by the police. Stop and search became to be *exceptional* policing powers that are free from the normal procedural safeguards regulating the

use of policing powers (Delsol & Shiner, 2015). Before PACE there were multiple national and local statutory authorities on which the stopping and searching of suspects was based on. The London Metropolitan Police for example, relied on the Metropolitan Police Act from the 19th century which gave them the law enforcement officers operating in the Greater London area extensive discretionary powers to stop, search, and arrest suspects in comparison to other localities (Terrill, 1989). PACE extended this power to stop and search persons and vehicles, throughout the whole country. The Metropolitan Police had been criticised prior to PACE, for the extensive use of stop and search powers, especially for the apparent discriminatory way of using it disproportionally towards Black youth (Terrill, 1989). This same criticism has been present post PACE, as stop and searches conducted under "reasonable suspicion" as Black youth were seven time more likely to be searched than the white youth at the beginning of the new millennium (Bridges, 2015).

In 1986 Thatcher's Government passed *The Public Order Act*, that further assured the protection of individual rights over collective rights. The basic characteristic of democratic society in the form of *peaceful protest and assembly* was recognised as a fundamental freedom, but not as an absolute right. The government decided that they essentially have "…the responsibility of balancing this right with society's right to public order and individual protection" and the government should also "…ensure that the law provides the police with adequate powers to deal with disorder, or where possible to prevent it before it occurs, in order to protect the rights and freedoms of the wider community" (Terrill, 1989, p. 451). The Public Order Act of 168 did two major things; the law enforcement agencies are placed in a position where the individual officers can possibly exercise political choice through their discretionary authority as peace officers (Terrill, 1989). More importantly, and specifically in relation to stop and search policing, this act made socially undesirable behaviour a criminal offence:

> "A person is guilty of an offence if he: (a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour or (b) displays any writing sign or other visible representation which is threatening, abusive or insulting within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby" (The Public Order Act of 1986 cited in Terrill, 1989, p. 452).

It seems evident that in these four acts the police discretion was gradually increased while the stop and search policing method was made into an exceptional power, readily mobilizable. It is important to remember that during the 1970s and 1980s Britain saw multiple

forms of public uprises in forms of rioting; most famously the miners strikes[9] and riots in impoverished areas of bigger cities (such as Brixton and Southall in London), often branded as "race riots" [10] by the conservative party and right leaning media (Hall, et al., 1978; Terrill, 1989). The public and political discourse were able to mobilise the image of a dangerous *Black Mugger*, from whom the wider public needed to be protected from and I hold that there seems to be a correlation in making stop and search policing more readily available for the police during the time that this image dominated the discussions about rising in crime numbers. As mentioned earlier, stop and search policing has been criticised prior to PACE and post PACE, for the way in which Black youth are targeted through this policing practice. During the following decades when PACE was passed, stop and search policing based on reasonable suspicion grew ten-fold and mainly targeted the inner-city Black youth (Bridges, 2015). There was a growing resentment and feelings of distrust in the Black communities towards the police, and the alleged racism of the police largely fell to def ears throughout the 20th century.

The first official instance where the institutional racism of the police and the stop and search powers became to be recognised was in the inquiry ordered in 1999 into the murder of Stephen Lawrence[11] and the subsequent police investigation. The Macpherson Report acknowledged that the long-standing claims by the Black community that the police are institutionally racist, were indeed true (Bridges, 2015). The report came into this conclusion after a detailed examination into the multiple failings in the police investigation into Stephen Lawrence's murder. In the Macpherson report it is noted that the stop and search practices implemented by the police are an example of institutional racism: "Nobody in the minority ethnic communities believes that the complex arguments which are sometimes used to explain the figures as to stop and search are valid. In addition, their experience goes beyond the formal stop and search figures recorded under the provisions of the Police and Criminal Evidence Act

[9] The biggest strike happened in 1984-1985. During which violent tactics were used by the law enforcement officers against the strikers: A key confrontation occurred in the 'Battle of Orgreave' when one mass picket on 18th June 1984 was 10,000 strong and the pickets were met with police in riot gear, police horses and dogs" (Archive Hub, no date, para. 3).

[10] Major riots broke out in London, Liverpool, Birmingham and Leeds in 1981 and in London, and Birmingham in 1985. Branded as race riots as the: "Long standing tensions between local communities and the police had been exacerbated by the disproportionate use of 'stop and search' ('sus') powers against young black men and the increasing economic decline of inner city areas (in particular the rapid growth in unemployment)" (The University of Warwick Library, Modern Records Centre, no date, para. 1).

[11] Stephen Lawrence was a Black teenager who was murdered in South London in 1993. Due to the institutional racism in the Metropolitan Police, his murder investigation was completely ineffective which resulted into the failure of the police to bring any prosecutions. Eventually number of the white youths widely believed to be responsible for the killing were acquitted. "These events led the incoming Labour government in 1997 to set up a judicial inquiry into the murder of Stephen Lawrence and the subsequent police investigation." (Bridges, 2015, p. 17)

and is conditioned by their experiences of being stopped under traffic legislation, drugs legislation and so called 'voluntary' stops.… Whilst there are other factors at play we are clear that the perception and experience of the minority communities that discrimination is a major element in the stop and search problem is correct" (Macpherson, 1999, para. 45.8).

The report acknowledged the discriminatory ways in which stop and search policing is used in the Black communities in England, but the conclusion of the report was surprisingly enough the following: "the (stop and search) powers of the police under current legislation are required for the prevention and detection of crime and should remain unchanged" (Macpherson, 1999, Recommendation 60). This would indicate that while there is evidence of a policing practice being implemented in a discriminatory fashion, the fear of having to restrict police discretion in any way overrules the possible changing of the policing practice. Or more polemically, the fact that stop and search powers discriminate against the Black communities is not seen as a reason enough to conduct a review and a possible altering of the stop and search power.

3. Main analysis: Stop and search in Europe

In this chapter of the thesis, I will answer my main research question: *How does the colonial legacy of anti-Blackness guide stop and search policing in contemporary Europe?* by looking at how the colonial notions of anti-Blackness frame the stop and search policing used in contemporary Europe. In the theoretical chapter, I concluded that anti-Blackness is central to the western notions of security, surveillance, and policing (Alexander, 2010; Browne, 2015; Hartman, 1997). Throughout time Blackness has been narrated as the "dysselected by the Evolution" (Wynter, 2003, p. 267) as well as "the essential index to which to measure human progress of" (Jackson, 2020, p. 46). The narration of Blackness as something animalistic, and bestial was embedded in the criminal laws of the US, as before Black people got full rights they were seen as criminally liable. The further criminalisation of Blackness became to be embedded in surveillance, as it became to be the "fact of antiblackness" (Browne, 2015, p. 10). In the first part of this chapter (2.1) I will look into the 'European anti-Blackness', by framing the theorise, thoughts and research of the contemporary forms of anti-Black racism in Europe.

I will analyse the different findings done by European intergovernmental institutions, nations, and non-profit organisations on racist and discriminatory policing and police violence here in Europe. To frame these findings, I will look at Theo David Goldberg's theory of "Regionalism of Race" as I will show, how anti-Black racism is just as much a European problem as it is a North American problem, even though the European political and public discourse more often refuses this as an American problem (Goldberg, 2006; Lentin, 2008; Salem & Thompson, 2016). I will then move on to trace the most recent reports, declarations, and resolutions passed in Europe (nations, intergovernmental organisations, institutions, and NGOs) in the 21st century about racist and discriminatory policing, police violence, and stop and search policing. The BLM protest that took over the Global North, after George Floyd's murder in 2020, seemed to prompt a response from EU institutions, traditionally adamant to discuss the issues of institutional racism, to come up with statements condemning the killing of Mr Floyd, and the institutional racism that led to this death[12]. After looking into the anti-Black sentiments and racism in European policing, I will move to the final part of this thesis where I present three case studies to illustrate how the colonial anti-Black sentiments can be argued to affect stop and search policing in European nations. The case studies will look at the UK, France, and the Netherlands and the aim is to determine if indeed in these nations there

[12] See for example European Parliament (2020), UN (2020)

are implications that how stop and search practices are implemented are directed by those anti-Black sentiments that can be regarded as the colonial legacy of all of these three countries.

3.1. Regionalism of race and anti-Blackness as a base or policing in Europe

European nations have been quick to argue that anti-Black racism and anti-Black sentiments are a product of American history, and as such don't appear in European societies (Goldberg, 2006). In this first part of the second chapter, I will look at how anti-Blackness functions as the basis of racist policing and securitisation in Europe, and how this should not be argued as only affecting the U.S. David Theo Goldberg (2006) coined the term racial regionalizations[13] and through the concept of racial Europeanization, I will inspect how race and racism have been historically understood in Europe and how this is still relevant. Goldberg (2009) for example notes that the European nations tend to stress the Holocaust when it comes to the discussions of European racism and racial categories. Stuart Hall has argued that this has contributed to the "historical amnesia", causing silence in the European nations about the colonial legacy, as colonization is seen as a settler issue, while the holocaust is seen as a local one (Goldberg, 2009). As such colonialism does implicate most European states and populations but treating the horrors of colonialism in an amnestic way begets silence, censoriousness, and even the denial of race. Goldberg holds that the sentiments follow the logic of "A family past that has passed or must be made to pass. Better that it not be mentioned, that it not have to be thought or thought about. Only it doesn't comply, it won't cooperate, it refuses to remain silent" (2009, p. 155). This silence came to a halt as the BLM protests swooped across the big cities and capitals of most of the European countries (European Parliament, 2020).

Contemporary Europe seems to be in denial of race and racism. EU has been associated with a foundational myth of 'Europe', where: "its unity exists to prevent war between European nations, and to prevent the reoccurrence of racial violence most traumatically remembered with the Holocaust" (Slootweg, et al., 2019, p. 144). This foundational myth helps to enable the previous histories of racism, both imperial and colonial. As such the contemporary focus of Europe is on the unspeakable horrors of the Holocaust with the prickliness of anti-Semitism, according to Goldberg (2006), implicitly disavows the European legacy concerning colonialism and the implication of modern slavery. What this has then done in the modern history of Europe and the EU is that race has been rendered invisible as there cannot be a response if the terms of recognition and response are unavailable. This silence varies in different European nations – while in the UK there seems to be a consensus and understanding

[13] "…a set of more or less recent typologies of regionally registered racisms linked to their dominant state formations" (Goldberg, 2006)

of race, seen for example in the way in which governmental organisations and institutions keep track of disaggregated data, in other nations, such as France, there are legal restrictions in using the word and categories of race in a public and institutional context. While race and racism derive from the same shared history of Western colonial conquests, European nations have been quick to declare that race and racism are something that happens elsewhere, just like the atrocities of colonialism (Lentin, 2008; Salem & Thompson, 2016)

As noted earlier, the silence surrounding race and racism has resulted in the absence of terms to discuss racism in the European context. Also, in Europe, there is a tendency to replace the term *race* with something less provocative, such as *ethnicity*, *culture* or, background (Lentin, 2008; Salem & Thompson, 2016). While the terms, concepts, and vocabularies are different depending on the region (Europe vs. America for example), there should still be no doubt about the existence of racism. The concepts after all derive from the same shared history, where the "idea of order" is based on the coloniality of being "enacted by the dynamics of the relation between Man…and its subjugated Human Others" (Wynter, 2003, p. 287). The difference between the two regions seems to rather be how the post-WWII period moulded the discourse surrounding race. Salem and Thompson note that the "post-racial" discourses differ between the U.S. and Europe as within the former the discourse of race is that it "…is overcome but acknowledges the long history of race as a category of exclusion and oppression", whereas in the latter the discourse "becomes a sort of "pre-race" discourse in which race is perceived as an isolated incident and not as a continuous factor in the workings of society" (2016, p. 14). Within both locations, the discourse is detached from the present way in which race and racism work, just in different ways (Salem & Thompson, 2016).

European public and political discourse often hold that racism is something that happens in the United States or at least in a non-European context, this notion Salem and Thompson (2016) argue, must be debunked. While the discourse is not the same, race and racism are at the forefront of the public and private debates in Europe. The centrality of race to European Modernity cannot be contested, even though the debates in Europe are veiled in the questions of tolerance and culture (Lentin, 2008). The reason why it would be important to adopt the terminology of race according to Lentin (2008) is that the contemporary forms of *racism* have been produced by modernity's centrality of *race*. Today racism (especially in Europe) seems to function independently of the concept of race as the "old form of racism" (relying on phenomenology or biological references) is seen against individuals, by individuals (Goldberg, 2009; Lentin, 2008). This is not true, as racism today manifests itself in a variety

of societal and institutional discriminations, injustices, and stereotypes, originating in the race projects of the eighteenth and nineteenth century (such as trans-Atlantic slavery, slave trade, colonialism, and eugenics).

The contemporary European societies then engage with the discourse and debates of cultural diversity, multiculturalism, and tolerance allowing these same societies to constitute themselves as tolerant, democratic, and according to Lentin (2008) by association, as non-racist and anti-racist. More deliberate and methodological approaches by nations to avoid having honest conversations about the European role in the horrors of colonialism are also not unheard of. In France for example, multiple laws have been passed since 2001 that mandates the "positive values" of colonialism should be taught in national curricula and research (Salem & Thompson, 2016), and the curriculum should recognise the positive role of French presence overseas during colonial rule (Lentin, 2008). This discourse, while not mobilising the concepts of race and racism, is still reproducing the colonial mindset:

> "In other words, race, though always imposed upon and experienced most forcefully as racism by non-whites and non-Europeans, is always constitutive of both Self and other; of Europeans in their hegemony and of non-Europeans in their subjugation. In this sense, it is deeply embedded in the conception of the idea of Europe itself" (Lentin, 2008, p. 492).

As racism is often identified as a U.S.-centred issue, this allows the European forms of racism to go unchecked, unaddressed and uncovered. Salem and Thompson (2016) argue that this leads the European states and actors to unknowingly deflect attention from the local racist and discriminatory practices. However, the contemporary forms of technologies and media have made it easy for images of US anti-Black racism to travel around. These images then, of anti-Black violence circulate across Europe and the rest of the world shaping the way in which anti-Black racism is read and perceived in the western cultural context. In France, the dominant media coverage of Black youth is portrayed as violent, and pathological, and the same is observed in the Netherlands where Surinamese men have been portrayed as violent and aggressive (Salem & Thompson, 2016). These representations seem to follow those of the US and the UK discussed earlier at the end of chapter one.

Salem and Thompson (2016) note that biopolitical racism has its roots in historical formations, and that colour racism has not historically been the first marker through which racism has been expressed. Rather religious and cultural expressions of racism have a long history and re-mobilising this discourse has just reframed cultural differences as racism in

Europe. This then serves to "construct cultural racism as separate from racism based on race, and to justify discriminatory practices based on "alien cultures"—all the while making a claim to multiculturalism" (2016, p. 13). This discourse then keeps portraying overtly racist acts as actions of a flawed individual. As racism has been narrated as something happening to individuals, in the hands of other individuals, institutional racism becomes something unattainable. In the UK the Macpherson Report (1999) has been one of the only instances where institutional racism has been acknowledged on a larger scale in a policing institution but still the link between institutional racism and racially discriminatory policing is less often made. Here I would like to focus on how racism and anti-Black sentiments can be understood as a basis for surveillance and policing in Europe, even though these terms are not something that the European public and political debate are keen to recognise. While there might not be agreed upon ethno-racial terms these institutions are willing to recognise, it will be shown in the upcoming policy analysis section (3.2), that it is often the Black populations that experience most of the racial profiling and even police violence (ENAR, 2021; FRA, 2010; FRA, 2018).

Jasbinder S. Nijjar has looked into racial warfare and the biopolitics of policing and concluded that "policing as a state institution where the politics of racism not only persist, but do so by combining with those of militarisation, in complex and dynamic fashion" (2022, p. 2). Nijjar (2022) holds that police, is a biopolitical institution, that maintains the everyday, normalised and continuous "racial warfare" in its defence of what he refers to as Euro-modernity. He looks at how pre-emptive policing of race in the forms of stops, identity checking, questioning, and searches, that have become a routine, are within the architecture of the modern police powers. With this Nijjar means that the way in which these policing tactics are disproportionally applied on racialised populations inflicts a *social death*: "While they may not physically kill, these regular police powers regulate race in overwhelming, humiliating, dehumanising, degrading and exclusionary fashion, thus destroying a sense of social security, safety, spirit, hope, belonging and citizenship" (2022, p. 13).

Institutional racism has inscribed into the policing the suspiciousness and danger of racialised others, and this is then acted out as racial policing that takes on hyper-violent, physically harmful, and fatal methods of policing (Nijjar, 2022). This is why police powers and racialised policing can be seen as biopolitical, according to Nijjar, as racial lives are deemed disposable. Here it is important to recognise that racism is not only present in those overt outbursts of targeted violence, that are often narrated in the European context, but is instead framing those

everyday hostile and dangerous encounters between the police and the racialised populations of Europe.

In the context of Europe, the relational framework for thinking about race has typically been arranged in a dualistic way, with anti-Semitism being entangled in a long history of exclusion, excision, and ultimately extermination, and anti-black racism resulting from slavery and colonialism largely keeping blacks out and whites in. As discussed, this dualism still serves as the foundation for popular conceptions of racial Europeanization and has dominated historical conceptions and understandings of European racism at least since World War II (Goldberg, 2006). However, the interconnectedness of racially motivated structures of exclusion and debilitation between continents should serve as a reminder that the sharp edge of racial Americanization lies behind racial Europeanization. As such while recognising the racial regionalization and the uniqueness in the way in which race and racism have come to be understood and discussed in different locations, Goldberg holds that Muslims have become the "new niggers" through the globalising racial Americanization. There is a long history between *modernity* and *the Muslim*, according to Goldberg (2009), already inherited from the medieval contest between Christianity and Islam. During the late Enlightenment period, Immanuel Kant when drafting the racial hierarchisation of national character placed the Arab "between the basest of (Southern) Europeans and the Far East, but significantly above ''the Negroes of Africa"" (Kant cited in Goldberg, 2009, p. 344). In more recent history, the post-9/11 public and political discourse have thrust Muslims into the spotlight of ever-increasing outrage and fear that has left the Muslim communities often feeling criminalised, stigmatised, and over-policed. While this thesis focuses on the anti-Blackness of stop and search policing powers, there is a connection between the anti-Black sentiments and the way in which the *Muslim* is being narrated in the western consciousness.

The figure of Muslim, according to Goldberg has become:

> "to stand for the fear of violent death, the paranoia of Europe's cultural demise, of European integrity. For the fear of the death of Europe itself. The Muslim image in contemporary Europe is one of fanaticism, fundamentalism, female (women and girls) suppression, subjugation, and repression. The Muslim, in this view, foments conflict: violence, war, militancy, terrorism, and cultural dissension. He is a traditionalist, pre-modern, in the tradition of racial historicism difficult if not impossible to modernize, at least without ceasing to be 'the Muslim'.… The Muslim signals the death of European secularism, humanism, individualism, libertinism" (2009, p. 346).

As such this fear can be argued to have mobilised policies such as the Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (PATRIOT) Act of 2001 of the U.S. and the Terrorism Act of 2006 in the UK. Both of these acts resulted in state powers that have been criticised as unconstitutional and against human rights. Both anti-Black racism and anti-Muslim racism is critical in determining militarised policing, as anti-Black policing derives from the *law-and-order* sentiments and the Muslim practising Islam indicates national insecurity (Nijjar, 2022). Hence, through stop and frisk/search policing these two groups seen as risky can be conflated in to the *dangerous* and *racialised other*, magnifying the need for racialised population management.

3.2. Anti-Blackness of stop and search policing in contemporary Europe

Afrophobia[14] and anti-Black racism has been a topic that policy documents have engaged in in Europe during the past decade. The European Union Fundamental Rights Agency (FRA) reported in 2018 that one in three (30%) of African descent had experienced hate-motivated violence and harassment (FRA, 2018) and that since 2008 the number has been on the rise (FRA, 2017). The UN proclaimed the International Decade for People of African Decent running from 2015 to 2024 (UN, 2013). This decade has prompted the UN to release resolutions, reports and declarations that have called for the promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent[15]. In the aftermath of the murder of George Floyd, a 46-year-old African American man, by a white police officer in Minneapolis, Minnesota, many European organisations, nations, intergovernmental institutions, etc. released statements condoning the actions of the police and the institutional racism that led to the death of Mr Floyd. This was prompted by the U.S.-wide BLM protests that also spanned across borders and to multiple continents, calling for justice, an end to police and state violence, and racism. In this chapter section, I will trace how within the European wide public, political and policy recognises the anti-Black racism within its policing ranks.

The European Network Against Racism (ENAR) released a never-before-seen report on police brutality in Europe in 2021, prompted by the aftermath of the killing of George Floyd, the BLM protests and the calls for justice also from the racialised communities of Europe (ENAR, 2021). The report found that racist violence and brutality is not only an action in which individual law enforcement officers partake but should be rather understood as a framework of law and policy that governs law enforcement. The report holds that not only is racialised police violence a reality in the racialised communities in Europe but also that due to the lack of empirical research, this is an under-reported phenomenon in Europe (ENAR, 2021). The issue of racist police violence and brutality in Europe, according to the report, is rampant but is often denied along with the denial of institutional racism. The author of the report noted that it was

[14]"The use of the term Afrophobia has generated many questions within some parts of the anti-racism movement in Europe. Some NGOs and individuals have preferred to use the term 'anti-Black racism'. Others, in particular in the Francophone context, have suggested the use of the term Negrophobia" (Momodou & Pascoët, 2014, p. 262). "Afrophobia manifests itself through acts of racial discrimination – direct, indirect and structural – and violence, including hate speech, targeting Black people. Structural discrimination is overall discrimination by the result, rather than by intent that also impacts Black people" (Momodou & Pascoët, 2014, p. 262)

[15] See UN Resources for Racial Equality and Justice; https://libraryresources.unog.ch/fightracism

difficult to raise the issues of race and racism with the relevant stakeholders when conducting the study. Often answers to the study in hand would prompt responses such as:

> “"France is not the United States" and that it is not "acceptable", to “racialize” the victims and to assert that "their skin colour or their origins" had "something to do" with their deaths or how police officers behaved with them. It is always "something else" that is at play: at best, social class, at worst, "bad luck"” (ENAR, 2021, p. 7).

As such the report hopes to show how incidents of police brutality that target racialised communities can help to expand the knowledge of how and why racist policing manifests in institutions and on the streets. While the report recognises racism and discrimination against multiple minorities (such as the Roma people, Black and African descendants, Muslims, refugees and migrants of different ethnic and racial backgrounds, etc.) in this thesis I will highlight the findings of following the logic of anti-Black racism.

The reason I highlight the link between anti-Blackness and police violence and brutality is that the report highlights the entrenched racial disparities in the criminal justice system for Black people and those of African descent. The Working Group of People of African Descent, quoted by the report, holds that the

> “stereotypes grounded in the historical legacies of the global trafficking in enslaved Africans, colonisation, and the ways in which modern social narratives evolved from rhetoric designed to justify these institutions and the exploitation of people of African descent” (quoted in ENAR, 2021, p. 24).

Throughout the reported case studies, reports of people being brutalised or killed by the police in Europe, there were clear examples of mobilising the stereotypes of the dangerous, superhuman or inhumane strength of Black men, women, and children (as young as 12 years old). The law enforcement officers and agencies often excused the excessive and almost sadistic amounts of violence with a statement of themselves acting appropriately to secure themselves in a dangerous situation (ENAR, 2021, pp. 23-31).

ENAR (2021) found that in France Black and North African people were twenty times more likely to be stopped and searched than their white counterparts. In the UK the corresponding number of Black people or those with Caribbean or African heritage being stopped and searched in comparison to the white public was up to 27 times more often. These disparities, ENAR (2021) holds, are a manifestation of institutional racism as the policies and broader culture result in the orders that govern the practices of individual law enforcement officers. The report notes that there was a clear increase in discriminatory and violent policing

during the Covid-19 lockdowns and enforcement of the pandemic measures (ENAR, 2021). Amnesty International (2020) also flagged the increase in policing of racialised minorities during the Covid-19 pandemic. Particularly the stop and search policing saw an increase in France and the UK. In the UK this policing tactic rose by 22% and the proportion of Black people being stopped and searched rose from an already high rate, by an extra third.

After the killing of George Floyd in the U.S., the BLM protest took to the streets in Europe as well. This prompted the European Parliament (2020) to come up with a resolution which condemned the death of George Floyd, the police killings of other Black Americans, and the overall racism of the criminal justice system in the U.S., citing their discriminatory way of incarcerating people (40 per cent of the people incarcerated in the US are Black, while the society constitutes as 13 per cent of Black and African American people). The Resolution (2020) condemns racial and ethnic profiling used by police and law enforcement authorities, violence and disproportioned interventions of state authorities as well as

> "calls on the Member States to ensure that the use of force by law enforcement authorities is always lawful, proportionate, necessary and the last resort, and that it preserves human life and physical integrity; notes that the excessive use of force against crowds contravenes the principle of proportionality" (Section 29., European Parliament, 2020).

While this discourse might seem like an institution repeating what the public has been saying, I hold that this kind of discourse is surprising, as Europe and the EU have been notorious for not acknowledging race and racism. However, this discourse does not seem to reach the member states. Adam Nossiter and Constant Méheut (2020) reported what was happening in the public and political discourse in Europe during the BLM protests. The protesters were highlighting the issue of racist and violent policing in France, Germany, and the UK, demanding justice and recognition for the victims. However, in all instances, the political response was one that ENAR highlighted also: "there are no racist institutions, and no racism" (Nossiter & Méheut, 2020, para. 15). In France, Nossiter and Méheut show, the largely white police force routinely targets African and Arab youths via identity checks and stop and search policing. The political response from France's interior minister, Christoph Castner, held that there are no racist institutions in France and that the "bad actors" should not be allowed to "throw opprobrium" on French institutions. This was contested by a former police officer, giving an anonymous interview to Nossiter and Méheut. The source recalled that during his

time as a ranking police officer, he was told by a superior officer to "stop Blacks and Arabs" as they were easily recognisable on the streets (Nossiter & Méheut, 2020).

It has been easy for institutions, organisations, researchers, etc to look at the UK as a case study, as today it is the only European nation that collects disaggregated data of its population, as well as of police stops. Other nations seem to be able to avoid the question of racism within their criminal justice system due to the lack of disaggregated data. Already in 2010, FRA looked at the police stops of minorities as part of the European Union Minorities and Discrimination Survey. This was the first report that looked at EU-wide data providing evidence of experiences about the minorities' experience of discriminatory policing. The report found that minorities living in the EU member states were 3 or more times more likely to be stopped by the police than the white majority (FRA, 2010). In this report, it was also acknowledged that those with an African heritage were most likely to be stopped by the police due to their immigration or ethnic minority background in Spain, Italy and France. Similar trends have been reported by FRA in 2017 and 2018. In FRA's reporting on *Being Black in the EU* (2018) almost half (44%) of those stopped by the police reported that they perceived the police stop as being racially motivated. While there is a lack of statistics and disaggregated data in most of the European nations, it has still been shown time and again by the organisations, institutions and NGOs that there seems to be an issue with racial profiling, and racial violence on behalf of the law enforcement agencies towards racialised populations, but specifically towards Black individuals.

In the next section of this thesis, I will look into three case studies, to answer the main research question: How does the colonial legacy of anti-Blackness guide stop and search policing in contemporary Europe? First (3.3), I will look at the UK, while not a member of the EU anymore, still a European nation, released a new policing act in 2022 (*Police, Crime, Sentencing and Courts Act 2022*) that made suspicion-less stop and search practices easier for law enforcement officers. In this case study, I will utilise the available disaggregated data to look at disparities within stop and search policing. After this (3.4) I will look at France and how the civil society has loudly called for the recognition of racist policing, especially in the capital Paris. France recently released a new policing act (*Bill for Overall Security Which Preserves Freedoms 2021*) that also made stop and search policing a more readily available method to patrolling law enforcement officers. The final case study (3.5) looks at the Netherlands and the way in which stop and search policing is implemented after Amnesty International cautioned the state in 2014 about the racist way of implementing this form of

policing. In both the cases of France and the Netherlands, the lack of disaggregated data hinders the possibility of quantitative analysis of numerical data, and as such requires a more qualitative approach. By analysing recent policies and reports along with demands and concerns raised by the civil society I will trace how the colonial legacy of anti-Blackness affects the policing practice of stop and search policing in these European nations.

3.3. The UK: Stop and search as an 'ethnically discriminatory' policing power

Stop and search policing has been under controversy throughout the 21st century in the UK. *Section 60* of *the Criminal Justice and Public Order Act* (CJPOA) passed in 1994, allowed "suspicious-less" stops and searches as the act allowed searches 'without the reasonable suspicion' required before in all stops and searches by the PACE act. The European Court of Human Rights subsequently found that the suspicious-less stop and searches better known as section 60 stop and searches are in breach of article 5 of the Convention on Human Rights, but still, these searches are conducted (Flacks, 2020). The most recent research shows that there is a racial disparity in how much more Black and brown people get stopped and searched in the UK in comparison to the white population, and Black people get disproportionally stopped, searched, and questioned the most. Depending on whether the stop and search are conducted based on 'reasonable suspicion' or 'without reasonable suspicion' Black people are stopped at the rate of six to twenty times as often as the white majority (ENAR, 2021; Flacks, 2020). Often hailed as a 'necessary policing' tool, stop and search is seen as a mechanism of crime prevention, and a way of keeping the public safe (Flacks, 2020).

Police, Crime, Sentencing and Courts (PCSC) Act passed in 2022 is further restricting public gatherings and protests, putting the participants at risk of being criminalised for taking the streets and trying to get their voices heard (Pang, 2022). This targeting of civil unrest in a form of protests seems intentionally directed at the BLM protests and the women's vigils that have both been taking place in 2020 and 2021. In both instances, the police were accused of violent policing and over-policing, but little has come of these accusations towards the police. PCSC act gives the police a wider array to conduct stop and search policing once more, and already scholars and activists have argued that this can result in further racially discriminatory policing. In this first case study, I will look at how contemporary stop and search policing is implemented in the UK, and how the colonial anti-Black sentiments can be argued to guide this form of policing. I will first look at contemporary research and statistics on how stop and search policing targets Blackness while tying this to the anti-Blackness of surveillance. Then I will do a short policy analysis tracing how the PCSC Act 2022 can increase the use of stop and search policing, in the way that was seen post PACE 1984. Towards the end of this chapter, I will also raise the question of Islamophobia[16] and how this has affected the stop and searches

[16] The following definition is recommended by the UN Human Rights Office of the High Commissioner: "A fear, prejudice and hatred of Muslims or non-Muslim individuals that leads to provocation, hostility and intolerance by means of threatening, harassment, abuse, incitement and intimidation of Muslims and non-Muslims, both in the online and offline world. Motivated by institutional, ideological, political and religious hostility that transcends

conducted towards the Muslim populations in the UK. The contemporary Tory government has passed a lot of controversial policies, and the increasing right-wing and nationalistic sentiments, seem to be affecting the way in which the police powers are being increased while civil disobedience is being criminalised, following the playbook that Margaret Thatcher's government created in the 1980s.

Stop and search statistics: Ethnically disaggregated data in the UK

The UK government releases ethnically disaggregated stop and search statistics every year[17] in which all stop and searches conducted in England and Wales are recorded, excluding vehicle stops. Here I would like to look at the most recent stop and search statistics released by the UK government in 2021 and 2022. The reason these statistics are interesting is that under the statistics released in 2021, the period looked at is from April 2019 to March 2020, which is right before the Covid-19 measures in the UK[18]. The statistics released in 2022 is the period (April 2020 to March 2021) in which the Covid-19 pandemic took place and multiple social restrictions were introduced to society. I will introduce the statistics from the two years and will also look into why vehicle stops and searches, known to affect the Black UK population more than non-vehicle stops and searches, do not have statistics available to the public. While looking into the vehicle stop and searches, I came across a new sinister version of the stop and search policing that goes unrecorded by the law enforcement agencies called 'stop and account'. This new form of conducting stop and search policing has been flagged by grassroots movements and by the wider civil society, but outside of public discourse, this policing tactic flies largely under the radar.

The ethnically disaggregated stop and search statistics have been released by the UK government since 2009 (GOV.UK, 2022) and the use of this policing method has been on a downwards trend since its peak usage in 2009. The rate by which people are stopped and searched has gone down from the peak of 24.8 for every 1,000 people in 2009/10 to 5 for every 1,000 people in 2017/18 and back up again to 12.4 for every 1,000 people in 2020/21 (GOV.UK, 2022). It is noted by the government that over half of all stops reported in 2021 and

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into structural and cultural racism which targets the symbols and markers of a being a Muslim" (Awan & Zempi, 2020, p. 2).

[17] These statistics and other governmental data that have been disaggregated can be found at https://www.ethnicity-facts-figures.service.gov.uk/

[18] Timeline of the UK government's Covid-19 measures (such as lockdowns, curfews, and mask mandates) can be found at https://www.instituteforgovernment.org.uk/charts/uk-government-coronavirus-lockdowns

2022 are done in the London area by the Metropolitan Police, wherein the rate at which stops and searches was conducted in 2019/20 was 34 stops per 1,000 people and in 2020/21 the rate went up to 38.1 for every 1,000 people. A similar trend is traceable in the way in which the stops target Black people. The trend has been a downwards one from the hight of 2009/10 when Black people got stopped at the rate of 117.5 for every 1,000 people when the general average was 24.8, and the corresponding rate for the white population was 18.6 for every 1,000. From here the lowest rate in which the Black population has been stopped and searched was in 2017/18 29.2 for every 1,000 people and this rate has started climbing back up as the rate went up to 54 in 2019/20 and 52.6 in 2020/21. The corresponding rates for the white population were 6 in 2019/20 and 7.5 in 2020/21.

While the fluctuations seem to be consistent throughout the ethnicity categories, it is undeniable that based on statistics collected by the UK government stop and search policing targets Black bodies disproportionally in England and Wales. Also noteworthy is that when stop and searches were conducted at over double the rate in 2009/10 (24.8 for every 1,000) than in 2019/2020 (11 for every 1,000) the rate in which the Black population is stopped and searched, while in a downwards trend, is higher than ever. In 2009/10 Black people were five times as likely to be stopped and searched than their white counterparts, but in 2019/20 this rate was nine.

Stop and search powers: racial discrepancies, and police brutality

During the Covid-19 pandemic and the lockdowns, stop and search policing became to be scrutinised; Amnesty International reported during March and April 2020 the London Metropolitan Police registered a 22 per cent increase in stop and search policing, and that the stopping and searching of Black people rose by a third (Amnesty International, 2020). This moment in time could be smoothed out by the statistics, as recorded stops of March of 2020 are in the cluster of 2019/2020 and the April of 2020 is in the next increment under 2020/2021 (GOV.UK, 2022). Overall, during lockdowns until August of 2020, the usage of stop and search powers rose by 40 per cent, equating to up to 1,100 stops a day (Beckford, 2020). This was flagged as worrying by the chief executive of Race on the Agenda, a social policy research non-profit organisation that leads Britain's anti-racist change drivers (Rota, 2022), as crime rates were falling throughout the covid lockdowns (Beckford, 2020). The discriminatory way of implementing stop and search powers has been discussed way before the covid pandemic, and how this power is implemented against the Black youth have been argued to be contributing

to the way Black youth in the UK is being increasingly being thrust further into the youth/criminal justice system and towards incarceration.

David Lammy, the Labour MP for Tottenham since 2000, conducted an *independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System* in 2017. The Lammy Review made alarming findings, on how the BIPOC communities were overrepresented throughout the criminal justice system (CJS) in England and Wales. For example, the proportion of youth prisoners (from BIPOC communities) had risen from 25% to 41% the decade 2006-2016 (Lammy, 2017). According to the Lammy Review (2017) between 2016 and 2017 Black people make up 3% of the general population but 12% of prisoners and 21% of children in custody are Black. Here the same is observed as highlighted earlier on then, that the stop and search practices have the habit of marking Black bodies disproportionally, thrusting these bodies eventually further into the criminal justice system. There seems to be an acknowledgement by the government (GOV.UK, 2022; Lammy, 2017; Macpherson, 1999) that Black people are disproportionately affected by stop and search policing, but there seems to be less of an acknowledgement of the implications of this. The Lammy Review raised the concern of discriminatory stop and search policing of the BIPOC youth as a risk factor of shoving them further into the CJS, but there were no recommendations in his report to that of the usage regarding stop and search policing.

Most often stop and search policing is conducted on the suspicion that the individual stopped and searched is carrying on them drugs or weapons (Race on the Agenda (ROTA), 2019). When facing scrutiny, it is always quoted that the police are conducting stop and search to tackle these two types of crime. However, the stop and searches conducted under the suspicion of drugs are racially charged as Black people are more likely to be stopped citing the suspicion of drugs, as Black people are stopped and searched at a rate of 6 times that of white people (Eastwood, et al., 2014). The illicit drug usage in the population is quite equally distributed, and occasionally it is reported that the white population consumes more drugs than the Black population in the UK (Delsol, 2018; Eastwood, et al., 2014). Only 7 per cent of the stop and search for drugs resulted in arrest a decade ago, and here too Black people were 6 times as likely to be arrested than their white counterparts and most cautions came from cannabis possession (StopWatch, 2015). When it comes to the stop and searches conducted under the suspicion of possible weapons on a person, there seems to be slim evidence supporting the fact that stop and search policing is effectively curbing violent crime. The UK

StopWatch, a coalition of academics, lawyers, civil society organisations, and community stakeholders, promoting fair, effective, and accountable policing in England and Wales, with a primary focus on stop and search reported back in 2015 about their doubts concerning the effectiveness of stop and search policing (StopWatch, 2015). Stop and search, cited as a helpful tool to curb knife crime in the London area, found knives and knife-like objects on a person only in 2 per cent of all stops and searches conducted (StopWatch, 2015). StopWatch holds that this was further supported by the fact, that while stop and search policing were declining, so did the knife crime.

An issue raised more often recently is the concern of the police using more force against the BIPOC. ENAR (2021) urged the UK government to stop the rollout of tasers amid concerns it has led to a "disturbing rise" in its "disproportionate" use against Black people. While Black people only make up 3 per cent of the UK population, they represent 12 per cent of altercations with police where force is used (Fitzpatrick, 2021). Meanwhile, Black people make up to 8 per cent[19] and the BIPOC make up to 14 per cent of deaths in police custody since 1990 (Coles, 2022). Another way of understanding police brutality is the psychological and social distress that especially stop and frisk/search policing has been acknowledged to cause (Butler, 2014; Cooper, 2015; Flacks, 2020). Flacks notes that while stop and search powers are known to increase the criminalization and imprisonment of Black and POC youth, stop and search also leads to "feelings of exclusion, resentment, distrust of the police, alienation, social and, political disenfranchisement" (2020, p. 393). Youth has also been reporting "feeling harassed, fearful and anxious as a result of stop and search" (Flacks, 2020, p. 393) which can lead to the rejection of any notion of value. This Flacks holds as being destructive and harmful as it can fuel the feelings of 'not belonging'. Further research has shown that social position, racial discrimination, stigma, and alienation are cited as explanations for health inequalities in the UK within the racialised population (Bécares, 2013; Evandrou et al., 2016; Nazroo, 2003 cited in Flacks, 2020). Here then what Achille Mbembe (2003) theorised, as necropower holds true, as the stop and search policing can be seen as defining those lives worthy and unworthy of living, as there is a clear trace of material, civil, and social destruction of a racialised population.

[19] Police brutality and the social media campaign #SayTheirNames have often been associated with the U.S. and the Black and African American victims of police brutality there. Crime + Investigation released a statement, that while we are more likely to turn our attention away from the UK in relation to racialised police brutality, this does not mean it does not exist. See more: https://www.crimeandinvestigation.co.uk/article/say-their-name-police-brutality-in-the-uk

Anti-Blackness of stop and search and stop and account

The over-policing of the racialised minorities in the UK has been connected to the colonial policing tactics implemented in the English colonies in Africa, the Caribbean, and India, which has turned the racialised communities into "domestic colonies" (Flacks, 2020). The police are seen part as the law enforcement institutions and given that law is deemed the 'highest achievement of civilisation' the relationship between race, the rule of law and lawlessness puts police on a racially charged war-footing according to Nijjar (2022). Nijjar's take on the law and law enforcement would align with the data of CJS clearly targeting those of Black and people of colour and the racial discrepancies reported in the use of police force and deaths reported in police custody. Further critical research into English law and law enforcement has suggested that since the late 18th century the relationship with nationality, political imagination, and the virtue of law has been settled in the fact of Englishness or better yet as the "Law's entanglement with national culture conditions 'the nationalizing drive to a fantasised homogeneity" (Goldberg, 2002 cited in Nijjar, 2022, p. 8) by default then the law is against or at an oppose to heterogeneity. This would then make it arguable, that certain policing powers are there to challenge the heterogeneity of the contemporary makeup of the UK. Or at least the powers such as stop and search are there to enforce the colonial logic of the *phenomenological other* as "out of place", marking and criminalising these bodies further.

Here then I hold that the exercising of stop and search powers are employed to assert authority over a specific region and recreate pre-existing spatial relations encoded by the colonial history, as different populations are denied different rights, such as freedom of movement. This further aligns with Mbembe's theory of necropolitics, as the colonial occupation asserts spatial controls and enacts "differential rights to differing categories of people for different purposes within the same space" (Mbembe, 2003, p. 25). Flacks (2020) notes that stop and search policing powers have repeatedly been argued to derive from colonialism and slavery outside of the UK, but I would like to expand that the anti-Black sentiments of securitisation and policing is also present in the way in which the stop and search policing targets Blackness within the UK.

In the UK the police are allowed to stop any vehicle on a public road without reasonable suspicion under section 163 of the Road Traffic Act 1988. These stops do not need to be recorded and as such, there is no police data on why or how frequently these powers are being used and against whom. Two NGOs, Liberty and StopWatch released a report in 2017, where they estimated that yearly these 'stop and account' policing traffic stops under section 163 of

the Road Traffic Act of 1988 are implemented over 5,5 million times (Liberty & StopWatch, 2017). The stop and account traffic stops were in the headlines in 2020 when the police stopped Bianca Williams, a British athlete, and her partner, resulting in them being cuffed on the street while their three-month-old baby was in the car[20]. A month later a British Labour MP, Dawn Butler, was stopped by the police, leading to a heated discussion which Butler ended up recording on her phone and later released to the public via social media. In the case of Bianca Williams, the police searched the car for weapons and Ms Williams' partner for drugs, but none were found. In MP Butler's case, the police questioned their intended actions, and where they were coming from because "there's people who have been coming into the area" [21].

Prior research has shown that ethnic minorities are stopped on the roads more often than the white majority, resembling that of the stop and search statistics (Liberty & StopWatch, 2017). While stop and search policing has been widely criticised as a policing method, the traffic 'stop and account' stops have not received as much attention. However, this policing method is not only done in traffic but is more readily available as a policing tool for law enforcement officers. The non-traffic stop and account police power is similar to stop and search, but here the police have the power to stop and ask questions about who you are and what you are doing in the area in which you are stopped. This policing practice is coded as an informal and "voluntary practice" (Centre for Public Data, 2019).

Why I want to raise this policing power along the stop and search policing is, that stop and account policing does not have to be recorded by the police forces since a reform that took place in 2010. As such only three out of 43 police forces in the UK kept data of such stops in 2019, and most ethnically disaggregated data was interpreted to be unreliable because the ethnic category "Unknown" was used liberally (Centre for Public Data, 2019). Stop and account policing was used over two million times in 2008/2009 at a time when the usage of stop and search policing was also at the highest ever recorded in the UK (GOV.UK, 2022). While the public and political scrutiny has brought down the stop and search policing by over

[20] Williams and her partner, a Portuguese athlete Ricardo dos Santos, were stopped while driving back to their home in west London, see more: https://www.theguardian.com/uk-news/2020/jul/08/met-police-apologise-for-handcuffing-athlete-bianca-williams
Eventually, the complaint Williams made led to five police officers facing allegations of "breached police standards of professional behaviour for duties and responsibilities and equality and diversity": https://news.sky.com/story/bianca-williams-five-police-officers-face-sack-over-stop-and-search-of-great-britain-sprinter-and-partner-ricardo-dos-santos-12599995

[21] Dawn Butler, the Labour MP accused the police of being institutionally racist after she and a friend were stopped while driving to Sunday lunch in August of 2020. This statement was the reason given for the stop, but according to Butler it was never explained any further by the officers: https://www.theguardian.com/uk-news/2020/aug/09/labour-mp-dawn-butler-stopped-by-police-in-london

a half from 2008/9 to 2020/21, there is no record of how much stop and account policing has been used, raising the question of the stopping of people by the police actually ever went down. The Centre for Public Data (2019) notes that a policing power such as the stop and account should not go unrecorded, especially since it is known that stop and search powers are racially discriminatory. What this does then is that it dismisses those people who report being excessively stopped: “Data allows lived experiences to be validated. If there's no data, then people are often told their experiences are anecdotal” (Katrina Ffrench, CEO of StopWatch cited in Centre for Public Data, 2019, para. 24). This could contribute to those who insist that they are constantly stopped and questioned by the police, such as the case of a 14-year-old boy in 2021 who complained about being stopped over thirty times in two years (Webber, 2022).

Policy post-2020 in the post-racist UK

The issue of institutional racism within the police has been inseparable from stop and search policing, ever since the Macpherson (1999) report linked these two together. The political and institutional discourse around this subject has been a pendulum, occasionally identifying institutional racism as a problem in the UK police (Lammy, 2017) and at times holding this to be a fictitious assertion. Most recently the Commission on Race and Ethnic Disparities released a report in 2021 as a response to the BLM protests in 2020, which found no evidence of institutional or structural racism in the UK (Commission on Race and Ethnic Disparities, 2021). The commission held that the UK is “a model for other White-majority countries” (2021, p. 9) and that the polarization between the acronym BAME (Black, Asian, and minority ethnic) as opposed to the white majority, could not capture the “complex realities of ethnic advantages and disadvantages” (2021, p. 233) and as such left many feeling that the only recommendation the commission had to offer was scrapping the usage of the acronym BAME to fix racism (Rota, 2022; Sharma, 2021). The report seemed to ignore the ever-increasing voices of the minorities for justice and as such, the report was argued to be both inadequate and insulting towards racialised communities in the UK (Sharma, 2021). The tone deafness of the Commission is undeniable, as there were loud calls for justice from the BLM protests at the time, but also the Black and people of colour communities were hit the hardest during the Covid-19 pandemic at the time both economically and healthcare-wise. The report was accused of trying to “sanitise” the colonial history of Britain by mobilising racist tropes while simultaneously presenting the UK as the “beacon leading European countries towards post-racism” (Sharma, 2021).

The passing of the Police, Crime, Sentencing and Courts (PCSC) Act in 2022, is another instance which has been flagged as a growing democratic deficit (Pang, 2022; Webber, 2022). The PCSC act has been described as clamping down the right to protest (Elahi, 2021), possibly increasing the disproportionate and growing representation of black children and young black men in custody (Rota, 2022), as well as contributing to the erosion of human rights (Webber, 2022). The PCSC is subsequently giving the police the right to impose restrictions on protests seen as causing "serious unease, alarm or distress" to the public, making participation in such protests an act of crime. This is regardless of whether the protestors know their actions are prohibited or not and as such the new law is seen as undermining the principle of law that requires criminal intent if a person is convicted of a crime (Elahi, 2021). As the passing of this act comes after the large BLM protests in 2020, and the vigil turned protest for Sarah Everards[22] in 2021, it is impossible to see the act as not targeting and simultaneously condemning these calls for justice. The PCSC act for example had originally been proposed to include a new ten-year sentence for anyone damaging monuments or statues (Elahi, 2021) as a clear reaction to the BLM protests and the growing calls for decolonising the UK cities. Webber for example argues that the PCSC act is a "nakedly political use of criminal justice in the 'culture wars' against those demanding a reckoning with slavery and colonialism" (2022, p. 59).

This I hold that if there was an intention by the government to reconcile with its colonial past and the contemporary injustices the past is still upkeeping, there would not be a need for a legal clampdown on these calls for racial and gendered justice. What makes the PCSC act a ground-breaking one, is that it extended policing powers, such as the availability of digital surveillance as well as the implementation of suspicion-less stop and search policing. These actions will certainly further criminalise the already marginalised communities (Pang, 2022; Webber, 2022), but also increase the repertoire of policing powers and police discretion.

[22] Sarah Everard, a 33-year-old woman was walking home in London, when she was murdered by a serving London Metropolitan Police officer, Wayne Couzens on the 3rd of March 2021. Her killing sparked a social media uproar about women's safety on the streets and later an unofficial gathering in south London where hundreds of attendees paid their respects to Ms. Everards. During this vigil there were multiple clashes between the police and those attending the vigil. See more from https://www.bbc.com/news/uk-england-london-60707646 and https://www.bbc.com/news/uk-england-57399170

3.4. France and Bill for Overall Security Which Preserves Freedoms 2021

> "Thus, "Frenchness" and "blackness" in the discourse of "race-blindness," reinforced by the Republic's myths, become an impossible equation because "blackness" is demographically rendered non-existent. In effect, the first issue—"race-blindness"—precludes the second—racial statistical data generation of a diverse population—because said-diversity is rendered null and void. Again, this does not correspond, however, with realities on the ground. " (Keaton, 2010)

As quoted by Keaton above, in France race-blindness is seen as a part of French republicanism, and as such disaggregated data goes against the "race-blind" values of the country reinforcing, what Keaton calls the non-existence of "Blackness". The Open Society Institute carried out a field study in Paris on the stop and search policing practices in 2007-2008 and found that the French Police disproportionally target Blacks and Arabs. It was recorded that Blacks were overall six times more likely to be stopped as whites, and the data was clear that the Blacks were most likely to be ethnically profiled (Open Society Institute, 2009). The French state conducted their own research into the stop and search practices in 2017 reported to the news outlet France 24 in 2021. It was observed that young men perceived as Black or Arab, were twenty times more likely to be checked by the police than the rest of the population (France 24, 2021). This same was acknowledged by French President Emmanuel Macron in 2020, when he stated that "Today, when you have a skin colour that is not white, you are controlled much more (...) You are identified as a problem factor and this is unbearable" (France 24, 2021, para. 15; translated from French to English by me). The French human rights institutions as well as the UN have called for France to take up measures to prevent, as well as sanction, any ethnic and racial discrimination by law enforcement officers (Jeannerod & Sunderland, 2021). In 2021, a class action suit against the French state was filed, raised by six international and French organisations to demand structural reforms needed to end discriminatory police stops in France (Jeannerod & Sunderland, 2021). Jeannerod & Sunderland write on behalf of the Human Rights Watch that the laws that allow stops and searches in France, should at least be changed to require a reasonable and individualised suspicion as the basis on which stops are then conducted.

In 2021 the French government passed a domestic security bill "Bill for Overall Security Which Preserves Freedoms" that further extends the rights of law enforcement officers. This bill has been criticised and condemned by the UN Human Rights Council, other

human rights organisations, journalists, and civil society that protested the bill (Briscoe, 2021). Under this section (3.4), I will look at how stop and search policing in France can be understood as a policing practice that carries with it anti-Black connotations and why the contemporary calls for justice are specifically targeting this form of policing. I will first look at how Blackness and anti-Black racism are (not) understood in the francophone context, and how anti-Black racism can be argued to be part of the law enforcement powers, especially the different forms of stop and search policing. I will then turn to the stop and search policing laws and how previous studies have shown the anti-Blackness of this policing practice. In the final subsection, I will look at how the calls from civil society have been mobilised recently against the stop and search policing in France, and how the latest security bill can be seen hindering these calls.

Race-blindness of the French Republic and the (im)possibility of institutional racism in the French police

In the case of France, the prevailing conception of the country is one of an egalitarian Republic that is inherently "race-blind" and hence disassociated from the race as a social category. The French Republic employs a dominating kind of universalism that conceals its discriminating practices and disqualifies demands from excluded groups. According to Salem and Thompson (2016), this form of universalism is based on the Republican principles of "liberty, equality, and fraternity" of the Jacobin philosophy. The French Republic differs from other European nations in terms of its national ideology and constitution in that it is based on the universalizing idea of unified national citizenship that incorporates diversity into the national body. France's conception of national identity then portrays itself as equitable through a "diversity-neutral" perspective. While in general Europe often holds that the concept of race and racism are imported concepts from the U.S., this holds true especially in France, where the communitarianism discourse is widely understood as imported from the Anglo-US-American context (Salem & Thompson, 2016). This communitarianism discourse is understood to emphasise and support the formation of communities along ethnic, religious, racial, social, and cultural lines, and this is seen as the polar opposite of the French Republican values, threatening the diversity-neutral perspective. The French law bans the collection of racial statistics, and uses the term “race,” even to denounce racism (Boutros, 2022). Hence, the French nation-state's social and political integrity is founded on the idea that France has no institutional bias

against visible minorities and the mere suggestion of this is seen as an attack against the Republican values.

This then, according to Salem and Thompson (2016) differentiates France from the anglophone nations that are seen as self-declared multicultural communitarian societies. This can cause the inability to articulate race and racism in the French context to the same extent that can be seen in the context of the UK and the USA, but one should not think that the French society is absent of these racially differentiated lived realities. Trica Danielle Keaton (2010) looked at the politics of race-blindness in France and emphasises that the absence of ethno-racial discourse and statistics is deflecting the attention from the realities of lived discrimination, as well as allowing the nation to not address their colonial history.

The mobilisation of ethno-racial classification in France could provide the activists in the anti-discrimination battles with the "ammunition" of history and legacy. This Keaton acknowledges, could cause the breakdown of the French principles of equality and the "race-blind" universalism that now allow the denial of France's racial past, that "determined placement in a social hierarchy and thereby in the distribution of social privileges, resources, and opportunities (accorded and denied) on the grounds of "race" (2010, p. 118). When it comes to the law enforcement and criminal justice institutions in France, there is a similar racialised history of policies seen in the Anglophonic nations. The legal code, Indigénat, passed in 1881, was "designed to entrench racial difference and control" (Kalman, 2020, p. 2) through racial segregation of urban neighbourhoods, which affected both labour and prison systems. This was done through constant surveillance, identity checks, and roundups. Kalman (2020) noted that the authorities governed the imperial space through an omnipresent legal framework. In his article, Kalman looks at the links between the imperial police, judicial and penal services and how these became to be reframed around colonialism. In doing so then, the criminal justice system became the "engine of repression designed to bolster European hegemony, while othering and suppressing the colonized and their desires" (2020, p. 3). Here I hold then that the policing tactics still can be seen as reinforcing this same colonial line, as the police stops and searches in France are indeed identity checks, known to affect the racialised communities.

While there have been repeated calls to acknowledge racist and discriminatory policing in France during the 21st century, little has come of this. The Parisian Police chief Didier Lallement insisted that in Paris the police and policing "is neither violent, nor racist: it acts within the framework of the right to liberty for all" (quoted in Diallo, 2020, para.10). Paris has

repeatedly been argued to be the main city in France in which the police acts in racially discriminatory ways (Jobard, et al., 2012; Jounin, et al., 2015; Open Society Institute, 2009). After the class action lawsuit against the French government in 2021 due to the "longstanding and widespread practice of ethnic profiling that constitutes systemic discrimination", there has been an acknowledgement by the French government that there are "racist police officers" (Langley, 2021, para.11-13), however institutional racism or the systematisms of racism has gone largely unacknowledged. For example, the French Interior Minister Christopher Castaner, famously said in an interview in 2020 that "there are no racist institutions, there are only republican institutions" when asked about the possibility of institutional racism within the police (Nossiter & Méheut, 2020, para. 15). The French President, quoted by Langley, acknowledge that "…when your skin color is not white, you're checked [by police] more often" (2021, para. 11). However, when a government spokesperson suggested the collection of ethno-racially disaggregated data and statistics to address the issue of racism in France, the President was quick to shoot her proposal down (Langley, 2021). This makes it seems that indeed there seems to be political pressure to acknowledge the large and vocal social movement, but beyond this political pressure, there does not seem to be a need to look into the claims of racism in France. Furthermore, NGOs and civil society actors have raised the concern that the government's engagement with discriminatory policing might be a short-lived one, at best resulting in "superficial and insufficient measures" (Langley, 2021, para. 13).

The worry that the civil society demonstrates is only reasonable, as accusations of racist police violence and killings are not rare in France. Diallo (2020) shows how France has been cautioned, accused, and convicted multiple times by courts, NGOs, and intergovernmental organisations for racialised and arbitrary policing and racialised policed brutality, police violence and killings[23]. After the BLM protests emerged in 2020, the topic of racism entered the mainstream media in France (Langley, 2021). However, scholars, researchers and thinkers hold that the political and public insistence on the race-blind Republican values of '*égalité,*

[23] Diallo lists the following: "In 1999 France became the first European Union state to be convicted of torture by the Strasbourg-based European Court of Human Rights, for the violent and sexually charged abuse of a young man of North African origin in police custody. In 2012, Human Rights Watch argued that "French police are using overly broad powers to conduct unwarranted and abusive identity checks on black and Arab young men and boys" In 2015, the Court of Appeal of Paris sanctioned the French state for allowing law enforcement officers to conduct arbitrary identity checks, based solely on the physical features of the citizens." (2020, para. 19-20, 22). An anti-torture NGO (ACAT), found in its investigation into the use of force by police in France that "visible minorities" constitute "a significant proportion of victims … particularly … concerning deaths" (Diallo, 2020, para. 24). Also, Diallo notes, that the UN Committee against Torture criticised France for: "the excessive use of force by police officials which, in certain cases, resulted in serious injuries or deaths" (2020, para. 25). See more: https://www.aljazeera.com/opinions/2020/6/11/france-is-still-in-denial-about-racism-and-police-brutality

liberté et fraternité', will keep on hindering the wider acknowledgement of racism within the French state. While the ethno-racial categories are less present in the French non-communitarianism discourse, colonial history has shaped the present way in which securitisation and policing are conducted in France. Hence, I hold that these anti-Black sentiments are present in the way in which the law enforcement officers apply 'stop and search' policing throughout France.

Disparities in identity checks and the 'stop and search' policing in France

The police stops in France take four different forms legally speaking but in practice, police stops in France are entirely dependent on the discretion of the police officers involved. These police stops are conducted as *identity checks* which can lead to further frisking and searching of the person and the belongings of the person stopped. According to the Open Society Institute (2009), these police stops are based on different legal frameworks, including the VIGIPIRATE counter-terrorism plan. The other three legal frameworks are the Code of Criminal Procedure, the Code of Entry and Stay of Foreigners and the Right to Asylum, and the Customs Code. These laws together give the police officers a wide array of discretion on whom to stop, when, and for what reason. Furthermore, identity checks in France can be used as both an investigative and a preventative function. This means that the stops can be carried out and directed at individuals, suspected of having already committed a crime, as well as a "preventative" measure to stop any person in a particular area when there is a perceived threat to public order or personal security. These both are secured by the Code of Criminal Procedure, which also holds that "Any person in the country must agree to submit to an identity check carried out under the conditions and by the police authorities" (Article 78-1 of the Code of Criminal Procedure cited in Open Society Institute, 2009, p. 42).

According to French law, all citizens are required to comply with identity checks and must provide the police with identity documents, and if documents are not provided this can lead to the "verification of identity", which implies detention in police custody, not exceeding four hours (Service-Public.fr, 2021). As the law requires complying with any person stopped, it has been noted that challenging the legality of the stop and search policing conducted by the French police as discriminatory is very difficult, as doing so would be construed as an obstruction of justice under French law. This obstruction could submit the individual to further police action, such as fines and imprisonment, and as such the Open Society Institute (2009) notes, that most identity checks can only be contested after the fact.

Under the Code of Entry and Stay of Foreigners and the Right to Asylum, all foreigners in France are required to always carry with them proof of their legal stay or right to transit through the country (Open Society Institute, 2009). The persons then who are perceived to be foreigners are exposed to even further identity checks, stops and searches as according to the regulation the French police can subject foreigners to identity checks at any time, without having to meet the suspicion criteria established in the Code of Criminal Procedure. A French constitutional council ruling from 1993 states that immigration stops cannot be motivated by discriminatory indicators, as well as the "presumption of foreignness" (Open Society Institute, 2009, p. 45) must be based on objective factors that are external to the person being stopped. However, the Open Society Institute found that the existing ambiguous guidance of the case law fails to establish comprehensive limits on police identity checks, stops and searches for the purposes of immigration control. This ambiguity is further complicated by the counter-terrorism tactics laid out by the VIGIPIRATE counter-terrorism plan created originally by an administrative order in 1978, an updated number of times since (Open Society Institute, 2009) which only extends the discretionary powers of the police. VIGIPIRATE plan has made the stop and search powers more readily available to the law enforcement officers in designated areas. Functioning on an alert level basis, since the London 7/7 bombings in 2005, the level has been maintained at three of four possible levels. This level three marks areas open to the public as sensitive zones, presuming a risk to the public order under the Code of Criminal Procedure, justifying police stop and search powers in such spaces (Open Society Institute, 2009).

The combination of all of these four legal frameworks has resulted in extensive discretionary powers of the law enforcement officers in relation to stop and search policing in France. Jounin, et al. (2015) note that the legal standards of 'plausible grounds for suspicion' or 'prevent a breach of public order' are only subjected to review if the person stopped will end up being detained and prosecuted. And this is during a 'normal' time, so as long as the level of the VIGIPIRATE counter-terrorism plan is not brought down, citation of this is enough legally speaking for the police officers. The identity checks according to Jounin, et al., (2015) are often associated with road stops as well. While there seems to be no legal framework for identity checks on the roads, as technically the stops on the road are to check the condition of the vehicle or the credentials of the driver, the stops may serve other purposes. In their qualitative research, Jounin et al. found that many of the racialised youth interviewed reported being pulled over by the police in the same manner known in the U.S. as the *pretextual traffic*

stops known to be used as a form of racial profiling (2015). Despite the controversies over profiling during policing, institutional knowledge of this was reported to be non-existent only a decade ago (Jobard, et al., 2012). One of the main reasons for this, according to Jobard, et al. (2012) is that identity stops do not generally leave a paper trail and are not systematically included in police statistics. Furthermore, the statistics would not tell us much, as only the nationalities of those stopped would be mentioned. The importance of self-reported experiences becomes crucial here, as this is the only way to challenge the "metonymic figure" for perceived police injustice.

The racial disparity of stop and search policing has become more and more reported and acknowledged in France, even resulting in identity checks and stop and search policing being called polemically "contrôle au faciès", policing done based on physical appearance (Jobard, et al., 2012). I would like to raise the issue of institutional whiteness concerning policing here. As noted above, experiences of racial profiling and the policing done based on *racialised* physical appearance, while growing in numbers reported by the civil society, are not largely acknowledged by the law enforcement institutions themselves. The inability to do a further self-reflection by the policing institutions of France is a painful exertion of sovereign powers that have historically been used against the 'racialised other'.

"Contrôle au Faciès", racialised violence and calls for justice

The "contrôle au faciès" according to Jounin, et al. (2015) is a particularly French practice that can be seen as corresponding to "ethnic/racial profiling" in the anglophone context. The practice is understood as euphemistic for racial or racist orientation of institutional practices, seen as typical to the French political system. Jounin, et al. hold that the practice is seen as a desire not to reduce the discriminatory nature of controls to only racial markers, but to other non-phenotypical elements of the appearance too. The empirical study done by the Open Society Institute reported that when conducting police stops, the French police did a profile based on clothing style, but that "… clothing may thus be described as a racialized variable. Even if police are targeting their identity controls on the type of clothing individuals are wearing, a result is a disproportionate number of stops of ethnic minorities, particularly Blacks" (2009, p. 32). Hence, despite the euphemism in the name of the policing practice, it still seems to be heavily racialised. ENAR reported in 2021, that in France Black and Arab youth are stopped by the police with identity checks 20 times as often as the white majority. Amnesty International held back at the beginning of the Covid-19 pandemic that the most

economically deprived area in mainland France, Seine-Saint-Denis mainly populated by inhabitants of Black and North-African heritage, was the most heavily policed area during the lockdowns. In Seine-Saint-Denis the number of fines written for the breach of the lockdown rules was three times higher than in the rest of the nation. This was although local authorities felt that the respect for the lockdown measures was similar throughout the country (Amnesty International, 2020). How most unlawful use of force manifested itself, according to Amnesty International (2020), was through stop and search policing, and identity checks.

Racialised police brutality is being reported in France increasingly by civil society and human rights organisations. The list seems exceptionally long for a nation known as the "country of human rights" (Diallo, 2020, para. 19), and the ever-increasing calls for justice come often from victims who have disclosed police violence during police stops and searches. It has been reported that victims have been beaten, thrown against walls[24], verbally abused[25], and even killed during police stops, most often as a result of a racially motivated identity check. While a self-declaredly an ethno-racially blind nation, the same racially discriminatory and stereotyping tropes are used of the racialised minorities. Salem and Thompson report how in the mainstream media in France as well as in the political discourse, the Black youth is portrayed as "inherently violent, pathological and undereducated" (2016, p. 7). This discourse then seems to follow the Anglophonic logic where Blackness is systematically stigmatised and socially inferiorisised (Wynter, 2003) and understood as wedded to 'criminality' (Bassichis & Spade, 2014). Here the hyper visibility of the racialised other works for the advantage of the police, as they seem to be encouraged to conduct identity checks of these bodies (Nossiter & Méheut, 2020). Often dressed as a question of individual and a racist decision of a singular law enforcement officer, an accusation of racist policing is brought forward, here I would like to argue that there are often larger institutional forces at play.

[24] Rayan Bardakji a young Parisian recalled for the New York Times, that he and his friends had been insulted by the police after an identity check when he was 17 years old. "They would hit me, throw me up against the wall, slap me," …"They would strip us, and hit us," (Nossiter & Méheut, 2020, para. 35). Another interviewee, Yassin Taamourt, also a Parisian, reported the following: "As I was coming out of my building, they told me to come back inside, and they beat me up," …"They smashed my head against the wall three times. And they hit me in the nose with the butt of a flash-ball gun" (Nossiter & Méheut, 2020, para. 45). See more: https://www.nytimes.com/2020/06/12/world/europe/george-floyd-protests-europe-police.html

[25] A 27-year-old Egyptian national who has lived in France for 10 years was filmed running from the police before jumping into the river Seine in April of 2020. In the video the police officers "can be heard using a derogatory term for Arabs ("bicot"), laughing at him and one officer says "you should have put a weight on his ankle"" (Amnesty International, 2020, para. 7). He was later on beaten by the police in the police van and held in custody. No charges were raised against him, but he was ordered to leave the country (Amnesty International, 2020). See more: https://www.amnesty.org/en/latest/news/2020/06/europe-covid19-lockdowns-expose-racial-bias-and-discrimination-within-police/

ENAR (2021) identified that police unions are extremely powerful in supporting individual law enforcement officers who are facing allegations of misconduct. In the case of France, it was noted that the policymakers and government officials seemed to be under pressure from police unions to put forward statements, that the law enforcement officers are entitled to special protection from the law and must for their protection use force due to being vulnerable to violence in the line of duty (ENAR, 2021). This institutional support and legal assistance from the police unions have been identified by ENAR as hindering policing reforms that could see more effective punishment of those officers who abuse their powers in a racially biased manner. The institutional packing that the individual officers enjoy makes the racialised usage of stop and search policing in France a question of necropolitics. Just as the stop and frisk policing powers of the U.S. have been argued to have originated from the colonial slave patrols (Gossett, 2014), I hold that how legal frameworks took their shape during colonialism are still traceable in the way in which the identity checks are mobilised in France. The anti-Black connotations seem to be present in the identity checks in France, as there are clear indications that Black people are more likely to be stopped, asked to identify themselves as well as frisked and searched (Open Society Institute, 2009). While there is no national statistical data to back this up, there are efforts from civil society organisations to gather such evidence. *Le Collectif Stop le Contrôle au Faciès* (The Collective Against Stop and Search) alliance of multiple anti-racism initiatives as well as civil society organisations were gathering data on racial profiling. In doing so they established what Vanessa E. Thompson (2022) has called ‘counter-statistics’ or ‘statistics from below’. While this is not just statistical recording, it also functions as a way to document the realities of people experiencing racial profiling, and in doing so help with the denormalization of the problem of racist policing.

3.5. The Netherlands, Amnesty International and stop and search policing

In the Netherlands for decades now there has been a public debate about ethnic profiling in policing (Çankaya, 2020). Van der Leun & van der Woude (2011) held that during the past decades the Netherlands has developed a culture of control, in which criminals and immigrants are conflated into the category of 'dangerous other' or the *cimmigrant*. A decade ago, Amnesty International (2014) conducted research which resulted in concerns about stop and search policing as a risk to human rights in the Netherlands. The report focused on the ethnic profiling done during stop and search policing. The stop and search policing in the Netherlands were defined by Amnesty International as "the exercise of powers arising from the police's general supervisory powers, in which members of the public may be stopped or checked without being suspected of any criminal offence" (2014, p. 2). More specifically the report scrutinised the Compulsory Identification Act, the Road Traffic Act, and immigration control that happened under the Aliens Act, as well as preventive body searches. The report found that ethnic profiling went beyond the levels of isolated cases, resulting in a discriminatory way of implementing stop and search policing in the Netherlands.

These results follow the trends seen in other countries of the Global North where policing and security are increasingly becoming both restrictive of individuals' rights for the protection of groups, as well as expanding powers for preventive policing. This pre-emptive form of policing comes with plenty of discretionary powers allocated to the law enforcement officers, which creates the risk of the power being used arbitrarily. The preventive or pre-emptive policing powers are known to be done based on generalisations about race, ethnicity, nationality, religion, gender, etc. rather than on the actions of the individual, and this holds true also in the Dutch context (van der Leun & van der Woude, 2011). Within the Dutch context, ethno-racially disaggregated data is scarce; occasionally there is data where the citizen's ethno-racial background is recorded as autochthone or allochthone. A Dutch concept, that roughly translates to "from this soil" (autochthones) and their opposite the "not from this soil" (allochthones) (Çankaya, 2020). Çankaya (2020) holds that while the "State agencies categorise allochthones as people of whom at least one parent is born outside of the Netherlands", the lived reality of this concept is not so clear cut and is for example tied to other factors, such as spatiality. This distinction between the two categories is further complicated by the fact that western migrants are known to be incorporated into the category of autochthone quicker than non-western migrants. I hold that the label of the phenotypical other can keep an

individual in the category of allochthones longer than the institutionally recognised second generation.

The Netherlands have been investing in pre-emptive policing, and surveillance technology, which has already gotten civil society organisations, human rights, and institutional organisations worried as by design, these tools are designed to profile ethnically (Macaulay, 2020). These new technologies are known for example to use cameras and sensors to collect data on vehicles and predict the probability of the criminal intentions of the driver and passengers close to the borders. Presented by the law enforcement agencies as neutral systems, using only objective crime statistics (Macaulay, 2020), Amnesty International (2020) found that this system is discriminatory, and uses humans as "guinea pigs" under this mass surveillance project. What makes this project blatantly discriminatory, is that this project is explicitly excluding people with a Dutch nationality (Geiger, 2020), as such assuming foreigners as criminals, playing into the trope of the crimmigrant. Other forms of predictive policing are weaponizing social economic status, which has been argued to further strengthen existing inequalities, with new technology utilising data and statistics from under categories such as: "Number of one-parent households", "Number of social benefits recipients", "Number of non-Western immigrants" (Geiger, 2020, para. 1). Here I will look at how anti-Black sentiments appear in stop and search policing in the Netherlands, also nudging an idea for future research with the idea of how anti-Black sentiments skew the policing done with the technology of the future, which is a product of an anti-Black society, and hence as discriminatory than the society which created it.

How Race and racism negotiated in the Netherlands

The Netherlands, like the rest of Europe, has constructed a national self-image that is understood as free of race and racism. Following the logic of multiculturalism, the Netherlands according to Salem and Thompson (2016) locates racism in individuals that are exceptional, rather than the norm. The *Race* is not seen as something that exists in the Netherlands, rather *ethnicity* is seen in the terms of *integration* (Salem & Thompson, 2016) through the terms of autochthon and allochthon. The autochthones are the people whose both parents have been born in the Netherlands, versus the allochthone whose one or both parents were born outside of the Netherlands, so by making a distinction between *us* – the real Dutch, and *them* – the not-quite-real-Dutch (Essed & Trienekens, 2008). Salem and Thompson found in their research that this distinction is more meant for the majority (white Dutch) as autochthon and the non-

Black minorities, usually Moroccan, Turkish, or Muslim as the allochthon, leaving Blackness as something that is seen as a "foreign threat: they are foreign despite the long colonial history and the presence of the Dutch nationality; because of this foreignness, they are a threat" (2016, p. 8). However, Philomena Essed and Sandra Trienekens argue that there is a clear distinction between the western allochthone and the non-western allochthone:

> "In policy practice allochthone refers foremost to non-western ethnic groups considered disadvantaged or less integrated into 'modern' societies such as the Netherlands: persons (and children of persons) born in Turkey, Morocco, Suriname, the Dutch Antilles, Aruba, former Central Yugoslavia, or countries in South and Central America, Africa and Asia" (2008, p. 57).

These non-western allochthones are, according to Essed and Trienekens, treated as second-class citizens, never amounting to being quite Dutch, or the norm while always seen as a problem, aspiring, but simultaneously always lagging behind. While there is an emphasis on cultural determinism rather than a racial one in the Netherlands, just like in the rest of Europe, Essed and Trienekens hold that "…skin colour as a racist marker of belonging should not be underestimated" (2008, p. 58) within the Dutch context.

Scholars point out that there seems to be a different level of integration into the Dutch culture. The Black people that came to the Netherlands as "guest workers" through labour migration in the 1960s-1970s from the Antilles and Suriname were never seen as integrating into the society and culture as well as the Japanese, who under Apartheid in South Africa qualified as honorary whites (Essed & Trienekens, 2008) and the integration of the Eurasian migrants from Indonesia in the 1950s (Salem & Thompson, 2016). Salem and Thompson (2016) propose that throughout Dutch history there has been a tendency to shift stereotypes and discourses of one *foreign group* to another, depending on the complex array of the political and economic factors of the time. Here they point to how the stereotypes and negative connotations from the white working class were transferred onto the migrants arriving from North Africa and Southern Europe with the idea of needing the migrants to be civilised into the Dutch culture. Another example they propose is that the "Surinamese men were discursively portrayed as violent and aggressive in the 1980s. Yet in the 1990s this portrayal extended to and became focused on Moroccan men" (Salem & Thompson, 2016, p. 8). These transfers and shifts in discourse however are never going to be complete and this is why there are still negative assumptions about the white working class, as well as there is the tendency in the Netherlands to portray the Surinamese men as violent and aggressive.

While these categories of race, ethnicity, culture, religion, etc. are often conflated in the European way of understanding ethno-racial relations, there seems to be a clear pattern of how also in the Netherlands minorities are "at best tolerated, and at worst, marginalized…They are expected to become 'the same' as the dominant group (read: White Dutch), yet they are never considered to be same-enough because of fixations on their Otherness and assumed lack of competences" (Ghorashi, 2020, p. 4). What more is that Essed and Trienekens (2008) found in their study that many Europeans associate socioeconomic differences as a marker of privilege in a person over the concept of whiteness, not grasping the historical relation between socio-economic standing and race. Here I hold how Blackness has been theorised as the ontological zero (Jackson, 2020), upon which the colonial myths and racial hierarchy are then built, the complete integration of the Black population into the white Dutch culture is a difficult task. While race and ethnicity are largely understood as not having a part in the Dutch culture (Essed & Trienekens, 2008; Salem & Thompson, 2016; van der Leun & van der Woude, 2011), this does not nullify the long history of colonialism where these negative stereotypes and the narration of Blackness as the *deviant other* originate from and have become to dominate the white consciousness of the Global North. I will now move on to look at how these racial relations play out in the Dutch criminal justice system, and more specifically between the minorities and the police officers.

The targeting of Black and brown youth by law enforcement officers in western societies is a combination of multiple conditions. Throughout this thesis, I have shown, however, that the national discourse and the way in which certain historical stereotypes are still upheld by the national sentiments play into how national powers are deployed. And here I would like to suggest that this also holds true in the case of the Netherlands as the colonial migration caused by the colonial history, reproduces the old colonial racial and ethnic hierarchies in the metropoles of the European continent. This then upholds the so-called "new forms of racism" known as cultural racism according to Michael Orlando Sharpe (2014). Gloria Wekker (2014) holds that in the Netherlands Black men and women face in their everyday life sexualisation, inferiorization, and criminalisation, which are upheld in the main images that are available by the Dutch archives. This is further reproduced by presenting the Black Dutch youth as anti-social, violent, and criminal by the Dutch media. This relationship between ethnicity and social problems, such as social nuisance and criminality has been increasingly seen as a political issue. Sharpe also notes that within the 'liberal' Dutch political parties Antillean and Aruban youth have been portrayed as a criminal. In 2005, the progressive Dutch

political party D66 helped to draft legislation, to have “troubled, specifically Antillean and Aruban youth, who either committed a crime or were not employed within a few months, deported to their home islands” (Sharpe, 2014, p. 129). The legislation could not be upheld, as it was against the European Convention on Human Rights.

This has resulted in the contemporary development of a discourse of the minority ethnic youth in the Netherlands being seen and addressed as the *dangerous other*. Van der Leun and van der Woude (2011) argued that this conflation of the immigrant and criminal has been the driving force of the merging of migration policy and crime control into a political issue they refer to as, *crimmigration*. Crimmigration then guides the policies, and political and public discourse, according to van der Leun and van der Woude, which further pushes the law enforcement agencies to profile individuals based on race, ethnicity, and nationality in the Netherlands. This could be seen in the way in which the Dutch police carried out targeted stops and searches combined with ID checks on West Africans in 2009 (van der Leun & van der Woude, 2011). The phenomenon of crimmigration, I hold, emerges from the culture of control or the sentiments of *law and order* also seen in the case of the UK and France where the tendency is to restrict individual rights for the sake of public safety. As the focus of the law enforcement agencies is constantly more on the early detection or the complete prevention of crime, there is a higher risk of ethno-racial profiling. Everything is aimed at detecting and 'disarming' risky and potentially dangerous persons as soon as possible by using risk assessments, broadening criminal liability by criminalising behaviour in preliminary stages before a harmful activity has occurred. All of this in combination with introducing new and harsher penalties and introducing new potentially intrusive investigatory powers (van der Leun & van der Woude, 2011) results in ethno-racial profiling of the *dangerous other*. Stemming from the *crimmigration* mentality, the criminalisation of behaviour in combination with criminalising socio-economic background factors historically tied to the colonial racial hierarchy, I hold has led to the ethno-racial profiling by the Dutch law enforcement agencies. Especially to the targeting of Black and brown bodies during stop and search policing.

Police stops in the Netherlands and the lack of disaggregated data

Van der Leun and Van der Woude (2011) display how the stop and search practices were picked up by the law enforcement agencies in the Netherlands since the turn of the millennium. Foremostly the stop and search practices are based on the Aliens Act of 2000, where expanded provisions (articles 50 and 53) allow immigration officials to carry out house

searches, as well as the stopping of people on the streets to subsequently ID them. The stop and search methods were technically reintroduced in the Netherlands in 2002, as preventative stops and searches could be done in areas, designated by the mayor, seen as more prone to attract violence or public disorder (van der Leun & van der Woude, 2011). In this case, van der Leun and van der Woude note that the law enforcement officers are empowered by the authority of the public prosecutor to stop and search any individual, goods, and vehicles without reasonable suspicion.

Before 2002, police could stop and search individuals if there was a "reasonable suspicion of a criminal offense and in order to establish one's identity" (van der Leun & van der Woude, 2011, p. 448) stated in article 55b in the Code of Criminal Procedure. The extension of the Identification Act of 2005 further pumped up the police stops as everyone over the age of fourteen in the Netherlands is required to carry IDs with them, which the police can at any time ask to see. Preventative searches, which cover on-person searches, the searches of belongings as well as searches of vehicles can be performed by Dutch law enforcement officers in zones announced as "at high risk of gun or knife crime" (Brown & van Eijk, 2021, p. 692) by the government. Currently, such zones are in Rotterdam, and debates about introducing such zones around Amsterdam have been hot since the end of 2020 (Brown & van Eijk, 2021, p. 692). Finally, the Mobile Security Surveillance of 1992 (Mobiel Toezicht Vreemdelingen = MTV) and Road Traffic Act gives law enforcement officers great discretionary powers on which cars to stop. Under MTV the focus according to Brouwer, et al. (2017), was to symbolically shift the focus from alien supervision to criminal enforcement, hence further conflating these two groups and the mentality of crimmigration on the roads. Amnesty International (2014) argued that as the Road Traffic Act allows law enforcement officers to stop vehicles and identify the driver and the passengers, there has been a blurring of the line between investigative policing and traffic policing.

The Open Society Justice Initiative (2009) found in their study that minorities in the Netherlands believed that surveillance is profiling based and hence seen as discriminatory. This finding is also supported by the report released by the European Union Agency for Fundamental Rights (FRA) (2010), which looked into the police stops of minorities in Europe. FRA (2010) reported that 34% of the Surinamese respondents reported being stopped by the police in the past twelve months, with 9% of them suspecting racial profiling. The same corresponding numbers from the Turkish respondents were 28% and 7%, and North African 26% and 10% (FRA, 2010). All the while a survey conducted by the EU in 2010 showed that

in the Netherlands Surinamese (67%), North African (66%), and Turkish (61%) respondents believed that "discrimination based on ethnicity is very or fairly widespread" (van der Leun & van der Woude, 2011, p. 451). These statistics are based on both institutionally gathered data, as well as on data that is self-reported. Tracking police stops and searches in the Netherlands has similar issues found in the other case studies; not all stops done are necessarily recorded, and when recorded there is no other ethno-racial data outside of nationality and in some cases the Dutch ethnicity in the forms of autochthone or allochthone.

Amnesty International (2014) published a report on ethnic profiling in the Netherlands and how the stop and search practices pose a risk to human rights. In this report, Amnesty International point to how the Human Rights Committee of the UN, as well as the European Commission against Racism and Intolerance (ECRI), had previously highlighted their concerns about the prominence of ethnic profiling in the Netherlands. These concerns however have been repeatedly shot down by the Dutch political figures; Zihni Özdil (2014) found that in the media the report findings and concerns were belittled and downplayed, and even completely denied by key Dutch political actors. When the leader of the social democratic party, Diederik Samsom, was asked about the ECRI findings, he agreed that ECRI should mind their own business. The Secretary for Security and Justice Fred Teeven was quoted to say that he is not worried about ECRI's findings as he did not recognise himself in the findings. Even the leader of the progressive party D66 at the time, Alexander Pechtold's reaction to racism on this institutional level was: "I do not think that we are incongruous in that respect" (Özdil, 2014, p. 59).

ID stops, spot checks, preventative searches, road stops…

Here I want to differentiate between the different forms in which individuals can be stopped and questioned by law enforcement officers in the Netherlands and how these individual stops can be seen as targeting ethno-racial minorities. Çankaya (2020) noted that while the street police stops, both ID checks, as well as the stop and searches, are known to affect the *urban allochthones* more, on the roads during the vehicle stops, middle-class men and women of racialised groups get racially profiled. Under the Aliens Act, the law enforcement and security agencies are exercising their powers at border crossing points, at airports, on the roads, and at train stations where also ethno-racial makeup of the individuals, as well as their nationality, dictated who is being ID'd, questioned, and eventually searched. Many of the legal tools that these agencies can use lack transparency as many of them are

dependent on the discretion of the individual officers. Furthermore, in many cases there is little insight is provided to the one stopped, into the legal grounds on which the officer's actions are based unless there is a formal complaint filed against the law enforcement officers (Brouwer, et al., 2017). Sinan Çankaya (2020) holds that racial profiling by law enforcement is done in a form of geopolicing in the Netherlands. He coined the term *urban allochthone* identifiable by their intersection of class, race, gender, age, and residential status. More specifically the imaginaries of the urban allochthone are concerned, according to Cankaya, the urban poor ethnicized men. By policing this demographic, the law enforcement officers are policing the body that is seen as a risk. Since the policing tactics have essentially completely changed from the more traditional *reactive* policing (action, such as a crime causes a reaction, such as usage of policing powers) to more pre-emptive or predictive policing, this has led to the increased usage of what Çankaya calls the *risk mentality* within the law enforcement agencies. This risk mentality directs policing, resulting in "proactive police stops are primarily initiated by police officers to intervene in preventive as well as repressive ways" (2020, p. 706).

The BBC (2016) reported in 2016 that a study done by the Politie en Wetenschap (Police and Science Research) found that over half of those stopped on the road by the Dutch police, were people of minority ethnic origin. The study found that the Dutch police have extensive powers to stop and search people if they behave in a suspicious/unusual manner and that the members of minority ethnic communities were more often perceived as criminals due to stereotypes attached to them (BBC, 2016). The study specifically looked at cases where the law enforcement officers stopped and searched people based on the officer's *intuition* and *experience*, rather than based on reasonable doubt of criminal activity. Of these stops done on the basis of intuition and experience, 40% were unfounded (BBC, 2016). This aligns with what Amnesty International Reported a few years earlier, and how statistically speaking there is a trend in the Netherlands that spot checks and other forms of stop and searchers are done based on an ethno-racial makeup of a person. Doing policing stops based on ethnic profiling has been a contested topic in the Netherlands and as recently as 2021 it was debated in a court. Two citizens, backed by Amnesty Netherlands and a coalition of NGOs brought a legal case against the Dutch government for singling out passengers for questioning and further searches by the law enforcement officers at the airport based on skin colour (Corder, 2021). The Hague District Court ruled against the plaintiffs, holding that ethnicity can be one of the criteria for singling out passengers when carrying out stops. Amnesty international swore to appeal this decision, as "by ruling that police can target people based on skin colour and race the court has allowed

a practice that is in a clear violation of the prohibition against discrimination to continue" (Amnesty International, 2021, para. 3).

As racism and ethnic profiling have been a hot political and public issue since 2020 and the BLM demonstrations in the Netherlands, this verdict was seen as a disappointing outcome by many human rights, and civil society actors (Corder, 2021). This ruling I hold should also be seen as a devastating loss as this could set a precedent for how law enforcement officers are allowed to use ethno-racial categories as a criterion for *reasonable suspicion* while conducting policing in the future. This ruling also seems to conflict with the increased calls to face and reckon with the European colonial history and the contemporary forms of racism, that is not only been mobilised on the grassroots level, but also by institutions such as the UN, the UN High Commissioner of Human Rights, and the European Parliament (European Parliament, 2020; UN Human Rights Council, 2020; UNGA, 2020; UNGA, 2021).

The Netherlands has been cautioned by several entities by the way in which pre-emptive and preventative policing applies new technologies (Amnesty International, 2020; Geiger, 2020) Here I do not intend to make an argument that the usage of technology is exceptional to the Dutch context. On the contrary the increased usage of technology in policing and surveillance in the past two decades has been a global trend. When conducting the research however, it was specific to the Dutch context that recently the human rights organisations, and other civil society NGOs had flagged the usage of new technology-based predictive policing and surveillance methods as a worrying trend, and as a threat to human rights. The problem with policing that is 'trying to stop crime before it happens', is that this form of policing does not target individuals, but rather groups who are attached with a level of *risk*. Hence, further research into pre-emptive policing done through new technologies would be interesting. It seems like the discretionary powers that allows law enforcement officers to use their bias in street policing, is coded into these new, seemingly neutral, technologies, that flag people as likely criminals based on their nationality. Çankaya (2020) holds that the prevention of crime is done through repressive powers, and time and again these forms of pre-crime policing have been revealed to be less than novel. As criminal law is based on the criminal actions of a person, the question then lingers; how does the pre-emptive policing affect Black and communities of colour, as the focus is more on pre-crime than on the traditional post-crime?

4. Conclusion

This research looked to answer the research question: *How does the colonial legacy of anti-Blackness guide stop and search policing in contemporary Europe?* And I have shown how the colonially constructed narrative of anti-Blackness manifests itself in public and political discourse that guides the laws and policies. This allows the nation states to employ this necropolitical policing power called stop and search. No matter which forms it takes (stopping, ID checking, traffic-stopping, spot checking, questioning, searching, frisking) these can all be seen targeting the racialised communities, and more specifically the Black communities in all of the three case studies. This thesis does not argue that the only reason for police stop and search is the anti-Black sentiments of the individual law enforcement officers or the law enforcement institutions. Rather, this research has shown that the shared colonial history that these nations have, has relied heavily in its colonial expansion on the anti-Black hierarchisation, or the "coloniality of power" (Quijano, 2000). This anti-Black hierarchisation is often narrated as something happening elsewhere, rather than *here* in the *metropoles* of the European continent, but my research has shown that this is not the case.

I hold that the anti-Black sentiments of surveillance and policing are ever-present in the way in which stop and search practices are implemented in contemporary Europe and this is evident in the analysis I've conducted in the three case studies. France, The Netherlands, and the UK all utilise a form of stop and search policing where aspects of a necropower are present, as these policing tactics target the bodies of the *phenotypical other* more precisely than those of the majority. Studies show that stop and frisk/search policing is a highly racialised, and discriminatory way of implementing militarised state powers (Ahmed, 2007; Alexander, 2010; Browne, 2015; Flacks, 2020; Gossett, 2014; Jackson, 2020; Kitossa, 2020) and I have shown how this form of policing was always meant to target Black bodies. This is further supported by how these powers are implemented in the self-proclaimed race/colour-Blind Europe.

The Anti-Black stereotypes and depictions are very much central to how the European metropoles came to exist, and this history cannot be erased by bluntly denying it. The increased discourse of securitisation in Europe plays with the conflation of two categories; immigrant and criminal, which has led to the passing of several legislations, policies, and laws that make pre-emptive policing, crime detection, and crime prevention the main task of the localised criminal justice systems. Hence, I conclude that these policies are drafted from the "moral panics of the crimmigration", as the Global North keeps showing us time and again how the

nation states deploy law enforcement officers to fight the *criminal immigrant* embodied by the *racialised others*.

The headlines about the Haitian refugees being mistreated at the U.S.-Mexico borders caught the attention of most news and media outlets with the distinctive photos, videos, and stories of border patrol chasing the Haitians on horseback, whipping them, and shouting vulgarities at them[26]. Absurd scenes that even the most conservative media outlets had to acknowledge were reminiscent of the bygone times of slavery. Seemingly while shocking to the Europeans, this seemed to play into the trope of 'the history of coloniality happening elsewhere'. However, only six months ago, the Europeans, as well as the rest of the world, were shocked to hear about the war that Russia started in Ukraine, and news channels, newspapers and other media outlets were quick to react all over the Global North on how absurd a war was in a "white, civilised nation". While there were great efforts to evacuate civilians, the moment of crisis is always telling and an undeniable truth to the deepest sentiments of humanity. As women and children were loaded into trains and buses, all of a sudden Blackness became to be the factor that seemed to erase gender and I hold here, that even the humanity of these racialised individuals trying to flee the war. The mainstream medium outlets as well as social media suddenly started being full of stories, pictures and videos of Black and brown women and men being denied access to evacuation transportation, most of the time by force. The authorities had adopted "Ukrainians first"-policy when evacuating people to trains and busses, suggesting that Black people fleeing should walk (Dovi, 2022). These often young expats were in Ukraine as international students and workers. Their socio-economic status did not erase their race, as so many Europeans seem to insist, but rather the locals did not want to have to save them from the conditions of war.

My reading is that the anti-Black sentiments, well hidden from the individual behaviours of the white European majority, will surface when pressure is applied. The ugly head of racism is always lurking, waiting to lift its head. By applying external pressure, or the feelings of having the *Black Other* seen as your equal human where resources are scarce and there is a threat to life and humanity, the centuries-old racial hierarchies, internalised by the colonial project of Europe will offer the structure and solace that is needed. When the Black and brown people made to the borders of other European nations in Ukraine, in an attempt to

[26] Thousands of refugees from Haiti arrived at the U.S.-Mexico border in October of 2021. When the refugees were trying to cross over to the U.S. from the shallow parts of the Rio Grande River, many were forcibly blocked by law enforcement officers on horseback. Video and pictures circulated on different media platforms of officers whipping, kicking the refugees and pushing them back into the river (Al Jazeera, 2022). See more: https://www.aljazeera.com/news/2022/7/8/us-border-agents-used-unnecessary-force-on-haitians-report

get away from the war, many of them were denied access by the border patrol (Dovi, 2022), once again demonstrating how the law enforcement and security institutions are deployed as the necropolitical power of these nation states, deciding who gets to live and who gets to die.

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6. Annex

Glossary

Act: Legislations and policies passed by nations (England, France, etc.) or by intergovernmental organisations (The UK, the EU, etc.) and institutions (European Union, European Parliament, European Council, UN, etc.)

Anti-Blackness: Is a formation that simultaneously dehumanises Blackness and systematically marginalises Black people: "…antiblackness has sought to justify its defacing logics and arithmetic by suggesting that black people are most representative of the abject animalistic dimensions of humanity, or the beast."' (Jackson, 2020, p. 3)

Black/ness: throughout this thesis I have capitalised the terms Black and Blackness. This is done because many people from the Afro/African diaspora use this term as their primary race descriptor. The word white and whiteness do not carry the same level of cultural identification that Black/ness has and as such are not capitalised.

Crime: Traditionally an act defined as criminal by the court of law. In this thesis this definition of *crime* is expanded into a concept that the sovereign states deploy in order to match the discourse with the solution of policing, law and order. *Crime* allows the mobilisation of different agencies to *protect* citizens from the "manufactured domestic enemy", through creating these feelings of insecurity and fear (Kitossa, 2020).

Discretionary Powers/Authority: Policing is emphasised to be largely dependent on discretion and in this thesis the term 'Discretionary Powers/Authority' is used in relation to stop and frisk/search policing, as this mode of policing is 100% dependent on the discretion of the police. For example, the courts in the UK have held that the law enforcement officers discretionary powers should go largely uncontested (Terrill, 1989) and this power has become the most used tool of policing post-PACE.

Mode of Power: Dean Spade (2015) furthers Michel Foucault's concept of *power*, by defining three modes of power through which the government can keep distributing and redistributing power to where it has historically been. The three modes of power Spade identifies, are the: perpetrator/victim power, disciplinary power, and the population management power.

Necropolitics: Achille Mbembe (2003) furthered Michel Foucault's concept of Biopower and biopolitics into the framework of *necropolitics*. Here the sovereignty has control over the mortality of subjects as well as the power to define those lives worthy of living. The sovereign action is concerned with the material destruction of either individuals or populations.

Necropower: Kwate & Threadcraft (2017) hold that stop and frisk policing should be understood as a *policing power that distributes death.* This policing power leaves traces to Black bodies as physical markers due to the violence of the searches, and mental distress of knowing that the stop can come anytime and end your life.

PACE: The Police and Criminal Evidence Act of 1984, seen as the most revolutionary policing act since WWII (Bridges, 2015). This Act made the stop and search policing an *exceptional* power, as it became to be a stand-alone policy free from the normal procedural safeguards that regulate policing powers, essentially relying on the discretionary powers of law enforcement officers.

Perpetrator/Victim Model: Dean Spade's (2015) first *Mode of Power* - Here the individual perpetrators are punished for their violations, as well as there is a possible subtraction of their rights (opportunities, property, health(care), etc.).

Phenomenology: Franz Fanon theorises of the phenomenology of Blackness in his book Black Skin, White Mask (1986). He's theorised of the racial epidermal schema that Blackness of the skin holds. The history which is written on the Black skin and how there is no escaping the white hostile gaze. Sara Ahmed (2007) looked at the phenomenology of whiteness and the ease in which the non-marked (white) bodies can move in spaces and institutions as these can be characterised by "sea of whiteness". The flip side of this is that the marked bodies (Black, brown, etc.) automatically standout.

Population Management Model: Dean Spade's (2015) third *Mode of Power* - through which the society distributes differing levels of life chances by producing and reproducing security and insecurity within the population.

Stop and Frisk: Policing power that allows the law enforcement officer to stop, question, and 'pat down' a person whom the law enforcement officer(s) suspect of planning to commit a crime based on reasonable suspicion in North American context.

Stop and Frisk/Search: term used throughout the thesis to refer to the North American Stop and Frisk policing powers and the Stop and Search powers used in the UK and in the EU. (See more under stop and frisk or stop and search).

Stop and Search: Policing power that allows the stopping, questioning, and searching of people and vehicles in the UK. This policing power has been used in England since the 17th century but became codified in the 19th century by the 'sus laws' and the Metropolitan Police Act of 1839, and later on by the PACE Act of 1984 (see more under Metropolitan Police Act of 1839,

PACE, ‘sus laws’). Also known more commonly in the European context as stop and search policing.

‘SUS laws’: Clause under the 1824 Vagrancy Act which allowed the stopping, searching, and arresting of individuals that was deemed as a ‘*suspected* person’. These people who were in a public place, such as street, highway, and any place adjacent to a street or highway, with an intent to commit an arrestable offence “shall be deemed a rogue and vagabond” (Miller, 2019, p. 54) and could be arrested.

Terry Stop: The predecessor of the stop and frisk policing practice. The name comes from the legal case Terry v. Ohio (1968), and this was the first time the courts ruled that the police can stop, question, and search a person who they believe is about to commit a crime.

UN: The United Nations

UNGA: General Assembly of the United Nations, when as a reference; the proceedings/report of the General Assembly of the United Nations.