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## **German policing at the intersection: race, gender, migrant status and mental health**

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*Abstract:* Germany not only avoids using the term ‘race’, but its institutions, such as the police, refrain from collecting statistics according to race, gender, ethnicity, and so on, which makes it hard to prove that police actions, and particularly violence, differentially affect non-white Germans. Examining a series of controversial cases in which non-white Germans have been killed in encounters with the police, the author argues for an understanding of how race and other identities intersect, and shows how the police mount a dubious ‘cultural defence’ – based on their perceived fears – to justify their disproportionate use of force. Deaths in custody provide a lens through which to view the need in Germany to identify and accept the presence of patterns of institutional racism.

*Keywords:* death in custody, gender, Germany, institutional racism, intersectionality, mental health, migrant, police brutality, policing, race, racial profiling

The way in which a society polices those within its domain highlights certain facets of that society’s inner workings. Policing culture is specific, institutional and governed by logics that are not easily transferable to general social life. However, this is not to say that the thinking that frames policing policy and practice is detached from broader social phenomena. Indeed, the study of policing provides a window for viewing broader social thinking and practice, including how we understand and distinguish between groups as well as what forms of violence we deem to be appropriate.

This article briefly examines German policing, with an emphasis on custodial deaths, considered primarily in terms of race, but also with an eye towards gender, migrant status and mental health. With an analysis of specific, well-reported cases (discussed in the light of the above aspects), the article aims to use policing as a vehicle for understanding not only identity politics in Germany, but the construction of the ‘good citizen’, on the one hand, and the ‘national threat’, on the other, which lie at the heart of German civic self-understanding. Also, viewing these cases in terms of how law enforcement officers have acted disproportionately or harshly provides a specific understanding and indictment of legal standards that regulate police violence.

### **Racism and policing**

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‘Race’ is a tricky term in Germany with regard to its popular usage. In Germany, ‘race’ is a concept that is thought to exist mainly elsewhere, as a form of US-American exceptionalism not terribly relevant to Germany. More relevant in Germany, conventional thinking would assert, are concepts like ethnicity, religion and xenophobia. On the other hand, the German term *Rasse* is so closely associated with biological race-thinking of the National Socialist variety that it has scarcely any contemporary political or social currency. So why is ‘race’ an appropriate term to describe the lens that frames this analysis?

Racism cannot be ignored in Germany simply because ‘race’ is not a term with a great deal of purchase there. Racism exists and is quite pervasive on a level that Philomena Essed has called ‘everyday racism’.<sup>1</sup> There are aspects of the daily lives of people of colour<sup>2</sup> in Germany, from personal interactions to forms of institutional exclusion, that are coloured by the spectre of race. It is extremely difficult to ignore race in Germany if one is not white. Partly owing to its general lack of purchase, ‘race’ is not afforded much attention in the creation of social policy, so there is not a great deal of discussion in the legislature as to how to reduce racial discrimination. There is, rather, an emphasis on linguistic and cultural integration, which tends to put the responsibility on those facing discrimination rather than on those engaging in it. It should, however, be noted that while racial identification can not be reduced to linguistic and cultural aspects, language and culture are not irrelevant concepts in helping decipher racially discriminatory practice. In various contexts, they can be understood as proxies or pretexts for discrimination based on appearance or origin, more commonly understood as aspects of racial discrimination. For example, the assumption that people of colour do not speak proper German or any German at all reveals a mindset that links appearance to both language and migration history. This logic racialises the German language, coding it as white, and allows for the expedient essentialisation of signifiers of Germanness and other-ness, distinguishing the insider from the outsider, *Deutscher* from *Ausländer*.<sup>3</sup> There is slippage here between cultural and biological forms of racism, which suggests that avoiding the term ‘race’ does not relieve Germany from the sticky issue of biological racism. The problem created by avoidance, however, is that it makes it difficult to name, describe and measure racial discrimination in all but its most blatant forms.

There has not been a comprehensive study of policing practices that disaggregates demographic details about the subjects of policing according to race. Such practices could include, but should not be limited to, police identification checks, stop-and-searches, injuries caused by the police or deaths in custody. Most generally, such statistics without such disaggregation of civilians’ identity characteristics would only reveal the prevalence of the given policing practices, but would not show which groups, if any, receive disproportionately harsh treatment by police. Some community organisations, such as KOP (*Kampagne für Opfer rassistisch motivierter Polizeigewalt*; Campaign for victims of racially motivated police brutality) have been documenting instances where people of colour have been stopped by police and either searched or issued written warnings.<sup>4</sup> There has also been talk among some community activists in Berlin about working to organise a two-ticket system which would allow both the police and the person being stopped and searched to keep a record of the search. The police could then record and analyse their data by their own metrics while those individuals

policed could pool their data and draw out whatever factors they found relevant. Ultimately, such data is important in identifying patterns of treatment by the police in a manageable, verifiable and transparent way.

As it stands, such data, on patterns of treatment along the lines of race, is not being collected. Thus, there are not only linguistic and conceptual, but also empirical barriers to the effective identification of disparate violence against various sections of German society by law enforcement. This means that a likely response to the assertion of disparate police violence against communities of colour is: prove it.

While race is important in policing and disparate treatment, it is not the only issue. For the purposes of the current analysis, the characteristics that are important are race, gender, migrant status and mental health.<sup>5</sup> Again, there are not reliable statistics kept on policing practices, broken down by gender, mental health, migration status or migratory background. These factors seem to coincide in ways that are identifiable not only in terms of the rate of incidence, but also in the discursive aspects of these incidents. It is important to locate these various aspects of identity not as separate, but as intersecting and, at times, mutually constitutive.<sup>6</sup> In this sense, I am using the term intersectionality to describe the configuration of the various and sometimes mutually constitutive positions occupied by subjects of disparate policing practices. Examining these positions as they reinforce one another helps us to understand more comprehensively the configuration of power and stereotyping that enables social exclusion more generally.

Despite the lack of purchase in the concept of race, legal provisions do exist to protect individuals from racial discrimination. However, unsurprisingly these provisions are quite simple and broadly lacking in effectiveness. The German Constitution provides for general equality under law on the grounds of '*Rasse*', among other grounds such as gender.<sup>7</sup> These constitutional protections have largely functioned as guiding principles, with hardly any corresponding legislation to give direct remedies to those who have faced discrimination. However, in 2006, equal treatment legislation was adopted, which protects German residents against discrimination, particularly in the areas of employment and the provision of goods and services, on the basis of several grounds covered, including race.<sup>8</sup> However, there are serious problems with this legislation, such as the extremely short statute of limitations (two months) and the lack of a fully-formed description of indirect discrimination.<sup>9</sup> There have been fewer than five successful racial discrimination claims brought under this law since it was passed. Compounding the problem of relatively flimsy laws, the collection of statistics broken down by race is discouraged in Germany. Despite the lack of more accessible legal protection against racial discrimination, some groups are beginning to challenge structural discrimination with test cases and the monitoring of particular hotspots such as night-club entry policies.<sup>10</sup> Such test cases both identify patterns of discrimination and suggest creative ways to utilise the General Equal Treatment Law.

Those facing racial discrimination in the context of policing enjoy similarly limited protection. While the constitutional equal treatment provisions apply in the context of policing, they must be weighed against relevant policing interests. An important case concerning the racial profiling of a young Black German man in Koblenz was decided in 2012, in which the judge ruled that racially targeted identity checks violated the

young man's right to equal treatment as per Article 3 of the German Constitution.<sup>11</sup> However, the judgment should not be understood as ruling on the constitutionality of racial profiling more generally, as instances where policing arguably violates individual rights are decided on a case-by-case basis. This includes a proportionality analysis and scrutiny of the context as well as the manner in which the person was identified for an identity check or other policing measure. Despite its limitations, the 2012 judgment and the social discussion that developed around it have helped consolidate slightly more of a mainstream awareness about how everyday policing can have a dramatically different effect on people of colour in Germany than it typically has on white Germans.

Another case that has highlighted racial discrimination in the context of policing has been that of the National Socialist Underground, known as the NSU – a rightwing group that committed a series of murders over more than a decade, after which a key member of the group turned herself in to police in 2011.<sup>12</sup> One of the many features of this case is the way in which police dealt with the murders over the years. The victims of the murders were predominantly of Turkish origin, and the police, in their investigations, implied that the families of the victims had been involved in organised crime and were effectively responsible for the victims' deaths. Foreseeably, this treatment of the families of the victims contributed to the pain of the experience for them.<sup>13</sup> Such treatment reveals how law enforcers have the capacity to use racial stereotypes to inform not only their perceptions of guilt and innocence, but their actions and the operations of an institution.

There are a few general aspects of German policing that are important to establish before discussing notable cases of brutality and the use of disproportionate force. They are not necessarily unique to the German context, but they are important for foregrounding a discussion of police violence.

First, German police are heavy-handed with social activist protests. In Germany, leftwing activism is treated as equivalent to its populist rightwing counterpart. In theory, this equivalence represents little more than a commitment to free speech, an issue that German society takes very seriously. In practice what this allows for is the quite violent repression of leftist activists. In some cases, water cannon are used and protesters are seriously injured.<sup>14</sup> In cases of protests organised against police brutality in particular, the police have a history of repressing such protests in strategic ways that tend to limit free speech – that is, by attempting to suppress protesters' criticism of police violence – rather than curtail the prospects of violence or disorder.<sup>15</sup>

Second, as with the general societal difficulty with the idea of race, systemic forms of bias among the police, including racism, Islamophobia and xenophobia, are not easily expressed, linguistically or conceptually, in German. Conceptually, there is not an awareness of, or a broad commitment to, assessing the possibility of institutional bias, as there have been in other parts of Europe.<sup>16</sup> With this in mind, I shall review a number of instances that demonstrate how such systemic biases among the police play themselves out, on the ground.

### **Proportionality and the fear factor**

I must say, that in that moment she had a completely crazy look, full of aggression, hate and rage, an expression that was frightening for me ... Upon calling out the third warning, Mrs. Schwundeck made a movement and a small step forward towards me. It was in this moment that I fired the shot.<sup>17</sup>

The media reported that a woman named Christy Schwundeck, a German national of Nigerian descent, had threatened and stabbed a police officer with a pocket knife during an altercation at an employment office in Frankfurt-am-Main. She was portrayed as a person who posed a credible threat. According to the portrayal, the police officers were understandably afraid of this woman, who had become irate when she did not receive her requested social benefit payment. This story was an easy sell, an uncontroversial story of the risk run by police officers.

However, on the day that Schwundeck died, activists in the German state of Saxony Anhalt, had gathered in the Regional Court of Magdeburg, to witness the appellate court proceedings concerning the custodial death of another Black resident. His name was Oury Jalloh and he had ostensibly been found dead by police, burnt to death in a holding cell. Activists and family members of the deceased continue today, a decade later, to refute the claim by police that Jalloh committed suicide. They argue, instead, that police officers were somehow involved in Jalloh's death. They contend that it would have been nearly impossible for Jalloh to have created such a blaze on his own, without the help of flammable liquids and affixed, as he was, to a flame-retardant mattress at his wrists and ankles.

I was in the court in Magdeburg on the day the news broke, and word spread very quickly among those assembled in the courtroom. Those seated near me on the mezzanine also reflected on the death of Dominique Koumadio, who was fatally shot in 2006 in Dortmund when he did not drop the knife he was said to have been holding. I thought of N'deye Mareame Sarr, fatally shot in her own home in 2001 in Aschaffenburg when she was purported to have threatened police with a breadknife. On that day, Schwundeck's story became part of Jalloh's story and vice-versa. The connections between the two incidents, and the seeming immunity of police officers from blame were immediate. The activists involved in campaigning around both cases recognised that policing attitudes and practices would need to be examined along the lines of race. There would be momentum, and the coincidence of the two cases gaining national news coverage at the same time would be a pivotal aspect of this momentum.

In addition, Schwundeck's case raises slightly different issues than does the Jalloh case. After Schwundeck was killed, it became public knowledge that she had been struggling with depression.<sup>18</sup> This began discussions among activists and others regarding the treatment of those with conditions that might make them seem more volatile, but whose behaviour may be out of their control. One might argue that her condition, while perhaps not explicitly communicated to the officers, should have been apparent to them, given her reaction to the employment office employees and, later, to the officers.<sup>19</sup> But, given the interview comments by the officer who fired the fatal shot, Schwundeck's demeanour was read as extremely aggressive, the threat thought to be so serious that she was shot in the stomach. Ultimately, questioning whether or not Schwundeck's potentially volatile state was read as a mental condition is nearly the same as asking whether the danger she posed was unique to her on the basis of her social position,

including her race, gender and migrant background. The officer states that she had a 'crazy look', she was 'aggressive and full of hate and rage'. The extreme type of threat that was imputed to Schwundeck is colourful and evocative, and reveals a familiar mix of fantasies of the Black female subject. She is seen as crazed, out of control in her aggression and hatred towards the officer. Hate is a strong term for an officer to use, it refers to a deep and complicated emotion and most likely reveals more about the officer's fears than the mental state of the civilian. The lingering question for those involved in analysing patterns of police violence is whether and, if so, how Schwundeck's appearance, in respect of her gender and race along with the supposed cultural differences that her apparent foreignness invokes, contributed to the perception of maniacal rage that she was said to have exuded. To what extent can Schwundeck be understood as a canvas onto which the racially steeped fears and anxieties of German society are projected?

In 2006, a young Black man of Congolese descent named Dominique Koumadio was reported to have brandished a knife when officers confronted him on a street in Dortmund. They killed him with a shot to the leg and a shot through the heart.<sup>20</sup> There were reports from those who knew him that he was not doing well psychologically.<sup>21</sup> However, as with Schwundeck, the rage imputed to him was extreme. Two police officers confronted Koumadio and, rather than attempt to disarm or incapacitate him, they shot him at close range. The failure of the officers to act with more restraint prompted demonstrations and calls to end police brutality in Germany.<sup>22</sup> His case has been memorialised as part of a pattern of police violence against people of colour.<sup>23</sup>

In Dortmund in 2012, Ousman Sey was at home with his brother when he began to feel unwell. He called an ambulance and the emergency workers ran heart monitoring tests and told him that he should just lie down and relax, and that they would not be taking him to the hospital. After another hour, Sey began to have a fit, making loud noises and breaking a window. Someone in a neighbouring flat must have phoned the police, who then arrived. A neighbour, who was a trained nurse, suggested to the police that they should take Sey to the hospital. The officers, instead, put him in handcuffs and took him to the police station, where he stopped breathing and died.<sup>24</sup>

In 2013, a young Turkish man named Emrah Kara, known in his community of Holzminden to have been suffering from schizophrenia, had an episode in his own home, during which his mother and sister became afraid. They phoned the police, who sent a special unit, which, in turn, deployed around fifteen officers and a police dog. The special unit confronted Kara in his bedroom and, after they unleashed the dog on him, he killed it.<sup>25</sup> The police then shot him in his bedroom. These techniques used by police in these cases were not designed to subdue, but rather to seriously, perhaps fatally, injure. In these cases, if reasoning with the victims seemed challenging, officers should have questioned why this was so. In Emrah Kara's case, at least, it should have been known that he was suffering from schizophrenia, as his family members were present to answer basic questions related to his condition. Presumably, had the police known that Kara was acting irrationally because of mental health conditions, they would have taken extra care not to fatally injure him.

Of course, this is wishful thinking, and it is naive to ask that police officers generally assume that potentially dangerous assailants might be suffering from mental conditions.

However, that is likely to be the situation in a significant number of cases. This is also not surprising, given that those struggling with psychological problems may not be in a position to conduct themselves in ways that make police officers feel comfortable or safe. Surely, though, this does not mean that those who are not in control of their actions should pay with their lives before every other feasible response can be implemented.

Mental illness, race and gender share some important connections in the ways in which they are construed as threat categories. Being a person of colour, for starters, and a woman of colour in particular, is coded as inherently angry and aggressive. These identities are more easily and consistently read as criminal, relative to their white counterparts.<sup>26</sup> This may sound like a return to biological racism, and in a way, it is. A black woman having an outburst is likely to be understood differently in German society to a white woman having a similar outburst. Perhaps existing mental health conditions are misread as the inherent madness of women of colour. This is not surprising, if one takes racism seriously as a social phenomenon, including prejudices associated with people's behaviour and personalities. Considering this, it is important to understand the potential role of race, as a gendered characteristic, in the police response to Christy Schwundek. The rage and wildness imputed are interpreted in light of her cultural difference (her Nigerian origins are referred to consistently in news articles on her death, some simply referring to her as 'the Nigerian' rather than as Nigerian-German or German).<sup>27</sup> This also leaves little room for the relevance of an actual mental illness, something outside of her control for reasons unrelated to the white fantasy of black rage.

In many of these cases, the police have responded with disproportionate force, informed by the fear that they claim to have felt in the respective situations. It is my contention that this fear was influenced by multiple vectors of identity that exacerbated the officers' perceptions of danger.

### **The law's violence**

After a person in Germany dies in police custody, the prosecutorial services launch a fact-finding investigation, the outcome of which provides the basis of their decision whether to prosecute or not the officers involved. Only very rarely does such a preliminary investigation lead to an actual prosecution of the police. In such a case, the prosecution would have to find that the officers had acted unreasonably in their assessment of what constituted a proportional response.

One problem in this assessment is that fear is a subjective response. It is difficult to refute that someone is afraid, and it is particularly difficult to suggest otherwise, since one hears only the officer's depiction of the circumstances, and the deceased party obviously cannot testify. How is the prosecution to assess the fear of the officer and the credibility of the alleged threat? The prosecution in Germany, like in most of Europe and in many countries around the world, sits in a strange position between the courts and the relevant law enforcement agency. Prosecutors work with police to enforce criminal law, so it is awkward to have prosecutors interrogate the police on their judgement regarding the use of force – a primary method of law enforcement. In practice, it seems that the prosecution, in most of these cases, has, after initial



investigations, not found it necessary actually to go forward with prosecuting the officers who delivered the fatal shots. The failure to prosecute, then, legitimises the police's assessments of the proportionality of their actions, based mainly on their own account of events.<sup>28</sup>

The posture of the prosecution is generally mirrored by the courts. It would be premature to state emphatically that the funnelling phenomenon of investigations to fully-fledged prosecutions is continued in the route from prosecutions to convictions – because there is just not enough empirical data to make those sorts of claims. However, it is clear that there are systemic issues that prevent clear and independent assessments of the circumstances in which deaths in custody occur. In a sense, the courts in Germany, as in other European jurisdictions, are independent; however, it must be seen that their functions are mediated by the political interest in upholding the ability of the police to operate in a certain way. This is not a controversial point, as evidenced by the existence of proportionality analysis at the stage of the prosecutorial investigation – of course, civilians are not typically armed with guns and, if they do use guns to fatally shoot other civilians, they are not given the benefit of proportionality analysis prior to litigation. In my view, the potential bias shown in the officers' assessments of fear and appropriate response operate as a sort of hidden cultural defence<sup>29</sup> – they are given a wider berth than usual in justifying a disproportionate response, based partly on the articulation of their own fear with respect to certain characteristics and actions of the deceased individual. While these fears are not articulated in terms of identity status, understanding the relationship between identity, criminal stereotyping and fear obviates the question of how identity informs the assumption that a threat was credible and, thus, a fear of immediate bodily harm was real.

The, the prosecution and the court system in Germany do not tend to critically examine the decisions of their police officers to shoot those who pose a perceived threat. It is crucial that, while the analysis here is qualitative and case-study based, I suggest that statistical analysis, which currently does not exist, would draw similar conclusions. Such analysis would need to be disaggregated by race, gender, migration status and mental health indicators, among other factors.

### **The governance of policing and race**

Racial discrimination is not addressed much in German law at all, which is surprising given the extensive legal regulation of various other aspects of public life. This is partly due to the idea that race is not an important category, and that a great deal of legislation around it may reify some notion of its scientific existence.<sup>30</sup> However, the lack of legislation allows aspects of racism to flourish and, as discussed, the dearth of empirical evidence of institutional or structural racism makes it equally difficult to identify what should be remedied in the first place.

Politically, a harm-reduction approach has not been successfully deployed for curtailing the fatality of police responses to perceived threats. Police typically argue that, when they fire upon civilians, they are using self-defence as a last resort and that they faced imminent bodily harm. This was effectively the argument in the Sarr, Koumadio, Jalloh, and Kara cases. Rubber bullets and tazers were not used in these cases, and police did

not effectively shoot the deceased in limbs or non-vital organs, as they are trained to do during close combat.<sup>31</sup> Empirical data is vital for enabling us to better understand whether instances of fatality in police violence are more prevalent among people of colour, women of colour in particular, mentally ill individuals and migrants. However, from the mobilisation of people of colour all over Germany concerned with resisting police violence, it seems apparent that a pattern of particular forms of violence against people of colour does indeed exist.

At the European and international levels, policing is not an area that is closely regulated in legislative or judicial terms. No legislation at the European level expressly outlaws racial profiling in policing, though European initiatives<sup>32</sup> and a UN Human Rights Committee Ruling has declared racial profiling impermissibly discriminatory.<sup>33</sup> A European Convention on Human Rights case identified the potential role of race in police brutality,<sup>34</sup> but cases must be particularly egregious to make it to Strasbourg, and still most egregious cases do not. Importantly, however, the Nachova case in Bulgaria *did* hold that the investigations into the deaths of two individuals in the aggrieved party may have been thwarted for racially-motivated reasons, even as they ruled that the deaths themselves were not racially motivated. This gives a glimmer of hope for the recognition of structural or institutional racism at the level of European Court of Human Rights jurisprudence.

The broader issue in Germany is dealing with the structural and institutional racism that shapes the everyday lives of those policed. European and United Nations institutions are not able to weigh in on more general issues of police brutality in Germany, as implied by racial and other forms of bias, without more data on patterns of racism.<sup>35</sup>

### **Beyond policing: institutional and structural racism in contemporary Germany**

Looking at deaths in custody provides us with an area of case studies that can, hopefully, reveal some of the systemic issues inherent in the way in which Germany has engaged with the concept of racial difference, including the ways it has intersected with gender, migration status and mental health. Disproportionate violence on the part of law enforcement is certainly not a problem limited to the German context, as one notes from international headlines relating to those like Mark Duggan, Sean Rigg, Mike Brown and Aiyana Stanley-Jones, killed by police in the UK and the US, respectively. However, it is important to understand policing as it exists within the power constellation of each society. In the UK and the US, unlike in Germany, there are statistics collected on policing practices, including stops and deaths in custody, disaggregated by race and gender, which allows us to identify the disparate impact of police violence on those groups. There are also a number of measures in the UK that allow for deeper investigations into deaths in custody, such as Article 2 Inquests and the Independent Police Complaints Commission.<sup>36</sup> Further disaggregation, according to other identity categories, would likely prove useful for tracking the patterns of the disparate impact of policing on certain groups. This is an important step towards articulating what is happening in a given society and unpacking the various forms of institutionally supported bias that affect people's everyday lives.

Policing can serve as a lens through which to view other forms of social exclusion. One can examine the particular issues surrounding police fears and police violence as an entry point for reflecting on other institutions and political and social configurations similarly informed by the identity categories I am discussing. In light of this, a study on the fears of policing, perhaps a qualitative ethnographic analysis of the ways in which police understand aggression and threatening behaviour in racialised, gendered, psychological and cultural terms, could provide the foundation for making fundamental changes to the ways in which police are trained.

The work of identifying patterns of discrimination in Germany in general, and within the context of policing more specifically, has been led by community organisations such as KOP and the *Initiative Schwarzer Deutsche und Schwarzer Menschen in Deutschland* (ISD) and other anti-racist organisations informed or led by people of colour. These groups have the expertise and experiential knowledge to understand the ways in which systematic exclusion works, and this expertise must be taken seriously and supported if institutional discrimination in policing is to be comprehensively addressed in Germany.

## References

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<sup>1</sup> Philomena Essed, *Understanding everyday racism: an interdisciplinary theory* (Newbury Park, CA, Sage, 1991), p. 3.

<sup>2</sup> The term ‘people of colour’ has been used in Germany, primarily by scholars and activists, to describe individuals not racially categorised as white.

<sup>3</sup> ‘German and foreigner.’ The word *Ausländer* is used to describe people who are foreign nationals, but it is also colloquially used to regard those who do not ‘look’ German, or those who have a so-called ‘migration background’ (*Migrationshintergrund*).

<sup>4</sup> ‘Chronik rassistisch motivierter Polizeivorfälle für Berlin in den Jahren von 2000 bis 2014’, (‘Chronic racially motivated police encounters for Berlin in the years from 2000 to 2014’), available online at KOP’s website: <https://www.kop-berlin.de/files/documents/chronik.pdf>.

<sup>5</sup> It would also be useful to collect and disaggregate statistics along various other indicators as well, including religion, nationality, sexuality, gender identity and social class.

<sup>6</sup> Intersectionality is an approach, coined by Kimberlé Crenshaw, to describe the position of Black women who have been made to occupy the social and legal terrain of being left out of the Black (male) position and the (white) woman position with regard to remedies against exclusion. See Kimberlé Crenshaw, ‘Mapping the Margins: intersectionality, identity politics and violence against women of color’, *Stanford Law Review* (Vol. 43, no. 6, 1991), pp. 1241-99.

<sup>7</sup> For a critical analysis of relatively recent efforts to remove the term *Rasse* from the German Constitution, please see Cengiz Barskanmaz, ‘Rasse - Unwort des Antidiskriminierungsrechts?’ *Kritische Justiz* (2011), pp. 382-89.

<sup>8</sup> *Allgemeines Gleichbehandlungsgesetz* [AGG] (German General Equal Treatment Law), Art. 3(3).

<sup>9</sup> In other contexts, indirect discrimination is defined as the disadvantaging of a protected group as a result of the application of a racially neutral provision or policy. For an example from British Law, see EA 2012. For a European example, see Framework Directive, Art 2(2)(b), which defines indirect discrimination as occurring ‘where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons’.

<sup>10</sup> See *Der Spiegel* (4 February 2013), available online at: <http://www.spiegel.de/unispiegel/wunderbar/studenten-klagen-gegen-diskriminierung-an-der-disco-tuer-a-878459.html>. See also HNA.de (18 August 2013), available online at: <http://www.hna.de/nachrichten/niedersachsen/dauerstreit-disco-tuer-werden-migranten-diskriminiert-3063226.html>.

<sup>11</sup> *Oberverwaltungsgericht (OVG) Rheinland-Pfalz, Beschluss v. 29.10.2012 - 7 A 10532/ 12.OVG*. See also *Grundgesetz* [GG] (German Basic Law) (23 May 1949 [BGBl. S. 1]). Art 3(3).

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<sup>12</sup> Press release of Bundesanwaltschaft, 'Bundesanwaltschaft erhebt Anklage im "NSU"-Verfahren' (8 November 2012), available online at: <http://www.generalbundesanwalt.de/de/showpress.php?newsid=460>.

<sup>13</sup> See *Deutsche Welle*, 'NSU murders trigger debate about structural racism' (2 June 2013), available online at <http://www.dw.de/nsu-murders-trigger-debate-about-structural-racism/a-16854462>. See also Eddie Bruce-Jones, 'Germany: time to deal with institutional racism', *European Network Against Racism Webzine*, available at <http://www.enargywebzine.eu/spip.php?article310>.

<sup>14</sup> See *Zeit Online* (21 February 1986), available online at: <http://www.zeit.de/1986/09/mehr-als-eine-dusche>. Germany recently sold three refurbished water cannon to London for police use in controlling demonstrations. See *Deutsche Wirtschafts Nachrichten* (11 July 2014), available online at: <http://deutsche-wirtschafts-nachrichten.de/2014/07/11/london-fuerchtet-soziale-unruhen-und-kauft-schwere-wasser-kanonen/>.

<sup>15</sup> Eddie Bruce-Jones, 'Germany's Stephen Lawrence', *Race & Class* (Vol. 54, no. 2, 2012), pp. 82–87.

<sup>16</sup> *Ibid.*, p. 86. See also Eddie Bruce-Jones, 'Germany: time to deal with institutional racism', *op. cit.*

<sup>17</sup> Quote from the officer who fired at and killed Christy Schwundek, as reported in the German magazine *Der Spiegel*: 'Tod im Jobcenter: Bevor ich etwas sagen konnte, hat sie geschossen', by Julia Jüttner, (22 March 2012), available online at <http://www.spiegel.de/panorama/justiz/verfahren-gegen-polizistin-eingestellt-die-frau-in-jobcenter-erschoss-a-823155.html>. The original text states: 'Ich muss sagen, dass sie in diesem Moment einen total irren Blick hatte, voller Aggression, Hass und Wut, ein für mich beängstigender Ausdruck ... Beim Aufrufen der dritten Warnung machte Frau Schwundek eine Körperbewegung und dazu einen kleinen Schritt nach vorne auf mich zu. In diesem Moment habe ich dann den Schuss abgegeben.'

<sup>18</sup> Dialika Neufeld, 'Geld oder Leben' (Money or Life), *Der Spiegel*, February 2011, pp. 44–46. Of course, it is worth noting that the main defence of the police is that Jalloh burned himself alive, which also relies on understanding Jalloh as capable of suicide due to depression, frustration or other disturbance; however, because he did not seem to have a history of mental illness, this did not become an issue in the case. His personality has been, however, construed as volatile and aggressive by the defence lawyers.

<sup>19</sup> Conversely, however, there was a discussion about the police insisting on touching her bag, which seemed an invasion of space and caused a relatively foreseeable reaction by Schwundek.

<sup>20</sup> See 'Ich will nur eins – Gerechtigkeit' (16 April 2007), available online at <http://no-racism.net/article/2051/>.

<sup>21</sup> *Ibid.*

<sup>22</sup> See Initiative Against Racism and Fascism, 'No Justice for Dominique', *indymedia* (15 April 2008), available online at: <http://de.indymedia.org/2008/04/213551.shtml>.

<sup>23</sup> See Flüchtlingsinitiative Berlin-Brandenburg, 'Kundgebung in Gedenken an Dominique Koumadio' (13 April 2009), available online at: <http://fibb.wordpress.com/2009/04/13/kundgebung-in-gedenken-an-dominique-koumadio/>.

<sup>24</sup> See Gaby Kolle, 'Tod im Polizeigewahrsam: Woran starb der Afrikaner Ousman Sey?' (Death in police holding cell: from what did African Ousman Sey die?), *RuhrNachrichten.de* (9 July 2012), available online at: <http://www.ruhrnachrichten.de/staedte/dortmund/Woran-starb-der-Afrikaner-Ousman-Sey:art930,1699848>.

<sup>25</sup> To make matters worse, the mainstream media sources highlighted the killing of the dog and failed to mention Emrah's mental condition. See Eddie Bruce-Jones, 'The production of an attacker: Emrah Kara and the shooting of the mentally ill', *IRR News* (30 January 2014).

<sup>26</sup> This very general statement can be supported by any number of indicators, including policies of racial profiling on the basis of immigration or narcotics offences.

<sup>27</sup> See Julia Jüttner, 'Tod im jobcenter', *op. cit.* This news piece, while sympathetic to Schwundek, introduces her as a Nigerian woman from Benin, rather than a German citizen of Nigerian origin. The piece later refers to her as 'the Nigerian', firmly establishing her foreignness, even if it is to evoke the readers' sympathy.

<sup>28</sup> Witness testimony is also considered, though such testimony is weighted in light of the testimony of the officers.

<sup>29</sup> By 'cultural defence' I am referring to a legal phenomenon by which defendants of crimes are given reduced punishments premised on their culturally specific understandings of the appropriateness or morality of their actions. My suggestion here is that racism, for example, can be understood as a cultural phenomenon.

<sup>30</sup> This is an idea shared by French Republican thinking on the subject of race.

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<sup>31</sup> See, for example, ‘Wie dürfen sich Polizisten im Einsatz wehren?’, *Bild* (6 June 2014), available online at: <http://www.bild.de/news/inland/polizei/wie-duerfen-sich-polizisten-im-einsatz-wehren-36285776.bild.html>.

<sup>32</sup> See, for example, Council of Europe, Commission against Racism and Intolerance, ECRI General Policy Recommendation No. 11, on Combating Racism and Racial Discrimination in Policing (29 June 2007), COE Doc. CRI(2007)39. This recommendation calls for Council of Europe member states to legislatively outlaw racial profiling, to study the phenomenon and to train the police.

<sup>33</sup> See ICCPR Human Rights Committee Communication No. 1493/2006, *Williams v. Spain* (2009). This ruling is non-binding.

<sup>34</sup> *Nachova and Others v. Bulgaria* [ECHR] 2005. The case was brought against the Bulgarian police by the relatives of two men who were shot in the back by police officers, who alleged that the role of racial discrimination in the shootings had not been investigated. The European Court of Human Rights ruled that there was a failure to investigate the role of racism based on the victims’ ‘minority’ Roma status. Witnesses stated that the police made racist remarks to the men before they were killed. The court found that there had been a violation of the ECHR equality provision obligations, with respect to the Article 2 Right To Life. The applicable language of the judgment follows: ‘The Court thus finds that the authorities failed in their duty under Article 14 of the Convention taken in conjunction with Article 2 to take all possible steps to investigate whether or not discrimination may have played a role in the events. It follows that there has been a violation of Article 14 of the Convention taken in conjunction with Article 2 in its procedural aspect.’ The case also cites Article 4 of the International Convention on the Elimination of all forms of Racial Discrimination for international law guidance on states’ responsibility to prevent racially motivated violence: ‘The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.’

<sup>35</sup> The collection of such data would broadly be justified under the ECRI General Policy Recommendation No. 11, Section 1(2). See note 32.

<sup>36</sup> Article 2 Inquests are investigative processes administered by the coroner’s office for the purpose of determining the cause of a person’s death. The process is mandatory in cases where the person is in the custody of the state, and it precedes any legal trial concerning the culpability of the state in the death. See Leslie Thomas, Adam Straw and Danny Friedman, *Inquests: a practitioner’s guide*, Legal Action Group (2008). This process has been heavily criticised in the UK, as the verdicts on the role of the state in an individual’s cause of death do not determine the outcome of a subsequent legal trial and, indeed, there have been very few cases in which police have been held criminally liable for the death of a civilian following such an inquest. The Independent Police Complaints Commission is a body that hears complaints regarding police behaviour, including, for example, instances of disproportionate use of force and cases of mishandling of investigations. This institution has similarly been criticised for lack of effectiveness. Nonetheless, these structures enable a more reasoned public debate than would otherwise be possible.