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Breonna Taylor: Transforming a Hashtag into Defunding the Police

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BREONNA TAYLOR: TRANSFORMING A HASHTAG INTO DEFUNDING THE POLICE

Jordan Martin*

How can modern policing be reformed to address police violence against Black women when it can occur at no fault of their own and end with a shower of bullets in the middle of the night while within the sanctity of their own home? What is accomplished when her name is said but justice is never achieved? What good does it do when her story is subsequently overshadowed or overlooked by the reform movements that intend to correct racism and sexism respectively? This Comment analyzes both Black women's vulnerability to police violence and their invisibility in reform movements. First, police violence against Black women is a common result of systemic racialized, gendered biases, misinformed by monolithic stereotypes and justified through the absence of institutional discipline and general social disapproval. The predominant underlying rationale often being that Black women are worthless, false victims who either perpetrated the violence or are somehow deserving of it. Second, while Black women are subject to both racism and sexism, their experiences are not given the same or similar platform in comparison to Black men in the antiracist movement or white women in the antisexist movement. Rather, Black women's needs are perceived as subordinate and inconsequential.

Breonna Taylor's killing is a beacon that illuminates the dangers posed to Black women, both in their own homes, where they should be safe, and in their own movements, where they should be heard. Her story is a signal that places a needed emphasis on overcoming the destruction in silence and empowerment in reclaiming the narrative. In determining an alternative solution to this historical, societal quandary, this Comment cautions that mere localized reform and implemented officer trainings are insufficient to

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overhaul an institutionalized system of racialized, gendered violence. This Comment builds upon intersectionality theory in its aim to conceptualize what defunding the police should look like in order to adequately address the unique needs of Black women. That is, that the “defund” movement must prioritize and center Black women. To be successful in this endeavor, Black women must receive adequate funding for community-based service organizations, recognized leadership positions of power beyond mere representation, and have the advantage of culturally competent mental and emotional support.

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To Breonna Taylor, and all other Black women unnamed and unheard,
your life mattered.

INTRODUCTION

Breonna Taylor was killed in her own home in the middle of the night, yet no charges were filed for her death.¹ In order to convey the depth of egregiousness that occurred that night, a summary is warranted.

Without announcing their entry, officers Jonathan Mattingly, Brett Hankison, and Myles Cosgrove used a battering ram to enter Taylor’s apartment shortly after midnight.² Taylor’s boyfriend fired a single shot in

¹ Richard A. Oppel Jr., Derrick Bryson Taylor & Nicholas Bogel-Burroughs, *What We Know About Breonna Taylor’s Case and Death*, N.Y. TIMES (Apr. 26, 2021), <https://www.nytimes.com/article/breonna-taylor-police.html> [<https://perma.cc/8AMG-LJS9>].

² *Id.* (reporting that the police department initially received court approval for a “no-knock” warrant allowing the police to forcibly enter without announcing and that the orders were changed before the raid to a “knock and announce,” and then also acknowledging that

response to the unexpected intrusion,³ to which the officers then proceeded to fire thirty-two shots into the apartment, six of which hit Taylor.⁴ The police account is widely disputed because there was no body camera footage despite department policy.⁵ Further, the incident report contained multiple errors, such as listing Taylor's injuries as "none" and indicating that no force was used to enter the apartment.⁶ Months later, officer Hankinson was the only officer to be terminated, charged, and indicted;⁷ however, it cannot be overlooked that this was only due to his wanton endangerment of Taylor's neighbors,⁸ not Taylor's death.⁹ Justice for Breonna Taylor has still not been realized, nor has there been any modicum of accountability among the individual officers who killed her or the police department that allowed for her death.¹⁰

although the officers involved claim otherwise, several neighbors and Taylor's boyfriend denied that the officers identified themselves).

³ *Id.* Taylor's boyfriend, who is licensed to carry, later called 911 to report that "somebody kicked in the door and shot my girlfriend." *Id.* (emphasis added).

⁴ *2 Officers Shot in Louisville Protests Over Breonna Taylor Charging Decision*, N.Y. TIMES (Sept. 30, 2020), <https://nyti.ms/32WFecr> [<https://perma.cc/9JKV-TP4M>].

⁵ *See* Oppel Jr., Taylor & Bogel-Burroughs, *supra* note 1.

⁶ *Id.*

⁷ *Id.* (noting the termination letter stated that firing ten rounds without a line of sight was "a shock to the conscience" which showed "an extreme indifference to the value of human life" that violated the department policy on use of deadly force).

⁸ Arian Campo-Flores, *Two Louisville Officers Are Shot After Grand Jury Decision in Breonna Taylor Case Sparks Protests*, WALL ST. J. (Sept. 24, 2020, 6:29 AM), <https://www.wsj.com/articles/breonna-taylor-decision-expected-wednesday-11600880814> [<https://perma.cc/J8VE-WFH9>] (noting that Hankinson was indicted only for bullets fired recklessly into a neighboring apartment and not for any bullets fired into Taylor's apartment); KY. REV. STAT. ANN. § 508.060 (West 1974) (defining wanton endangerment as conduct that creates a substantial danger of death or serious injury, while showing indifference to human life).

⁹ Campo-Flores, *supra* note 8; *see also* Alisha Haridasani Gupta, *Since 2015: 48 Black Women Killed by the Police. And Only 2 Charges.*, N.Y. TIMES (Sept. 24, 2020), <https://www.nytimes.com/2020/09/24/us/breonna-taylor-grand-jury-black-women.html> [<https://perma.cc/QAU5-24DM>] (underscoring that the decision not to charge the officers who killed Taylor was unsurprising and "more of the same," especially in light of the fact that few officers who kill are charged, and even fewer are convicted).

¹⁰ *See, e.g.*, Oppel Jr., Taylor & Bogel-Burroughs, *supra* note 1 (quoting Sergeant Mattingly as fervently denying any wrongdoing with statements such as "I know we did the legal, moral and ethical thing" and "good guys are demonized, and criminals are canonized"). To which, I would note that Taylor was not found to be involved in any criminal activity that night, or otherwise. *Id.*; *see also* Alanna Vagianos, *One of the Cops Involved in Breonna Taylor's Death Just Got a Book Deal*, HUFF POST (Apr. 15, 2021, 3:28 PM), https://www.huffpost.com/entry/breonna-taylor-cops-book-deal_n_60788760e4b0e554e81d262b [<https://perma.cc/87UW-ZUZW>] (reporting that not only did Mattingly get a book deal off the tragedy, but also sued Taylor's boyfriend for "severe trauma, mental anguish and emotional distress").

In addition to a twelve-million-dollar settlement for wrongful death, the City of Louisville agreed to institute police reforms to ensure more transparency and accountability as well as demonstrate an attempt to prevent future deaths by officers.¹¹ The predominant issue, however, is that although these reforms have potential to change local policing practices, they are limited geographically and lack an enforcement mechanism to address the systemic nature of the problem. Moreover, Taylor's death is just one example of why modern policing policies and practices, in addition to the collective police narrative, must transform to address the needs of Black women. Like too many other tragic killings of Black women by police officers that are quickly forgotten, Taylor's death is indicative of who the nation considers expendable. Further, Taylor is unique in her own right as her name was spoken and highlighted in the aftermath of George Floyd's death,¹² unlike many other Black women. Yet that still was not enough to receive justice. While the broader social, political, and economic circumstances involved are beyond the scope of this Comment, Taylor's case can be analyzed and expanded to larger issues like racialized, gendered violence and the culture implicated in defunding the police. Her case is especially provoking in that it should force a reevaluation of American history and a reimagining of policing—including who gets to lead the discussions about reforming the police and how to avoid the costs of prohibiting Black women from

But see Rachel Treisman, *Simon & Schuster Reverses, Won't Distribute Book by Officer in Breonna Taylor Raid*, NPR (Apr. 16, 2021, 11:21 AM), <https://www.npr.org/2021/04/16/988024774/simon-schuster-reverses-wont-distribute-book-by-officer-in-breonna-taylor-raid> [<https://perma.cc/F5EE-UDLM>] (reporting that Simon & Schuster changed course following mass criticism that viewed the deal as “an attempt to seek fame and profit off of Taylor's name,” but that Post Hill Press will continue with publishing).

¹¹ Rukmini Callimachi, *Breonna Taylor's Family to Receive \$12 Million Settlement From City of Louisville*, N.Y. TIMES (Sep. 15, 2020), <https://www.nytimes.com/2020/09/15/us/breonna-taylor-settlement-louisville.html> [<https://perma.cc/5V6S-7KNG>] (stating that some changes include more oversight into the search warrant approval process, mandating common practice safeguards that weren't followed the night of Taylor's death, and instituting an early warning system for officers who had been accused of excessive force); Oppel Jr., Taylor & Bogel-Burroughs, *supra* note 1 (reporting that city officials banned the use of no-knock warrants with Breonna's Law as well as announced other changes, including but not limited to a requirement that body cameras always be worn during search warrants and an establishment of a civilian review board for police disciplinary matters).

¹² Evan Hill, Aınara Tiefenthaler, Christiaan Triebert, Drew Jordan, Haley Willis & Robin Stein, *How George Floyd Was Killed in Police Custody*, N.Y. TIMES (May 31, 2020), <https://www.nytimes.com/2020/05/31/us/george-floyd-investigation.html> [<https://perma.cc/CWJ7-KK88>] (investigating the arrest and subsequent death of Floyd seventeen minutes after being pinned to the ground by three police officers, one of which kept his knee on Floyd's neck for at least eight minutes).

participating in that reformation. Reclaiming Taylor's story can become a symbol of change to reshape the collective narrative surrounding Black women's lives and experiences.¹³

This Comment implements intersectional feminism¹⁴ in the Taylor case context to discuss how racial and gender prejudice have coalesced into a new construction of discrimination against Black women in both the modern criminal system and reform movements. Part I of this Comment explores Black women's vulnerability to racialized, gendered police violence as well as the invisibility of Black women's experiences and leadership in reform movements. It then discusses how centering Black women in the police narrative can counteract these unique and complex forms of discrimination. Part II provides insight into how the "defund" movement should be understood conceptually and what that means specifically for Black women.¹⁵ Finally, Part III of this Comment analyzes the centering of Black women in the "defund" movement through an intersectional lens. It argues that both Black women leadership and culturally competent mental health services are necessary to successfully enable and support Black women. It

¹³ Donna M. Owens, *Power of Saying Their Names - Families Left Behind Find Comfort in the Movement*, USA TODAY, Mar. 12, 2021, at 3D (noting that while Sandra Bland is an exception, Taylor's death "bring[s] new life to the stories of other Black women who have died at the hands of police or in police custody, those whose names and identities have largely gone unknown and unacknowledged").

¹⁴ See generally Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL. F. 139 (1989) [hereinafter Crenshaw, *Demarginalizing the Intersection of Race and Sex*] (conceptualizing the unique complexities of Black women's experiences at the intersection of race, gender, class, and sexuality); Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1242 (1991) [hereinafter Crenshaw, *Mapping the Margins*] (differentiating the identity politics that provide a "source of strength, community, and intellectual development" for those generally marginalized from the multidimensional intersectional approach that embraces intragroup differences, specifically where Black women are marginalized within racism and sexism jointly and simultaneously).

¹⁵ See Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CAL. L. REV. 1781, 1781 (interpreting the "defund" movement as an alternative framework for reform, specifically one which "confront[s] head-on the violence, scale, and power of the police, and therefore aim[s] to redress police violence by diminishing the scale, scope, and legitimacy of police function"); see also Paige Fernandez, *Defunding the Police Will Actually Make Us Safer*, ACLU (June 11, 2020), <https://www.aclu.org/news/criminal-law-reform/defunding-the-e-police-will-actually-make-us-safer/> [<https://perma.cc/BPT7-TYR9>] (stating the basic premise of the defund police movement is cutting the upwards of \$100 billion dollar budget spent on law enforcement and reinvesting it in community-run violence prevention programs and services).

further explains how community-based service organizations can be tailored to the complex needs of Black women.

It should be noted that this Comment focuses on Black women for Black women. It is NOT the intent of this Comment to diminish or displace the systemic inequities which presently plague the lives of Black men, white women, or men and women of color generally. Additionally, there is insufficient space in this Comment to address each nuance of the vast discriminatory legal, social, political, and economic contexts that color all aspects of Black women's experiences. While modest and imperfect, this Comment is offered in the hope that it may meaningfully move the discussion forward in this time of great introspection about racism and modern policing. Thus, this Comment functions to explore the unique and complex ways that the "defund" movement must transform in order to meet the needs of Black women.

I. BACKGROUND: CENTERING BLACK WOMEN IN THE POLICE NARRATIVE

The biggest failures of the criminal justice system thus far seem to be deeply connected to the lack of accountability or enforcement against police officers who kill.¹⁶ The slow progression of Taylor's case, especially in contrast to Floyd's death where officers were quickly fired from employment and criminally charged,¹⁷ is just one example highlighting the conspicuous nature of distinct, normalized violence against Black women in the criminal justice system. Additionally, after the murder of Floyd, global multiracial protests emerged with outrage and calls for police accountability, reform, and defunding of departments.¹⁸ However, the minimal calls for justice following

¹⁶ See Gupta, *supra*, note 9 (underscoring that forty-eight women have been killed by the police since 2015, but only two officers have been charged); see also Rashawn Ray, *How Can We Enhance Police Accountability in the United States?*, BROOKINGS (Aug. 25, 2020), <https://www.brookings.edu/policy2020/votervital/how-can-we-enhance-police-accountability-in-the-united-states/> [<https://perma.cc/E955-4YKR>] (noting that a Black person in America is killed about every forty hours by the police).

¹⁷ Hill, Tiefenthäler, Triebert, Jordan, Willis & Stein, *supra* note 12. *But see* Nathalie Baptiste, *The Power of the Myths Many White People Believe About Policing—and America*, MOTHER JONES (Apr. 23, 2021), <https://www.motherjones.com/crime-justice/2021/04/derek-chauvin-the-power-of-the-myths-white-people-believe-about-policing-and-america/> [<https://perma.cc/55G5-97RK>] (emphasizing that while Derek Chauvin's conviction was rare and important, it is not "justice" because the Minneapolis police department was not on trial and thus cannot "signal[] a new era of policing").

¹⁸ See Ciera Graham, Opinion, *Let's Acknowledge that Black Women's Lives Matter, Too*, HERALDNET (July 5, 2020, 1:30 AM), <https://www.heraldnet.com/opinion/graham-lets-acknowledge-that-black-womens-lives-matter-too/> [<https://perma.cc/QE78-QQS9>].

the murder of Taylor have not garnered the same response.¹⁹ Indeed, had it not been for the heightened visibility of police violence against Black lives in 2020, Taylor's death would have likely wordlessly dropped out of the discourse like so many others before her.²⁰

Because of the prioritization of Black men within the Black Lives Matter movement, Black women are again rendered invisible in the very reform movement originated to empower Black people. This disconnect fuels Black women's invisibility because they are not only silenced by police brutality, but also further sidelined within their own reform movements, regardless of subject matter. For example, it would seem that the lives of Black men, and similarly, white women within the Me Too movement, matter more than the lives of Black women. Black women who suffer at the hands of the police, however, pay with their lives. When the deaths of Black women are continually overshadowed by the deaths of Black men and white women, there can only be a tradeoff of either systemic racism or sexism, never both, even when both affect the lives of Black women. The Say Her Name campaign²¹ rightfully aims to call attention to and break the silence surrounding the unique injustices that Black women face as a consequence of police brutality.²² But the Taylor case exemplifies how only "saying her name" can no longer be sufficient, and why wider legal reforms, although elusive like defunding the police, are inevitable if there is to ever be real change. Failure to answer these systemic issues would be a mistake and will only hinder the advancement of Black women.

¹⁹ *Id.* (acknowledging that society can never understand the depth of Black women's unique experience because their "vulnerabilities, pain and trauma must be concealed at the expense of [their] own mental, emotional and physical health").

²⁰ See Arwa Mahdawi, *We Must Keep Fighting for Justice for Breonna Taylor. We Must Keep Saying Her Name; Black Women are Rarely Centered in Narratives About Police Violence and They are Rarely the Catalysts for Mass Outrage*, GUARDIAN (June 6, 2020, 2:00 PM), <https://www.theguardian.com/commentisfree/2020/jun/06/we-must-keep-fighting-justice-breonna-taylor-say-her-name> [<https://perma.cc/R9CK-E7QH>] (stating that because Black women are rarely centered in narratives about police violence and thus not the catalysts for mass public outrage, their deaths are often a mere afterthought).

²¹ KIMBERLÉ WILLIAMS CRENSHAW & ANDREA J. RITCHIE, *AFR. AM. POL'Y F.*, SAY HER NAME: RESISTING POLICE BRUTALITY AGAINST BLACK WOMEN 1, 4 (2014) (noting the Say Her Name campaign's intersectional, Black feminist perspective addresses anti-Black state violence by "offer[ing] a number of stories that reveal the ways gender, race, and sexuality can operate together to inform police abuse of Black women").

²² *Id.* (campaigning to "support a gender-inclusive approach to racial justice that centers all Black lives equally" because "[t]he failure to highlight and demand accountability for the countless Black women killed by police . . . leaves Black women unnamed and thus underprotected in the face of their continued vulnerability to racialized police violence").

In determining the most efficient and effective reforms to change the way we think about criminal law and criminology in particular, policy rationales and proposed legislation reforms must address the ongoing silence of Black women. Indeed, Black women are the most marginalized group in the modern system.²³ They are collectively ignored, largely overlooked, and ultimately left behind, even in the Black Lives Matter and Me Too movements originally intended to combat racism and sexism respectively.²⁴ When deliberating whether a series of reforms constitutes an actual commitment to fairness and a good faith effort to build trust and legitimacy with Black women, the guiding principle should reflect an outcome similar to distributive social justice theory²⁵ that prioritizes a distribution of resources and opportunities suitable to that of disinterested persons. Moving forward, the rationalizations and justifications for the victimization of Black women deserve fundamental changes. These changes range from enforcement and accountability following police violence on an individualized local level, to a nationwide reform of police policies and practices, and further to an inclusive prioritization of Black women's leadership in social justice reform movements that counteract police violence.

²³ Ashley L. Smith, *#BlackWomenMatter: Neo-Capital Punishment Ideology in the Wake of State Violence*, 85 J. NEGRO EDUC. 261, 261 (2016) (stating Black women and girls are the most vulnerable group to “physical, sexual, institutional and state violence”); see also Crenshaw, *Mapping the Margins*, *supra* note 14, at 1243–44 (addressing how the intersectional identity of women and Black leads to further marginalization within both the Me Too and Black Lives Matter movements because these discourses “are shaped to respond to one or the other” but not both).

²⁴ See, e.g., Alaa Elassar, *Black Women are Often Overlooked by Social Justice Movements, a New Study Finds*, CNN (July 18, 2020, 10:40 AM), <https://www.cnn.com/2020/07/18/us/black-women-overlooked-social-justice-movements-trnd/index.html> [<https://perma.cc/5JU5-2HRL>]; see also Princesssafiya Byers, *Some Black Women Activists Feeling Left Out of BLM Movement*, U.S. NEWS (Aug. 23, 2020, 1:01 AM), <https://www.usnews.com/news/best-states/wisconsin/articles/2020-08-23/some-black-women-activists-feeling-left-out-of-blm-movement> [<https://perma.cc/72JZ-ZTA6>]; Tarana Burke, *#MeToo Was Started for Black and Brown Women and Girls. They're Still Being Ignored*, WASH. POST (Nov. 9, 2017), <https://www.washingtonpost.com/news/post-nation/wp/2017/11/09/the-waitress-who-works-in-the-diner-needs-to-know-that-the-issue-of-sexual-harassment-is-about-her-too/> [<https://perma.cc/S78T-9U24>].

²⁵ See generally JOHN RAWLS, A THEORY OF JUSTICE (1971) (advocating for “justice as fairness,” specifically a system based on a distribution of resources and opportunities suitable to that of what a disinterested person would choose, rather than a system based on the social group a person is born into or chance).

A. VULNERABILITY OF BLACK WOMEN

Black women are consistently the most vulnerable social group due to their intersectional identities of gender, race, class, and sexuality. First, this Comment will address what types of racialized, gendered violence the police continually perpetrate against Black women. This requires noting an underlying basic premise—there is an underrepresentation of officer-related deaths of Black women due to underreporting out of fear of retaliation and lack of an official data collection or national registry, and thus an incomplete account of less reliable data generally.²⁶ The violence, however, tracks a pattern of systemic, state-sanctioned oppression when observing various injustices together, rather than unconnected occurrences of violence stemming from singular bad actors.²⁷ Moreover, police violence against Black women includes, but is not limited to, contexts of (1) racial profiling while driving, (2) policing of poverty, (3) the war on drugs, (4) policing of mental health crises, (5) death in custody, (6) collateral damage, (7) responses to domestic violence, (8) policing of gender and sexuality, (9) sexual assault targeting, (10) the school-to-prison pipeline, (11) responses to Black women who demand justice for family members, and (12) criminalization of Black mothers.²⁸

Next, it is constructive to recognize when Black women are subjected to injustices as a result of their vulnerability. Trauma inflicted against Black women's bodies typically starts when they are girls, and Black women continue to experience this trauma throughout their lives.²⁹ Further, the

²⁶ Gupta, *supra* note 9; CRENSHAW & RITCHIE, *supra* note 21, at 4 (stating that it is currently impossible to provide a comprehensive catalog of police violence against Black women as there is neither an accurate database on police killings of Black women nationwide or data collection on sexual or other forms of gender and sexuality based police violence, nor ample media coverage due to the focus on police violence against Black men); *see also* Crenshaw, *Mapping the Margins*, *supra* note 14, at 1257 (noting the general unwillingness of Black communities to be subject to public intervention, especially where it involves police control that is consistently hostile).

²⁷ CRENSHAW & RITCHIE, *supra* note 21, at 6 (providing an overview of how and why the Say Her Name campaign has invested both time and resources to bring awareness and advocate for a shift in perspective as it relates to the vulnerability of Black women).

²⁸ *Id.* at 7 (proceeding further into analysis that ranges from colonization, through slavery, Jim Crow, the Civil Rights era, the war on drugs, criminalization of poverty, and various other techniques); Dorothy E. Roberts, *Prison, Foster Care, and the Systemic Punishment of Black Mothers*, 59 UCLA L. REV. 1474, 1476 (2012) (analyzing how both prison and foster care work together as one of many forms of over-policing to punish Black mothers and preserve U.S. race, gender, and class inequality).

²⁹ *See, e.g.*, Nicquel Terry Ellis, *Black Girls Are Often Treated Like Adults During Police Encounters, Experts Say. Rochester Is Just One Example*, CNN (Feb. 12, 2021, 5:22 PM),

invisibility of Black women's experiences in police violence has been structurally replicated and thus well connected to discretionary school disciplinary policies and practices which result in higher rates of discipline for Black girls as compared to other school-aged populations and eventual removal of Black women from the educational sphere.³⁰ Forms of punishment, whether directly through police violence or indirectly through the school-to-prison pipeline, are informed by the fundamental stereotypes that suggest indocile Black women are particularly threatening and thus deserve more severe punishment as an oppressive method of control over their bodies.³¹ The culmination of these experiences of punishment, from the earliest stages of adolescence through adulthood, have the effect of altered psyches to the detriment of Black women, which will be further addressed in Section C. That said, these more traditional, institutionalized avenues of oppression do not operate alone, and can be further tracked as they filter down to more individual aspects of society; for example, even a choice as simple as a natural hairstyle can affect Black women's professional legitimacy as well as life expectancy when it comes to police encounters.³²

<https://www.cnn.com/2021/02/12/us/black-girls-dehumanized-rochester-police-incident/index.html> [<https://perma.cc/KXZ3-DNR4>] (underscoring the “adultification bias” that dehumanizes Black girls and perpetuates harsher treatment by the police and severe disciplinary action within the education setting); *see also* Ann Dornfeld, *Seattle School Security Guard Fired for Restraining Second-grader, as She Screamed ‘I Can’t Breathe,’* KUOW (Nov. 3, 2020, 11:58 AM), <https://www.kuow.org/stories/school-security-guard-in-seattle-fired-for-restraint-on-second-grader-as-she-screamed-i-can-t-breathe> [<https://perma.cc/U3DT-FKUP>] (reporting a security guard who violated protocol in using physical force against a seven-year-old by placing his knee on her body first against a wall and then again on the floor as she screamed “I can’t breathe.”); Tamar Sarai Davis, *Black Girls Face Police Brutality Like Boys—But Is Anyone Having ‘The Talk’ with Them?*, ALTERNET (Feb. 24, 2021), <https://www.alternet.org/2021/02/police-brutality/> [<https://perma.cc/NF7N-DW9A>] (noting body camera footage capturing police officers pepper-spraying a nine-year-old Black girl and yelling “[y]ou’re acting like a child,” to which she responded, “I am a child!”).

³⁰ Smith, *supra* note 23, at 263 (highlighting more specifically the objectification of Black girls' experiences through the prioritization of boys of color as well as expanding on research regarding zero tolerance policies, verbal and physical assaults, exclusionary school discipline practices, and the school-to-prison pipeline).

³¹ *Id.* at 269.

³² D. Wendy Greene, *A Multidimensional Analysis of What Not to Wear in the Workplace: Hijabs and Natural Hair*, 8 FIU L. REV. 333, 335–39 (2013); Cara Anthony, *Black Hair Matters: How Going Natural Made Me Visible*, KAISER HEALTH NEWS (Nov. 13, 2020), <https://khn.org/news/black-hair-going-natural-racism-sexism-commentary/> [<https://perma.cc/UC T3-34TX>] (recounting concerns that the choice to go natural could affect her personal safety because her “silhouette could possibly be mistaken for a Black man’s frame”). It is important to highlight further that a Eurocentric hairstyle will not protect Black women either. *Id.*

Lastly, there is a need to understand why Black women are apt to be the most vulnerable targets of oppression and punishment. Conceptually, the monolithic stereotypes³³ created for Black women are perceived violations of dominant social standards.³⁴ More specifically, the one-dimensional Jezebel,³⁵ Sapphire,³⁶ and Mammy³⁷ stereotypes have come to define Black women in society such that there is a corresponding denial of societal resources and perceived justification that Black women are somehow deserving of their marginal “second class citizen” status.³⁸ This lack of social capital is a tool to police Black women’s bodies without interference or risk of accountability. Extreme racialized and gendered police violence is

³³ Jody Armour, *Stereotypes and Prejudice: Helping Legal Decisionmakers Break the Prejudice Habit*, 83 CALIF. L. REV. 733, 738–39 (1995) (defining stereotypes as “a set of [learned] beliefs about the personal attributes of a group of people” that are transmitted across generations, specifically dissociating stereotypes from personal beliefs for purposes of prejudice reduction strategy).

³⁴ Fanta Freeman, *Do I Look Like I Have an Attitude? How Stereotypes of Black Women on Television Adversely Impact Black Female Defendants Through the Implicit Bias of Jurors*, 11 DREXEL L. REV. 651, 671 (2019) (connecting negative Black women stereotypes perpetuated through the media and subsequent internalization and reinforcement of false, misinformed perceptions of Black women in society—especially by non-Black individuals—and how these resulting biases informed by stereotypes have “the potential to breed prejudice [and] . . . affect people’s behavior toward others, perceptions of others, and conclusions drawn about others”).

³⁵ *Id.* at 661 (characterized as the promiscuous seductress—dirty, physically strong and domineering—who is a sexual deviant that “often uses her sexuality in order to reap benefits from men who are helpless victims to her allure”); see also Andrea J. Ritchie, *#SayHerName: Racial Profiling and Police Violence Against Blackwomen*, 41 HARBINGER 187, 191, 193 (2016) (tracking patterns of systemic criminalization and punishment of Black women for perceived sexual and gender nonconformity as informed by stereotypes deeply rooted in slavery).

³⁶ Freeman, *supra* note 34, at 661–62 (describing the characterized “angry black woman”—loud, volatile, critical, tough—which promotes Black women as “emotionally irrational and devoid of sensitivity”).

³⁷ Nnennaya Amuchie, *“The Forgotten Victims” How Racialized Gender Stereotypes Lead to Police Violence Against Black Women and Girls: Incorporating an Analysis of Police Violence Into Feminist Jurisprudence and Community Activism*, 14 SEATTLE J. SOC. JUST. 617, 636–37 (2016) (describing the Mammy characterization as an obedient servant and also a nurturing, self-sacrificing matriarch, an archetype that “puts everyone else’s needs before her own well-being”).

³⁸ Freeman, *supra* note 34, at 660, 704 (connecting stereotypes and consequences thereof in that not only are Black women less likely to be believed when victimized, but they also are subject to more frequent conviction and harsher sentencing within the legal system); Armour, *supra* note 33, at 752 (exemplifying how racial stereotypes serve to prime (or influence) trait categories such as hostility, such that Black women are systematically viewed as more hostile than members of other races in same or similar circumstances).

normalized and in turn further justified by the failure of institutional sanctions—namely, lack of officer terminations and avoidance of civil and criminal legal liability—and absence of general social disapproval. Additionally, Black women’s traumas are further compounded by the media’s colorblind rereading of discriminatory experiences in an attempt to redeem or obscure racialized and gendered violence and subsequent public blaming of Black women by the general public for their victimization or criminalization.³⁹ For example, consider the impulsive rationales informed by perceived monolithic stereotypes, that Black women are either the perpetrators of violence, or somehow deserving of violence due to their dress, behavior, attitude, or combination thereof.⁴⁰ Regardless of the medium, timing, rationalization, or justification, Black women’s excessive vulnerability results in their systemic oppression in nearly all aspects of life.

Moreover, due to the history of larger consequences encountered by Black women in the criminal justice system, particularly as it relates to the interaction of racial and gender norms, Black women are disproportionately victimized—thus they are deserving of additional protections.⁴¹ To counteract police violence specifically, there should be an intentional, conscious review from line officers through department leadership. Further, this collective review should alter the underlying stereotypes about Black women that inform discretionary policing practices and facilitate violence against Black women such that there is zero tolerance for intrinsically unfair

³⁹ Osagie K. Obasogie, *Anything but a Hypocrite: Interactional Musings on Race, Colorblindness, and the Redemption of Strom Thurmond*, 18 *YALE J.L. & FEMINISM* 451, 452 (2006) (“By focusing on race aesthetics without a deeper conversation about racism . . . journalists [are] able to partially absolve America of any lingering racial guilt or unease, ultimately impeding any path towards genuine racial redemption.”); Patricia A. Broussard, *Black Women’s Post-Slavery Silence Syndrome: A Twenty-first Century Remnant of Slavery, Jim Crow, and Systemic Racism—Who Will Tell Her Stories?*, 16 *J. GENDER, RACE & JUST.* 373, 415 (2013) (discussing how the media’s diminution of Black women due to differential treatment of Black and white female victims encourages the silence of Black women because it communicates that “their story is not worth telling and not worthy of public outrage”).

⁴⁰ Obasogie, *supra* note 39, at 464, 474 (tracing journalists’ assertions and narratives that misrepresented, rationalized, and absolved the institutionalized sexual terrorism against Black women under Jim Crow through the twentieth-century statutory rape laws); *see, e.g.*, Megan Thee Stallion, Opinion, *Why I Speak Up for Black Women*, *N.Y. TIMES* (Oct. 13, 2020), <https://www.nytimes.com/2020/10/13/opinion/megan-thee-stallion-black-women.html> [<https://perma.cc/TD9F-3HYY>] (ending her silence after being shot twice and then publicly questioned and debated as to purported justifications for the violent assault).

⁴¹ Kali Nicole Gross, *African American Women, Mass Incarceration, and the Politics of Protection*, 102 *J. AM. HIST.* 25, 26 (2015); Freeman, *supra* note 34, at 677 (discussing the “exclusionary politics” unique to Black women, exemplified in that they are “not entitled to the law’s protection” and yet remain susceptible to the law’s consequences).

policing.⁴² By acknowledging the issues directly and centering Black women in the discourse for purposes of a fully informed understanding, realistic reform solutions can emerge that adequately address and benefit Black women.⁴³ Further, intentionally addressing the vulnerability of Black women must be effective on both ends; that is, reform to the institutionalization of racism and sexism can only be actively confronted when pursued jointly within the reform movements originally intended to protect Black women such as the Black Lives Matter and Me Too movements.

B. INVISIBILITY OF BLACK WOMEN IN REFORM MOVEMENTS

While Black women face increased vulnerability due to the unique, simultaneous combination of both racism and sexism in the police narrative, Black women are also invisible in the reform narrative.⁴⁴ The invisibility of Black women within social justice movements is most apparent when Black women's vulnerability to police violence and experiences are either entirely overlooked or relegated to the margins of the reform narrative.⁴⁵ The social justice movements originally intended to address Black women's experiences thus not only further ostracize Black women, but also obstruct collective progress for Black people and women. As a result, the heightened

⁴² Ritchie, *supra* note 35, at 197 (noting that discretionary policing is “deeply informed by controlling narratives dictating how individuals’ behavior will be perceived through racialized, gendered . . . lenses, and operating in service of maintaining systemic relations of power”); Freeman, *supra* note 34, at 694–95 (recommending an acknowledgment of individual biases and general understanding that talking about race is necessary to counteracting stereotypes); *see also* Armour, *supra* note 33, at 734, 738 (suggesting that automatic negative responses resulting from learned stereotypes about social groups can be controlled by activating controlled cognitive processes—namely, nonprejudiced or egalitarian personal beliefs—which requires conscious confrontation with stereotypes and race in order to intentionally inhibit racially based discrimination habits).

⁴³ Ritchie, *supra* note 35, at 197–98.

⁴⁴ *See* Angela Onwuachi-Willig, *What About #UsToo?: The Invisibility of Race in the #MeToo Movement*, 128 *YALE L.J. F.* 105, 119 (2018) (“[S]ome women, particularly white women, within the feminist movement, still barely acknowledge or understand the unique, racialized and gendered harassment experiences that women of color face.”); Teri A. McMurtry-Chubb, *#SayHerName #BlackWomensLivesMatter: State Violence in Policing the Black Female Body*, 67 *MERCER L. REV.* 651, 652, 671 (2016) (acknowledging that while “Black women [a]re front and center . . . vocally and publicly protest[ing] attempts to deny them the respect and other visible accouterments of citizenship,” violence against Black women remains to be primarily viewed only in relationship to violence against Black men).

⁴⁵ Crenshaw, *Mapping the Margins*, *supra* note 14, at 1251–52 (highlighting that Black women are “within at least two subordinated groups that frequently pursue conflicting political agendas. The need to split one’s political energies . . . is a dimension of intersectional disempowerment that men of color and white women seldom confront”).

vulnerability of Black women victimization is compounded by a new form of oppression through invisibility as it relates to lack of awareness, lack of support, and typically an unlikelihood to see justice. This is exemplified by the reality that not only are deaths of Black women unnamed and unheard, or rendered less important in the movement's dominant narrative, but also that Black women are invisible in their leadership and contributions to the movement.⁴⁶

Conceptually, Black women's experiences are in a "no man's land" because they are neither the focus of the antiracism movement's "[B]lack criminology," wholly dominated by Black men's experience with police violence, nor the antisexist movement's "feminist criminology," due to its main concern being white women.⁴⁷ Research on "double jeopardy" indicates that this can in part be explained by racial and gender stereotyping that suggests this invisibility, in relation to men generally and white women, is a result of Black women being neither prototypical of women nor of Blacks.⁴⁸ Moreover, Black women's interests can even be harmed by the interests of the anti-racist and feminist movements.⁴⁹ Their dual invisibility is further compounded by class or economic status, such that, regardless of whether Black women are on the lower or higher end of the wealth continuum, they remain equally victimizable on the individual and systemic level.⁵⁰

Invisibility is thus "conceptualized as a lack of representation or misrepresentation of . . . [Black women], and also a lack of individuation of

⁴⁶ See, e.g., Byers, *supra* note 24.

⁴⁷ Sylvie Frigon, *Feminist Perspectives in Criminology*, 4 *WOMEN & CRIM. JUST.* 139, 142 (1993) (reviewing *FEMINIST PERSPECTIVES IN CRIMINOLOGY* (Loraine Gelsthorpe & Allison Morris eds., 1990)).

⁴⁸ Amanda K. Sesko & Monica Biernat, *Prototypes of Race and Gender: The Invisibility of Black Women*, 46 *J. EXPERIMENTAL SOC. PSYCH.* 356, 359–60 (2010) (finding a "qualitatively different form of discrimination," as evidenced by Black women going dually unnoticed with their faces least likely to be recognized and their voices unheard as their contributions or statements are misattributed to others).

⁴⁹ See, e.g., Aya Gruber, *The Troubling Alliance Between Feminism and Policing*, *CALIF. L. REV. ONLINE* (Sept. 2020), <https://www.californialawreview.org/feminism-and-policing/> [<https://perma.cc/A7A7-28FV>] (exploring how carceral white feminism can actually harm the interests of women of color, for example, by locking up their partners); see also AYA GRUBER, *THE FEMINIST WAR ON CRIME: THE UNEXPECTED ROLE OF WOMEN'S LIBERATION IN MASS INCARCERATION* 7, 17–18 (2020) (tracing the carceral feminist instinct that women's equality is vindicated through criminal law enforcement and arguing that feminists should dismantle this alliance as it has neither produced gender equality nor justice).

⁵⁰ See, e.g., Megan Thee Stallion, *supra* note 40.

or lack of differentiation among . . . [Black women].”⁵¹ The conjunctive nature of a lack of representation, lack of differentiation, and invisibility not only reinforces the particular vulnerability to racialized gender police violence in the criminal justice system, but also contributes to Black women going unnamed and unheard in reform movements. Additionally, to the extent antiracist and feminist discourses forward the interests of Black people and women respectively, the political consequences of a failure to address intersectionality implicitly denies the validity of the other.⁵² The non-prototypical erasure and exclusion of Black women, or the “one-size-fits-all” approach of the feminist and anti-racist movements, fails to address Black women’s complex concerns and contributes to their marginalization by relegating them to the edges of the narrative.⁵³ A seemingly obvious solution to this fragmentation of Black women is an intersectional perspective on oppression in all of its forms.⁵⁴

The absence of acknowledgment and support of Black women leadership in founding and leading those same reform movements also reinforces the assumption that Black women have to fight for themselves to protect their interests. For example, even where Black women have reserved the Say Her Name campaign to address state-sanctioned police violence

⁵¹ Amanda K. Sesko & Monica Biernat, *Invisibility of Black Women: Drawing Attention to Individuality*, 21 *GRP. PROCESSES & INTERGROUP RELS.* 141, 141 (2016); see also Stewart M. Coles & Josh Pasek, *Intersectional Invisibility Revisited: How Group Prototypes Lead to the Erasure and Exclusion of Black Women*, 6 *TRANSLATIONAL ISSUES IN PSYCH. SCI.* 314, 314 (2020) (“[e]mploying a novel stereotypical attribute awareness task” for purposes of advancing a differentiation hypothesis to analyze intersectional invisibility that manifests in racialized gender violence).

⁵² Crenshaw, *Mapping the Margins*, *supra* note 14, at 1252 (“The failure of feminism to interrogate race means that the resistance strategies of feminism will often replicate and reinforce the subordination of people of color, and the failure of antiracism to interrogate patriarchy means that antiracism will frequently reproduce the subordination of women.”).

⁵³ See, e.g., Elassar, *supra* note 24 (exemplifying how the blending of Black women as Black people in the Black community’s struggle against racism results in a prioritization of race over gender or sexuality which overshadows, and thus overlooks, Black women’s issues); Ritchie, *supra* note 35, at 189 (exemplifying that when asked to recall the first image that comes to mind when considering police brutality, some variation of a man of color beaten by a white officer emerges first); see also Broussard, *supra* note 39, at 409, 413 (noting that “Black women have survived by keeping quiet, not only out of shame, but out of a need to preserve the race and its image,” and that their stories have “always taken a back seat to more pressing problems surrounding the African-American race. And, many times, when the story is told, it is from the perspective of Black and White males”).

⁵⁴ See, e.g., Obasogie, *supra* note 39, at 479 (“Where feminism has not fully represented women of color, intersectionality represents an opportunity to rebuild a positive account of how multiple identities and forms of discrimination constitute their experience.”).

against them, they must still contend with new forms of erasure through Black men and white women misappropriation.⁵⁵ To be clear, Black women started the Black Lives Matter movement, the Me Too movement, and played a pivotal role in the LGBTQ+ Stonewall protest.⁵⁶ All of which should be unsurprising given the consistently demonstrated leadership of Black women throughout history “from the Underground Railroad to the anti-lynching movement to the Civil Rights era and Black Power movements.”⁵⁷ Indeed, the Women’s National Basketball Association, a league largely consisting of Black women, is generally held to be the most socially progressive professional sports league.⁵⁸ This consistent purposeful and intentional leadership and activism of Black women are distinctive given the invisibility within the movements originally intended to support them.

In the Black Lives Matter movement specifically, Black women actively participate in nationwide protests by “organizing, educating, and advocating for change,” and yet remain invisible in “decision-making processes [and] leadership positions.”⁵⁹ Additionally, as exemplified comparatively by the reactions to the deaths of Floyd and Taylor, Black women are often only highlighted in the reform narrative after Black men are murdered by the police.⁶⁰ The deaths of Black women are only secondary concerns, which reinforces the fatal inference that Black women are and should be “structurally invisible” as they are “impermeable to broad

⁵⁵ Meghan Roos, ‘Say Her Name’ Used to Memorialize Ashli Babbitt Draws Backlash Online Over Phrase’s Origin, NEWSWEEK (Jan. 7, 2021, 6:57 PM), <https://www.newsweek.com/say-her-name-used-memorialize-ashli-babbitt-draws-backlash-online-over-phrases-origin-1559867> [<https://perma.cc/UW45-BZ8M>]; Davis, *supra*, note 29 (noting that #SayHerName has often been edited and applied instead to Black men).

⁵⁶ Graham, *supra* note 18. Namely, Alicia Garza, Patrisse Cullors, Opal Tometi, Tarana Burke, and Marsha P. Johnson.

⁵⁷ CRENSHAW & RITCHIE, *supra* note 21, at 7.

⁵⁸ Jonathan Abrams & Natalie Weiner, *How the Most Socially Progressive Pro League Got That Way*, N.Y. TIMES (Oct. 16, 2020, 8:44 AM), <https://www.nytimes.com/2020/10/16/sports/basketball/wnba-loeffler-protest-kneeling.html> [<https://perma.cc/2HFD-XZ83>] (noting that WNBA players actively challenged society’s status quo well before Colin Kaepernick took a knee and it was considered “vogue” for professional athletes across all major sports leagues to peacefully advocate for change in protest of social injustices and racism).

⁵⁹ Byers, *supra* note 24 (stressing that the effect of not acknowledging Black women’s experiences within a movement about Black people only validates that Black women are disposable and easily victimized, which in turn can only place limitations on progress).

⁶⁰ *See id.* (“Breonna Taylor was brought into the conversation only after we rallied for George Floyd.”).

empathy” prior to “reced[ing] from the foreground quietly.”⁶¹ This finds support in critical race feminism—while incorporating the virtues of unique Black women’s experiences, it diverges from intersectionality by incorporating a focus on Black culture and community.⁶² However, even if Black women’s greatest potential for equality lies “within the context of the larger [Black] community and society,” the problem remains that Black women have yet to realize any authentic visibility and authority within the antiracism movement, let alone be treated as a primary concern.⁶³ For these reasons, a shift in perspective away from Black women and on to Black people collectively creates an inaccurate, misleading narrative and ends in the continuation of vulnerability, invisibility, and ultimately, erasure.

Moreover, Black women have fared no better in the Me Too movement,⁶⁴ or any other feminist movement historically, in addressing the formal and informal structural, social, and legal controls afflicting women. Although the feminist movement is broad and sprawling,⁶⁵ academic and social critiques have pointed to the general focus being limited to white wealthy women, and thus contend that the movement has failed Black

⁶¹ Mahdawi, *supra* note 20 (“Had it not been for the massive protests sparked by George Floyd’s murder, it’s unlikely that Taylor would have received much, if any, mainstream attention.”).

⁶² Mary Jo Wiggins, *The Future of Intersectionality and Critical Race Feminism*, 11 J. CONTEMP. LEGAL ISSUES 677, 680–81 (2001) (positing that “the sexes must come together to sustain [B]lack culture” and that “[i]n order for researchers to better understand and analyze how the law and legal rules impact [B]lack women, it will often be necessary to also understand how those laws and rules affect [B]lack people”). *But see id.* at 682–83 (distinguishing “intra-racial status” and “intra-racial performance” in suggesting that “the law should account for the ways in which *both* the preferred minority and the unpreferred minority could be significantly disadvantaged”); Crenshaw, *Mapping the Margins*, *supra* note 14, at 1256 (noting that “[p]eople of color often must weigh their interests in avoiding issues that might reinforce distorted public perceptions against the need to acknowledge and address intracommunity problems,” the issue being that the costs of suppression is rarely recognized, and thus unlikely to address the underlying problems).

⁶³ Wiggins, *supra* note 62, at 680; *see also* CRENSHAW & RITCHIE, *supra* note 21, at 6 (noting that Black women’s positioning economically and socially creates for further isolation and vulnerability in which incidences and consequences of state violence occur).

⁶⁴ Onwuachi-Willig, *supra* note 44, at 106–07 (noting that Tarana Burke, a Black woman, founded the #MeToo movement ten years prior to the widespread media attention sparked by Harvey Weinstein); *see also* Burke, *supra* note 24 (stating that “sexual violence knows no race, class or gender, but the response to it does”).

⁶⁵ *See* Rosalind Dixon, *Feminist Disagreement (Comparatively) Recast*, 31 HARV. J. L. & GENDER 277, 278 (2008) (comparing “older feminist theories, such as liberal, cultural, and dominance feminism” and “more recent theories such as sex-positive, intersectional, and post-structural/pose-modern feminism”).

women.⁶⁶ Traditional feminist scholarship has long been critiqued for its fragmented approach.⁶⁷ Some scholars have noted that not only have “feminists who have taken account of [B]lack women’s experiences . . . done so without altering their conceptual framework[.]” but also that “[B]lack women have added to the potential power of feminism as they have explored wider collective struggles against imperialism and racism.”⁶⁸ If gender equity is ever to be achieved for the better functionality and legitimacy of society, this fragmentation between women must be resolved.

This begins with the notion that the feminist movement is substandard, at best, without the inclusion and leadership of Black women.⁶⁹ White women should feel compelled to acknowledge and remedy this historical exclusion of Black women by openly discussing and using past failures as examples to counteract the consistent sexism that Black women face. Next, as Black feminist theory further argues, the feminist movement should center Black women’s voices in order to expose the normalized violence against them and the devaluation of their experiences.⁷⁰

The basic underpinnings of both the antiracist and feminist movements thus fail, at present, in that they are not informed by the wide continuum of intersectional identities that comprise the parts of the movements as a whole.⁷¹ Generally, an intersectional approach has been either absent altogether or relegated to the margins of the narrative, at best. However, even when injustices against Black women are acknowledged, whether for purposes of comparison or support, they still remain overshadowed by the

⁶⁶ *Id.* at 306–07 (suggesting that the long-held notion that Black women are not “true” women, distinctly separate from the idealized image of femininity and white women, is due to an intentional oversight to convey that Black women do not belong within the movement, or at least could diminish their ability to achieve change); see also Crenshaw, *Mapping the Margins*, *supra* note 14, at 1259–61 (using the domestic violence movement as an example, exemplifying how Black women are minimized as “others” out of fear that they may “jeopardize the movement”).

⁶⁷ Frigon, *supra* note 47.

⁶⁸ *Id.*

⁶⁹ See Brooke D. Coleman, *A Legal Fempire?: Women in Complex Civil Litigation*, 93 IND. L. J. 617, 618, 620, 637–38 (2018) (noting that not only have “studies repeatedly show[n] that heterogeneity in group decision making leads to better results” and that “exclusivity creates a particularly challenging setting for gender equity[.]” but also that when women with a variety of viewpoints are part of decision making the results are different and often beneficial).

⁷⁰ Amuchie, *supra* note 37, at 619–20.

⁷¹ See Crenshaw, *Mapping the Margins*, *supra* note 14, at 1259–60 (highlighting that “the underlying premise of [the] seemingly universalistic appeal is to keep the sensibilities of dominant social groups focused on the experiences of those groups”).

experiences of cisgender Black men in the anti-racist movement and white women in the feminist movement. Thus, even when less invisible, the failure to provide an authentic Black women's perspective concerning issues that plague Black lives and women's lives respectively limits our collective ability to challenge underlying American values of white supremacy and patriarchy. Until academics, activists, and mass media actively pursue intersectional narratives, the normalizations, rationalizations, and justifications of police violence against Black women will persist without accountability or visibility.

II. OVERVIEW: DEFUNDING THE POLICE

Defunding the police⁷² at its most basic level should be construed as a grassroots progressive discourse on police reform, but not necessarily police abolition.⁷³ Defunding is a step toward abolition through reallocation of police funds and diminished police scope to community initiatives, programs, and services. Police abolition replaces modern policing with community-created alternatives. Indeed, this “language game” necessarily involves inherently malleable language that unfortunately distracts and, in some cases, derails the substantive conversation before it begins.⁷⁴ This Comment explores only what defunding the police with an intersectional lens would look like in practice. Further, this Comment aims to provide a perspective that would specifically benefit Black women such that mistakes of past police reforms and reform movements are not replicated to their

⁷² See Akbar, *supra* note 15, at 1781; see also Fernandez, *supra*, note 15.

⁷³ See, e.g., Leah Savage, Opinion, “Defund the Police” is Not the Problem, ME. CAMPUS (Dec. 14, 2020), <https://mainecampus.com/category/opinion/> [<https://perma.cc/8YKA-D5ZK>] (expressing that the inability to accept that “many of our systems of governance and justice are inherently racist is not a reflection of problematic activism strategies, but rather systemic racism itself”).

⁷⁴ See, e.g., Caitlin Flanagan, *What Language Game Are the Defunders Playing?*, ATLANTIC (Dec. 10, 2020), <https://www.theatlantic.com/ideas/archive/2020/12/what-language-game-are-defunders-playing/617348/> [<https://perma.cc/JDY3-6YN9>]; see also Aya Saed & Alessandra Brown, *From #BlackLivesMatter to Black Liberation: An Interview with Professor Keeanga-Yamahtta Taylor*, HARV. J. AFR. AM. POL'Y STUD. 43, 44 (2017) (arguing that public policies alone will not liberate Black lives, and thus to be effective, defunding the police “will be the product of a massive social upheaval that doesn't just change the police but changes the entire order of a society . . .” (quoting Keeanga-Yamahtta Taylor)); Akbar, *supra* note 15, at 1785, 1787 (approaching defunding as “reform rooted in hope rather than cynicism,” “efforts in our imaginations for the world we want to live in tomorrow,” and reform that is “part of a larger strategy of transforming the state and society”).

detriment.⁷⁵ That said, a brief understanding of what is meant by “defund” the police is of considerable use.

Generally, there has been a certain reassurance that the world has always been broken, and thus there will always be a need for police.⁷⁶ But perhaps the world has always been broken because we have always had police.⁷⁷ Thus far, we have traditionally incorporated the police into every layer of community duty as an all-encompassing safety net. The manifestations of individual officers’ disproportionate rage and aggression in communities of color they police, as exemplified in Taylor’s case, can be explained, in part, by the overwhelming weight of their vast and varying responsibilities, especially where officers lack requisite training to police safely.⁷⁸ The inherent racialized and violent aspects of policing make Black women particularly vulnerable to police violence. Therefore, police are more of a detriment to public safety than its savior. Modern policing thus functions to

⁷⁵ Arguing specifically that while grassroots organizations have a unique ability to confront white fragility and force a state response, any social justice movement or grassroots organization is doomed to fail where Black women are not centered. KEEANGA-YAMAHTTA TAYLOR, FROM #BLACKLIVESMATTER TO BLACK LIBERATION 106 (2016) (demonstrating that “Black people’s progress has always been propelled by the strength of the movements of the mass of ordinary Black people”); Crenshaw, *Mapping the Margins*, *supra* note 14, at 1249 (illustrating “how modest attempts to respond [] can be ineffective when the intersectional location of women of color is not considered in fashioning the remedy”).

⁷⁶ See, e.g., *3 Reasons Why Defunding the Police is a Bad Idea*, NAT’L POLICE SUPPORT FUND (Jan. 21, 2021), <https://nationalpolicesupportfund.com/3-reasons-why-defunding-the-police-is-a-bad-idea/> [<https://perma.cc/37K8-T534>] (claiming that defunding the police will reduce support for training, hinder officer recruitment and retention, and allow “dangerous, violent criminals” to win); Ronald J. Allen, *The Hidden Costs of the ‘Defund the Police’ Movement*, WASH. EXAMINER (June 7, 2021, 12:00 AM), <https://www.washingtonexaminer.com/opinion/op-eds/the-hidden-costs-of-the-defund-the-police-movement> [<https://perma.cc/H7B2-QEFS>] (advocating for more, rather than less, police presence because “increased scrutiny of police . . . leads to reduced effort by officers” and “the real locus of racism and humiliating behavior in policing . . . lies more in everyday street encounters” such that “civilians killed by police is miniscule by comparison” to “[intraracial] ‘slaughter.’”); see also Stephanie Pagonis, *Police Defunded: Major Cities Feeling the Loss of Police as Murders, Other Crimes Soar*, FOX NEWS (Apr. 1, 2021), <https://www.foxnews.com/us/police-defunded-cities-murders-crime-budget> [<https://perma.cc/8RJD-GFHG>] (stating that although a month-by-month breakdown in crime statistics could not be found, “when you defund the police, people die”).

⁷⁷ See TAYLOR, *supra* note 75, at 124 (characterizing the police as “stormtroopers for gentrification”).

⁷⁸ Note that while this Comment specifically targets police responsibilities in traffic control, mental health crises, and school disciplinary matters, the varying roles of the police extend far beyond these misplaced issues and can range from debt collection proceedings to noise complaints.

maintain the systemic patterns of inequality of racism and sexism. Indeed, even where police leaders admit to a need for more accountability and transparency, particularly when it comes to police discipline, progress has been delayed by blatant attempts at deflection.⁷⁹ For these reasons, there should be a reallocation of police responsibility and significant reduction in police function.

As for specific legal reforms, the police abolition movement, similar to but separate from the “defund” movement, has primarily followed non-reformist reforms which increase community-based budgets by decreasing police funding and scope.⁸⁰ These reforms include suspending paid leave for officers under investigation, withholding pensions and refusing to rehire officers involved in excessive force, capping overtime, and withdrawing from police militarization exercises.⁸¹ Alternatively, reformist reforms seek to entrench policing by increases in police funding and scope. These typically include increasing body cameras, scale of policing, and more officer training requirements.⁸²

⁷⁹ Jeremy Gorner & Dan Hinkel, *Chicago Police Leaders Admit Need for More Transparency as They File Progress Report on Reform, a Document Critics Dismiss as Deflection*, CHI. TRIB. (Feb. 08, 2021), <https://www.chicagotribune.com/news/criminal-justice/ct-chicago-police-reform-claims-20210208-p314h2fujvaadfg5yyxkvdxk6e-story.html> [<https://perma.cc/8Z7Y-XTFU>] (saying that the report neither complies with the constitution to police in a nonbiased manner, nor engages the “higher-than-usual number of complaints filed against Chicago police officers this past summer” in light of protests over George Floyd or disproportionate COVID-19 enforcement against Black citizens, and also ignores “a number of recommendations from the community for new CPD use-of-force policies” (citing Sheila Bedi)).

⁸⁰ *Abolish Policing*, CRITICAL RESISTANCE, <http://criticalresistance.org/abolish-policing/> [<https://perma.cc/SCY7-8G64>] (last visited Aug. 4, 2021) (describing an abolitionist organization that supports reforms to dismantle policing and creates viable alternatives in communities).

⁸¹ *Id.* (suggesting that this reduction in size of the police funding and scope can then prioritize spending on community needs such as health, education, and affordable housing).

⁸² *Id.* (arguing that reformist reforms distinguish “good police” from “bad police,” and suggest that bad actors are an exception rather than a systemic proponent for violence against Black, Brown, and poor neighborhoods). Note also that these reformist reforms do not include community mandates such as civilian review oversight boards or any ability to prosecute police who have killed.

Concrete local efforts have also been adversely affected by elected officials in several states,⁸³ including New Jersey,⁸⁴ Minnesota,⁸⁵ and California.⁸⁶ Camden, New Jersey has overseen the most dramatic transition, marked by a subsequent decline in crime and excessive-force complaints.⁸⁷ While doubling the police in size in accordance with reformist reforms,⁸⁸ the community has benefited from proportionality and reasonable force requirements that are much clearer compared to other police departments.⁸⁹ However, while Camden has made strides comparatively, its progress has been grossly oversimplified and misleading when attributed to the city's

⁸³ See, e.g., David Leonhardt, *Can Policing Change?*, N.Y. TIMES (Apr. 20, 2021), <https://www.nytimes.com/2021/04/20/briefing/walter-mondale-vice-president-rwanda-genocide.html> [<https://perma.cc/3AZT-NUF7>] (claiming that recent policy changes either seek to limit the use of force or address police accountability, but maintaining that “it’s too early to know whether [it] . . . will amount to widespread changes [as] ‘[p]olice organizations have an amazing ability to resist change when there’s no real buy-in from the rank and file’” (quoting Rosa Brooks)).

⁸⁴ James Doubek, *Former Chief of Reformed Camden, N.J., Force: Police Need ‘Consent of the People’*, NPR (June 8, 2020, 7:21 PM), <https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/06/08/872416644/former-chief-of-reformed-camden-n-j-force-police-need-consent-of-the-people> [<https://perma.cc/3U32-E29L>] (reporting on Camden’s disbanding and rebuilding its police department after the city was in a public safety crisis due to “murder rates 18 times the national average and scores of excessive-force complaints”).

⁸⁵ Avie Schneider, *Minneapolis Shifts \$8 Million in Police Funding, But Keeps Force at Current Level*, NPR (Dec. 10, 2020, 1:41 PM), <https://www.npr.org/2020/12/10/944938471/minneapolis-shifts-8-million-in-police-funding-but-keeps-force-at-current-level> [<https://perma.cc/P66Q-9DCG>].

⁸⁶ Sarah Ravani, *Calif. City Adopts Police Reforms, Votes to Take Cops Off Some Traffic Stops*, S.F. CHRON. (Feb. 24, 2021), <https://www.gov1.com/public-safety/articles/calif-city-adopts-police-reforms-votes-to-take-cops-off-some-traffic-stops-Q0VMhHHkmbqAsZ8H/> [<https://perma.cc/U5BX-NQVB>] (reporting a removal of police in small stakes infractions altogether).

⁸⁷ Sarah Holder, *The City That Remade Its Police Department*, BLOOMBERG (June 4, 2020, 3:00 AM), <https://www.bloomberg.com/news/articles/2020-06-04/how-camden-new-jersey-reformed-its-police-department> [<https://perma.cc/9UHC-65XQ>] (noting that Camden has taken the most far-reaching reforms since 2013 by dissolving the local police department in favor of countrywide department that provides shared services).

⁸⁸ Doubek, *supra* note 84 (noting that “[a] majority of the police were rehired, but each had to complete a 50-page application, retake psychological testing and go through an interview process,” and that officer performance measurements were changed from the number of arrests and tickets issued to other outcomes in order to “change the identity of Camden police officers from that of ‘warrior’ to ‘guardian’”).

⁸⁹ Holder, *supra* note 87 (stating that the department adopted a use of force policy that emphasizes de-escalation techniques and limits deadly force only to situations where all other tactics have been exhausted, in addition to requiring officers to intervene where colleagues violate the edict).

disbanding the police force instead of local activism's persistence and pressure.⁹⁰ Next, Minneapolis, Minnesota transitioned from a vague promise of "end[ing] policing as we know it," to shifting a miniscule portion of police funding to expand other services, such as violence prevention and mental health crisis response teams, to then limiting the effect by maintaining police staffing after facing political pressure.⁹¹ Finally, Berkeley, California's attempt to transform policing took a smaller scale, but significant, approach by removing police from low-level offense traffic stops, mental health, and social service calls.⁹² While through these examples it is clear that the "defund" movement has taken vastly different approaches to reform, so far all have been limited in one extent or another. However, given the relative youth of the "defund" movement generally, there remains a strong potential for future success.

The "defund" movement, for purposes of this Comment, should be understood at its core as a reimagining of public safety with community at

⁹⁰ *Id.* (noting that the ACLU found a "significant increase in low-level arrests"); Stephen Danley, *Camden Police Reboot is Being Misused in the Debate over Police Reform*, WASH. POST (June 16, 2020, 5:00 AM), <https://www.washingtonpost.com/outlook/2020/06/16/camden-nj-police-reboot-is-being-misused-debate-over-police-reform/> [<https://perma.cc/9QAL-HGR3>] (showing that the city's disbanding of the police department was "deeply anti-democratic and done with the purpose of increasing enforcement," and that local activism was the true reason behind the new force-reduction policies that led to meaningful change in Camden).

⁹¹ Astead W. Herndon, *How a Pledge to Dismantle the Minneapolis Police Collapsed*, N.Y. TIMES (Jan. 2, 2021), <https://www.nytimes.com/2020/09/26/us/politics/minneapolis-defund-police.html> [<https://perma.cc/W2WM-3KEN>] (stating that the city has become "a case study in how idealistic calls for structural change can falter," as council members began to withdraw support in a disjointed response to a shift in political winds, and instead emphasized that their words were "in spirit" or "up for interpretation."); Schneider, *supra* note 85 (reporting that the \$8 million was insignificant in comparison to the overall police budget of \$179 million and a disappointment in comparison to the prior city council vote that unanimously voted to eliminate the police department in favor of "a department of community safety and violence prevention, which will have responsibility for public safety services prioritizing a holistic, public health-oriented approach").

⁹² Gayle Ong, *Berkeley Becomes First City in US to Approve Plan to Remove Police from Traffic Stops*, KRON4 (July 15, 2020, 8:42 PM), <https://www.kron4.com/news/bay-area/berkeley-becomes-first-city-in-us-to-approve-plan-to-remove-police-from-traffic-stops/> [<https://perma.cc/L76M-RL2N>] (noting that this plan not only will curtail racial profiling but will also free up the city's budget as well as "enable police officers to focus on what they're trained to do which is to address serious and violent crimes."); Ravani, *supra* note 86 (noting the city council's unanimous vote to cut the police budget in half and institute sweeping reforms, including but not limited to: eliminating police stops for low-level offenses such as failing to wear a seat belt or driving with expired license plates).

the center.⁹³ Police function is disaggregated so that law enforcement issues that are not inherently violent are transitioned to more appropriate community resources.⁹⁴ This is a fundamental transition from the police as an all-encompassing solution to police as an absolute last resort. For example, low-hanging fruit like minor traffic violations, school disciplinary matters, and mental health emergencies are all matters which do not require inherently violent treatment such as arrest and excessive force, and thus police involvement is both inappropriate and unnecessary.⁹⁵ Defunding thus requires a simultaneous reduction of policing duties as well as resurgence or reallocation of resources to community-based organizations.⁹⁶ Access to necessary federal funding would be contingent on basic, minimum constitutional policing standards, such that accountability and transparency are actually and intentionally incorporated. Moreover, while education programs on bias are often suggested as a solution, they are rarely implemented and thus rarely effective.⁹⁷ However, if effective education

⁹³ In noting the merits of the argument that inequality produces crime and that the “police are not some neutral force that lies above the fray of society [but rather] exists to enforce [the rich and white] law and order,” it is important to also recognize that this argument merges violent and nonviolent crimes as one without consideration of the distinctively different elements of the crimes or offenders themselves. See Saed & Brown, *supra* note 74, at 47. Note also that for the purposes of this Comment, each individual, partnering community will have different needs for public safety depending on the community members that comprise it, specifically so in communities of color.

⁹⁴ See Akbar, *supra* note 15, at 1788 (indicating the “need for a range of tactics, experiments, and projects for . . . depolicing, and ultimately the need to rethink the state”).

⁹⁵ See Tyra Jean, *Black Lives Matter: Police Brutality in the Era of COVID-19*, SYRACUSE U. LERNER CTR. PUB. HEALTH PROMOTION 1, 2–3 (2020) (providing that only one standardized emergency number is inappropriate and that there should be a ranking of emergency types ranging from immediate, life threatening circumstances to civil disputes).

⁹⁶ See Simone Weichselbaum & Nicole Lewis, *Support for Defunding the Police Department is Growing. Here’s Why It’s Not a Silver Bullet*, MARSHALL PROJECT (June 9, 2020), <https://www.themarshallproject.org/2020/06/09/support-for-defunding-the-police-department-is-growing-here-s-why-it-s-not-a-silver-bullet> [<https://perma.cc/8K72-7CGJ>] (distinguishing defunding and reinvesting in community-based programs from failed reforms such as federal oversight, trainings on implicit bias, and cutting law enforcement budgets outright); Leah A. Jacobs, Mimi E. Kim, Darren L. Whitfield, Rachel E. Gartner, Meg Panichelli, Shanna K. Kattari, Margaret Mary Downey, Shanté Stuart McQueen & Sarah E. Mountz, *Defund the Police: Moving Towards an Anti-Carceral Social Work*, 32 J. PROGRESSIVE HUM. SERVS. 1, 22 (2020) (providing an effective alternative via an anti-carceral model of social welfare that operates independently from law enforcement and enhances restorative practices and social work’s commitment to social justice, while also elevating and supporting community voices).

⁹⁷ See Akbar, *supra* note 15, at 1782–83, 1788 (arguing that contemporary reforms of the police have failed despite “diverse hiring, implicit bias trainings, civilian review boards, and

programs on bias and racialized gender issues are implemented,⁹⁸ reform to local police practices and policies, and a national defunding—all of which are led by grassroots community organizations and committees—can lead to, at least, a heightened consciousness of racialized gender issues. Thus, after defunding is implemented and policing is disaggregated, inherently violent issues that remain within the scope of policing duties will also adhere to fair, effective, and equitable policing.

While defunding the police signals to Black women that, although they have been dismissed for so long and we are listening now, reforms of police policies, practices, and defunding alone are not enough. Due to the systemic inequities within American policing, the “defund” movement can only be successful if it is led by individuals who understand reform and the unique complexities of intersectionality that defunding intends to address.⁹⁹ The obvious leadership for purposes of guiding that narrative on Black women’s experiences should fall to those impacted. To be clear, Black women are those most informed on Black women’s interests and experiences. Next, this Comment will address *some*, but certainly not all, important elements that

criminal indictments of police;” thus, proving that reform alone is not enough (citing Rachel Herzog); *see also* Ritchie, *supra* note 35, at 197 (“The kind of discriminatory decision-making the archetypes drive is often invisible to the law and thus not susceptible to challenge in the same ways as other forms of explicit race, gender . . . based discrimination.”).

⁹⁸ *See, e.g.*, Coleman, *supra* note 69, at 647 (distinguishing educational bias training programs that are collective engagements in open discussion of bias and racialized gender issues among individuals—especially individuals in leadership roles—as opposed to a few hours of required diversity training on a computer).

⁹⁹ *See, e.g.*, MARIAME KABA, WE DO THIS ‘TIL WE FREE US: ABOLITIONIST ORGANIZING AND TRANSFORMING JUSTICE 26 (2021) (exemplifying how “people, especially white people, consider a world without the police . . . and they shudder,” and envisioning “a different society, built on cooperation instead of individualism, on mutual aid instead of self-preservation”); *see also* Mariame Kaba, Opinion, *Yes, We Mean Literally Abolish the Police*, N.Y. TIMES (June 12, 2020), <https://www.nytimes.com/2020/06/12/opinion/sunday/floyd-abolish-defund-police.html> [<https://perma.cc/XS2G-E7JU>] (opining that “[w]e can’t reform the police. The only way to diminish police violence is to reduce contact between the public and the police” and concluding that the demands must change to reduce police power by cutting budgets and the number of officers). Additionally, to the extent the “defund” movement and police abolition movement overlap, the police abolition movement is directly linked to the prison abolition movement. *See, e.g.*, Frank Barat, *Introduction to ANGELA DAVIS, FREEDOM IS A CONSTANT STRUGGLE*, at *xii* (Frank Barat ed., 2016) (reiterating how crucial it is to discuss with Black women such as Angela Davis, and those like her, because she “never stopped [and] is still, every day, living the struggle”); *see also* Lanre Bakare, *Angela Davis: ‘We Knew That the Role of the Police Was to Protect White Supremacy,’* GUARDIAN (June 15, 2020, 1:00), <https://www.theguardian.com/us-news/2020/jun/15/angela-davis-on-george-floyd-as-long-as-the-violence-of-racism-remains-no-one-is-safe> [<https://perma.cc/MP35-5PB8>].

must be included when centering Black women in the “defund” movement for it to successfully transform American policing.

III. ANALYSIS: CENTERING BLACK WOMEN IN THE “DEFUND” MOVEMENT

There are various complex ways to enact wide legal reforms that can change modern policing practices. For purposes of clarity, this can be conceptually (overly) simplified as a spectrum. On one end, there are specific reforms that change policing practices, such as the no-knock warrant which created the circumstances allowing for Taylor’s death.¹⁰⁰ On the other end, there are general reforms, such as defunding the police instrumentality that actually killed Taylor. Even if the settlement in Taylor’s case changes local policing practices, wider legal reforms at both the state and federal levels remain necessary to destabilize the institutionalization of racism and sexism and resolve modern systemic inequities that will otherwise continue on a national and global scale. It should also be noted that defunding the police is not the only solution, nor will it completely remedy the vastness of inherent inequities and injustices perpetrated against Black women. However, this moment in American history has seen more widespread and diverse support, protests, and demonstrations that were lacking in the civil rights movement. This moment has potential to transform a movement to bring meaningful change not just for Black people collectively, but Black women specifically.¹⁰¹ While widespread and diverse participation is paramount, full participation requires that all participants believe they have been heard, which has not yet happened for Black women.

Defunding the police is the method with the best potential to respond to the unique dehumanizing policies and practices structurally implemented by police against Black women, and counteract the silencing of Black women

¹⁰⁰ See Oppel Jr., Taylor & Bogel-Burroughs, *supra* note 1; see also Campo-Flores, *supra* note 8.

¹⁰¹ Blair Chavis, Kevin Davis & Liane Jackson, *Is This a Moment or a Movement? 6 Civil Rights Lawyers Reflect on Recent Demands for Racial Justice*, ABA J. (Oct. 1, 2020, 12:00 AM), https://www.abajournal.com/magazine/article/lawyers-involved-in-civil-rights-battles-reflect-on-recent-demands-for-racial-justice?utm_source=salesforce_283119&utm_medium=email&utm_campaign=weekly_email&utm_medium=email&utm_source=salesforce_283119&sc_sid=04348376&utm_campaign=&promo=&utm_content=&additional4=&additional5=&sfmc_j=283119&sfmc_s=60456235&sfmc_l=1527&sfmc_jb=302&sfmc_mid=100027443&sfmc_u=8651391 [https://perma.cc/H55Y-P89A] (suggesting that even though the current movement has more support, it could further benefit by learning from the civil rights movement in that it “was driven by coordinated events and strategies organized through top-down leadership structures,” “targeted to specific kinds of change,” and had “identifiable leaders”).

who have been subjected to police brutality within reform movements. A contemporaneous reduction of police duties and redistribution of resources to community-based organizations can realistically supply an alternative to modern policing while also serving as a new foundation for accountability, transparency, and inclusion of Black women across racial and gender barriers. While it is important to note the context that Black women face in light of systemic inequities, the coordinated, simultaneous undertaking to defund the police should also necessitate the prioritization of Black women's experiences and leadership in the process.

A. COMMUNITY-BASED SERVICE ORGANIZATIONS

Community-based service organizations address the notion that the public deserves a meaningful say in the manner in which they are policed. This allows communities to prioritize local police accountability upfront, as opposed to waiting for subsequent accountability after another police-involved death of a community member. This reimagining of public safety is not only more effective, fair, and equitable, but also provides the police department an opportunity to build trust within the partnering community as it relates to transparent policing policies and practices, data, technologies, and the like.¹⁰²

These organizations impact their communities more generally by increasing transparency and accountability in various ways. For example, community-based service organizations advocate for requirements such as “body cameras, internal affairs reviews, citizens reviews and independent boards, along with an end to . . . racial profiling.”¹⁰³ One specific example is “discharge integrity teams,” an external group which includes a member of the community, law enforcement, a defense attorney, and a retired judge, tasked with reviewing fatal shootings by police officers.¹⁰⁴ Another example

¹⁰² See, e.g., *Community Policing: A Curated Collection of Links*, MARSHALL PROJECT (Apr. 28, 2021), <https://www.themarshallproject.org/records/323-community-policing> [<https://perma.cc/Q47G-FXWK>].

¹⁰³ *Id.*; see also Ritchie, *supra* note 35, at 190 (highlighting the overwhelming contemporary strategy of centering Black men in racial profiling as yet another reason why Black women should be centered in the narrative).

¹⁰⁴ See, e.g., Rhonda Stewart, *How Black Female Prosecutors are Challenging the Status Quo and Fighting for Reform*, ABA J. (Sep. 10, 2020, 12:22 PM), https://www.abajournal.com/web/article/how-black-female-prosecutors-are-challenging-the-status-quo-and-fighting-for-reform?utm_source=salesforce_269235&utm_medium=email&utm_campaign=weekly_email&utm_medium=email&utm_source=salesforce_269235&sc_sid=04348376&utm_campaign=&promo=&utm_content=&additional4=&additional5=&sfmc_j=269235&sfmc_s=6

is racialized gender bias task forces which work to address how and why Black women are targeted by the police, as well as how race and gender intersect within the criminal law system.¹⁰⁵ Taken further, by specifically including Black women in community reviews of systemic racism, police accountability, and reform policies impacting communities of color, these groups can account for the complex intersectional identities contributing to Black women's vulnerability and invisibility.¹⁰⁶ The "defund" movement would significantly limit this formal integration of community-led organizations to policing of inherently violent situation. However, effective protection of Black women is dependent on both front-end and back-end reforms.¹⁰⁷

While these organizations provide opportunities to align alternative policing with their communities' specific needs and place greater importance on nonviolent initiatives and de-escalation techniques, they are subject to two limitations. First, they assume that successful police training is necessarily dependent on hierarchal, organizational support within the police department. It has been suggested that a resurgence in encouraging officers to engage in community service or to live in the neighborhoods that they police may be sufficient to effectively decrease police-involved shootings of community members.¹⁰⁸ This is insufficient because the "defund" movement calls for a reduction in police encounters outright. For this reason, more extensive police training has been suggested as a more effective solution for inherently violent issues.¹⁰⁹ For example, police officers should be trained on

0456235&sfmc_l=1527&sfmc_jb=270&sfmc_mid=100027443&sfmc_u=8390524 [https://perma.cc/E7FQ-ES8T].

¹⁰⁵ See, e.g., Coleman, *supra* note 69, at 630–31 (discussing that, instead of limiting the task force to gender bias for purposes of reducing the risk of overload or confusion, self-awareness and consideration of each factor—race, class, and sexual orientation in addition to gender—is essential to counteracting residual invisibility).

¹⁰⁶ *Id.*

¹⁰⁷ For purposes of this Comment, back-end reforms are focused on accountability and are triggered after an incident has occurred, whereas front-end reforms are focused on preventative measures before an incident has occurred.

¹⁰⁸ Callimachi, *supra* note 11.

¹⁰⁹ Chavis, Davis & Jackson, *supra* note 101, (noting that officers could have "avoided putting themselves in a position where they were—or might have thought they were—in danger . . . If police were to get the proper tactical training . . . that better training would over time affect the underlying police culture, which . . . is at the root of the problem" (quoting Steven Winter)); see also Wesley G. Skogan, Maarten Van Craen & Cari Hennessy, *Training Police for Procedural Justice*, 11 J. EXPERIMENTAL CRIMINOLOGY 319, 319–34 (2015) (stating that research on police training concluded that more than ninety percent of training focused

integrational nonviolent initiatives such as learning defensive techniques in tandem with crisis intervention strategies, de-escalation techniques, and communication skills.¹¹⁰ However, while community-led trainings on nonviolent initiatives and de-escalation techniques have potential, they will be unsuccessful without corresponding changes to police culture.¹¹¹ Police culture is most effectively altered by internal discipline, such as suspension or termination,¹¹² but is also largely affected by leadership investment of resources and support for institutional process changes.¹¹³ Thus, for community-based police training to contribute to the preservation of Black women's lives, the police culture must change as well. Moreover, it should be institutionalized that even in inherently violent situations, police violence should remain a last resort.

Second, for organizations to adequately counter the structural and systemic barriers, they must be informed by the intersectional identities of both the community members they serve as well as the founders themselves. This is an area of social justice reform where Black women are notably more successful in leading organizations and using their complex, intersectional social positions to establish more robust neighborhood social services. One

on defensive tactics and reactive exercises such as use of weapons and force, whereas less than three percent focuses on cognitive and decision-making skills.).

¹¹⁰ See Natalie Crystal Doggett, *If Police Training Can't Protect Disabled Black Women, What Will?*, WOMEN'S ENEWS (Nov. 18, 2020, 5:06 PM), <https://womensenews.org/2020/11/if-police-training-cant-protect-disabled-black-women-what-will/> [<https://perma.cc/5ZY5-SXAJ>] (suggesting that officers are incapable of knowing what techniques to apply in dynamic, realistic situations because modern state and local law enforcement training lacks integrational teachings on gender orientation, disabilities, and racism).

¹¹¹ Skogan, Craen & Hennessy, *supra* note 109, at 333; see also Holder, *supra* note 87, (exemplifying that, while substantial, "Camden's reforms are more incremental in nature" and "the challenge is that you have 18,000 police departments' in the U.S It's an industry that generally is averse to any type of change. The only time change comes is when it's compelled.") (quoting Camden former chief of police Scott Thomson)).

¹¹² James J. Fyfe, *Police Use of Deadly Force: Research and Reform*, 5 JUST. Q. 165, 201 (1998) (suggesting a combination of internal discipline, carefully defined officers' roles and training to perform those roles as a more effective process for controlling police discretion); Christopher Totten & Sutham Cobkit, *The Knock-and-Announce Rule and Police Searches After Hudson v. Michigan: Can Alternative Deterrents Effectively Replace Exclusion for Rule Violations?*, 15 NEW CRIM. L. REV. 414, 451–52 (2012) (concluding that police administrators should increase and strengthen three internal mechanisms of training, education, and disciplinary actions in order to effectively deter police misconduct).

¹¹³ Totten & Cobkit, *supra* note 112, at 452 (concluding further that police departments must not only provide incentives such as "tuition reimbursement policies and flexible work schedule options," but also "promote 'open door' policies to . . . provid[e] feedback and suggestions").

example is nonprofit community-based human service organizations.¹¹⁴ Despite Black women's important roles in founding, leading, and maintaining human service organizations, particularly in disadvantaged neighborhoods, scholars rarely mention Black women in the nonprofit sphere, limiting the reach of these organizations.¹¹⁵ As discussed in Section B, the "defund" movement should emphasize and support the importance of Black women leadership so as to avoid these limitations in the future.

B. BLACK WOMEN LEADERSHIP

It must first be noted that in order to bridge the gap between superficial support and actual support, non-Black women's involvement in leading the police narrative, despite simultaneously problematic and valid attributes, must proceed with the utmost caution. There is a thin line between a performative "ally" and genuine activist.¹¹⁶ While educating, providing resources, and merely actively listening are productive, the principle of lasting social change starts and ends with real, true knowledge. There can be no mistake that firsthand experience is that requisite, informative knowledge. For this reason, non-Black women's involvement can have no place in *leading* the narrative as it relates to that which uniquely affects Black women.

Further, increasing the visibility of Black women and informed social awareness of Black women's experiences are no longer sufficient by themselves; rather, a prioritization of inclusion and leadership across intersectional identities of Black women is necessary. Absent a prioritization of Black women in the "defund" movement, the inference that Black women's lives do not matter, or matter less than other lives, will continue to prevent any hope of ever remedying the broken American system. Although

¹¹⁴ See generally Sara Elizabeth Terrana, *A Qualitative Case Study of Black Women Nonprofit Founders: Social Justice and Social Change in the Community*, PROQUEST (2019) (defining nonprofit community-based human service organizations as "public charities that have obtained 501(c)(3) tax-exempt status and are physically located in, and primarily serve, members of their local community").

¹¹⁵ See *id.* at 1–2. Terrana notes further that Black women better serve the relevant disadvantaged communities as they have direct experience, individually and collectively, in and around the issues that the human service organizations were intended to address, and thus are able to be more strategic with resources. *Id.* at *iii*.

¹¹⁶ See, e.g., S.R. Toliver, *Of Monsters and Saviors, or Black Women in the United States*, MEDIUM (Aug. 19, 2020), <https://medium.com/@stephanie.toliver/of-monsters-and-saviors-or-black-women-in-the-united-states-50bb732dc659> [<https://perma.cc/5ZWR-X6RM>] (exemplifying a common predicament of "dehumanization disguised as praise" and the Black women superheroine narrative). For purposes of this Comment, these examples distinguish and exemplify some significant differences between an ally's performance and an activist's support.

Black women's leadership can take various shapes in different contexts,¹¹⁷ there is a sense of unity that results in a larger impact on and feeling of community when centering Black women in the narrative. For example, the limited representation of Black female prosecutors has contributed to a collective need for activism in the legal space.¹¹⁸ Despite relentless sexism and racism inflicted with the intention of further alienating and dehumanizing the few Black women elected, there has been an unintended effect of creating a close, supportive network of friendships and mentorship to navigate the unique challenges both in the office and in the public sphere.¹¹⁹ Thus, mere representation can assist in overcoming the complex challenges that Black women face.

However, even where Black women are visibly represented, albeit notably limited in number, this does not necessarily align with a commitment to their advancement, let alone equal advancement.¹²⁰ Policies aimed solely at representation are insufficient to advance the devalued social positions of Black women, particularly as it equates to "tokenism;" thus, leadership roles should be a priority for purposes of real advancement.¹²¹ Advancement for

¹¹⁷ See, e.g., Abrams & Weiner, *supra* note 58, (reiterating that the proclaimed "walking protest at all times" has only strengthened its impact due to a unified, collective league effort, as opposed to merely individual athletes or teams).

¹¹⁸ Stewart, *supra* note 104 (noting that between 2015 and 2019, the share of elected women of color prosecutors has barely increased—from one percent to two percent). For perspective, it is important to note that this statistic is inflated as it relates to women of color generally, not Black women specifically.

¹¹⁹ *Id.* (explaining the "damned if [you] do, damned if [you] don't" standard for Black women making prosecuting decisions, and recounting instances of being called monkeys and other various expletives, receiving hate mail and death threats, and having their families and children targeted).

¹²⁰ See Ilya E. Lerma, *Women of Color in Law: Visibility Does Not Equal Advancement*, BLOOMBERG L. (Oct. 1, 2020, 3:00 AM), https://www.bloomberglaw.com/exp/eyJjdHh0IjoiQlVOVYsImlkIjoiMDAwMDAxNzQtYjg2Zi1kZjU0LWEzN2YtZmVmZmUyMDAwMDAxIiwic2lnIjoiOTRiUVZtWGQveitHVj9hTXZicnB6RzA2TFBNPSIsInRpbWUiOiIxNjAxNTU3MTM5IiwidXVpZCI6IitKQU5lY3htSFFCejg3emFPaEdvSUE9PTlzdRtTGk2UkpTUWxsY0RtTeTZDS0E9PSIsInYiOiIxIn0=?usertype=External&bwid=00000174-b86f-df54-a37f-feffe2000001&qid=6987771&cti=LSCH&uc=1320024245&et=FIRST_MOVE&emc=bbunw_bf%3A10&bna_news_filter=true [https://perma.cc/RFM9-48HU] (reporting that not only do women of color comprise fifteen percent of all law firm associates while women of color partners remain below four percent, but also women of color remain at essentially the same presence in equity roles as they did in 2006 while their white counterparts have advanced at an appreciably more steady rate). Again, it is important to notice that these numbers are inflated as they reflect women of color generally, not Black women specifically.

¹²¹ *Id.* (suggesting that long-term solutions include, but certainly are not limited to more "woman-to-woman referrals, female-owned/operated firms, networking, and co-representation affiliations").

women does not necessarily mean progress for women of color generally, and should be even further distinguished for Black women.¹²² While not discounting that white women and women of color are affected, Black women should be a focus in their own right, separate from other female identities, as they face unique challenges. In order to replace Black women's invisibility relative to social groups of "Black" and "women," the individuation of Black women must be heightened such that the focus is on their distinctiveness, rather than merely increasing representation.¹²³

C. CULTURALLY COMPETENT MENTAL HEALTH SERVICES

Lastly, to begin the process of authentic healing, one area of reform that should be presumptively mandatory is the overall mental and emotional health of Black women. The mental health sphere has become yet another area in which Black women are exposed to police violence, not only as a result of the interactions of racism and sexism discussed in Part I, but also through stigmatization of ableism.¹²⁴ As evidenced by the Say Her Name campaign, police encounters with disabled Black women that result in nearly routine showings of excessive and deadly force are not isolated incidents.¹²⁵ Defunding the police has potential to be an effective solution to the problem of systematically criminalizing disability. This is done by substituting officers who lack sufficient training to engage with individuals in mental crises, specifically disabled Black women in crisis, with mental health professionals. To accomplish this, experienced specialists equipped for the unique complexities of Black women,¹²⁶ a contemporaneous development of

¹²² *Id.*

¹²³ Sesko & Biernat, *supra*, note 51, at 154 (suggesting, also, that motivating social individuation of outgroup members with multiple subordinate identities can increase visibility of Black women specifically).

¹²⁴ ANDREA J. RITCHIE, *INVISIBLE NO MORE: POLICE VIOLENCE AGAINST BLACK WOMEN AND WOMEN OF COLOR* 93 (2017) ("[T]he odds that [B]lack women and women of color who are, or are perceived, to be in a mental health crisis will experience violence, arrest, or involuntary commitment are compounded by perceptions of mental instability based on gender, gender nonconformity, and sexuality.").

¹²⁵ CRENSHAW & RITCHIE, *supra* note 21, at 16–17.

¹²⁶ See Crenshaw, *Mapping the Margins*, *supra* note 14, at 1245–46 (emphasizing that there must be a structural confrontation of the multilayered, systemic forms of racism and sexism that converge in Black women's experiences, rather than a continued use of strategies designed solely for experiences of those who do not share the same intersectional background, which in turn reproduce the subordination and marginalization of Black women within the very support services designed to respond to the issues).

reasonably available alternatives, and a subsequent social allowance to utilize those resources must be in place.

First, community, grassroots organizations which focus on “transformative justice” for Black women in mental health crises can prevent future police violence by mitigating encounters to a minimum or completely depriving officers the opportunity to engage in crises where they are neither necessary nor useful.¹²⁷ However, these organizations only retain value if sufficiently available to be utilized by Black women. This requires that community-based organizations have sufficient resources available, specifically funding the expansion of programs that provide training, which can be obtained by shifting funding away from the police. This is one example, specifically within the mental health sphere, of how defunding the police must be treated deliberately and carefully and led by Black women at every step, such that vital resources cannot be reallocated to equally damaging alternatives to traditional policing.¹²⁸

Second, in expanding to a more general mental health and support for Black women, their experiences go well beyond mental health crises. This can be explained in part because Black women are socialized early in life into silence due to their invisibility and exposure to criminalization and public punishment.¹²⁹ For example, educational policies and practices shape Black girls such that they are socialized into masking pain as a coping mechanism.¹³⁰ This can also be explained in part because Black women are on the margins of multiple identity categories and thus susceptible to multiple “isms.” As a result, Black women cannot experience a comprehensive feeling of support or begin the process of healing until it is generally understood that therapy needs to be both diverse, as there are “many ways of being

¹²⁷ Doggett, *supra* note 110 (focusing on “increas[ing] safe interventions in gender-based violence that do not rely on contact with the police, while relocating funding from the police to ‘community-determined programs’”).

¹²⁸ *Id.* (stating that mandatory social and health services, such as group homes, psychiatric hospitals, and drug treatment facilities, which may require compliance with medication, forced medication, or forced restraint, “are no less damaging than our systems of policing and cages.”).

¹²⁹ Broussard, *supra* note 39, at 373, 402 (writing for Black women who were urged to “be silent and just forget what had happened” and demonstrating how “silence became a necessary tool for their survival”).

¹³⁰ Smith, *supra* note 23, at 264, 267–68 (examining the invisibility of Black girls’ trauma that works to categorize Black women collectively in formative years and thus to reinforce stereotypes through anti-Black girl rhetoric).

[B]lack,”¹³¹ and unique to the intersectional social categories of each individual Black woman.¹³²

Clinical concerns for Black women are thus often multilayered and predominated by trauma, including but not limited to: “childhood abuse (emotional, physical, and sexual), violence exposure, and repetitive experiences of exclusion, isolation, and devaluation emanating from racism and other forms of social oppression.”¹³³ Despite this overrepresentation in vulnerability,¹³⁴ Black women have historically underutilized mental health services due to a cultural disconnect and mental health professionals’ inability to address race and racism in conversation.¹³⁵ These failures implicitly communicate to Black women that they should suffer alone and in silence for themselves, and their families, which in turn is reinforced by a widespread stigma surrounding mental health within the Black community.¹³⁶ Black women are essentially prevented from reclaiming their stories. The ultimate consequence is that Black women, without the support or opportunity to analyze their experiences in a safe environment, are subject to victimization and blame that obstruct empowerment.¹³⁷ To break this

¹³¹ Harriet Curtis-Boles, *Living in the Margins: Intersecting Identities and Clinical Work with Black Women*, 42 *WOMEN & THERAPY* 430, 440–42 (2019) (noting the necessity of diversity in clinical services due to the combination of different types of traumas experienced by Black women).

¹³² *Id.* at 431, 442–45 (suggesting implications for training and clinical supervision in order to provide competent mental health services for Black women that overcome stigma, cultural disconnect, and mismanagement of race by emphasizing the therapist as a “compassionate witness” and including intersectionality to influence the dynamics in the treatment relationship); *see also*, CRENSHAW & RITCHIE, *supra* note 21, at 32 (suggesting that in addition to involving trained professionals at community conversations to offer Black women emotional support and referrals to trauma care, the Say Her Name campaign also provides a list of questions that can start the conversation).

¹³³ Curtis-Boles, *supra* note 131, at 431 (noting that the consequences of neglecting this trauma can include low self-esteem, relationship dysfunction, fragmentation, posttraumatic stress, depression, and addiction as well as underlying feelings of rage that can manifest as silence and disassociation or self-destructiveness).

¹³⁴ *Id.* at 430 (establishing that Black women are underdiagnosed and underrepresented in counseling services within the mental health system).

¹³⁵ Crenshaw, *Mapping the Margins*, *supra* note 14, at 1251 (recognizing the failure of mental health professionals to consider intersectional identities may explain the “high levels of failure, frustration, and burn-out experienced”).

¹³⁶ Curtis-Boles, *supra* note 131, at 431–32 (associating the Black women stereotype of being “strong, independent, and emotionally self-reliant” or a “survivor” with the stigma towards mental health in the Black community as a whole in addition to the abuse of power and coercion concerns reflected historically).

¹³⁷ *Id.* (characterizing empowerment as the central focus of treatment in validating their experiences and consequences, respecting their truths, and communicating authentic and

silence and begin healing,¹³⁸ Black women must be able to speak their stories, and more importantly, they must be heard. For these reasons, the success of defunding the police is contingent on the notion that Black women are supported through culturally competent mental health services with an intersectional approach that encompasses both mental health emergencies and general mental and emotional health.

CONCLUSION

As demonstrated throughout this Comment, equality for Black women is limited by their vulnerability in the criminal justice system and their invisibility in reform movements. From a purely logical standpoint, because Black women suffer uniquely and are particularly unlikely to realize justice, it would make sense that anti-racist and feminist reform would center their perspective to capture each nuance within the movement. By expanding the intersectional lens and centering Black women in defunding the police, wider implications can be achieved. What it looks like to authentically transform policing from the Black women's perspective will be different from that of other intersectional categories like Black men and white women.

For this reconfiguration to be successful, it will require men and women, white and Black, and all other multidimensional intragroup differences to individually and collectively recognize that this is not just a Black women's problem, but an American problem. While recognitions have thus far ranged from acknowledging privilege and its corresponding platform to saying her name and actively listening, it must extend beyond "allies" taking responsibility for being uninformed or merely praising Black women for their strength. It must meet the requisite authenticity for Black women to buy in to a movement that will actually follow through.¹³⁹ The motivation should be an authentic effort in reforming both the criminal justice system and the reform movement's approach to defunding the police. By doing so, Black women can begin to not only trust that their fate will not end in a shower of bullets while in the sanctity of their own home, but also more importantly, to feel something other than hopelessness and exhaustion. At the very least, Black women should be able to realistically believe that their lives matter, and that they are no longer alone. In closing, it is time to take urgent, affirmative steps by purposely supplying the requisite resources,

genuine acceptance in providing a corrective emotional experience such that Black women can rescript and reclaim their narrative).

¹³⁸ Broussard, *supra* note 39, at 380, 420 (referencing three types of silence that Black women are subject to: silence stemming from slavery and subsequent societal status, silence of the legal system that has ignored them, and silence in the failure to reclaim their stories).

¹³⁹ Toliver, *supra* note 116.

opportunities for leadership, and mental and emotional support necessary to intentionally prioritize and center Black women.