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## Talking About Black Lives Matter and #MeToo

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## Authors

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## ARTICLES

### TALKING ABOUT BLACK LIVES MATTER AND #METOO

*Linda S. Greene, Lolita Buckner Inniss, and Bridget J. Crawford†  
with Mehrsa Baradaran, Noa Ben-Asher, I. Bennett Capers, Osamudia R.  
James, and Keisha Lindsay\**

“Nobody’s free until everybody’s free.”  
-Fannie Lou Hamer<sup>1</sup>

INTRODUCTION .....	110
DISCUSSION .....	117
1. Do you view the Black Lives Matter and the #MeToo movements as autonomous phenomena or as outgrowths, evolutions, extensions, or departures from prior social or legal movements? .....	117
2. What are the goals of these movements? What are the assumptions of the Black Lives Matter and #MeToo movements? What are methods employed by these movements to attain their goals? .....	121
3. What are the similarities between the two movements? How do they differ? .....	127
4. What is your understanding of intersectionality? How does the lens of intersectionality help us to understand the interior characteristics and influence of the Black Lives Matter and/or #MeToo	

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1. Fannie Lou Hamer, *SPEECHES OF FANNIE LOU HAMER: TO TELL IT LIKE IT IS* (Maegan Parker Brooks & Davis W. Houck eds., 2010).

movements? .....	136
5. What voices or conversations, if any, are missing from the Black Lives Matter and/or #MeToo movements, and, if there are absences in these regards, how do we address them? .....	140
6. How do the two movements define success? How do you measure the success or failure of the movements? What has been the trajectory of success? Have the movements experienced setbacks? Has the public embraced or rejected these movements and how do you evaluate that embrace or rejection? .....	146
7. What effects have the Black Lives Matter and/or #MeToo movements had on law? .....	150
8. What effects have the Black Lives Matter and/or #MeToo movements had on popular culture including music, movies, art, social media? .....	160
9. Does law have the potential to produce meaningful and transformative solutions to the phenomena that led to either or both movements? Does law pose an obstacle to transformative change? .....	164
10. What role should law play in achieving a society that is race-conscious and gender-conscious? Should we view race consciousness and gender consciousness with skepticism? .....	167
11. How do the Black Lives Matter and the #MeToo movements affect your teaching, scholarship, and community engagement? .....	168
12. How can law teachers bring aspects of the Black Lives Matter and/or #MeToo phenomena into the classroom? .....	171
13. What are the most promising research questions with respect to either or both of these movements? .....	172
14. What are the futures of the Black Lives Matter and #MeToo movements? .....	175
CONCLUSION .....	177

## INTRODUCTION

(by Linda S. Greene, Lolita Buckner Inniss, Bridget J. Crawford)

In her remarks to the 1971 National Women's Political Caucus, civil rights leader Fannie Lou Hamer described the quest for individual freedom as co-extensive with the pursuit of liberation for all people.<sup>2</sup> Almost fifty years later, this belief undergirds the work of the Black Lives Matter and #MeToo movements. Alicia Garza, Patrisse Cullors, and Opal Tome, three self-described "radical Black organizers,"<sup>3</sup> founded Black Lives Matter in response to the 2012

2. See, e.g., MARGARET PARKER BROOKS, A VOICE THAT COULD STIR AN ARMY: FANNIE LOU HAMER AND THE RHETORIC OF THE BLACK FREEDOM MOVEMENT, 157-58 (2014).

3. *Herstory*, BLACKLIVESMATTER.COM, <https://perma.cc/QVM3-EAFH> (last visited Nov. 24, 2019) ("In 2013, three radical Black organizers—Alicia Garza, Patrisse Cullors, and

death of Trayvon Martin, an unarmed 17-year old, shot and killed by a self-appointed neighborhood “watch” coordinator in a gated community. The shooter claimed that Martin looked suspicious and that he fired the gun in self-defense against Martin.<sup>4</sup> People took to the streets in response to the deaths of Martin and then others, as the general public could no longer ignore the number of Black men and boys killed by police each year—men and boys including Eric Garner (Staten Island, New York, 2014), Michael Brown (Ferguson, Missouri, 2014), Tamir Rice (Cleveland, Ohio, 2014), Walter Scott (North Charleston, South Carolina, 2015), Freddie Gray (Baltimore, Maryland, 2015), Laquan McDonald (Chicago, Illinois, 2015), Philando Castille (Falcon Heights, Minnesota, 2016), Terence Crutcher (Tulsa, Oklahoma, 2016), Antwon Rose II (Pittsburgh, Pennsylvania, 2018), and O’Shae Terry (Arlington, Texas, 2018).<sup>5</sup> Activists have established chapters of the Black Lives Matter organization in other cities throughout the United States.<sup>6</sup> #BlackLivesMatter is a frequent hashtag on social media. Black Lives Matter shines the light on the pattern of killings.<sup>7</sup> It is a racial justice movement with a goal to “transform the state.”<sup>8</sup>

Alongside the Black Lives Matter movement grows a freedom struggle for all women, including transgender women, to live and work without threat of sexual harassment and sexual assault. In 2006, Tarana Burke founded an organization called Just Be Inc. to serve the needs of young female victims of sexual harassment and assault.<sup>9</sup> Burke explains that the movement “started in the deepest, darkest place in my soul,” when she was working with a young survivor of sexual abuse and “could not muster the energy to tell her that I understood,

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Opal Tometi—created a Black-centered political will and movement building project called #BlackLivesMatter.”)

4. Greg Allen, *At Trial, Witness Says Zimmerman Acted in Self-Defense*, ALL THINGS CONSIDERED, NPR.ORG (June 28, 2013), <https://perma.cc/LMF4-HKEZ>.

5. CNN Library, *Controversial Police Encounters Fast Facts*, CNN.COM (May 3, 2019), <https://perma.cc/B5D7-AWE7>.

6. See *Chapters*, BLACKLIVESMATTER.COM, <https://perma.cc/J5L9-4GA5> (last visited Nov. 24, 2019).

7. The media has played a role in increasing awareness of both the violence against Blacks in the United States and the activist-oriented responses of members of the Black Lives Matter movement (and others). See, e.g., Munmun De Chodhury et al., *Social Media Participation in an Activist Movement for Racial Equality*, AAAI CONF. ON WEB. & SOC. MEDIA 92 (2016), <https://perma.cc/2HAQ-DZGC> (evaluating role of social media in galvanizing participation in Black Lives Matter protests); Linda Sheryl Greene, *Before and After Michael Brown*, 49 *Washington Journal of Law and Policy* 1, 51 (2015). To be sure, sanctioned violence against black bodies is not a new phenomenon (and to be sure, violence is not inflicted only by the police and only on Black men). See, e.g., *Paul Butler*, CHOKEHOLD: POLICING BLACK MEN (2017). But media has allowed citizens of all colors all over the world see first-hand the violence that Black Americans have always known. The 1991 beating of Black truck driver Rodney King by the Los Angeles Police Department was videotaped by an observer watching from an apartment balcony. See *Controversial Police Encounters Fast Facts*, CNN.COM (May 3, 2019), <https://perma.cc/FLG2-QDAM>.

8. Amna A. Akbar, *Toward a Radical Imagination of Law*, 93 N.Y.U. L. REV. 405, 405 (2018).

9. Sandra E. Garcia, *The Woman Who Created #MeToo Long Before Hashtags*, N.Y. TIMES, Oct. 20, 2017, <https://perma.cc/PA25-34TV>.

that I connected, that I could feel her pain,” as a survivor of sexual abuse herself.<sup>10</sup>

In 2017, celebrity Alyssa Milano took to Twitter to urge anyone who had been “sexually harassed or assaulted” to “write ‘me too’ as a reply to this tweet.”<sup>11</sup> Milano was unaware of Burke’s prior work, and reached out to Ms. Burke two days later to begin collaboration.<sup>12</sup> Millions of women and men subsequently used the hashtag #MeToo and the eponymous movement began to take shape. Several Hollywood stars made publicized claims of sexual harassment and assault against movie producer Harvey Weinstein.<sup>13</sup> Investigations (and in some case, subsequent legal proceedings) confirmed stories of predatory behavior by men such as Roger Ailes,<sup>14</sup> Les Moonves,<sup>15</sup> Larry Nassar,<sup>16</sup> Bill Cosby,<sup>17</sup> and others. Soon the whole world was talking about #MeToo.<sup>18</sup> Thus, when Dr. Christine Blasey Ford told the Senate that then-Judge Kavanaugh had sexually assaulted her thirty-six years before, when both were teenagers,<sup>19</sup> news sources reported that eleven million to thirteen million people watched those hearings.<sup>20</sup>

10. Tarana Burke, About Us, *The Inception*, JUST BE INC., <https://perma.cc/63EM-KE26>. Burke coined the phrase to bring attention to the harms suffered by black, brown and other sexual assault survivors from marginalized communities a decade before the phrase was taken up by others. Lesley Wexler, Jennifer K. Robbennolt, & Colleen Murphy, *#Metoo, Time’s Up, And Theories Of Justice*, 19 U. Ill. L. Rev. 47, 51 (2019). Burke, all while making known her prior work in this regard, acted to forge a link between the movement she initiated and the broader contemporary white feminist movement that adopted Burke’s phrase. See also Angela Onwuachi-Willig, *What About #UsToo?: The Invisibility of Race in the #MeToo Movement*, 28 YALE L.J. F. 105, 106-108 (2018) (discussing the invisibility of Burke in the #MeToo movement and the broader invisibility of women of color in many white feminist rights agendas).

11. Alyssa Milano (@Alyssa\_Milano), TWITTER (Oct. 15, 2017, 4:21 PM), <https://perma.cc/E346-V7H5>.

12. Sandra E. Garcia, *The Woman Who Created #MeToo Long Before Hashtags*, N.Y. TIMES, Oct. 20, 2017, <https://perma.cc/4ZMG-AQKK>.

13. See *Harvey Weinstein Timeline: How the Scandal Unfolded*, BBCNEWS.COM (May 24, 2019), <https://perma.cc/LVQ4-JP6D>.

14. See John Koblin, et al, *Roger Ailes Leaves Fox News and Robert Murdoch Steps In*, N.Y. TIMES (Jul. 21, 2016).

15. See Brian Stelter, *New Allegations Against Former CBS Chief Les Moonves Put his \$120M Severance in Doubt*, CNN.COM (Nov. 29, 2018).

16. See, e.g., Monica Davey, *Larry Nassar, Convicted Gymnastics Doctor, Wants a New Sentence From a New Judge*, N.Y. TIMES (July 25, 2018), <https://perma.cc/EQY9-DG2J>.

17. See, e.g., Chris Francescani & Bill Hutchinson, *Bill Cosby Sentenced to 3 to 10 Years in State Prison with No Bail During Appeals*, ABC NEWS (Sep. 25, 2018), <https://perma.cc/K2HZ-PYHG>.

18. See, e.g., Catherine Powell, *#MeToo Goes Global and Crosses Multiple Boundaries*, Council on Foreign Relations blog, CFR.ORG (Dec. 14, 2017), <https://perma.cc/LXP2-2YMF>. In France, the campaign is *#BalanceTonPorc* (“snitch on your pig”). *Id.* In Italy, the equivalent is *#QuallaVoltaChe* (“that time when”). In Spain, it is *#YoTambien* (“me too”). *Id.*

19. See, e.g., *Christine Blasey Ford Describes Alleged Assault by Brett Kavanaugh*, BBC.COM (Sept. 27, 2019), <https://perma.cc/DNT6-LE96>.

20. Toni Fitzgerald, *Kavanaugh Hearing Ratings: How Many People Watched The Senate Testimony*, FORBES, Sept. 28, 2018, <https://perma.cc/25CD-EEYA>.

Those hearings took America back to 1991, when, in a precursor to the #MeToo moment, Anita Hill, a 34-year old law professor, testified before the Senate that then-Judge Clarence Thomas had sexually harassed her while she worked under his supervision at the U.S. at the Department of Education and the Equal Opportunity Commission.<sup>21</sup> After Thomas vigorously defended himself in nationally televised hearings, calling the experience a “high tech lynching,”<sup>22</sup> the Senate confirmed Thomas by a narrow vote of fifty-two to forty eight.<sup>23</sup> The Hill-Thomas hearings marked the beginning of greater cultural awareness about

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21. See, e.g., Martha R. Mahoney, *Exit: Power and the Idea of Leaving in Love, Work, and the Confirmation Hearings*, 65 S. CAL. L. REV. 1283, 1293 (1992). Other witnesses with similar accusations against Thomas were willing and able to testify but were not called. See, e.g., Jane Mayer, *What Joe Biden Hasn't Owned Up to About Anita Hill*, THE NEW YORKER (Apr. 27, 2019), <https://perma.cc/K3KK-5VH2>.

<sup>22</sup> Many people found Thomas's invocation of the metaphor inapt because his accuser was a Black woman. One scholar described Thomas's lynching comment as “distorted and dishonest.” Carolyn A. Mitchell, *Choicelessness as Choice: The Conflation of Racism and Sexism*, in DISCOVERING DIFFERENCE: CONTEMPORARY ESSAYS IN AMERICAN CULTURE 189, 194–95 (Christoph K. Lohmann ed., 1993). The Thomas confirmation hearing also impressed many not only because Hill publicly alleged workplace sexual misconduct, but also because the hearings marked the first time that many Americans became aware of the then little known or acknowledged African-American intelligentsia with elite educations and high status employment. Nor had many people seen portrayed in widespread media accounts such an intra-racial, almost intra-familial dispute pitting a black man against a black woman. Lolita Buckner Inniss, *From Space-Off to Represented Space: A Review of Reimagining Equality: Stories of Gender, Race, and Finding Home* by Anita Hill, 28 BERKELEY J. GENDER L. & JUST. 138, 139 (2013) (book review).

<sup>23</sup> See also R.W. Apple, Jr., *The Thomas Confirmation; Senate Confirms Thomas*, 52-48, *Ending Week of Bitter Battle*, N.Y. TIMES (Oct. 16, 1991), <https://perma.cc/F4YK-SWU6>. Both Justices Kavanaugh and Thomas were confirmed with the narrowest majorities since 1881. It is not without irony that some commentators note that both Justice Thomas and Professor Hill have continued to capture public attention. Justice Thomas does so because of his judicial philosophy including his opposition to race conscious inclusion measures and his opposition to female reproductive autonomy, among other views. He continues to sit on the nation's highest court and has what he has called a job without stress, and insists he has no plans to retire. See, e.g., Robert Barnes, *Clarence Thomas says he has 'no idea' where retirement rumors started*, WASH. POST, (June 3, 2019), <https://perma.cc/SVZ6-7FB3> (quoting Thomas as saying of his job as a Justice, “I actually don't have a lot of stress. I cause stress.”). For her part, in the short run, Professor Hill suffered damages on a personal and professional level, not the least due to critics like David Brock who smeared her reputation, credibility and mental state: according to him, Professor Hill was “a little bit nutty and a little bit slutty.” David Brock, *The Real Anita Hill: The Untold Story* (1993). Brock subsequently disavowed the premise of his own his own book. See, e.g., Alex Kuczynski & William Galberson, *Book Author Said He Lies in His Attacks on Anita Hill in Bid to Aid Justice Thomas*, N.Y. TIMES (June 27, 2011), <https://perma.cc/7M8L-TZ6D> (reporting Brock's admissions that he lied in order to “protect the reputation of Justice Clarence Thomas[.]”). But Anita Hill is now a respected expert on sexual harassment, the author of several books, holder of an endowed chair at Brandeis University, the recipient of numerous honorary degrees, Brandeis Faculty Guide: Anita Hill <https://perma.cc/4RLQ-PXZH> (last visited Nov. 22, 2019), and is a celebrity speaker. Executive Speakers Bureau: Anita Hill <https://perma.cc/B67U-R37L> (last visited Nov. 22, 2019).

the pervasive and insidious nature of sexual harassment.<sup>24</sup> Similarly the Senate's close vote on Kavanaugh (who was confirmed by a vote of fifty to forty-eight)<sup>25</sup> did not derail the #MeToo. If anything, the hearings deepened interest in the complexities of race, gender, and power dynamics.

Inspired by both the Black Lives Matter movement and the #MeToo movement, the three of us sought an academic venue in which we could explore the apparent differences in the ways that the two movements have unfolded, with Black Lives Matter coming to have a public perception associated with an "underclass" Black male identity, and #MeToo coming to have an externally-facing association with white female middle- and upper-class identities. These perceptions confound, given that Black women organized both movements. We suspected a need to address the interlocking nature of racial and gender oppression by applying a robust intersectional analysis.<sup>26</sup> We then sought a Law School and journal collaborator, symposium participants, and a format that would be commensurate with the intellectual challenge before us.

The University of Wisconsin Law School has played an historic role in nurturing and providing a forum for legal scholarship in the Law & Society tradition. The *Wisconsin Journal of Gender, Law and Society* has brought women and gender issues to the forefront, recently with its 2018 symposium on "Rights and Protections of Transgender and Non-Binary Individuals in the U.S. Legal System," its 2015 symposium on "Civil Rights in the Digital Age: Developing Effective Legal Responses to Cyber Sexual Harassment," and many other articles and comments on gender, gender identity, and race. We were

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24. See, e.g., ANITA F. HILL, *SPEAKING TRUTH TO POWER* (1997). After the hearings, a Gallup Poll found that 60% of American thought that women would be more likely to report sexual harassment. Megan Brennan, *Gallup Vault: Anita Hill's Charges Against Clarence Thomas*, GALLUP (Sep. 26, 2018) <https://perma.cc/95E3-YYHM>. Rebecca Walker said that the hearings were about "women's credibility and power." The then twenty-two-year-old writer described the proceeds as "not about determining whether or not Clarence Thomas did in fact harass Anita Hill. They were about checking and redefining the extent of women's credibility and power." Rebecca Walker, *Becoming the Third Wave*, MS., Jan./Feb. 2002, reprinted in MS., Spring 2002, at 86. Walker also urged women "of my generation" to become politically active: "Do not vote for [men] unless they work for us. Do not have sex with them, do not break bread with them, do not nurture them if they do not prioritize our freedom to control our bodies and our lives." *Id.* Some scholars date the beginning of so-called "third-wave feminism" to Walker's article. See Bridget J. Crawford, *Toward a Third-Wave Feminist Legal Theory: Young Women, Pornography and the Praxis of Pleasure*, 14 MICH. J. GENDER & LAW 99, 106-09 (2007).

25. PN 2259 – *Brett Kavanaugh – Supreme Court of the United States*, CONGRESS.GOV, <https://perma.cc/ACM2-8BJC> (last visited Nov. 22, 2019).

26. Intersectionality is a term popularized by legal Scholar Kimberlé Crenshaw in an article published in 1989 in the University of Chicago Legal Forum, where she wrote, "[b]ecause the intersectional experience [of Black women] is greater than the sum of racism and sexism, any analysis that does not take intersectionality into account cannot sufficiently address the particular manner in which Black women are subordinated. .... Discrimination, like traffic through an intersection, may flow in one direction, and it may flow in another." Kimberlé 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, 149 (1989).



thrilled that the student editors agreed to invite a group of scholars to come together in April, 2019 to think together about these issues.

At a one-day symposium entitled “Race-Ing Justice, En-Gendering Power: Black Lives Matter and the Role of Intersectional Legal Analysis in the Twenty-First Century,” speakers with a wide range of teaching and scholarly interests—including critical race theory, feminist theory, violence against women, the criminal justice system, policing, structural marginalization, and constitutional and civil rights law—explored issues at the intersection of race and gender through the lenses of the Black Lives Matter movement and the #MeToo movement. Conversations continued among the Symposium participants long after the end of the official program. We invited the speakers to memorialize the robust conversations held at the Symposium and to dive more deeply into the phenomena, implications, and future of Black Lives Matter and #MeToo. That invitation inspired the dialogue in this essay.

Our collective aim to explore Black Lives Matter and #MeToo movements as complex social justice movements implicating a range of identity characteristics. Although some lawyers and legal scholars prefer to assess racial and gender harms as occurring on separate axes, this Symposium’s proponents posit that only an intersectional approach holds the potential to explore the breadth of experience sufficient to inquire whether Fannie Lou Hamer’s dream of freedom is accessible to all. In some political,<sup>27</sup> popular<sup>28</sup> and even academic circles,<sup>29</sup> it may be fashionable to deride identity politics as divisive.<sup>30</sup> There is often particular scorn reserved for nonwhite racial and non-masculine gender identity; perhaps even more scorn is heaped upon racial and gender-ambiguous people, who, given the actual or perceived indeterminacy of their identities, often fall into a category all their own.<sup>31</sup> And at the most fundamental level, identity

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27. See, e.g., Brent Griffiths, *Sanders Slams Identity Politics as Democrats Figure Out Their Future*, POLITICO (Nov. 21, 2016) (quoting socialist and former presidential candidate Bernie Sanders as saying “It’s not good enough for someone to say, ‘I’m a woman! Vote for me!’ No, that’s not good enough. What we need is a woman who has the guts to stand up to Wall Street, to the insurance companies, to the drug companies, to the fossil fuel industry[.]”).

28. See, e.g., ON POINT, NPR PODCAST (Oct. 8, 2018 at 22:49) (quoting Pennsylvania voter and President Trump supporter Dorothy Niklos saying, “Running in the streets wearing silly pink hats does not make a woman a woman.”).

29. See, e.g., FRANCIS FUKUYAMA, *IDENTITY: THE DEMAND FOR DIGNITY AND THE POLITICS OF RESENTMENT* (2018) (calling identity politics a “chief threat” to liberal democracy).

30. Identity politics has at its base the notion of identity, which is a frequently discussed idea across academic disciplines. “Identity politics” has mostly been ascribed to discussions about race, gender, sexuality, culture, national and political identity. What all of these categories often have in common is the way that they may concern both collective social identities along with personal, self-ascribed identities. Identity is behaviorally consequential, normatively significant, increasingly pervasive across disciplines, and yet is also subject to “definitional anarchy.” Rawi Abdelal et al., *Identity as a Variable*, 4 PERSPECTIVES ON POLITICS 695, 695 (2006).

31. Lolita Buckner Inniss, “*Other Spaces*” in *Legal Pedagogy*, 28 HARV. J. RACIAL & ETHNIC JUST. 67, 71 n. 21 (2012). “Racial and gender norms are firmly entrenched in our society; we are all expected, for the most part, to be transparent on matters of personal racial

politics *are* divisive; they require recognizing that individuals are different from each other and groups of people have not had the same experience in this country and elsewhere.<sup>32</sup> Categories operate as heuristic short-hands; they are part of the cognitive processes that helps human beings make sense of the world.<sup>33</sup>

In one respect, to recognize difference is to merely describe. Human diversity exists along lines of race, sex, gender, sexual orientation, socioeconomic class, immigration status, language ability, or physical and neurological functions, for example. Only when power, politics and law enter do differences take on meaning and reify into categories.<sup>34</sup> But acknowledging difference—if that is what identity politics is—may not be bad at all. By recognizing the diversity of human experience, one may begin to work to make sure all are free.<sup>35</sup>

This essay organizes around *internal* and *external* spatial metaphors. Spatial schemata, or spatial metaphors, can help organize ideas and also shape understandings of reality.<sup>36</sup> Like the heuristic functions of identity identifiers, schemata give shape and meaning to knowledge. They contribute to the iterative,

or gender identity....As a society, we are even more demanding when it comes to understanding the gender identity of persons.” *Id.*

32. Ashley Jardina, *White Identity Politics*, WHITE IDENTITY POLITICS, 61-63, 112-13 (2019). White identity, traditionally thought of as nonexistent in the sense that white was the “neutral” or “default” racial identity, has grown substantially over the last decade as whites have increasingly perceived themselves as part of a raced group, albeit often as a superior raced group.

33. As Linda Krieger has explained, identity-type categories are “strategies for simplifying the perceptual environment and acting on less-than-perfect information.” Linda Hamilton Krieger, *The Content of Our Categories*, 47 STAN. L. REV. 1161, 1188 (1995).

34. Catharine MacKinnon has explained with respect to gender, for example, that “gender is socially constructed as difference epistemologically; sex discrimination law bounds gender equality by difference doctrinally.” Catharine A. MacKinnon, *Difference and Dominance*, in FEMINISM UNMODIFIED 32-45 (1987). It is widely asserted that both gender and race are “socially constructed.” While there is no doubt that the two categories defy the limits of biology and are largely shaped by society, this does not mean that gender and race are any less social realities upon which our lives are shaped. John A. Powell, *The Race and Class Nexus: An Intersectional Perspective*, 25 LAW & INEQ. 355, 357 (2007).

35. In 1977, a group of feminists calling themselves the Combahee River Collective issued a statement that advocacy is only effective when groups work together without attempting to erase differences. The Collective Statement read in part: “We have arrived at the necessity for developing an understanding of class relationships that takes into account the specific class position of Black women who are generally marginal in the labor force, while at this particular time some of us are temporarily viewed as doubly desirable tokens at white-collar and professional levels. We need to articulate the real class situation of persons who are not merely raceless, sexless workers, but for whom racial and sexual oppression are significant determinants in their working/economic lives.” See Combahee River Collective Statement (Apr. 1977), available at <https://perma.cc/BE56-EYN5>. One of the members of the Combahee Collective, Barbara Smith, explained decades later that “[t]he political theory and practice of identity politics has been most useful for building coalitions with people of various identities who are committed to working together to eradicate these systems and not for creating enemies lists.” Barbara Smith (@TheBarbaraSmith), TWITTER.COM (Jan. 5, 2018, 6:34 PM), <https://perma.cc/6YKZ-NY82>.

36. Lolita Buckner Inniss, *From Space-Off to Represented Space: A Review of Reimagining Equality*, 28 BERKELEY J. GENDER L. & JUST. 138, 148 (2013).

recursive process of expanding one's world view. This essay makes five spatial schematic moves. First, internal considerations ground comparisons of the definitions, goals, and ideas of success employed by or applied to Black Lives Matter and #MeToo. Second, external concerns inspire questions about whether both movements may be better understood through the lens of intersectionality, and relatedly, what challenges these movements pose for an intersectional analysis. Third, a meta-internal<sup>37</sup> framework invites inquiry into how the movements shape the daily work of scholars, teachers, lawyers, and community activists. Fourth, a dialectical external-internal frame drives questions about the movements' effects on law and popular culture, and the reciprocal effects between those external influences and the movements themselves. Returning to an external, even forward-looking, approach, we ask what the next steps are for both movements. This five-part taxonomy frames the inquiry into where the Black Lives Matter and #MeToo movements are located individually, but also where they are co-located, and, perhaps most importantly, where they are going.

The contributions to the collective conversation are marked with each participant's individual name. The essay as a whole reflects our shared commitment to humbly put forward our observations, doubts and questions in a combined effort so that we all can get free, just as Fannie Lou Hamer envisioned.<sup>38</sup>

#### DISCUSSION

1. *Do you view the Black Lives Matter and the #MeToo movements as autonomous phenomena or as outgrowths, evolutions, extensions, or departures from prior social or legal movements?*

**Bennett Capers:** Can we really think of Black Lives Matter and #MeToo without thinking of how they build on, and learn lessons from, movements that came before them? Remember Occupy Wall Street? Remember SlutWalks? Even with #NeverAgain following the mass shooting at Stoneman Douglas High School, I assume they're aware of what worked, and what didn't, for other movements. I take it as a given that no social movement is truly an autonomous phenomenon. I'm not suggesting this is done consciously, but everything seeps in.

I'll go a step further and suggest that the #MeToo movement likely learned a thing or two from the Black Lives Matter movement. The latter was immediately attacked for not being inclusive enough; hence, the counterclaims of "All Lives Matter" and "Blue Lives Matter," as well as adjacent claims like "Trans Lives Matter." #MeToo, as a matter of branding, first by Tarana Burke

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37. "Meta-internal" refers to the way that we as teachers, scholars and activists respond to both the broader external and internal considerations of these movements and use them to shape our own personal frameworks and working models for interaction and understanding. While Black Lives Matter and #MeToo have clear, distinct existences of their own, they also exist, as do many of even our earliest notions, as composite, internally self-designed models for our own behaviors and choices. See e.g., DANTE CICHETTI & MARJORIE BEEGHLY, *THE SELF IN TRANSITION: INFANCY TO CHILDHOOD* 248, n. 2 (1990).

38. See Hamer, *supra* note 1.

and then Alyssa Milano, is as inclusive—and thus made to go viral—as it can get. There’s certainly no demographic that cannot claim #MeToo. This is just one example of a “lesson” the organizers likely learned from thinking about Black Lives Matter.

**Osamudia James:** To the extent that Black Lives Matter is a movement for black liberation, it is certainly anchored in the same themes as earlier civil rights movements. The movement for racial justice that dominated the middle of the 20<sup>th</sup> century, however, was multifaceted, and easy comparisons elude. Differences in terms of political strategies, structure, and leadership distinguished the arm of the movement led, for example, by Dr. Martin Luther King, Jr. and the Southern Christian Leadership Conference, from that led by the Student Non-Violent Coordinating Committee (SNCC) or the Black Panthers. If Dr. King’s arm is framed as using non-violent protest to make moral appeals, perhaps Black Lives Matter is similar in its attempt to make more visible the immorality of physical, material, and psychic violence leveled against Black people. If the civil rights arm led by SNCC is understood as informed primarily by local and grassroots organizing, then perhaps Black Lives Matter is similar in its loose network structure that eschews a unitary leadership model. If both SNCC and the Black Panthers are understood to have come together under the “Black Power” slogan that galvanized so many in the late 1960s and early 1970s, then perhaps Black Lives Matter, described by one of its co-founders as a “love note” to black people,<sup>39</sup> is similar in its attempt to speak directly to black people about their enduring worth and capacities in the face of white supremacy.<sup>40</sup>

Black Lives Matter has, however, made key departures from the rhetoric and structures of those earlier movements, starting with leadership: Black Lives Matter leadership is not only black, but intentionally female and queer. Second, in contrast to a defining feature of Dr. King’s civil rights work, Black Lives Matter is a major movement for Black liberation where religion in general, and the black church in particular, doesn’t feature prominently, either intellectually as providing text in which the movement is grounded, or physically as providing a space in which movement strategy is planned and coordinated. That may be because Americans today are less religious. But it may also be because the patriarchal, hierarchical, and socially conservative traditions of the black church don’t work for the more radical goals of Black Lives Matter. It is sobering to think that wanting *all* black people, including women and queer folks, to be free, could be properly characterized as “radical,” but here we are.

Finally, if radical is ultimately the key characteristic, then perhaps Black Lives Matter also draws heavily on the provocative aims and goals of movements

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39. Laura Flanders, *Building Movements Without Shedding Differences: Alicia Garza of #BlackLivesMatter*, TRUTHOUT (Mar. 24, 2015), <http://www.truth-out.org/news/item/29813-building-movements-without-shedding-differences-alicia-garza>.

40. For more on the multidimensionality of the civil rights movement, particularly as various arms interacted with Dr. King’s movement work, see Brandon M. Terry, *Requiem for a Dream: The Problem-Space of Black Power*, in *TO SHAPE A NEW WORLD, ESSAYS ON THE POLITICAL PHILOSOPHY OF MARTIN LUTHER KING, JR.* 290 (Tommie Shelby, Brandon M. Terry eds., 2018).

like Occupy Wall Street or even SlutWalk. It is worth noting, however, that even the non-violent methods of last century's civil rights movement were understood as radical at the time.

**Mehrsa Baradaran:** I think both movements built upon and learned from the movements that preceded them, but they differ in important ways that reveal a recent cultural and political shift—or more accurately, breakdown. I think both of these movements are a rejection of institutions and traditional hierarchies. These are both essentially leader-less movements whose ideology (if one can be identified) is a suspicion of gatekeepers and structures. Black Lives Matter and #MeToo do not make endorsements, do not create think tanks, do not build institutes. The movement is active, flexible, and unwieldy. They are coming to tear things down (in a good way) and call out injustice. They are not without historic precedent—there have been many movements of people railing against injustice. For example, the progressive and populist movements in the United States, abolition, and other movements abroad are similar. However, there is not a direct lineage to trace either movement to those that directly preceded it. Although I think there was a spark that lit both movements: in the case of #MeToo, I think it was Trump's election and Harvey Weinstein. And Black Lives Matter, it was Trayvon Martin's killing and Zimmerman's acquittal—then the movement went nationwide after Michael Brown and the Ferguson protest.

**Keisha Lindsay:** I agree with much of what you said, Mehrsa. I also think of the Black Lives Matter and #MeToo as both replicating and moving beyond prior social and legal movements, including the civil rights, black power, and feminist movements. On the one hand, as some other commentators have already suggested, Black Lives Matter and #MeToo break new ground because they make use of online social networks and interfaces (Facebook, Twitter, Instagram, etc.) and because they are not centered around a single charismatic leader—be it Gloria Steinem, Malcolm X, or Abbie Hoffman. Furthermore, unlike previous movements, Black Lives Matter and #MeToo were founded by self-identified black feminists who explicitly articulated their intention to challenge white supremacist, patriarchal power.

On the other hand, the Black Lives Matter and the #MeToo movements are also extensions of the social movements that precede them. For instance, the civil rights, anti-Vietnam war, and feminist movements also made use of what was then relatively new technology – i.e., nationwide evening news broadcasts and live television news feeds. In addition, while Black Lives Matter and #MeToo were founded by black feminists who embraced an intersectional analytical framework, there is a case to be made, as many of us do in this discussion, that many participants in both movements are increasingly moving toward the same single-axis orientation, or notion that activists can and should focus on one oppression at a time, that has defined earlier movements. Hence, the increased focus among Black Lives Matter activists on racism and among #MeToo activists on sexism, and the *decreased* focus, among both groups, on the *relationship* between race and gender based oppression.

**Lolita Buckner Inniss:** While Black Lives Matter and #MeToo are in many respects autonomous movements, there is no doubt that the two movements are informed by each other. Indeed, this is just the latest instance in which raced and gendered concerns have worked as co-constituted and at times co-constructed processes. Black Lives Matter and #MeToo are related to the longstanding relationship between black civil rights and the quest for women's (often understood as white women's) equality.<sup>41</sup> However, while historically the black civil rights movement has functioned as an explicitly acknowledged paradigm for women's rights, some contemporary work around women's rights has at times disdained what has been described as "reasoning from race."<sup>42</sup> This is part of the reason that Black Lives Matter has experienced less sustainability as a social movement.

**Linda Greene:** Both movements challenge the current allocation of power to the white patriarchy in society. Black Lives Matter seeks to stop the explicit or implicit racial bias that results in the discriminatory deployment of deadly force.<sup>43</sup> #MeToo focuses on the gendered power structures in the workplace that sustain a gender subordination conducive to sexual harassment, an abuse of that power.<sup>44</sup>

Although both movements arise from contemporary circumstances, both were foreshadowed by significant prior movements. With respect to Black Lives Matter, Martin Luther King raised the question at the March on Washington in 1963: "We can never be satisfied as long as the Negro is the victim of the unspeakable horrors of police brutality."<sup>45</sup> The 1966 Black Panther Ten Point Program said, "We want an immediate end to police brutality and murder of black people..."<sup>46</sup> Several of the sixties' Black urban rebellions—in New York, the Harlem Riots (1964);<sup>47</sup> in Los Angeles, the Watts Riots (1965);<sup>48</sup> the Detroit

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41. Lolita Buckner Inniss, Book Review, 91 TEXAS L. REV. DICTA 1, 1 (2012). (reviewing Serena Mayeri, *Reasoning from Race: Feminism, Law, and the Civil Rights Revolution* (2011)).

42. *Id.* at 1, 3.

43. *Our Co-Founders*, BLACK LIVES MATTER, <https://perma.cc/V2DH-UT58> (last accessed June 12, 2019).

44. Alix Langone, *#MeToo and Time's Up Founders Explain the Difference Between the 2 Movements – And How They're Alike*, TIME, <https://perma.cc/QC7H-38PD> (last updated Mar. 22, 2018).

45. Michelle Garcia, *3 Often Forgotten Parts from Martin Luther King's "I Have a Dream" Speech*, VOX, <https://perma.cc/MG3E-CLQQ> (last updated Jan. 17, 2019).

46. Huey P. Newton, *Ten-Point Party Platform*, WAR AGAINST THE PANTHERS (Oct. 15, 1966).

47. The Harlem Riot of 1964 was sparked after a white police officer shot an African-American teen. *E.g.*, AUGUST MEIER & ELLIOTT RUDWICK, CORE: A STUDY IN THE CIVIL RIGHTS MOVEMENT 1942–1968, at 301–02 (1973).

48. Police brutality also sparked the Watts Riot of 1965, which erupted after a Los Angeles police officer pulled over a black motorist, a crowd of onlookers formed, and officers struck the crowd with batons. Eric Bennett, *Watts Riot of 1965*, in 5 AFRICANA: THE ENCYCLOPEDIA OF THE AFRICAN AND AFRICAN AMERICAN EXPERIENCE, 365, 367 (KWAME ANTHONY APPIAH & HENRY LOUIS GATES, JR. eds., 2d ed. 2005).

Riots (1967);<sup>49</sup> the Newark Riots (1967)<sup>50</sup>—arose proximately from police abuse of Blacks.

It is important to note the scale of Black Lives Matter. According to Frank Leon Roberts:

Black Lives Matter, the organization, is a global decentralized network with over 30 chapters across the world. Black Lives Matter, the movement, is a broad conceptual umbrella that refers to the important work of a wide range of Black liberation organizations.<sup>51</sup>

**Noa Ben-Asher:** I'll add two observations to the thoughtful iterations above about the Black Lives Matter movement and #MeToo. First, in response to Osamudia's insight regarding the alleged non-religiosity of the Black Lives Matter movement – and this applies to #MeToo as well – I wonder if it is worthwhile to distinguish religious *authority* from religious *values*. Are there religious values that have been endorsed (even celebrated) in these two modes of resistance? If so, which, how and why? Second and somewhat relatedly, I am compelled by Mehrsa's suggestion that the two movements reveal a current cultural and political "breakdown." It seems that indeed we are in a midst of a loss of faith in the democratic process yielding fair results, and in so-called democratic institutions providing fairness and equality for all.

2. *What are the goals of these movements? What are the assumptions of the Black Lives Matter and #MeToo movements? What are methods employed by these movements to attain their goals?*

**Noa Ben-Asher:** One trajectory that seems to have been taken up enthusiastically by both movements is that of trauma. The assumption is that trauma is an important and prevalent injury that many individuals and communities suffer as a result of racial and sex discrimination. This, for instance, played out in Justice Kavanaugh's hearing when the Democratic Senators, commentators, and Ford herself emphasized her trauma as her primary injury to sexual assault.<sup>52</sup> By contrast, Anita Hill's trauma in her accusation of Justice

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49. After police raided an illegal African-American owned drinking establishment, taking more than 80 patrons into custody, a crowd formed and riots ensued. HUBERT G. LOCKE, *THE DETROIT RIOT OF 1967*, 26-29 (1969).

50. A rumor that a black taxicab driver had been killed inside a police station, coupled with "entrenched, unaddressed poverty, urban renewal policies that bypassed black residents and a white political power structure that had long ignored their needs," led to several days of rioting in Newark, New Jersey in 1967. Rick Rojas & Khorri Atkinson, *Five Days of Unrest That Shaped, and Haunted, Newark*, N.Y. TIMES (July 11, 2017), <https://perma.cc/2N95-WDMN>.

51. Frank Leon Roberts, *How Black Lives Matter Changed the Way Americans Fight for Freedom*, AM. CIV. LIBERTIES UNION, (July 13, 2018, 3:45 p.m.), <https://perma.cc/JJ95-6UGD>.

52. Emma Brown, *California Professor, Writer of Confidential Brett Kavanaugh Letter, Speaks out About her Allegation of Sexual Assault*, WASH. POST, (Sept. 16, 2018, 9:28 p.m.), <https://perma.cc/B8ZL-DA5Q>.

Thomas, went unnoticed in the 1990s. The discursive and generative power of trauma is fascinating, and its role in shaping social justice movements calls for further exploration.

**Bennett Capers:** Although we tend to associate the Black Lives Matter movement with eradicating blue on black violence and making officers accountable, as Osamudia James and Linda Greene point out above, the movement has developed a much broader and more ambitious agenda. I know this is a long quote, but the goals they themselves articulate bear repeating.

Every day, we recommit to healing ourselves and each other, and to co-creating alongside comrades, allies, and family a culture where each person feels seen, heard, and supported.

We acknowledge, respect, and celebrate differences and commonalities.

We work vigorously for freedom and justice for Black people and, by extension, all people.

We intentionally build and nurture a beloved community that is bonded together through a beautiful struggle that is restorative, not depleting.

We are unapologetically Black in our positioning. In affirming that Black Lives Matter, we need not qualify our position. To love and desire freedom and justice for ourselves is a prerequisite for wanting the same for others.

We see ourselves as part of the global Black family, and we are aware of the different ways we are impacted or privileged as Black people who exist in different parts of the world.

We are guided by the fact that all Black lives matter, regardless of actual or perceived sexual identity, gender identity, gender expression, economic status, ability, disability, religious beliefs or disbeliefs, immigration status, or location.

We make space for transgender brothers and sisters to participate and lead.

We are self-reflexive and do the work required to dismantle cisgender privilege and uplift Black trans folk, especially Black trans women who continue to be disproportionately impacted by trans-antagonistic violence.

We build a space that affirms Black women and is free from sexism, misogyny, and environments in which men are centered.

We practice empathy. We engage comrades with the intent to learn about and connect with their contexts.



We make our spaces family-friendly and enable parents to fully participate with their children. We dismantle the patriarchal practice that requires mothers to work “double shifts” so that they can mother in private even as they participate in public justice work.

We disrupt the Western-prescribed nuclear family structure requirement by supporting each other as extended families and “villages” that collectively care for one another, especially our children, to the degree that mothers, parents, and children are comfortable.

We foster a queer-affirming network. When we gather, we do so with the intention of freeing ourselves from the tight grip of heteronormative thinking, or rather, the belief that all in the world are heterosexual (unless s/he or they disclose otherwise).

We cultivate an intergenerational and communal network free from ageism. We believe that all people, regardless of age, show up with the capacity to lead and learn.

We embody and practice justice, liberation, and peace in our engagements with one another.<sup>53</sup>

This is not only ambitious, but revolutionary in a good way, and on its face would seem to have commonalities with the #MeToo movement, which takes as its focus ending sexual violence.<sup>54</sup>

What interests me, however, is recognizing that, as is often the case, movements that may seem simpatico can differ when it comes to actual cases. For me, Harvard University’s decision to not renew the contracts of two of its first African American faculty deans, largely because of student protests over their representation of Harvey Weinstein on sexual assault and predation charges, is illustrative of this conflict.<sup>55</sup> For student protesters and many in the #MeToo movement, the deans’ representation of Weinstein likely feels like a betrayal of sexual assault victims. It’s certainly consistent with the demand, made by some, that we should just “Believe Women.”<sup>56</sup> I suspect many of us who also support Blacks Lives Matter see the representation of Weinstein differently, given: (a) the long history associating black men with rape; and (b) the equally long history of denying those men equal protection. Weinstein is

53. *What We Believe*, BLACK LIVES MATTER, <https://perma.cc/4SD8-Z8A6>.

54. Langone, *supra* note 44.

55. See Kate Taylor, *Harvard’s First Black Faculty Deans Let Go Amid Uproar Over Harvey Weinstein Defense*, N.Y. TIMES (May 11, 2019), <https://perma.cc/CUL5-R6WE>; Randall Kennedy, *Opinion, Harvard Betrays a Law Professor—and Itself*, N.Y. TIMES (May 15, 2019), <https://perma.cc/DW8H-KHQF>, for more on the decision.

56. Marie Solis, “Believe Women” became a rallying cry during the confirmation hearings of Justice Kavanaugh. For more on its history, see Marie Solis, *When “Believing Women” Isn’t Enough to Help Them*, VICE (Oct. 9, 2019, 3:46 p.m.), <https://perma.cc/5MU3-PVRN>.

definitely not a brother, even an honorary one, but if we were playing a game of word association, the line from Weinstein to Bill Cosby would be a short one indeed. And that in turn would trigger not just the Cosbys of the world, but also the Emmet Tills and, since we're talking about the right to counsel, even Tom Robinson in *To Kill a Mockingbird*. The idea that a defendant accused of rape, regardless of actual guilt or innocence, is undeserving of defense or due process, is anathema to many of us who recognize this country's long history of denying defenses to black men accused of rape, and instead letting the mob function as the jury and executioner. I suspect this is something people of color "get" intuitively, including women of color, that might not be as obvious (or important?) to more privileged women. I'd love to know what my co-contributors think about this.

**Mehrsa Baradaran:** I think one assumption shared by both movements is that the traditional avenues of seeking justice and social reform have broken down or perhaps never worked. With #MeToo, there was a sense I think of frustration that a lot of women had thinking that this is just how things are and you deal with it and protect yourself or you go to HR and then you can move up the corporate ladder and gain power. When I was working on Wall Street, the types of behavior highlighted by #MeToo was rampant, but none of us women blew the whistle on anybody because it seemed like this was just how it was. But we also believed that you could just rise above it. I think that's why Hillary's defeat to the archetype misogynist who bragged about sexual harassment just blew open the door. I think the assumption that many women had about institutional advancement by playing along and being nice just stopped. I think that wave was immediate. I felt it suddenly, too, and just as suddenly realized that there was no way that anything would change without a revolution. I think the same is true of the Black Lives Matter movement in a way. I think so many police shootings and acquittals of the shooters made a lot of people realize that the legal system would not address these injustices. I think most of these communities knew this already, but with Trayvon Martin, Michael Brown, Eric Garner, Sandra Bland and other shootings just really ended illusions of racial progress. In a way, both movements reflect anger and frustration, and especially anger and frustration with institutions of power. Occupy was similar to these movements. These movements do not rely on political parties, the electoral process, or the legal system to address their demands.

To address Bennett's question about defending men of color against allegations of sexual abuse, I think that's a real area of concern and tension as these movements intersect. Black men have not historically been granted their full due process rights. Fabricated allegations of sexual abuse were used often to justify the lynching of black men or even their discreditation. So, I do believe that many people of color are wary of the charge to always "believe women." I've never been comfortable with it. I mean, given the fact that the majority of white women voted for Trump, you might even say that there are many women who choose to uphold the patriarchal order and white supremacy rather than fight for other women and people of color.

**Osamudia James:** Building on Mehrsa's observation that the Movements perceive previous modes of change and progress as broken, Black Lives Matter and #MeToo both reject the politics of respectability. There is a commitment to asserting that neither black people nor women have to don the "appropriate" dress, speak the "right" language, or move in the "correct" spaces to deserve justice and humane treatment from the government, from the police, or from others in their community. No amount of bootstrapping or leaning-in will end sexual violence or racial subordination as long as we maintain societal hierarchies that place these two groups at the bottom and attempt to justify the physical and psychic harm to which they are regularly subject. The centering of queer black women in the leadership of the Black Lives Matter movement, as well as the inclusion of transgender women in #MeToo, reflect the Movements' refusal to trade in political palatability—a refreshing development.

**Lolita Buckner Inniss:** I am struck by Bennett's mention of the complexities of having a prominent black male lawyer like Harvard law professor Ronald Sullivan engaged to represent a serial sexual assault defendant like Harvey Weinstein. As I noted in a 2018 blog post, generally speaking, false accusations of sexual assault are rare.<sup>57</sup> However, the black community in the United States, both historically and in modern times, has lived with the trauma of false claims of sexual assault against black men, frequently made by white women. This reality makes the phrase "Believe Women" one that, while stating a generally accepted and acceptable premise, one that is also mingled with skepticism, pain and even grief for many black Americans. This is because many black men fell victim to extrajudicial killings that were motivated by instances in which white women were believed when they alleged sexual assault by black men.<sup>58</sup> I also agree with Bennett that Black Lives Matter is a much broader movement than is typically recognized. Yes, Black Lives Matter was founded on the opposition to instances of unjustified state-sanctioned and extra-legal detentions, assaults, and killings of black people. But black harm caused by agents of the state (blue on black violence) and by self-deputized private citizens (like the killer of Trayvon Martin) are just publicly visible symptoms of the systemic black oppression in every aspect of US life, across numerous contexts. An important goal of Black Lives Matter is to help people to see the legal, historical, and cultural nature of black oppression, and from there to find ways to redress the harms. Similarly, while the #MeToo movement is premised on (mostly women's, and mostly white women's) outcries against sexual harassment, violence and abuse by powerful or empowered men, #MeToo is a broader movement whose goal is not only to end the silence around women's sexual harassment, but also to reshape women's roles in professional, civic and

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57. Lolita Buckner Inniss, *The Absent Racial #MeToo and Rekindling Intersectional Identity*, AIN'T I A FEMINIST LEGAL SCHOLAR TOO? (Sept. 23, 2018), <https://perma.cc/WYC8-G65K>.

58. E.g., Mark I. Pinsky, *Maligned in black and white*, POYNTER (2019), [HTTPS://PERMA.CC/VZR2-HG9B](https://perma.cc/VZR2-HG9B).

social life.<sup>59</sup> Yes, earlier women's rights movements helped women to gain entrée to more spaces in public life. But while women are more present, women are also prone to suffer from glass ceilings, inadequate pay, and gendered bias. The harms too often mark women as outsiders despite their accomplishments. We see this in recent media comments querying whether women like Elizabeth Warren and Kamala Harris, both stellar figures with years of professional and political experience, are "electable."<sup>60</sup> Though "electable" generally refers to the extent to which or whether a candidate has qualities that make the person's election to plausible or suitable, this word takes on additional meaning when applied to women and especially to black women. For women, and particularly for black women, "electable" is an assessment of whether a majority of white men will vote for them, which often comes down to issues of a candidate's gender and racial identity.

**Linda Greene:** Black Lives Matter's primary mission is to "build local power and to intervene in violence inflicted on Black communities by the state and vigilantes."<sup>61</sup> It seeks to shed light on connection between the slavery and post-slavery extrajudicial racial violence, as well as racialized state criminal and judicial processes.<sup>62</sup> And that's what Milano's tweet did: the percent of Americans who say that sexual assault in the workplace is a "serious problem" has risen from 47% in 2011 to 64% in 2017.<sup>63</sup>

Tarana Burke said that #MeToo is "essentially about survivors supporting survivors," and "about community healing and community action."<sup>64</sup> Its ambitious specific goals include the testing of all untested rape kits around the country,<sup>65</sup> the reexamination of school boards' teacher vetting policies, and an end to the mandatory ninety-day "cooling off period" required before Capitol Hill employees may file sexual harassment claims. It calls attention to its mission

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59. Langone, *supra* note 44.

60. Kelly Ditmar, *Elizabeth Warren and Kamala Harris are running dual campaigns (opinion)*, CNN (Sept. 2, 2019, 10:30 a.m.).

61. *About*, BLACK LIVES MATTER, <https://perma.cc/3FS9-RQX4> (last visited Nov. 20, 2019).

62. *Id.*

63. Caitlin Gibson & Emily Guskin, *A majority of Americans now say that sexual harassment is a 'serious problem'*, THE WASH. POST (Oct. 17, 2017, 3:32 AM), <https://perma.cc/BKH2-DXQJ>.

64. Chris Snyder & Linette Lopez, *Tarana Burke on Why She Created the #MeToo movement – and where it's headed*, BUSINESS INSIDER (Dec. 13, 2017, 9:16 AM), <https://perma.cc/S7P8-FB9R>.

65. *Id.*

by recruiting high profile women such as Gretchen Carlson<sup>66</sup> and Oprah Winfrey<sup>67</sup> to publicly share with the world their candid abuse stories.<sup>68</sup>

**Keisha Lindsay:** Two shared assumptions – one positive and one negative – stick out in my mind. The first, positive assumption is that ordinary people can affect social change. In other words, both movements take it for granted that ordinary people can and should raise their voices to protest what they regard as injustices in their lives – be it in their personal and/or professional lives. What this means, in practice, is that participants in Black Lives Matter and the #MeToo include everyone from celebrities, to administrative assistants, to community-based activists. The second assumption, with negative implications, is that corporate-owned social media is a progressive, liberating means of organizing against race and/or gender-based oppression. I am talking here about the extent to which many participants in both movements seem to have, until quite recently, taken it for granted that Twitter, Facebook, and other forms of social media are, at the very least, value-neutral spaces that won't harm their objectives. Part of the issue here, I think, is the failure of some participants, in both movements, to pay enough attention to the relationship between capitalist exploitation, racism, and patriarchy. At the same time, I also think that, as is the case across the nation, there is a growing critique of social media companies among Black Lives Matter and #MeToo supporters. And, of course, the 2015 revelation that the FBI has been using Facebook and other social media to track the movements of participants in the Black Lives Matter movement has also helped to raise awareness of this issue among a wide range of activists.<sup>69</sup>

### 3. *What are the similarities between the two movements? How do they differ?*

**Bridget Crawford:** One aspect of the two movements that interests me is how powerful messages delivered primarily via social media (through hashtags like #BlackLivesMatter and #MeToo) have translated into real-life, formalized legal structures. Organizationally speaking, Black Lives Matter is grassroots in nature. But there is also an organization called “Black Lives Matter.” It has a decentralized global structure, with chapters organized by city.<sup>70</sup> The

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66. David Bauder, *Carlson says nation shifting on harassment issue*, AP NEWS (Oct. 16, 2017), <https://perma.cc/DD3N-QN65>.

67. Ted Barber, *Oprah & #MeToo, TimesUp for Sexual Harassment*, HUFFINGTON POST (Jan. 13, 2018, 5:47 AM), <https://perma.cc/8KC7-AJCJ>.

68. Other high-profile women who have come forward in the #MeToo movement include Gwyneth Paltrow, Angelina Jolie, Ashley Judd, and Laura Dern. Riley Griffin, Hannah Recht & Jeff Green, *#MeToo: One Year Later*, BLOOMBERG (Oct. 5, 2018), <https://perma.cc/34W2-9V2G>. Additionally, attendees of the 2018 Golden Globes drew attention to both the MeToo and Time's Up movements by wearing pins and referencing the movements in multiple acceptance speeches. *Id.*

69. Nusrat Choudhury, *The Government is Watching #BlackLivesMatter, And It's Not Okay*, ACLU.ORG (Aug. 4, 2015, 10:30 AM), <https://perma.cc/H9ZC-RNTM>.

70. See Herstory, BLACK LIVES MATTER, <https://perma.cc/8VLM-WF53> (last visited Nov. 11, 2019); see also *id.* Chapters.

organization has a formal statement of “guiding principles”;<sup>71</sup> a section of its website provides short biographies of the movement’s “co-founders,” Patrice Kahn-Cullors, Alicia Garza, and Opal Tometti.<sup>72</sup>

At least four non-profit organizations using the words “Black Lives Matter” in their legal names have received formal recognition from the Internal Revenue Service as tax-exempt organizations.<sup>73</sup> This status is important because it allows the organizations to receive tax-deductible charitable contributions. For the Black Lives Matter movement to mount (and fund) legal challenges, being able to receive tax-deductible donations is a boost. Certainly, there are many donors who would give to a local or national Black Lives Matter organization (or one that explicitly supports the aims of the Black Lives Matter movement), without regard to the availability of a tax deduction. We have seen that with cash donations from celebrities such as The Weeknd and fundraising concerts by Jay Z’s Tidal streaming music service,<sup>74</sup> as well as donations and material support from everyday citizens.

There are other tax-exempt organizations, such as the NAACP Legal Defense and Educational Fund, Inc., that are deeply engaged in the same issues as the Black Lives Matter Movement. Even if the legal structures and principal activities of the Black Lives Matter movement and, say, the American Civil Liberties Union (to give another example of a well-known impact litigation organization) are different, many people who are affiliated with one organization or movement also are affiliated with other organizations and movements doing the same or similar work. Separate legal existence does not mean separate legal interests necessarily (although I’m not under some naive impression that the members of the non-profit sector, including legal advocacy organizations, speak with a singular voice on any issue).

It seems to me that there is considerable movement of people, ideas and vocabulary across historically more rigid lines. For example, the actors in the off-Broadway biographical play about Gloria Steinem called *Gloria: A Life* lead

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71. Herstory, BLACK LIVES MATTER, <https://perma.cc/8VLM-WF53> (last visited Nov. 11, 2019).

72. Our CoFounders, BLACK LIVES MATTER, <https://perma.cc/8VLM-WF53> (last visited Oct. 25, 2019).

73. They are New York Black Lives Matter Inc., of Bronx, New York; Black Lives Matter Greater Atlanta, of Atlanta, Georgia; Black Lives Matter VT Ltd, of Winoski, Vermont; Black Lives Matter Vancouver WA, of Vancouver, Washington; and Black Lives Matter Foundation, of Santa Clarita, California. See I.R.S Cumulative List Pub. 78, (last updated Dec. 7, 2017), <https://perma.cc/WL3J-3SS3> (listing the types of organizations eligible to receive tax-deductible contributions under I.R.C. Sec. 170). See also Candid, <https://perma.cc/A89B-T7CS> (last visited May 15, 2019) (showing result of search for phrase “Black Lives Matter”).

74. See, e.g., Lydia Price, *How The Weeknd, Kim Kardashian West and More Stars Have Supported Black Lives Matter*, PEOPLE (Aug. 12, 2016, 2:00 PM), <https://perma.cc/FD57-4FEU> (listing multiple celebrities who have donated to or otherwise supported the Black Lives Matter movement).

a pre-planned audience “talk back” after the performance.<sup>75</sup> In setting the tone for the conversation, the leaders quote Alicia Garza, Patrice Cullors and Opal Tometi as proponents of four conversation guidelines that “Gloria says these are the best conversation guidelines she’s ever known.”<sup>76</sup> Those guidelines are: (1) “lead with love;” (2) “low ego;” (3) “high impact;” and (4) “move at the speed of trust.” To my ear, it is no coincidence to me that *The Speed of Trust* is also the title of a popular business book by Steven M.R. Covey.<sup>77</sup>

Consider also the corporate structure of the #MeToo movement. A group of celebrities founded and funded the TIMES UP Legal Defense Fund, along with attorney Roberta Kaplan (who argued on behalf of Edith Windsor in the landmark case of *United States v. Windsor*)<sup>78</sup> and Fatima Goss Graves, an African-American woman who is the President and CEO of the National Women’s Law Center. Fundraising for the organization began in earnest on January 1, 2018, when a group of over 300 women, many leaders in the entertainment industry, including Alfre Woodard, Alyssa Milano, America Ferrera, Amy Poehler, Anjelica Huston, Anna Devereaux Smith, Cate Blanchett, Charlize Theron, Jennifer Lopez, Kerry Washington, Rashida Jones, Sandra Bullock, Taraji P. Henson, Taylor Swift, and Shonda Rhimes, bought in national newspapers a full-page advertisement that began with the words, “Dear Sisters.”<sup>79</sup> The Time’s Up Legal Defense Fund has raised well over \$22 million and includes a network of more than 780 attorneys.<sup>80</sup>

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75. Leah Fessler, *Gloria Steinem says these are the best guidelines for difficult conversations*, QUARTZ, (Nov. 18, 2018), <https://perma.cc/K9Y7-QH7X>. See also Gloria: A Life, <https://perma.cc/X25H-HAB4> (last visited May 15, 2019).

76. See, e.g., Leah Fessler, *Gloria Steinem Says These are the Best Guidelines for Difficult Conversations*, Quartz at Work, qz.com (Nov. 18, 2018) (describing Gloria Steinem’s leading of talk-back session after invitation-only performance of play), <https://perma.cc/4L29-SHVZ>.

77. See STEPHEN M.R. COVEY, *THE SPEED OF TRUST: THE ONE THING THAT CHANGES EVERYTHING* xxiv (Free Press, 2006) (“[W]hether you define trust as mutual confidence or loyalty or ethical behavior, or whether you deal with its fruits of empowerment and teamwork and synergy, trust is the ultimate root and source of our influence.”).

78. *United States v. Windsor*, 570 U.S. 744 (2013) (holding that section of Defense of Marriage Act that defined marriage as a union between one man and one woman only was unconstitutional, and therefore, Edith Windsor should be recognized for federal estate tax purposes as having been married to her life-partner Thea Spyer at the time of Ms. Spyer’s death).

79. See Cara Buckley, *Powerful Hollywood Women Unveil Anti-Harassment Action Plan*, N.Y. TIMES (Jan. 1, 2018, 8:21 PM), <https://nyti.ms/2q9xIPs> (linking to list of over 400 signatories to *Open Letter from Time’s Up*, <https://perma.cc/HE6X-PENL>). See also TIME’S UP, *The 300+ Original TIME’S UP Signatories*, TIME’S UP NOW (Oct. 21, 2019), <https://perma.cc/38T9-T3KX>.

80. See, e.g., Joanna Walters, *#MeToo a Revolution that can’t be stopped, Says Time’s Up co-founder*, THE GUARDIAN (Oct. 21, 2018, 3:00 PM), <https://perma.cc/6WPR-K98T> (reporting that in first ten months after the “Dear Sisters” ad appeared, the Times Up Legal Defense Fund had raised over \$22 million). See also *TIME’S UP Legal Defense Fund, A Lifeline for Survivors*, TIME’S UP <https://perma.cc/FM2C-8V86> (last visited Nov. 23, 2019) (“Founded in January of 2018, the TIME’S UP Legal Defense Fund has connected more than 3,700 workers facing sexual harassment to attorneys. Those reaching out to the fund come

From the beginning, organizers conceived of the Times Up “movement” as having distinct programs: legislation, litigation, industry-specific parity efforts, and public awareness.<sup>81</sup> There is *Time’s Up Now*, a 501(c)(4) organization that engages in political lobbying, the *Time’s Up Foundation*, a 501(c)(3) public charity that funds the Time’s Up Legal Defense Fund and other charitable work, and affiliate industry-specific groups such as TIMES’S UP Advertising, TIME’S UP Tech, TIME’S UP Health Care, TIME’S UP Entertainment, TIME’S UP UK.<sup>82</sup>

**Bennett Capers:** Bridget, I love that you brought up the tax-exempt structure and corporate structure of the two movements because it brings up another issue: access to money. Can you talk a little about that?

**Bridget Crawford:** Starting or maintaining a successful social justice campaign does not require money, of course. Just four days after the shooting at Marjory Stoneman Douglas High School, students in Parkland, Florida organized a national March for Our Lives, gave the name “Never Again” to their activist movement and took to Facebook and other social media platforms to advocate for strict background checks for gun purchasers.<sup>83</sup> No one paid them to do that.

But it is also true that non-profit organizations that are well funded will have access to and wield a different kind of power than all-volunteer organizations that operate on a shoestring budget. One example that comes to mind is the Southern Poverty Law Center.<sup>84</sup> Morris Dees and Joseph Levin Jr. began their work as a small civil rights law firm in 1971.<sup>85</sup> One federal judge has described the organization as one of “the single most responsive and reliable civil rights institution[s] in the South.”<sup>86</sup> The Southern Poverty Law Center has an annual revenue of over \$120 million and an endowment of over \$470 million.<sup>87</sup>

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from every industry and two-thirds identify as low-wage workers. . . . More than 700 attorneys who are committed to gender equity and social justice have joined the TIME’S UP Legal Defense Fund network.”).

81. See Buckley, *supra* note 79A (reporting multiple initiatives of Time’s Up founders).

82. See TIME’S UP, *Our Work*, TIME’S UP Now, <https://perma.cc/TS4F-Q7A5> (last visited Nov. 23, 2019) (explaining the separate organizations under the “Time’s Up” umbrella).

83. See, e.g., Emily Witt, *How the Survivors of Parkland Began the Never Again Movement*, THE NEW YORKER (Feb. 19, 2018), <https://perma.cc/UX4T-NUMA> (describing rapid organizing by some students as a mechanism for coping with grief but also a reflection of a certain savvy that the media would pay attention to the incident for a limited amount of time).

84. See *About Us*, SOUTHERN POVERTY LAW CENTER, <https://perma.cc/NU5B-NNBJ> (last visited Nov. 23, 2019) (providing a brief history of the organization).

85. *Id.*

86. Audra D.S. Burch et al., *Roiled by Staff Uproar, Civil Rights Group Looks at Intolerance Within*, N.Y. TIMES (Mar. 25, 2019), <https://perma.cc/QGF6-WAGK> (quoting Judge U.W. Clemon).

87. E.g., *Southern Poverty Law Center*, CHARITY NAVIGATOR (Oct. 2019), <https://perma.cc/68FR-TV3> (showing organization’s income statement for fiscal year 2018).



The group funds successful litigation against the Ku Klux Klan and other hate groups in the United States.<sup>88</sup>

But the experience of the Southern Poverty Law Center also illustrates that the bias and discrimination that exists in the larger world can take root in “good” organizations, too. Former and current employees of the organization have complained of years of workplace discrimination and inappropriate sexual conduct.<sup>89</sup> Dees was fired from the Southern Poverty Law Center after being disciplined twice for “inappropriate conduct,” with at least one of those incidents involving a female employee who felt uncomfortable because of Dee’s behavior.<sup>90</sup> Other leaders have left the organization in the wake of claims of racial bias.<sup>91</sup>

**Mehrsa Baradaran:** Fascinating observation, Bridget, on the corporate co-option of the #MeToo movement. I think that’s right—in a way, even the most radical movements can be turned mainstream. I was also really struck by the Nike Kaepernick ad, which was, in a way, the commodification of a Black Lives Matter activist. I think you can see it as a hopeful sign that Nike did the math and realized that they would sell more products by embracing this movement, but I think some people saw it as a troubling development.

Going back to the original question, I think the similarities of both movements is that they started outside of the mainstream institutional power structure, but because of their wide appeal to key demographics that are attractive to marketers, they are both ripe and in danger of co-option. But to be optimistic, that does not have to be a bad thing. I think both #MeToo and Black Lives Matter have fundamentally altered the American consciousness and done so permanently. They have both garnered significant backlashes too.

The movements are also very different. #MeToo tackles issues that are so common and pervasive yet have kept in silent and outside of the public domain for a long time. Black Lives Matter only deals with a small subset of Americans and many of us have no experiences at all with which to relate to this movement. While most of us have some personal experience with consent and sexual harassment, most of us have never feared being killed by the police due to our character. Those who have had these experiences have had to share their stories with the rest of us to make us aware. The cell phone videos have helped the unbelieving to see for themselves. In that way, both of these movements have required a lot from the victims and potential victims. Both movements hinged on

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88. See, e.g., Burch, *supra* note 86 (describing Southern Poverty Law Center’s well-known litigation but also departure of Dees and other leaders in response to allegations of sexual harassment and racial discrimination).

89. *Id.*

90. See *id.* (“[T]he center has refused to detail the circumstances behind Mr. Dees’s firing, it said it had dismissed its 82-year-old co-founder after he was twice investigated for ‘inappropriate conduct.’ Both inquiries, the organization suggested, led to discipline...[Dees] acknowledged that he was the subject of a 2017 complaint made by a female employee who said his actions had made her feel uncomfortable.”).

91. See *id.* (“Former employees said racially callous remarks at the center were not uncommon, and that professional voices of people of color were often sidelined, affecting the center’s work and priorities.”).

the public airing of private tragedy and trauma. Michael Brown's body being left out on the street, Trayvon Martin's last moments, and so many black men who have had to recount or show their confrontations with police. And the women who had to tell their stories of rape, assault, and molestation. It was awful for them and awful for us to watch, but all necessary to fuel the movement. I know many of us stayed up late watching the Ferguson protests, watched and re-watched the video of Eric Garner's death, Sandra Bland's encounter with the police—we watched the US Gymnastics team testify in court, we watched Christine Blasey Ford's testimony. These were difficult moments of shared trauma and tragedy. They were awful to watch and yet many of us felt like it was our duty to watch and witness and do something about it. So, these are both movements that built solidarity based on empathy. The very name "Me Too" illustrates that. And Black Lives Matter is also a demand.

**Noa Ben-Asher:** Thinking about the names, in this context, may be worthwhile. "MeToo," as you write, Mehrsa, is a message of seeing through similarity. "I see you because I've suffered, like you." "Black Lives Matter," is an altogether different kind of speech act. It is primarily an ethical demand – not a description of how our world works. The demand is that black lives *should* matter. The fact that the police acts as though they don't, is an ethical problem. It is a problem of social justice. So, in that sense, the names of these movements, perhaps reflect different orientations towards social action and justice: one of individual empathy; the other, of explicit ethical demands.

**Keisha Lindsay:** When contemplating why the mainstream media is now paying more attention #MeToo, we should consider another factor – the reality that the white women who increasingly dominate the #MeToo movement are better positioned to command media attention than the black men whose voices now dominate the Black Lives Matter movement. I say this because whites, including white women, are far better represented in the nation's newsrooms than black people – be they black men or black women.<sup>92</sup> For instance, the proportion of all journalists who are white men and white women is 52.12% and 31.04%, respectively.<sup>93</sup> The comparable figure for black men and black women, respectively, is 3.02% and 2.62%.<sup>94</sup>

Equally important, as Bridget and several other folks have already mentioned, is the corporate-controlled media which seeks to maximize its profits by foregrounding news stories about reforming, rather than radically redefining, existing socio-economic structures.<sup>95</sup> Key tenets of the #MeToo movement are amenable to exactly this kind of "reformist" coverage. A prime example is many #MeToo activists demand that women be given a chance to compete, without the threat of sexual harassment and assault, for leadership positions in corporate

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92. WOMEN'S MEDIA CTR., THE STATUS OF WOMEN OF COLOR IN THE U.S. NEWS MEDIA 2018 13 (2018) <https://perma.cc/8ZSE-CDMS>.

93. *Id.*

94. *Id.*

95. NICHOLAS HOPKINS, MARKETING MADNESS: A SURVIVAL GUIDE FOR A CONSUMER SOCIETY (2019).

boardrooms, law firms, and other decidedly middle and upper-class workspaces. While this demand is clearly a valid one, it is also premised more on women getting a seat at the table where racial, gendered, and class-based hierarchies of power are sustained and less about radically dismantling these same hierarchies.

Of course, when many of the black male voices that now dominate Black Lives Matter posit black men as both the principal victims of and resisters against racism, they also posit a patriarchal message that re-inscribes rather than challenges gendered inequalities of power. However, what ultimately distinguishes the present incarnation of the Black Lives Matter movement from the #MeToo movement is that the former also offers a structural critique of oppression – namely, racial oppression – that is not merely about getting middle-class black men into positions of power. This critique is also about identifying and dismantling racism’s harmful effects on black men, and sometimes black women, from a variety of class backgrounds and in a variety of settings including the criminal justice system and the classroom.<sup>96</sup> As such, Black Lives Matter arguably threatens structural relations of power in ways that #MeToo does not *and* in ways that consequently make it a less than palatable topic for the mainstream media.

**Linda Greene:** There are both similarities and differences. Black women started both movements to challenge historical and current power structures that entrench white patriarchy. On the other hand, their differences lie along the continuum between widespread acceptance and backlash. #MeToo has seen widespread acceptance,<sup>97</sup> while Black Lives Matter continues to face wide opposition, particularly from the right.<sup>98</sup>

The mainstream importance of #MeToo was evident from the fact that twenty percent of American households with a television viewed the Blasey Ford testimony,<sup>99</sup> over twenty million people,<sup>100</sup> and the tacit assumption that the nomination would have been dead if a majority of the Committee believed that Justice Kavanaugh had assaulted Dr. Blasey Ford.<sup>101</sup> The decision to bring in a

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96. See *What We Believe*, BLACK LIVES MATTER, <https://blacklivesmatter.com/what-we-believe/> (last visited Nov. 23, 2019).

97. Within twenty-four hours of Milano’s tweet, the hashtag had been posted over 500,000 times. Sophie Gilbert, *The Movement of #MeToo*, ATLANTIC (Oct. 16, 2017), <https://perma.cc/F2JL-D53S>. Since then, the movement has led to the firing, suspension, or resignation of high-profile individuals in multiple industries, including government, producing, comedy, media, food, music, photography, and venture capital. Lesley Wexler et al., *#MeToo, Time’s Up, and Theories of Justice*, 2019 U. ILL. L. REV. 45, 52–53 (2019).

98. For example, Conservative radio host Rush Limbaugh has referred to Black Lives Matter as a “terrorist group committing hate crimes.” Mark Hensch, *Rush Limbaugh: Black Lives Matter a ‘Terrorist Group’*, HILL (July 08, 2016, 5:33 PM), <https://perma.cc/HQ2U-TG3E>.

99. Jenna Amatulli, *Christine Blasey Ford, Kavanaugh Hearing Draws in 20 Percent Of Homes With TVs*, HUFFINGTON POST (Sept. 28, 2018), <https://perma.cc/DB6R-UNG5>.

100. David Bauder, *More than 20 million people watched Kavanaugh hearing*, AP NEWS (Sept. 28, 2018), <https://perma.cc/A6JD-EHQJ>.

101. The floor statement of Senator Susan Collins (R. Maine), suggests that had she believed that Kavanaugh assaulted Blasey Ford, her vote would have been no:

former female prosecutor to question Blasey Ford also made clear that the senators understood the #MeToo social climate and gender power “optics” of the hearings.<sup>102</sup>

On the other hand, there is an #AllLivesMatter campaign dedicated to “fight[ing] those who feel entitled to challenge traditional [A]merican values,”<sup>103</sup> while the #BlueLivesMatter campaign claims that Black Lives Matter “spread[s] outright lies and distortions of the truth about . . . all police officers,” and is nothing more than “[c]riminals who rioted and victimized innocent citizens” who “were further given legitimacy by the media as ‘protestors.’”<sup>104</sup>

These counter movements take attention from and distort the goals of the Black Lives Matter movement. #AllLivesMatter contends Black Lives Matter is a “domestic terrorism” organization and asserts that Black Lives Matter’s goals are contrary to the Constitution.<sup>105</sup> Their claims are akin to a “reverse discrimination” attack similar to arguments long made to push back against race conscious inclusion measures.<sup>106</sup> The #BlueLivesMatter movement emphasizes the challenges and dangers inherent in contemporary police work, important concerns to be sure,<sup>107</sup> but reframes uses of deadly force not as a human rights issue but as a byproduct of police decision-making in high-pressure situations.<sup>108</sup>

**Lolita Buckner Inniss:** Black Lives Matter and #MeToo are similar in that both movements push against dominant forces in society that render black people and women victims of an entrenched, often masculinist hierarchy. Both movements are also largely progressive and liberatory in that they seek to expand

[F]airness would dictate that the claims at least should meet a threshold of more likely than not as our standard. The facts presented do not mean that Professor Ford was not sexually assaulted that night or at some other time, but they do lead me to conclude that the allegations fail to meet the more likely than not standard. Therefore, I do not believe that these charges can fairly prevent Judge Kavanaugh from serving on the court.

Olivia Paschal & Madeleine Carlisle, *Read Susan Collins’s Historic Floor Speech on Brett Kavanaugh*, ATLANTIC (Oct. 5, 2018), <https://perma.cc/D8BQ-NAK7>.

102. See *Grassley Hires Experienced Prosecutor to Question Witnesses During Thursday’s Session of Kavanaugh Confirmation Hearing*, U.S. SENATE COMM. ON THE JUDICIARY (Sept. 25, 2018), <https://perma.cc/MRF2-CFCC>.

103. *About Us*, ALL LIVES MATTER, <https://perma.cc/3KX6-A34J> (last visited June 13, 2019).

104. See Christopher Berg, *About Blue Lives Matter*, BLUE LIVES MATTER (May 14, 2017), <https://perma.cc/2THX-9WC2>.

105. The All Lives Matter website states:

All men and women are born equal, and the Black Lives Matter organization uses their prominence in the liberal media outlets to exploit the lives and minds of the American people. We will not be left silent while others tolerate the existence of their violent tendencies, which resemble that of domestic terrorism.

*About Us*, *supra* note 61, at 27.

106. See George Yancy & Judith Butler, *What’s Wrong With ‘All Lives Matter’?* N.Y. TIMES: OPINIONATOR (Jan. 12, 2015), <https://perma.cc/BF4K-9UYG>.

107. Berg, *supra* note 100, at 27.

108. See Alex Emslie, *S.F. Police Commission Approves New Use-of-Force Rules, Union Has Sticking Points*, KQED NEWS (June 23, 2016), <https://perma.cc/H9DE-P9AP>.

rights of oppressed groups. However, Black Lives Matter has, thus far, failed to garner the sort of concern or acclaim of #MeToo. Those speaking out about black injustice have frequently found less sympathetic audiences, and less willingness to craft policies that would help to diminish anti-black racism. This is not surprising; many times, the words of the black oppressed are, for the most part, little-heeded words that do little to alter existing race-based power differentials.<sup>109</sup> In addition, I think that it is worth pondering how the phrase #MeToo, while expressing solidarity, does so by centering the speaker as victim; “me” is at the heart of the expression. While I think that this widespread proliferation of shared stories of sexual assault has, in many respects, inherited to the benefit of large numbers of victims, I have at times been concerned that sometimes, many times, victims speak only with their solitary voices and there is no one who is able or willing offer public testimony of shared victimhood. This should make the victim’s story no less worthy of inquiry.<sup>110</sup> In contrast, Black Lives Matter as a discursive device states a truth about an entire group of people that may be taken up by anyone, black or not, rather than centering the experience of a particular speaker.

**Osamudia James:** These observations all illustrate a key difference between #MeToo and BlackLivesMatter, and that is one of proximity. Most men have women in their lives to whom they’re close. This obviously does not prevent sexual violence, but it does facilitate the prerequisite intimacy necessary for the development of empathy, and for the suspension of belief that allows men to accept that a woman’s experience could be radically different from their own. In contrast, due to both structural forces and the choices of white people (e.g., white flight), Blacks and Whites still live intensely segregated lives. Even as multiracial relationships are on the rise, many white people, including those in power, are not at all proximate to either black people or their experiences. That distance renders the stories of blue on black violence, even when caught on tape, incomprehensible and unbelievable.

Like my co-authors assert above, however, there are also significant similarities between the two movements. When sexual violence is perpetrated against women, victims are dehumanized and objectified to justify the perpetrator’s conduct. Similarly, shootings of black men and women are often justified by reference to their “superhuman” strength and aggression,<sup>111</sup> another form of dehumanization. In this sense, both the Black Lives Matter and #MeToo movements are responding to similar societal phenomenon.

**Noa Ben-Asher:** Osamudia, your point above on proximity is compelling. A recent manifestation of how black people’s experience is “incomprehensible and unbelievable,” as you put it, is how politicians and media coverage talk about

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109. See Lolita Buckner Inniss, *A ‘Ho New World: Raced and Gendered Insult as Ersatz Carnival and the Corruption of Freedom of Expression Norms*, 33 N.Y.U. REV. L. & SOC. CHANGE 43, 76 (2009).

110. Lolita Buckner Inniss, *Me, One: Sexual Harassment and the Single Voice*, Ain’t I a Feminist Legal Scholar Too?, (Oct. 16, 2017), <https://perma.cc/46TK-TSJT>.

111. See, e.g., Jessica Glenza, *Darren Wilson In His Own Words*, THE GUARDIAN (Nov. 25, 2015) <https://perma.cc/M2NM-N3FQ>.

“the black vote.” While white voters are understood as conservative or liberal, religious or secular, LGBT, disabled, etc., black voters are somehow imagined, at least in that way of talking, as voting as a block with no diversity.

4. *What is your understanding of intersectionality? How does the lens of intersectionality help us to understand the interior characteristics and influence of the Black Lives Matter and/or #MeToo movements?*

**Keisha Lindsay:** Intersectionality is the analytical framework which presumes that race, gender, and other axes of difference are mutually reinforcing. To embrace this framework is to understand, for instance, that black women’s experience of racism is informed by their experience of sexism. Put, more concretely, racist whites routinely assume that black women are racially inferior *because* they are failed women—i.e. welfare queens and jezebels rather than “real” women who are sexually monogamous wives in patriarchal, nuclear family households. To embrace intersectionality is also to reject a binary approach in which race, gender, and other hierarchies of power are taken as “distinct and isolated realms of experience” operating along “independent axes.”<sup>112</sup> Intersectional theorizing, moreover, eschews derivative analyses that posit a single, key oppression, like class, as the one from which all others follow. Intersectionality differs, finally, from additive models of oppression, which presume, for instance, that black women are subject to the double burden of racial plus gendered oppression.

While the concept of intersecting or interlocking oppressions has long been evident in the work of Anna Julia Cooper<sup>113</sup> and other historical black women thinkers and writers, contemporary intersectional scholarship emerged during the very period—the late 1970s and 1980s—when black women began to enter the academy in greater numbers.<sup>114</sup> This increase facilitated black women’s willingness and ability to “elucidate[e] the social locations that [make] them more vulnerable to discrimination, isolation, and inequality both in the university setting” and farther afield. Legal scholar Kimberlé Crenshaw did exactly this when she formally coined the term “intersectionality” in her now seminal, 1989 essay, “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics.”<sup>115</sup>

I will say more later about how the logic of intersectionality enables us to understand the interior characteristics and influence of both movements.

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112. Avtar Brah & Ann Phoenix, *Ain’t I a Woman? Revisiting Intersectionality*, J. INT’L WOMEN’S STUD., no. 3, 2004, at 75, 80.

113. Anna Julia Cooper, *A VOICE FROM THE SOUTH* (1892).

114. See, e.g., Vivian May, *PURSUING INTERSECTIONALITY, UNSETTLING DOMINANT IMAGINARIES* (2015) and Ange-Marie Hancock, *INTERSECTIONALITY: AN INTELLECTUAL HISTORY* (2016).

115. Crenshaw, *supra* note 26.

**Linda Greene:** Intersectionality explains how people who share one identity characteristic—e.g. race—may experience discrimination and subordination differently based on divergent intersecting identity categories, such as being black and female as compared to being black and male or white and female.<sup>116</sup> Kimberlé Crenshaw said that “the intersection of racism and sexism [may] factor into [women of color’s] lives in ways that cannot be captured wholly by looking at the race or gender dimensions of those experiences separately.”<sup>117</sup> Similarly, and more personally, Marcia Gillespie, author of “We Speak in Tongues,” an article in *Ms. Magazine*, expanded on the indivisibility of intersectional identity:

We say, I am a Black Woman, I cannot separate my race from my sex, cannot separate racism from sexism. They are rarely separate, never indivisible. So, don’t ask me to choose, I cannot; I am myself, I am not you. Nor will I let you choose for me. And I will not let you pretend that racism and sexism are not inseparable issues in all of our lives.<sup>118</sup>

Although the initial media coverage of #MeToo emphasized prominent white women as victims of sexual assault and sexual harassment,<sup>119</sup> it is important to note that Black women have played crucial role in bringing the issues public long before Tarana Burke started #MeToo.<sup>120</sup> For example, in 1974, in a much publicized trial, Joan Little was acquitted in the death of her North Carolina white jailer, Clarence Allgood, whom Little said she stabbed when he tried rape her.<sup>121</sup> An early prominent New York case involved Carmita Wood, an

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116. For primers on intersectionality theory in the United States context, see Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991) (focusing on violence against Black women, and the focus of Black activists on the liberation of Black men and the focus of feminists on the liberation of white women); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990) (arguing that “white straight, and socioeconomically privileged people who claim to speak for all of us” dominate feminist legal theory); and Crenshaw, *supra* note 26. See generally Symposium, *Black Women Law Professors: Building a Community at the Intersection of Race and Gender*, 6 BERKELEY WOMENS’ L. J. 1 (1991). A recent essay on intersectionality explores its pre-Crenshaw origins, its expansion beyond law among feminist theorist and in international human rights discussions, its analytical approaches along with its strengths and weaknesses, and its contemporary resilience. Anna Carastathis, *The Concept of Intersectionality in Feminist Theory*, 9/5 Philosophy Compass 304 (2014), <https://perma.cc/L9SX-8JNQ>.

117. Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1244 (1991).

118. Marcia A Gillespie, *We Speak in Tongues*, MS., Jan.-Feb., 1992, at 41, 42.

119. Raina Lipsitz, *Sexual Harassment Law Was Shaped by the Battles of Black Women*, THE NATION: BLOGS, (October 20, 2017 Friday, 10:21 PM EST), <https://perma.cc/AQ2D-SMXN>.

120. *Id.*

121. Julian Bond, *Self Defense Against Rape: The Joanne Little Case*, 6 THE BLACK SCHOLAR 29 (1975); *The Case of Joanne Little*, 3 CRIME & SOC. JUSTICE 42 (1975).

administrative assistant at Cornell University, who brought the first sexual harassment suit under New York State law against nuclear physicist Boyce McDaniel in 1975.<sup>122</sup> And when in 1986, the Supreme Court recognized sexual harassment as a form of discrimination prohibited by Title VII, in *Meritor Savings Bank v. Vinson*,<sup>123</sup> a case in which a Black women claimed that her boss harassed and raped her repeatedly during work hours for three years, occasionally in the bank vault at work.<sup>124</sup> The Hill-Thomas hearings of 1991, viewed by twenty million people, put the issue of sexual harassment against Black women before the public in a high stakes proceedings in which a Supreme Court appointment was at stake.<sup>125</sup>

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122. Enid Nemy, *Women Begin to Speak Out Against Sexual Harassment at Work*, N.Y. TIMES, (Aug. 19, 1975), <https://perma.cc/H6DS-MR4S>. For a brief history of the sexual harassment movement from which this account is drawn, see Susan Brownmiller & Dolores Alexander, *How We Got Here: From Carmita Wood to Anita Hill*, Ms., Jan.-Feb. 1992, at 70; Peter Weber, *The Depressingly Long History of Sexual Harassment Turning Points*, THE WEEK (Nov. 27, 2017), <https://perma.cc/WK88-3FVX>; Sarah Burke, *A Short History of the Long Fight Against Workplace Sexual Harassment*, VICE (Dec. 12, 2017), <https://perma.cc/62UW-KV4M>. Wood said McDaniel repeatedly harassed her. He looked her up and down, brushed up against her body, intimated that he was touching himself when she was nearby, put his hand underneath her shirt, and pinned her up against the wall. Wood applied for unemployment benefits from the employer but was denied because she left her job “voluntarily” and for “personal reasons.” Wood, along with Eleanor Holmes Norton, who was then who was then Commissioner of Human Rights of the City of New York, co-founded Working Women United, which aimed to illuminate the scope of a problem newly called “sexual harassment.”

123. *Meritor Sav. Bank, F.S.B. v. Vinson*, 477 U.S. 57 (1986).

124. *Id.* at 60.

125. After Nina Totenberg of NPR reported Professor Hill’s allegations, the Hill-Thomas hearings followed, watched by 20 million people. Liane Hansen & Nina Totenberg, *Transcript of Nina Totenberg’s NPR Report on Anita Hill’s charges of sexual harassment by Clarence Thomas Transcript*, NPR: WEEKEND EDITION (Oct. 6, 1991), <https://jwa.org/media/transcript-of-nina-totengbergs-npr-report-on-anita-hills-charges-of-sexual-harassment-by-0>. Those hearings covered a lot of territory including stars of a certain industry. By the time the three days ended, the Confirmation now encompassed issues of race and opportunity at the highest levels of government, White men judging Black men and Black women, lynching, judicial philosophy and natural law, reproductive choice, gender politics, Ron Elving, *A Refresher On Anita Hill And Clarence Thomas*, NPR (Dec. 10, 2017), <https://perma.cc/T7YP-XKFG>, and an alleged “high tech lynching.” *Nomination of Judge Clarence Thomas to be Associate Justice of the Supreme Court of the United States: Hearing Before the S. Comm. on the Judiciary*, 102nd Cong. 157 (1993) (Statement of Clarence Thomas). In the final analysis, the confirmation would be decided by the vote of seven southern Democrats who voted yes, three of whom were up for reelection 52-48. The Associated Press, *The Thomas Confirmation: How the Senators Voted on Thomas*, N.Y. TIMES (Oct. 16, 1991), <https://perma.cc/XY4C-3FPR>. It was a palpable power struggle over the role of Blacks and women in society. The next year, in what might count as a gender expiration, In 1992, voters elected thirty women to Congress (twenty-four in the House and six in the Senate including Carol Moseley Brown, whom Illinois elected as the first black woman in the United States Senate in what became known as “The Year of the Woman.” United States Senate, *Carol Moseley Braun*, <https://perma.cc/FGF9-8KKG> (last visited Oct. 25, 2019).



**Osamudia James:** Colleagues have reminded me to think about intersectionality as a series of questions, and not a foregone conclusion. That is, what group are we talking about, and what are the historical conditions that have subordinated or marginalized that group in intersecting and overlapping ways? Racial and ethnic subordination, as well as white supremacy, exist around the world, such that Black Lives Matter has import as far away as the United Kingdom, France, Italy, and Australia.<sup>126</sup> The overlapping systems of oppression in those places, however, differ from those in the United States, and merit interrogation of their own.

**Bridget Crawford:** I have always understood intersectionality to be an analytic tool or lens that helps illuminate the multi-faceted nature of identity-based oppression. I am struck by how the term has permeated the public consciousness.<sup>127</sup> I find that many people use the term “intersectional” when what they really want to convey is a race-conscious and recognition of the experiences of people of color.<sup>128</sup>

**Lolita Buckner Inniss:** I think of intersectional as a word that describes the multiplicity of identities inhabited by people who are often described by a single identity marker. So, for example, while women are all intersectional beings, the term “woman” often fails to be exhaustive because it does not account for historical context, or for intersectional modalities such as race, sexual orientation, class, or ethnicity. But although viewing people through intersectional lenses helps to paint a more detailed and nuanced picture, “intersectionality” sometimes fails because it is viewed as possibly too over-inclusive or under-inclusive, thereby obscuring complex forms of bias.

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126. Editorial Board, *Black Lives Matter in France, Too*, N.Y. TIMES, July 29, 2016, <https://perma.cc/KU4D-LNHZ>; Sewell Chan, *Black Lives Matter Activists Stage Protests Across Britain*, N.Y. TIMES, Aug. 5, 2016, <https://perma.cc/X2MV-W4LZ>; Amien Essif, *How Black Lives Matter Has Spread Into a Global Movement to End Racist Policing*, IN THESE TIMES: ACT LOCALLY, June 29, 2015, <https://perma.cc/KC83-PPU6> (documenting the impact of the Movement in London, Paris, Berlin, and Amsterdam); Giovanni Torre, *Indigenous Australians Use Tech to Expose Police Abuse*, N.Y. TIMES, Aug. 14, 2018, <https://perma.cc/3BGG-8N53>

(noting that Black Lives Matter served as inspiration for indigenous activists in Australia); Amy McQuire, *Without Video Evidence, Australians Find It Hard to believe that Black Lives Matter*, NEW MATILDA, July 13, 2016, <https://perma.cc/4V5J-H2Z3>; *Racist Murder in Italy is a Wake-up Call for a European #BlackLivesMatter*, EUROPEAN NETWORK AGAINST RACISM, July 7, 2016, <https://perma.cc/4FG5-E2RJ>; *Thousands Protest in Rome Over Italy's 'anti-migrant' Decree*, THE NATIONAL, Nov. 11, 2018, <https://perma.cc/FDX2-BN8D>.

127. See *Intersectionality*, OXFORD ENGLISH DICTIONARY (OED 3d ed. June 2015).

128. At the Oscars in 2018, presenter Ashley Judd proclaimed, “We work together to make sure that the next 90 years empower these limitless possibilities of equality, diversity, inclusion, intersectionality—that’s what this year has promised us.” See Kory Stamper, *A Brief, Convoluted History of the Word ‘Intersectionality,’* THECUT.COM (Mar. 9, 2018) (reporting Judd’s remarks in the context of several accusations against movie producer Harvey Weinstein).

5. *What voices or conversations, if any, are missing from the Black Lives Matter and/or #MeToo movements, and, if there are absences in these regards, how do we address them?*

**Bennett Capers:** In terms of conversations, I'd love to hear a conversation about what we do with the past. As I pointed out at the symposium, Black Lives Matter benefited from the widespread availability of cameras and video to document and "prove" blue on black violence. To borrow from Lolita Buckner Inniss, these cameras now serve as a "white witness," proof to make real the claims of black and brown folks.<sup>129</sup> On this level, Black Lives Matter, notwithstanding its broader agenda, as understood in the public imagination is focused on present acts of violence. #MeToo, by contrast, can be as historical as it wants, alleging sexual abuses that took place last week as easily as twenty years ago—see, e.g., Justice Kavanaugh. But really, Black Lives Matter has a much bigger agenda and its concerns are historical too. See, e.g., the linkages between slave patrols and the creation of police departments. Which brings me to the conversation I want to hear.

What should we do with past behavior that seemed more acceptable at the time (at least to some people) than it does now? When we think of removing Confederate monuments,<sup>130</sup> for example, or no longer playing Kate Smith's "God Bless America" at baseball games,<sup>131</sup> do we think of them the same way as removing serial sexual harassers? In other words, should we remove the names of historic sexual harassers from buildings? How are the situations the same, and how are they different? The recent fallout in Virginia politics, with the Governor allegedly having a past of wearing blackface and the Lt. Governor allegedly having a past of sexual assault, brings this into sharp focus for me.<sup>132</sup> Does it matter that apparently every white person in Virginia donned blackface back then? (I'm exaggerating of course, but this is what it seems like.) Should it

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129. As Lolita Buckner Inniss observes:

[V]ideo surveillance sometimes provides much needed valorization for . . . less regarded private people [those possessing little power or authority.] This is because private people are far more often lied about, lied to and deemed liars. Hence private people often lose in battles of opposing narratives with public people about what has occurred. In such cases, video surveillance becomes a mostly neutral, unlikely to lie, legitimizing witness. For many of these private people, especially women, people of color or other relatively powerless people, video surveillance is the modern day white witness.

Lolita Buckner Inniss, *Video Surveillance as White Witnesses*, AIN'T I A FEMINIST LEGAL SCHOLAR TOO, Sept. 30, 3012, <https://perma.cc/5BD5-M4MV>.

130. See, e.g., *Confederate Monuments Are Coming Down Across the United States. Here's a List*, N.Y. TIMES (Aug. 28, 2017), <https://perma.cc/4LE3-687H>.

131. Des Bieler & Michael Errigo, *Yankees, Flyers Drop Kate Smith's 'God Bless America' Amid Questions of Possible Racism*, WASH. POST (Apr. 19, 2019), <https://perma.cc/7Y7V-TB5Y>.

132. The scandal did not result in resignations or even discipline. See Campbell Robertson, *'It Just Went Poof': The Strange Aftermath of Virginia's Cascade of Political Scandals*, N.Y. TIMES (Apr. 2, 2019), <https://perma.cc/R9HU-Q9WX>.

matter that probably lots of guys didn't take no as a final answer back then? (Again, maybe exaggerating. Maybe not.)

**Osamudia James:** Bennett makes an important point—that we understand patriarchy and misogyny as having a historical legacy, but we don't understand racism and white supremacy as having the same. Our nation has never fully come to grips with how foundational white supremacy was to the development of the United States—so foundational that eliminating slavery was a necessary but by no means sufficient step towards racial equality. And yet, the cataclysmic event of the Civil War has allowed us to run from that truth, believing that "We fought a war, the "right" side won, we made some readjustments in the 1960s, and so it's over." In addition, the passage of major civil-rights laws in the mid-twentieth century provided a "break with the past" that allows Americans to double-down on the meritocracy myth which suggests that discrimination must not happen because *the law doesn't allow it*.<sup>133</sup>

In contrast, the absence of wars or landmark civil rights legislation aimed at gender discrimination has enabled us to understand sexism and misogyny as ongoing. That long historical arc, ironically, renders us more comfortable with addressing not just current, individual acts of sexual violence and abuse, but also the legacy of gender-based discrimination and violence more generally. Finally, when white women confront patriarchy, they serve as "white witnesses" who can legitimize grievance.

Accordingly, what is missing from the conversation about Black Lives Matter is that which is missing from much of our political engagement with race and racial subordination: a shared understanding of the psychic and material legacy of slavery in the United States, such that all fields, and certainly law, are better informed about the doctrines, theories, ideologies, and policies that are anchored in white supremacy. Outside of an academic sphere, entertainment and media have told the story of slavery, and even Jim Crow, over and over again; but relatively less has been told about the enduring legacies of those periods that appear race-neutral today, but are actually grounded in the racialized commitments of yesterday. When reading *Homegoing* a few years ago, I repeatedly thought, "This should be made into a movie."<sup>134</sup> I long to see more stories in popular culture that might help Americans understand how the traumas and thefts of slavery and Jim Crow are very much still with us today.

**Noa Ben-Asher:** I agree that facing the past is critical for both movements. In this context, I wonder about possible meanings of forgiveness. What does it mean to forgive someone or something? Are there unforgivable acts? How would a politics of forgiveness inform our social justice movements? What are the prices of unforgiveness? Is an apology necessary for forgiveness? Shortly, after the 2015 racist massacre in the Charleston church, the victims' relatives, one

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133. Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1347 (1988).

134. YAA GYASI, *HOMEGOING* (2016).

after the other, faced the murderer during the bond hearing and forgave him.<sup>135</sup> He had not apologized for his appalling deeds (one wonders if he had the emotional capacity to), yet they forgave him nonetheless. To me, those gracious acts of forgiveness were ethical existence at its purest form.

**Linda Greene:** Black Lives Matter, started by three black women, Alicia Garza, Patrisse Khan-Cullors, and Opal Tometi,<sup>136</sup> has focused primarily on Black men who have fallen victim to police violence, including Tamir Rice, Walter Scott, and Michael Brown. This is not necessarily a product of the movement itself but could be a product of the cultural notions of violence often attributed to Black men by white police officers. Black Lives Matter explicitly seeks to include all voices: “1.”<sup>137</sup>

Additionally, co-founder Alicia Garza, a queer Black woman, focuses her leadership on challenging “the misconception that only cisgender Black men encounter police and state violence.”<sup>138</sup> The media focus on Black men who have fallen victim to police violence, including Trayvon Martin, Tamir Rice, Walter Scott, Michael Brown, Laquan McDonald—as well as the frequency with which those images are rebroadcast—operates as a symbolic fetishization of these public executions.

But Black women also face violence at the hands of police officers. One such case involved a black woman whom Los Angeles Police Department agents shot and killed in 1979.<sup>139</sup> The incident occurred after a gas company employee demanded that she pay an outstanding balance on her gas bill and threatened to turn her gas off if she did not.<sup>140</sup> She physically stopped the employee from turning off the gas and proceeded to retrieve a check from the local social security office.<sup>141</sup> When she returned, she was confronted with two police officers.<sup>142</sup> The officers alleged that she was carrying a knife “with ‘froth’ coming from her mouth.”<sup>143</sup> They drew their guns, demanded she drop the knife, and shot her eight times when she raised the knife and threw it.<sup>144</sup> On April 17, 1979, the District

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135. See Mark Berman, “I Forgive You.” *Relatives of Charleston Church Shooting Victims Address Dylann Roof*, WASH. POST (June 19, 2015) <https://perma.cc/U6B8-TYAZ>; see also Elahe Izadi, *The Powerful Words of Forgiveness Delivered to Dylann Roof by Victims’ Relatives*, WASH. POST (June 19, 2015) <https://perma.cc/HJ9X-EV4T> (“You hurt me. You hurt a lot people. If God forgives you, I forgive you.”; “Every fiber in my body hurts . . . May God have mercy on you.”; “I am very angry. . . . We have no room for hating, so we have to forgive.”)

136. *Our Co-Founders*, *supra* note 43.

137. *About*, *supra* note 101.

138. *Our Co-Founders*, *supra* note 43.

139. Los Angeles Bd. of Police Comm’rs, *Concerning the Shooting of Eulia Love*, 14 CRIME & SOC. JUST. 2, 3 (1980).

140. *Id.*

141. *Id.*

142. *Id.*

143. Jamilah King, *Maxine Waters’ Battle Against Powerful White Men Began When Eula Love Was Killed in 1979*, MIC (Apr. 26, 2017), <https://perma.cc/MAK8-YUFC>.

144. Los Angeles Bd. of Police Comm’rs, *supra* note 139 at 4.

Attorney announced that there would be no criminal charges filed against the two police officers involved, because they had acted in self-defense and justifiably used deadly force.<sup>145</sup>

There is exciting and sophisticated statistical analysis of police data that demonstrate the extent to which police also target which Black and Latinx women for stops, moving from the anecdotally focused “Say her Name” to a more robust focus on “patterns and practice” of police misconduct targeting women of color.<sup>146</sup> Kanya Bennett, writing for the ACLU, notes that, “Police violence impacts Black women and other women of color just as it does Black men. So sadly, we too need survival tactics for our teen girls attending pool parties and our girlfriends eating at the Waffle House.”<sup>147</sup> Tarana Burke commented to the *New York Times*: “I think the media doesn’t really care about the stories of black women and the stories of women of color. A lot of folks have slid under the radar.”<sup>148</sup> The #SayHerName Movement seeks to create a more inclusive narrative within the Black Lives Matter movement, including police violence against Black women and other forms of violence such as sexual assault (the second most reported form of police misconduct after use of excessive force).<sup>149</sup>

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145. *Id.* at 3.

146. Brianna Remster, Chris M. Smith, and Rory Kramer presented, “Say Her Name: Race, Gender, and Police Violence during Investigatory Stops,” an unpublished paper at the 2019 Law and Society Conference Washington D.C. In part, the abstract states that robust statistical analysis reveal that Police in New York aim lethal force disproportionately at both Black men and women.

The social movement #SayHerName focuses on police violence against Black women in the US. However, research on police violence is rarely intersectional, and questions regarding how race intersects with gender during policing interactions remain. We offer an intersectional analysis of police violence using New York City investigatory stop data from 2007-2014. Our findings reveal that police perceptions of Black and Latino men’s hypermasculinity illuminate who is stopped, but those perceptions of racialized hypermasculinity fail to explain Black and Latina women’s heightened experiences of police violence compared to White women. In fact, Black men and women, as well as Latinos and Latinas, share similar risks of experiencing police violence compared to White men and women respectively. Yet gender is strongly associated with the risk of experiencing any police violence within racial groups. Black men are more likely to experience any police violence than Black women and the same gender gap exists for Whites, Asians, and Latinx persons. However, these gender gaps largely disappear when limiting our focus to potentially lethal violence.

147. Kanya Bennett, *Say Her Name: Recognizing Police Brutality Against Black Women*, ACLU.ORG (June 14, 2018), <https://perma.cc/26GX-AWZP>. Carol Cole-Frowe & Richard Fausset, “Jarring Image of Police Use of Force at Pool Party”, N.Y. TIMES (June 8, 2015), <https://perma.cc/PA2L-YJAZ>.

148. Harris, *supra* note 59.

149. #SayHerName: Towards a Gendered Analysis of Racialized State Violence, AFR. AM. POL’Y F. (Mar. 30, 2015), <https://perma.cc/B8UU-M4YD>.

**Lolita Buckner Inniss:** I am in deep accord with Bennett's query about what we do with the past. Much of my current scholarship takes a legal historical approach to questions of race and gender, often in the service of clarifying the present. In the context of analyzing how race and gender have been treated over the course of United States history, "past is prologue" is more than a trite Shakespearean quote. Exploring the past illuminates how we got to be where we are, and why, despite clear gains, there are frequent setbacks in access to social and legal rights. Historically, black men and all women have, for instance, often been said to have lesser faculties than white men.<sup>150</sup> Additionally, black men and all women have often been said to possess physical and social characteristics that function to systematically and explicitly exclude them from opportunities to which members of other groups might aspire.<sup>151</sup> These historic claims about intellectual and physical deficits have been used to justify offering black men and all women a lesser quantum of rights and of justice. These types of troubling claims are less often explicitly articulated as contemporary rationales for rights denials, but they nonetheless continue to exist as *sub rosa* rationales for rights denials.

I also resonate deeply with Linda Greene's observation that women at the head and the heart of the Black Lives Matter movement have frequently been overlooked in discussions of the movement. While it is true that many of the ills facing contemporary black people affect men and women alike, black women frequently face separate burdens. This has been well-noted, and is often described as the "black woman question."<sup>152</sup> One of the burdens addressed in querying the black woman question is how black women have often been relegated to being silent partners to black men in racial uplift projects, even where black women have themselves crafted the projects.

**Keisha Lindsay:** I wholeheartedly agree that Black women's voices are increasingly absent from both movements. Let me put forward an additional explanation regarding why this is so. Plainly put, both movements are evidence that intersectionality is not always a progressive means of understanding the social world. Instead, it is a politically fluid heuristic that can be used to advance diverse political agendas. Or, put another way, while intersectional analysis highlights how racial, gendered, and other spheres of difference are co-constitutive, intersectionality's underlying logic does not dictate *which* spheres are mutually constructing, *who* experiences oppression in the process, or *how* to relieve their oppression. Instead, these are political decisions that are made by people who embrace intersectionality and not by intersectionality itself. As a result, Black men, white women, and other social groups who engage in

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150. ROBERT L. HAYMAN, *THE SMART CULTURE: SOCIETY, INTELLIGENCE, AND LAW* 19 (1998).

151. WILLIAM HENRY CHAFE, *WOMEN AND EQUALITY: CHANGING PATTERNS IN AMERICAN CULTURE* 77 (1978).

152. Lolita Buckner Inniss, *Toward a Sui Generis View of Black Rights in Canada? Overcoming the Difference—Denial Model of Countering Anti-Black Racism*, 9 BERKELEY J. AFR.-AM. L. & POL'Y 32, 68–69 (2007) (referring to the "black woman question" as the multiplicity of oppressions faced by black women).

intersectional analysis can and do use it to make diverse arguments about their own and other's socioeconomic status - including arguments that silence black women's experiences of oppression.

The #MeToo movement and the Black Lives Matter movement exemplify this reality. First, some of the most prominent #MeToo voices are now those of white women who assert that they are oppressed not only because they are women who have experienced sexual harassment and assault but also because they are *white* women whose experience of assault and/or harassment unjustly prevents them enjoying the same racist power as their white male peers. Consider comedian Bette Midler's recent assertion that Brent Kavanaugh's successful appointment to the Supreme Court is evidence that "women are the n-word of the world."<sup>153</sup> At first glance, Midler's claim is anything but intersectional given that she mistakenly presumes that "women" and "blacks" are mutually exclusive social categories. A closer reading, however, reveals that Midler does, in fact, make an intersectional argument, albeit one that re-inscribes rather than resists racism.<sup>154</sup> What I mean here is that Midler not only claims that white women who experience sexual assault are victims of gender-based oppression. She goes further and suggests that white women's status, as such, means that they are *racially* disempowered. Hence, her claim that "women are the n-word of the world."

There is also evidence that the Black Lives Matter movement is sometimes informed by a less than progressive intersectional framework.<sup>155</sup> A case in point are those black male participants in the movement who conclude that they are oppressed not only because they are black in a racist society but also because they are black *men* who have long been denied their "rightful" or "natural" status as leaders of the race. Paul McKinley, a self-declared "grassroots" activist, exemplifies this sentiment when he declared during a 2015 march against police brutality in Chicago that queer black women "want to get in front of the movement and all they want to do is promote the gay agenda! . . . You can't promote that. This is a black man thing!"<sup>156</sup> In positing black men as both the primary victims and challengers of racism, McKinley ultimately advances an anti-feminist ethos which obscures black women's feminized experiences of racism and attempts to resist their racial oppression at the intersection of race and gender.

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153. Timothy Bella, "'Women 'are the n-word of the world,' Bette Midler Tweeted. She Apologized Hours Later," WASH. POST (Oct. 5, 2018), <https://perma.cc/HEG9-4ESS>.

154. *Id.*

155. Michael Romain, *West Siders Protest on the Magnificent Mile*, AUSTIN WKLY. NEWS (Nov. 30, 2015), <https://perma.cc/JCM3-8RXB> (describing march attended by over 2,500 to protest police killing of Laquan McDonald).

156. *Id.* (quoting Paul McKinley, a member of the Black Nationalists movement, criticizing the Black Youth 100 Project).

6. *How do the two movements define success? How do you measure the success or failure of the movements? What has been the trajectory of success? Have the movements experienced setbacks? Has the public embraced or rejected these movements and how do you evaluate that embrace or rejection?*

**Bennett Capers:** Others may not like my answer because of its simplicity, but this applies to almost everything I teach and care about. Success is when the movement no longer becomes necessary. I am thinking of Evan Wolfson's role as founder and president of Freedom to Marry, and his decades'-long campaign to secure marriage equality for same-sex couples. When *Obergefell v. Hodges* was decided in 2015,<sup>157</sup> Wolfson decided the movement had achieved what it set out to do, and walked away.<sup>158</sup> Of course, achieving an end to blue on black violence and the excessive use of force, and ending unwanted sex and unwanted sexual advances, are much harder tasks, tied up as they are with the broader goals of true racial equality and true gender equality. But again, success will be when both of those movements can pack their bags and move on to something else.

**Osamudia James:** "Success is when the movement no longer becomes necessary," Bennett said.<sup>159</sup> I love that, and also want to add: I want the upside of being black, but not the attendant vulnerabilities. I want to delight in being a woman, without the psychic and material inequalities that I can't currently escape. It sometimes seems that we are envisioning a colorblind, gender-neutral world where neither race nor gender has any meaning for their identity holders, and I'm not sure that's what we really want. To be sure, our society would be a better one if we weren't so fixated on the roles, rights, and obligations we've attached to gender. But that doesn't mean I want a world where being a woman has no meaning, or one where Black culture ceases to exist. And it feels to me, particularly when interrogating universal equality movements or the Court's refusal to fully engage race, that we're being told, "If you don't want the bad, then you can no longer have the good."

**Bennett Capers:** I'm totally down with Osamudia's friendly amendment!

**Linda Greene:** Black Lives Matter embraces a multi-agenda policy platform:

1. End the war on black people.
2. Reparations for past and continuing harms.
3. Divestment from the institutions that criminalize, cage, and harm black

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157. *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

158. See Karen Heller, *Freedom to Marry is Going Out of Business. And Everybody's Thrilled*, WASH. POST (July 30, 2015), <https://perma.cc/38YC-JN8W>; Evan Wolfson, *Evan Wolfson: What's Next in the Fight for Gay Equality*, N.Y. TIMES (June 26, 2015), <https://perma.cc/78DS-CTJ9>.

159. See *supra* p. 40.



people; and investment in the education, health and safety of black people.

4. Economic justice for all and a reconstruction of the economy to ensure our communities have collective ownership, not merely access.
5. Community control of the laws, institutions and policies that most impact us.
6. Independent black political power and black self-determination in all areas of society.<sup>160</sup>

One way to measure the success of a movement is by assessing whether it is able to move the needle from its concerns to the mainstream political or legal policymaking agenda, to policy. In this respect, with respect to Black Lives Matter, we have legislation, criminal prosecutions and criminal convictions of officers in a few egregious circumstances, civil settlements, and federal court consent decrees that incorporate transitional justice truth and reconciliation principles and structures with the potential to transform policing in Black communities in America.

The popularity of the slogan “All Lives Matter” is the latest iteration of the trope of colorblindness,<sup>161</sup> in which its proponents erase the past and present of racialized policing in America as well as argue normatively for a colorblind approach to prospective policy despite the postulate “colorblind” theory.

Additionally, the Blue Lives Matter campaign seeks to reframe the issue as one of police discretion in times of high pressure—this, of course, misses the point of the Black Lives Matter Campaign. Campaigning in 2015, Trump said that if he was elected he would use an executive order to make the death penalty mandatory for anyone who killed a police officer.<sup>162</sup> The idea of a Black Lives Matter-inspired “war on cops” continues to have a powerful role. For example, Milwaukee Sheriff David Clarke opened his speech at the 2016 Republican National Convention by saying that “blue lives matter” and blaming the Black Lives Matter movement for the “collapse of social order.”<sup>163</sup> These concerns have gained the attention of state legislatures: thirty- two Blue Lives Matter bills were introduced in fourteen states in 2017, following fifteen bills in 2016.<sup>164</sup> They are meant to extend hate-crime protections to members of law enforcement.

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160. Tyrmaine Lee, *Black Lives Matter Releases Policy Agenda*, NBC NEWS (Aug. 1, 2016, 12:40 PM), <https://perma.cc/FT32-LA4Q>.

161. See, e.g., John Tawa, Ruqian Ma, & Shinji Katsumoto, “All Lives Matter”: The Cost of Colorblind Racial Attitudes in Diverse Social Networks, 8 RACE & SOC. PROBS. 196 (2016).

162. Ben Kamisar, *Trump: I Will Mandate Death Penalty for Killing Police Officers*, THE HILL (Dec. 10, 2015, 8:16 PM), <https://perma.cc/5UVK-8GL6>.

163. Nick Gass, *Milwaukee Sheriff at RNC: ‘Blue Lives Matter’*, POLITICO (July 18, 2016, 9:36 PM), <https://perma.cc/EF3B-Q6D2>.

164. Julia Craven, *32 Blue Lives Matter Bills Have Been Introduced Across 14 States This Year*, HUFFPOST POLITICS (Dec. 11, 2017), <https://perma.cc/65U6-NYVC>.

Even though most have failed, hate crime protections have been extended to police officers in Louisiana<sup>165</sup> and Kentucky.<sup>166</sup>

A measure of success is often imitation. Black Lives Matter's focus on policing issues has also driven mainstream civil rights and constitutional law organizations to seek to occupy the space.<sup>167</sup>

Some push back on the idea that the Black Lives Matter movement is losing momentum. According to Frank Leon Roberts, cultural and political critic who writes and performs about Black resistance culture,<sup>168</sup> "[t]he revolution is still happening—it is just not being televised."<sup>169</sup> The idea that the Black Lives Matter movement is in a "decline" stage is false. Instead, what is true is that American mainstream media has been much less willing to actually cover the concerns of the Black Lives Matter in part because it has been consumed by the daily catastrophes of the Black Lives Matter presidency. Nonetheless, it would be a mistake to assume that Black Lives Matter is "dwindling" away simply because the cameras are no longer present. All throughout the country, Black Lives Matter organizers are at work in their local communities feverishly fighting for change and relentlessly speaking truth to power.<sup>170</sup>

"The Revolution Will Be Tweeted, but Tweets Alone Do Not the Revolution Make."<sup>171</sup> "If communication is at the heart of social mobilization, and if holding power largely depends on the control of communication and information, it follows that the transformation of communication in a given society deeply affects the structure and dynamics of social movements. This transformation is multidimensional: technological, organizational, institutional, spatial, cultural."<sup>172</sup>

Black Lives matter continues its work.<sup>173</sup> The #MeToo movement has led to the accusation of 263 powerful people, celebrities, politicians, CEOs, and others since 2017. The main goal of #MeToo is to use "healing and survivorship"

165. LA. STAT. ANN. § 14:107.2(E)(3) (2019).

166. KY. STAT. § 532.031(1) (West 2019).

167. These organizations include the NAACP Legal Defense Fund, *Policing Reform Campaign*, NAACP LEGAL DEFENSE FUND (Feb. 16, 2018), <https://perma.cc/7SBU-8AXW>, and the American Civil Liberties Union, *Police Practices*, ACLU, <https://perma.cc/P6P2-DL8L> (last visited Nov. 21, 2019).

168. See, e.g., Frank Leon Roberts, et al., *5 Ways of Understanding Black Lives Matter*, YOUTUBE (Aug. 2, 2016), <https://perma.cc/GJ2T-9NTF>.

169. The quote is a paraphrase of the song by Gill Scott Heron, "The Revolution will not be Televised", from the 1970 Gil Scott-Heron's debut album *Small Talk at 125th and Lenox*. <https://perma.cc/L6QG-T5CG>. Darren Sands, *What Happened to Black Lives Matter*, BUZZFEED NEWS (June 28, 2017), <https://perma.cc/VUN2-NBHS>.

170. Roberts et al., *supra* note 164.

171. SASHA COSTANZA-CHOCK, OUT OF THE SHADOWS, INTO THE STREETS! TRANSMEDIA ORGANIZING AND THE IMMIGRANT RIGHTS MOVEMENT 6 (2014).

172. *Id.*

173. E.g., Ann M. Simmons & Jaweed Kaleem, *A Founder of Black Lives Matter Answers a Question on Many Minds: Where Did It Go?*, L.A. TIMES (Aug. 25, 2017, 3:00 AM), <https://perma.cc/QDE5-NBMM>; Jamiles Lartey, 'We've Ignited a New Generation': Patrisse Khan-Cullors on the Resurgence of Black Activism, THE GUARDIAN (Jan. 28, 2018, 2:00 AM), <https://perma.cc/JH8W-KNHV>.

to create a “community of survivors who move forward together,” to create “the start of a larger conversation.”<sup>174</sup> It is meant to give people a voice and seeks cultural transformation by “encouraging millions to speak out about sexual violence and harassment.”<sup>175</sup>

Success can be seen in the amount of money donated to women’s causes. In 2018, 180 organizations that serve women saw an increase of donations of thirteen percent. Additionally, the Time’s Up Legal Defense Fund, which funds cases involving workplace sexual harassment and related retaliation, raised \$22 million, which made it the most successful initiative ever on the popular crowd-sourcing program GoFundMe.<sup>176</sup>

Such prevalence and success is not without setbacks. Unfortunately, men are feeling “attacked” by the movement, with some men afraid that they will be falsely accused: “I now think twice about spending one-on-one time with a young female colleague,” one American finance executive said at the World Economic Forum.<sup>177</sup> This line of thought, of course, sets women back in the workplace, particularly where men hold higher positions of power and can help their mentees advance in their careers. As Pat Milligan, a researcher on female leadership wrote: “A number of men have told me that they will avoid going to dinner with a female mentee, or that they’re concerned about deploying a woman solo onsite with a male.”<sup>178</sup>

**Lolita Buckner Inniss:** Both Black Lives Matter and #MeToo have as implicit goals ending the harms that engendered the movements. So, in the case of Black Lives Matter, a core goal is reducing and ultimately eliminating state-based and vigilante violence against black people. For #MeToo, a key objective is to reduce and ultimately eliminate sexual harassment and sexual abuse of women. However, I think that in both cases the articulation of these more immediate goals obscures the fact that harms against black people and women are only symptoms of broader situations of oppression. So, if somehow sexual harassment and sexualized violence against women were ended overnight, or if state-sanctioned and vigilante violence against black people were immediately ended, we would still be left with other aspects of gender and racial oppression. Of course, as Linda Greene and others note, both movements in point of fact have multiple planks to their platforms. However, I think though that their relatively narrow framing of goals is as important way of reaching the public in

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174. Alix Langone, *#MeToo and Time’s Up Founders Explain the Difference Between the 2 Movements – And How They’re Alike*, TIME (Mar. 22, 2018, 5:21PM), <https://perma.cc/57H5-NLV3>.

175. *Id.*

176. Alix Langone, *These Are the Biggest Donors to Hollywood’s Record-Breaking #TimesUp Campaign*, MONEY (Jan. 18, 2018), <https://perma.cc/XF7T-CSNE>; Jessica Testa, *Time’s Up Has Raised More Money Than Any Other GoFundMe Campaign in History*, BUZZFEED NEWS (Dec. 6, 2018, 6:22 AM), <https://perma.cc/RBY4-NZL9>.

177. Katrin Bennhold, *Another Side of #MeToo: Male Managers Fearful of Mentoring Women*, N.Y. TIMES (Jan. 27, 2019), <https://perma.cc/UAA8-F4NZ>.

178. *Id.*

meaningful ways. Even people who are generally receptive to both movements might hesitate to engage with a more general or nuanced program.

7. *What effects have the Black Lives Matter and/or #MeToo movements had on law?*

**Bennett Capers:** You know, Deb Turkheimer at Northwestern has argued that #MeToo has not had much influence on the law.<sup>179</sup> To be sure, there have been modest changes at the margins, but nothing earth-shattering.<sup>180</sup> Nothing that, in fact, has reduced unwanted sex and unwanted sexual advances. By contrast, if nothing else, Black Lives Matter must be credited with the widespread adoption of police body worn cameras. I have argued elsewhere that these cameras likely deter some excessive force, and when it doesn't deter, at least records it, again serving as a "white witness."<sup>181</sup> But I have also borrowed from my colleague Jocelyn Simonson to argue that the impact of video evidence will likely go well beyond deterring and documenting.<sup>182</sup> Ultimately, when used in court, such evidence has the power to change how courts normally think about the police—with uncritical deference and assumptions about police expertise<sup>183</sup>—and change how courts think about victims and everyday citizens. Eventually, this may have implications for how we think about the Fourth Amendment and Section 1983 claims. In short, video coming from body worn cameras has the potential "to change constitutional meaning."<sup>184</sup>

**Osamudia James:** Particularly when understood as a broad conceptual umbrella for the work of black liberation groups, Black Lives Matter has produced a string of accomplishments that, while not necessarily resulting in new law, has impacted understanding and functioning of our legal system. Consider that Black Lives Matter protestors who were arrested while protesting the death of Alton Sterling in Baton Rouge, Louisiana, settled their lawsuit against the city (for unconstitutional tactics intended to infringe on the protestors' First Amendment rights) for \$100,000.<sup>185</sup> Black Lives Matter-affiliated labor groups, like BYP100 and Assata's Daughters, successfully led the charge to unseat Cook

179. See Deborah Turkheimer, *Beyond #MeToo*, 94 N.Y.U. L. REV. 1146 (2019).

180. See Cara Kelly & Aaron Hegarty, *#MeToo Was a Culture Shock. But Changing Laws Will Take More than a Year*, USA TODAY (Oct. 5, 2018, 12:28 PM), <https://perma.cc/58SB-J8D7>; see also Catherine A. MacKinnon, *Where #MeToo Came From, and Where It's Going*, THE ATLANTIC (Mar. 24, 2019), <https://perma.cc/C5C9-ZFK9> (acknowledging that #MeToo has primarily moved "the culture beneath the law of sexual abuse" rather than moving the law itself).

181. See Bennett Capers, *Race, Policing, and Technology*, 95 N.C. L. REV. 1241, 1249, 1268-83 (2017).

182. See Jocelyn Simonson, *Copwatching*, 104 CALIF. L. REV. 391, 425, 442-43 (2016).

183. See Anna Lvovsky, *The Judicial Presumption of Police Expertise*, 130 HARV. L. REV. 1995, 1999 (2017).

184. Simonson, *supra* note 177, at 425.

185. Chris Sommerfeldt, *Baton Rouge Dishes Out \$100,000 to Settle Lawsuit Brought By Arrested Alton Sterling Protestors*, N.Y. DAILY NEWS (Nov 23, 2016, 4:38 AM), <https://perma.cc/R9LR-H6YY>.

County Prosecutor Anita Alvarez, who failed to charge police officers involved in at least 68 killings.<sup>186</sup> The Dream Defenders and others led a successful campaign against the reelection bid of Angela Corey, the Florida State's Attorney who failed to convict Trayvon Martin's killer<sup>187</sup> but prosecuted Melissa Alexander.<sup>188</sup> Black Lives Matter not only successfully pushed the 2016 Democratic presidential candidates to address structural racism during their campaigns, but also compelled the Democratic party to restructure their national platform to include criminal justice reform.<sup>189</sup> Black Lives Matter, in conjunction with allied organizations, released a multi-agenda policy platform addressing reparations, economic justice, community control, and political power.<sup>190</sup>

I'll also double-down on Bennett's assertion that Black Lives Matter has impacted policing. I am not as optimistic as my colleagues about the potential of body cameras. As long as police officers and the public continue to unjustifiably perceive black people as criminal, dangerous, aggressive, super- and sub-human, the cameras will only reflect and affirm that narrative. After all, what could justify the acquittal of Eric Garner's killers despite video evidence of police overreach? I do believe, however, that Black Lives Matter has succeeded in prompting conversations about the command and control culture of policing in the United States, opening up spaces for discussion about what policing could look like if the goal was not to routinely and immediately subdue and overpower civilians.

**Linda Greene:** Although Black Lives Matter aims for a "fundamental reordering of society wherein Black lives are free from systematic dehumanization," it began to seek legal reform shortly after Darrin Wilson killed Michael Brown on August 9, 2014.<sup>191</sup> The Associated Press reported that in the year between Michael Brown's death and August 2015, twenty-four states had passed at least forty new measures addressing officer-worn cameras, racial bias training, independent investigations when police use force, and new limits on the flow of surplus military equipment to local law enforcement agencies. The

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186. Frank Leon Roberts, *How Black Lives Matter Changed the Way Americans Fight for Freedom*, AM. C.L. UNION (July 13, 2018, 3:45 PM), <https://perma.cc/TX93-FS2P>. See also Miles Kampf-Lassin, *How Black Youth Helped Unseat Anita Alvarez and Transform the Face of Criminal Justice in Chicago*, IN THESE TIMES (Mar. 16, 2016), <https://perma.cc/D22R-GEHN>.

187. See Sarafina Wright, *State's Attorney in Trayvon Martin Case Ousted*, WASH. INFORMER (Sept. 7, 2016), <https://perma.cc/5GLT-26UH>.

188. Roberts, *supra* note 181.

189. Brandon E. Patterson, *Black Live Matter Just Officially Became Part of the Democratic Primary*, MOTHER JONES (Oct. 21, 2015), <https://perma.cc/6PXF-RMPG>; Jeff Stein, *Bernie Sanders moved Democrats to the left. The platform is proof*, VOX (July 25, 2016, 8:40 PM), <https://perma.cc/85NM-29UX>; James Downie, *The Democratic platform is far more liberal than four years ago. Here's why that matters*, WASH. POST (July 7, 2016), <https://perma.cc/2HKS-LG9G>.

190. See *Platform*, MOVEMENT FOR BLACK LIVES, <https://perma.cc/B2GC-BQX3>.

191. Roberts, *supra* note 179; Josh Hafner, *How Michael Brown's death, two years ago, pushed #BlackLivesMatter into a movement*, USA TODAY (Aug. 8, 2016, 7:50 PM), <https://perma.cc/UKT4-3MDM>.

Associated Press noted in 2018 sixteen states have mandated officer cameras that record interactions between police and civilians.<sup>192</sup> States including California passed “Right to Know” bills that authorize public access to internal investigations in use of deadly force scenarios<sup>193</sup> that require “records and records relating to ... investigations involving peace officers and custodial officers to be made available for public inspection.”<sup>194</sup> Colorado, Connecticut, New Jersey, and Illinois have also required independent investigations when police shoot people.<sup>195</sup> The New York Police Department and Los Angeles Police Department, along with Illinois, have imposed bans or limitations on chokeholds, the hold that NYPD Officer Daniel Pantaleo used to kill Eric Garner on July 22, 2014.<sup>196</sup> Other changes include an increase in community oversight of policing with specific concern for racial profiling.<sup>197</sup>

In some cities, the Black Lives Matter Movement’s impact on the political legal landscape is palpable. In Chicago, the people ousted the Cook County prosecutor who did not prosecute Officer Van Dyke for the murder of Laquan McDonald, the mayor decided not to run for reelection, and first-time candidate Lori Lightfoot, who had championed police reform, won the election for mayor over fourteen well-known career politicians.<sup>198</sup> In Baltimore, after the police killed Freddie Gray and portions of the city erupted in violence, the mayor fired the police chief but then declined to run for reelection.<sup>199</sup> In Jacksonville, Florida, the voters rejected prosecutor Angela Corey after her failed prosecution against Trayvon Martin’s killer, George Zimmerman. Advocacy from Black Lives Matter movement leaders led to Department of Justice investigations that found

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192. Trib. Wire Reports, *Ferguson spurs 40 new state measures; activists want more*, CHI. TRIB. (Aug. 02, 2015, 11:53 AM), <https://perma.cc/C7GE-E398>. These measures addressed body cameras, racial bias training, independent investigations for police force cases, and limits to surplus military equipment to local police agencies. *Id.*

193. ACLU of S. Cal., *Access to CA Police Records*, <https://perma.cc/QWL8-KNTG>.

194. S.B. 1421, 2017-2018 Reg. Sess., Ch. 988 (Cal. 2018).

195. Illinois Police and Community Relations Improvement Act, 50 ILL. COMP. STAT. 727/1-10. (2016); S.B. 1036, 218th Leg. (N.J. 2019).

196. David K. Li, *NYPD fires Officer Daniel Pantaleo for chokehold in Eric Garner’s death*, N.B.C. NEWS (Aug. 19, 2019, 11:40 AM), <https://perma.cc/33EZ-HZNP>; Javier Panzar, *Police wrestle with definition of chokehold*, L.A. TIMES (Dec. 9, 2014, 8:15 PM), <https://perma.cc/9HG6-2JWW>; Mary Wisniewski, *New Illinois law bans choke holds; gives guidelines on body cameras*, REUTERS (Aug. 12, 2015, 4:26 PM), <https://perma.cc/XG3D-4JSH>.

197. 20 ILL. COMP. STAT. 2715/40(b) (2016). Illinois statute, 20 ILCS 2715/40, adopted 2016, grants a statewide “Oversight Board” authority to “coordinate the development, adoption, and implementation of plans and strategies to eliminate racial profiling in Illinois and to coordinate the development, adoption, and implementation of plans and strategies to create public awareness programs in minority communities, designed to educate individuals regarding racial profiling and their civil rights.” *Id.*

198. Megan Crepeau, Christy Gutowski, Jason Meisner & Stacy St. Clair, *A historic murder conviction of a Chicago cop – and a city’s sigh of relief*, CHI. TRIB. (Oct. 06, 2018, 5:05 AM), <https://perma.cc/V82Y-FNP3>; Mitch Smith, *Lori Lightfoot, Chicago’s Incoming Mayor, Ran on Outsider Appeal*, N.Y. TIMES (April 3, 2019), <https://perma.cc/MRT2-B5DY>.

199. Juliet Linderman, *Baltimore Mayor Stephanie Rawlings-Blake will not seek re-election*, FOX 5 WASH. D.C. (Sept. 11, 2015), <https://perma.cc/FZX2-KPTV>.

pattern and practice police misconduct in Baltimore,<sup>200</sup> Chicago,<sup>201</sup> Ferguson,<sup>202</sup> and Cleveland.<sup>203</sup> In addition, the Black Lives Matter movement's demand for reparations<sup>204</sup> is an agenda item for Democratic presidential candidates for the 2020 Election.<sup>205</sup>

In particular in Chicago, Black Lives Matter played a key role in the recent federal court consent decree between the Illinois State Attorney General and the City of Chicago.<sup>206</sup> Black Lives Matter was involved in the four-month long activity of the Mayor Rahm Emanuel-appointed Task Force on Police Accountability that investigated racialized police in that city from December 1, 2015 to April 2016.<sup>207</sup> In addition, Black Lives Matter was involved in the efforts that led to the Department of Justice investigation of the McDonald shooting. Black Lives Matter also filed its own police misconduct lawsuit against the City of Chicago<sup>208</sup> and was an integral part of the coalition to whom Mayor Emanuel

200. Roberts, *supra* note 181. See generally OFFICE OF PUB. AFFAIRS, U.S. DEP'T OF JUSTICE, JUSTICE DEPARTMENT ANNOUNCES FINDINGS OF INVESTIGATION INTO BALTIMORE POLICE DEPARTMENT (2016), <https://perma.cc/F9JV-9U FK>.

201. *Id.*

202. Roberts, *supra* note 181. See generally OFFICE OF PUB. AFFAIRS, U.S. DEP'T OF JUSTICE, JUSTICE DEPARTMENT ANNOUNCES FINDINGS OF TWO CIVIL RIGHTS INVESTIGATIONS IN FERGUSON, MISSOURI (2015), <https://perma.cc/WRR9-HU6A>.

203. Roberts, *supra* note 181. See generally CIVIL RIGHTS DIV., U.S. DEP'T OF JUSTICE & N. DIST. OF OHIO, U.S. ATT'Y'S OFFICE, INVESTIGATION OF THE CLEVELAND DIVISION OF POLICE (2014), <https://perma.cc/8FDL-V9KG>.

204. See *Reparations*, MOVEMENT FOR BLACK LIVES, <https://perma.cc/34KP-YG63> ("We demand reparations for past and continuing harms. The government, responsible corporations and other institutions that have profited off of the harm they have inflicted on Black people — from colonialism to slavery through food and housing redlining, mass incarceration, and surveillance — must repair the harm done.").

205. Khorri Atkinson, *Reparations: Where the 2020 Democratic candidates stand*, AXIOS (Apr. 13, 2019), <https://perma.cc/E53P-UJR9>.

206. Summer Haris, *Black Lives Matter Chicago Co-Founder Discusses New Role In Police Reform*, WBEZ 91.5 CHI. (Mar. 27, 2018), <https://perma.cc/YB5B-LTWB>. See generally Consent Decree, *Illinois v. City of Chicago*, No. 17-cv-6260 (Dist. Ct. N.D. Ill. Jan. 31, 2019).

207. Susan Smith Richardson, *Acting on the 'hard truths' of racism in the Chicago Police Department*, CHI. REP. (Apr. 15, 2016), <https://perma.cc/K5EZ-L3K3>; OFFICE OF THE MAYOR CITY OF CHI., MAYOR EMANUEL ANNOUNCES TASK FORCE ON POLICE ACCOUNTABILITY (2015), <https://perma.cc/CHW8-KKB7>. The Task Force provided its final report on April 13, 2016. POLICE ACCOUNTABILITY TASK FORCE, TASK FORCE CALLS FOR SWEEPING CHANGE IN CHICAGO POLICING (2016), <https://perma.cc/9QLC-5PYF>. See generally POLICE ACCOUNTABILITY TASK FORCE, RECOMMENDATIONS FOR REFORM (2016), <https://perma.cc/A5JX-G7SW>.

208. See Class Action Complaint, *Campbell v. City of Chicago*, No. 1:17-cv-04467 (N.D. Ill. dismissed June 14, 2017). BLM sought to consolidate their lawsuit with that filed by ACLU on behalf of people with disabilities whom it charged the Chicago Police with using excessive force and deadly force in violation of, inter alia, Section 504 Rehabilitation Act of 1973. See Complaint at 2, *Communities United v. City of Chicago*, No. 1:17-cv-07151 (N.D. Ill. dismissed Oct. 4, 2017).

pledged to seek an enforceable federal consent decree<sup>209</sup> that would give Black Lives Matter a “seat at the table” in the development and implementation of police reforms.<sup>210</sup> Similarly, in Memphis, Black Lives Matter and the ACLU of Tennessee sued the Memphis Police Department for violating a consent decree between the City and the ACLU for spying on political protestors. The 1978 Consent Decree prohibited the City of Memphis from engaging in enforcement practices that interfered with the First Amendment, including rights to communicate an idea or belief, to speak and dissent freely, write and publish, and associate privately for a public or private purpose.<sup>211</sup> The ACLU had been keeping a list of people to monitor by social media and included members of Black Lives Matter. The judge found that the Memphis Police Department violated the decree “when an officer searched its social media collator for all instances of the term ‘Black Lives Matter,’ because the information gathered related to First Amendment Rights.”<sup>212</sup>

That “seat at the table” was evident in an agreement that Black Lives Matter would play a role in the development of the federal court consent decree that now forms the framework for policing in Chicago. Black Lives Matter joined a coalition of community and civil rights groups who criticized the Illinois Attorney General’s original draft of the consent decree as inadequate to address the history of police misconduct in Chicago.<sup>213</sup> That coalition had its own lawsuit to seek reform of policing in Chicago,<sup>214</sup> had developed its own proposed consent decree for the reform of policing in Chicago, and had reached an agreement with the City and Attorney General that required the City and State to consider the Coalition’s consent decree terms and empower the coalition with the authority to enforce the decree in federal court.”<sup>215</sup>

A number of Black Lives Matter’s demands are incorporated in the final consent decree.<sup>216</sup> Black Lives Matter demanded that the community have the

209. See U.S. DEP’T OF JUSTICE & CITY OF CHICAGO, AGREEMENT IN PRINCIPLE BETWEEN THE UNITED STATES DEPARTMENT OF JUSTICE AND THE CITY OF CHICAGO REGARDING THE CHICAGO POLICE DEPARTMENT (2017), <https://perma.cc/982V-5T8F>.

210. *Black Lives Matter Chicago Co-Founder Discusses New role in Police Reform* (WBEZ Chicago radio broadcast March 27, 2018). In that Broadcast, Aislinn Pulley said, “It’s significant in the terms of finally allowing families who have been victims of police violence, police terrorism, who have lost loved ones to police killings, to have the ability to be a part of this process. So that in and of itself is historic and significant and has never been done before in any other municipality when it comes to the consent decree process.” *Id.*

211. Order, Judgement and Decree at 2, *Kendrick v. Chandler*, No. C 76-449 (W.D. Tenn. Sept. 14, 1978).

212. *Blanchard v. City of Memphis*, No. 2:17-cv-2120-JPM-egb, at \* 21 (W.D. Tenn. Oct. 26, 2018).

213. Press Release, ACLU of Ill., Coalition of Community and Civil Rights Groups Call on City of Chicago and Illinois Attorney General to Improve the Draft Chicago Police Consent Decree (Aug. 14, 2018), <https://perma.cc/N7GT-5ZL5>.

214. See Second Amended Class Action Complaint, *Campbell v. City of Chicago*, No. 1:17-cv-04467 (N.D. Ill. dismissed Sept. 09, 2017).

215. ACLU of Ill., *supra* note 213.

216. *Consent Decree Requirements*, CHICAGO POLICE DEPARTMENT CLASS ACTION (last visited June 25, 2019), <https://perma.cc/M6DK-2P6S>.



opportunity to provide feedback on plans, analyses and reports related to CPD operations and all of these items must be made public. The consent decree states that “CPD will establish and maintain clear channels through which community members can provide input regarding CPD’s use of force policies and propose revisions or additions to those policies [and that] CPD will regularly review the input received, including during the biennial review process.”<sup>217</sup>

Black Lives Matter also demanded that the police department be required to make public comprehensive data related to complaints, uses of force, and other law enforcement activities implicated by the consent decree. The Consent Decree states:

- CPD must have an electronic system that accurately and reliably tracks all data derived from reportable use of force incidents including
- a. the response by CPD members during the incident, including the type(s) of force used;
  - b. the date, time, location, and district of the incident;
  - c. whether a foot or vehicle pursuit occurred that is associated with the incident;
  - d. the actual or, if unavailable, perceived race, ethnicity, age and gender of the subject;
  - e. the name, watch, employee number, and unit and beat of assignment of any CPD member(s) who used force;
  - f. CPD units identified in the incident report as being on the scene of the use of force incident;
  - g. whether the incident occurred during an officer-initiated contact or a call for service;
  - h. the subject’s mental health or medical condition, use of drugs or alcohol, ability to understand verbal commands, or disability, as perceived by the CPD member(s) at the time force was used;
  - i. the subject’s actions that led to the CPD member’s use of force;
  - j. whether the CPD member perceived that the subject possessed a weapons and, if so, what type(s); ...
  - l. whether reportable force was used against a subject that was handcuffed or otherwise in physical restraints;
  - m. any injuries sustained by CPD members;
  - n. any injuries sustained or alleged by the subject(s) and any medical treatment that was offered or performed on the scene of the incident;
  - o. for each weapon discharged by an officer, including firearms, Tasers, and OC devices, the number of discharges per weapon; and
  - p. whether the subject was charged with an offense, and if so, which offense(s).<sup>218</sup>

Next, Black Lives Matter demanded that the police department address hostile police-community interactions by developing diversion programs, ending

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217. Consent Decree at 50, *Illinois v. City of Chicago*, No. 17-cv-6260 (N.D. Ill., filed Jan. 31, 2019).

218. *Id.* at 178-78.

the financial incentives CPD officers have to make arrests and reducing arrests for minor, often pre-textual offenses. This demand included the requirement that CPD create diversion partnerships, including restorative justice and community mediation, that CPD engage in best efforts to create diversion partnerships including restorative justice and community mediation. The consent decree ultimately states: “The City and CPD are committed to exploring diversion programs, resources, and alternatives to arrest for individuals in crisis,”<sup>219</sup> signaling the Chicago Police Department’s willingness to further look into these demands.

Black Lives Matter further demanded that that people harmed by CPD and their families would receive support and information, including that CPD must provide information about whereabouts of people injured by police action, and must immediately contact injured person’s next of kin and/or emergency contact. Additionally, Black Lives Matter asked that the City provide police-violence survivors and their families with psychosocial supportive services independent from CPD. The consent decree at least acknowledges these concerns but does not provide for recompense: “The City and CPD are committed to ensuring their actions do not unreasonably impede access to information for families of the injured and deceased.”<sup>220</sup>

Black Lives Matter asked that the CPD strengthen protections against unlawful use of force by mandating de-escalation, restricting foot pursuits, lethal force and the use of Tasers, and ensuring accountability. This is addressed: “CPD recently adopted de-escalation as a core principle. CPD officers must use de-escalation techniques to prevent or reduce the need for force whenever safe and feasible. CPD officers are required to de-escalate potential and ongoing use of force incidents whenever safe and feasible through use of techniques. . . .”<sup>221</sup> Additionally, the Consent Decree requires reporting: “When CPD members use force, they must be able to demonstrate that the force used complies with the law and CPD policy. When a member’s use of force does not comply with the law and CPD policy, the member’s supervisors must be able to identify the non-compliance and take appropriate action to address it.”<sup>222</sup>

Another important request demands impartial policing. According to Black Lives Matter, this required that the Consent Decree meaningfully addressed the police violence and misconduct targeted at Black people, women, Latinx people, and people with disabilities and that it include data-driven efforts to identify and root out bias, and address gender- and disability-bias in policing. The Consent Decrees that the CPD does implement such a program “Starting no later than January 1, 2019, CPD will track and analyze the frequency with which CPD officers engage in foot pursuits of persons attempting to evade arrest or detention by fleeing on foot, regardless of whether the foot pursuit is associated with a

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219. *Id.* at 27.

220. *Id.* at 150.

221. *Id.* at 51.

222. *Id.* at 63.

reportable use of force incident.”<sup>223</sup> Moreover, all of Section B is devoted to “Impartial Policing Policies and Procedures.”

Black Lives Matter demanded that the jurisdiction of the Civilian Office of Police Accountability (COPA) encompass sexual assault, not just police misconduct. The Consent Decree addresses sexual misconduct in and outside of the context of COPA. It requires that “CPD [] develop and implement a policy that prohibits sexual misconduct by CPD members.”<sup>224</sup> The policy must “be consistent with best practice and applicable law and will provide definitions of various types of sexual offenses, including those that are not criminal in nature.”<sup>225</sup>

The Consent Decree also requires that COPA have jurisdiction over sexual assault and misconduct. It requires the City to “undertake best efforts to ensure that COPA has jurisdiction to conduct administrative investigations of allegations of sexual misconduct, as defined by this Agreement.”<sup>226</sup> More than this baseline is required, though; the Consent Decree requires that COPA have “appropriately trained and experienced staff to conduct sexual misconduct investigations”<sup>227</sup> and that COPA and the BIA may agree that “BIA may conduct the administrative investigation into allegations of sexual misconduct when they jointly determine that doing so avoids unnecessary disruption to the complainant.”<sup>228</sup>

Black Lives Matter has further demanded protection of children and youth, including in schools. This includes the specific request that Chicago Police Department officers not be stationed in schools, and to the extent that CPD officers continue to be assigned to schools, the decree must ensure that it addresses the school-to-prison pipeline, including by: mandated de-escalation tactics for school officers, prohibitions on using handcuffs and force in schools except in exigent circumstances, a prohibition on carrying firearms, a duty *not* to intervene in incidents on school grounds, a prohibition on interviewing an interrogating youth on school grounds, and a prohibition on collecting law enforcement data on youth in schools. The Consent Decree outlines specific guidelines for school-assigned officers, including specific training for officers that addresses subjects like “cultural competency,” “the use of de-escalation techniques, use of restorative approaches, and available community resources and alternative response options;” and “methods and strategies that create positive interactions with specific student groups such as those with limited English proficiency, who are LGBTQI, or are experiencing homelessness.”<sup>229</sup>

Finally, Black Lives Matter requested that CPD hire officers who reflect Chicago’s diversity and can police in a manner consistent with the requirements of the Decree. The Consent Decree states: “The City and CPD’s recruitment,

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223. *Supra* note 217 at 52.

224. *Id.* at 19.

225. *Id.*

226. *Id.* at 131.

227. *Id.* at 131.

228. *Id.* at 131.

229. *Supra* note 217 at 13-14.

hiring, and promotions policies and practices will show a commitment to attracting, hiring, and promoting qualified candidates at all ranks that reflect a broad cross section of the Chicago community the Department serves.”<sup>230</sup> Specifically, in meeting that goal, the Consent Decree requires the City and CPD to “publish job descriptions for each sworn member title code” and “continue to review any hiring and promotional exams to ensure they are fair, validated, and properly administered.”<sup>231</sup>

Unfortunately, not all of Black Lives Matter’s demands could be met. Black Lives Matter asked for but did not receive a clause that would have required the CPD to develop and implement officer performance metrics based on measures on non-biased policing, diversion and de-escalation.

Additionally, other clauses in the Consent Decree appeared to invoke Black Lives Matter’s main goals, while not addressing specific demands or requests. For example, the Consent Decree states that “[t]he Parties agree that policing fairly, with courtesy and dignity, and without bias is central to promoting broad community engagement, fostering public confidence” and that “CPD will prohibit officers from using race, ethnicity, color, national origin, ancestry, religion, disability, gender, gender identity, sexual orientation, immigration status, homeless status, marital status, prenatal status, military discharge status, financial status, or lawful source of income when making routine or spontaneous law enforcement decisions, except when such information is part of a specific subject description.”<sup>232</sup> The Consent Decree also promises that CPD will provide guidance on implicit bias, through training and supervision, that reinforces to officers that substitutes or stereotypes for the demographic categories listed above, such as manner of dress, mode of transportation, or language ability, are prohibited when making routine or spontaneous law enforcement decisions, except when such information is part of a specific subject description.<sup>233</sup> Finally, the Consent Decree declares that “CPD officers may only use force for a lawful purpose. CPD officers are prohibited from using force as a punishment or retaliation, such as using force to punish or retaliate against a person for fleeing, resisting arrest, insulting an officer, or engaging in protected First Amendment activity (e.g., lawful demonstrations, protected speech, observing or filming police activity, or criticizing an officer).”<sup>234</sup>

Black Lives Matter has also led to creation of a comprehensive database on police shootings, called “Mapping Police Violence,” created by three young professionals, ages 27, 31, and 31 respectively, “a research collaborative collecting comprehensive data on police killings nationwide to quantify the impact of police violence in communities.”<sup>235</sup>

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230. *Id.* at 75.

231. *Id.*

232. *Id.* at 17.

233. *Id.*

234. *Id.* at 51.

235. MAPPING POLICE VIOLENCE, <https://perma.cc/5MLB-JPGG> (last updated May 15, 2019).

In 2018, thirty-two state legislatures considered proposals to address sexual harassment in legislatures, with seventeen states adopting legislation.<sup>236</sup> Adopted legislation included the requirement of sexual harassment orientation training,<sup>237</sup> specific legislation forbidding retaliation,<sup>238</sup> legislation imposing sexual-harassment provisions on lobbyists,<sup>239</sup> provisions forbidding the use of public funds to pay sexual harassment settlements,<sup>240</sup> as well as legislation requiring the study of sexual harassment. California passed legislation to address workplace harassment in 2018. California enacted into law Senate Bill (SB) 1343, which expands the requirement that employers provided sexual harassment training requirements to employers with five or more workers to employers with as few as five workers.<sup>241</sup> SB 1300 prohibits employers from forcing employees to sign a non-disparagement agreement to release the employer of claims, including sexual harassment, as a condition for a raise or bonus, or as a condition of employment.<sup>242</sup> Moreover, the state also enacted into law Assembly Bill (AB) 2770, legislation that provides immunity to accusers or victims from defamation lawsuits when the accusers or victims make sexual harassment allegations to an employer “based on credible evidence” and without malice.<sup>243</sup> SB 820 applies to private and public employers and forbids secret settlements or nondisclosure agreements of factual information in cases involving allegations of sexual assault, harassment or discrimination.<sup>244</sup> The City of New York passed legislation requiring employers with fifteen or more employees to provide sexual harassment training and to post prominent signs forbidding sexual harassment.<sup>245</sup>

The American Law Institute (ALI), the legal equivalent of the prestigious National Academies,<sup>246</sup> is also studying the issue. The ALI, an elite elected body made up of judge, law professors, and lawyers and “the leading independent organization in the United States producing scholarly work to clarify, modernize,

236. NATIONAL CONFERENCE OF STATE LEGISLATURES, *2018 Legislation on Sexual Harassment in the Legislature* (Feb. 11, 2019), <https://perma.cc/FXS4-QURP>.

237. See, e.g., A.B. 2055, 2017-2018 Legis. Sess., Reg. Sess. (Cal. 2018), *chaptered as* CAL. GOV'T § 8956.

238. See, e.g., S.B. 419, 2017-2018 Legis. Sess., Reg. Sess. (Cal. 2018), *chaptered as* CAL. GOV'T §§ 9149.32, .40, .41.

239. See, e.g., H.B. 973, 154th Gen. Assemb., Reg. Sess. (Ga. 2018), GA. CODE §§ 21-5-71(b), (d).

240. See e.g., H.B. 4243, 100th Gen Assemb., Reg. Sess. (Ill. 2018), 25 ILL. COMP. STAT. 115/5.

241. S.B. 1343, 2017-2018 Legis. Sess., Reg. Sess. (Cal. 2018), *chaptered as* CAL. GOV'T §§ 12950(a), 12950.1(a).

242. S.B. 1300, 2017-2018 Legis. Sess., Reg. Sess. (Cal. 2018), *chaptered as* CAL. GOV'T §§ 12964.5(a)-(c).

243. A.B. 2770, 2017-2018 Legis. Sess., Reg. Sess. (Cal. 2018), *chaptered as* CAL. CIV. § 47(a).

244. S.B. 820, 2017-2018 Legis. Sess., Reg. Sess. (Cal. 2018), *chaptered as* CAL. CIV. § 1001(a).

245. NYC: HUMAN RIGHTS, *Sexual Harassment in the Workplace*, <https://perma.cc/QKZ6-MXE6> (last visited June 25, 2019).

246. NATIONAL ACADEMIES OF SCIENCES, ENGINEERING, AND MEDICINE, <https://perma.cc/53YZ-PY2M> (last visited June 25, 2019).

and otherwise improve the law” has undertaken two projects related to #MeToo, including a project addressing Sexual Assault and Related Offenses.<sup>247</sup>

**Lolita Buckner Inniss:** While I do think that both Black Lives Matter and #MeToo have had a significant effect on some formal legal articulations and procedures, which I call law with a capital “L,” perhaps more impact has been seen in sub-legal, informal regulatory regimes, which I call law with a small “l.” Small l law consists of the informal norms that govern how we shape social rule formulations, and how we interact with one another. An interesting change in small l regimes has been the way that many facets of society have examined their own behaviors and how they are sometimes complicit in promoting or valorizing women’s sexual objectification, or complicit in silencing black people’s articulation of the harms they suffer. Consider, for example, how a distinct subcultural space in U.S. social media, Black Twitter, has moved toward the center of the culture. Black Twitter is a virtual space on the social media application Twitter where a large, informally connected network of black people offer opinions and social commentary on the news of the day. Black Twitter users decry injustice and assail white hegemony, typically using wry humor. In the advent of the Black Lives Matter Movement, more people from the mainstream have followed and noted Black Twitter postings, and have come to value them as the voice of a community that is not often heard.<sup>248</sup> Another example of a small l response is seen in the fact that the Disney Company recently quietly deleted from the end of the 1999 film version of *Toy Story 2* a joke about the casting couch.<sup>249</sup> The casting couch is as old as the film business, and refers to how powerful men sometimes use promises of film roles to entice or coerce women into sexual relationships.<sup>250</sup>

8. *What effects have the Black Lives Matter and/or #MeToo movements had on popular culture including music, movies, art, social media?*

**Osamudia James:** I’ll first invert the question and address the impact of social media on Black Lives Matter. I noted earlier that Black Lives Matter was the first movement for black liberation unanchored in the black church. I would further suggest that social media replaced the church as the meeting place for activists. Indeed, the ability to quickly galvanize protestors through viral social

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247. THE AMERICAN LAW INSTITUTE, <https://perma.cc/NVU8-SR5R> (last visited Nov. 21, 2019).

248. Jenna Wortham, *Black Tweets Matter*, SMITHSONIAN MAG., Sept. 2016, <https://perma.cc/SK2V-6N2Y>.

249. Jason Silverstein, *Disney Deletes “Toy Story 2” Scene that Jokes about Casting Couch Sex*, CBSNEWS (July 3, 2019), <https://perma.cc/R4D3-NZVD>.

250. Note that the casting couch is but one industry’s metaphor for coerced sex in the workplace. Several years ago a Michigan attorney was sanctioned for allowing some clients to discharge their legal fees by having sex with him on his “couch of restitution.” Lolita Buckner Inniss, *“The Couch of Restitution” (Or, The Devil and the Deep Blue Sea vs. The Devil in Miss Jones)*, AIN’T I A FEMINIST LEGAL SCHOLAR TOO? (Dec. 4, 2009), Error! Hyperlink reference not valid. <https://perma.cc/MCZ5-5G85>.

media posts made the movement agile in ways it might not have otherwise been. It also provided a platform to anyone with a social media account to promote the Movement's goals and ideals, although this decentralized leadership network also made the movement vulnerable to critique when independent chapters took action that others considered excessive (e.g., the refusal of protestors to allow Bernie Sanders to speak at a Seattle rally in 2015).<sup>251</sup>

I'm not sure about the impact of the Black Lives Matter movement on pop culture. In one sense, yes—the slogan caught like wildfire, and became a convenient, all-encompassing heuristic for racism and white supremacy not just in the United States, but around the world. And as Linda details below, reference to the movement in particular, and the dehumanizing treatment of black people more generally, has certainly been reflected in popular music. And yet, the use of art as a medium for exposing brutality is not new, even if the slogan #BlackLivesMatter is. Rather, black people in the United States have been creating black culture and black art as witness to, and explanation and critique of, racial subordination since the first slave ships departed from African shores. Moreover, despite the potency of that art, I nevertheless read #BLM as part of a larger societal trend where black racial identity is celebrated in pop and cultural spaces (e.g., the success of Beyoncé's *Lemonade*), but still marginalized in social, legal, and substantively material spaces.

**Linda Greene:** Black Lives Matter has become an important social media case study: “By using the tools of social media, BLM was the first U.S. social movement in history to successfully use the internet as a mass mobilization device.”<sup>252</sup> The Pew Internet and Technology Center (Pew) studied the frequency and surges in the use of the hashtag #BlackLivesMatter:

In the course of five years, #BlackLivesMatter has become an archetypal example of modern protests and political engagement on social media: A new Pew Research Center analysis of public tweets finds the hashtag has been used nearly 30 million times on Twitter – an average of 17,002 times per day – as of May 1, 2018.<sup>253</sup>

In addition, Pew found that 69% believe that social media is a useful tool for influencing politicians, and 67% believe that social media has to potential to

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251. TimesVideo, *Black Lives Matter Protesters Disrupt Bernie Sanders Rally*, N.Y. TIMES (Aug. 9, 2015), <https://perma.cc/Q2NF-QJ3R>; see Dara Lind, *Black Lives Matter v. Bernie Sanders, Explained*, VOX, Aug. 11, 2015 (documenting the refusal of protestors to allow Bernie Sanders to speak at a Seattle rally in 2015 and the ensuing critique), <https://perma.cc/58MQ-GMP2>.

252. Frank Leon Roberts, *How Black Lives Matter Changed the Way Americans Fight for Freedom*, ACLU (July 13, 2018), <https://perma.cc/9R56-XNUF>.

253. MONICA ANDERSON ET AL., PEW RESEARCH CTR., ACTIVISM IN THE SOCIAL MEDIA AGE 3 (July 11, 2019), <https://perma.cc/G2BE-TPTT>.

“create sustained movements for social change.”<sup>254</sup> One half of Blacks and Hispanics responding said that the platforms “are at least somewhat personally important to them as a venue for expressing their political views or for getting involved with issues that are important to them” as compared to one-third of whites.<sup>255</sup>

Police abuse issues have also been the subject in popular television shows. For example, in the *Black-ish* episode *Hope*, aired on February 26, 2016, the Johnson family focused on a case involving an unarmed Black man whom police tasered 37 times for selling DVDs illegally, wondering whether the grand jury would indict the police officers involved.<sup>256</sup> *Scandal*, which stars Kerry Washington, aired an episode with facts similar to those in the killing of Michael Brown in Ferguson.<sup>257</sup> In several episodes, Trevor Noah, host of *The Daily Show*, takes up police killing of Black men.<sup>258</sup> The subject has been an ongoing theme in the work of comedian David Chappelle.<sup>259</sup>

On the music front, long a site of protest over racial injustice generally<sup>260</sup> and in the context of policing,<sup>261</sup> from Beyoncé to Blood Orange,<sup>262</sup> racialized policing is the topic. “I Can’t Breathe” is a tribute to Eric Garner.<sup>263</sup> Beyoncé’s *Lemonade* track “Forward” features mothers holding pictures of their sons Trayvon Martin, Eric Garner, and Michael Brown respectively.<sup>264</sup> Jay Z’s “spiritual” protests, “I am not poison/Just a boy from the hood that got my hands

254. *Id.*, at 4.

255. *Id.*

256. *Black-ish: Hope* (ABC television broadcast Feb. 24, 2016); see also Michael Rothman & Vanessa Wilkins, *Black-ish Lauded for Police Brutality Episode*, ABC NEWS (Feb. 25, 2016), <https://perma.cc/HW3H-QL54>.

257. *Scandal: The Lawn Chair* (ABC television broadcast March 14, 2014). After the police shot his son, the father planted himself in a lawn chair in front of his dead son’s body while awaiting answers as to what happened. NewsOne Now, *#BlackLivesMatter On ABC’s ‘Scandal’: Actor Courtney B. Vance Talks Racism, Police Brutality*, NEWSONE (Mar. 10, 2015), <https://perma.cc/GDH2-X7XQ>.

258. See, e.g., The Daily Show with Trevor Noah, *The Truth About the Philando Castile Verdict: The Daily Show*, YOUTUBE (June 21, 2017), <https://perma.cc/FJG5-HQNB>; The Daily Show with Trevor Noah, *Breaking the Cycle of Police Violence: The Daily Show*, YOUTUBE (July 22, 2016), <https://perma.cc/337N-KXF5>; The Daily Show with Trevor Noah, *The Fatal Shootings of Alton Sterling and Philando Castile: The Daily Show*, YOUTUBE (July 7, 2016), <https://perma.cc/JS79-22CG>.

259. Dave Chappelle – *Police Brutality*, YOUTUBE (July 6, 2009), <https://perma.cc/GFG2-YLEL>.

260. See, e.g., BILLY HOLIDAY, *STRANGE FRUIT* (Commodore Records 1939); BRUCE SPRINGSTEEN, *AMERICAN SKIN (41 SHOTS)* (Columbia Records 2001) (memorializing Armadou Diallo).

261. Cis Van Beers, *Top 10 Hip Hop Songs Against Police Brutality*, HIP HOP GOLDEN AGE (Nov. 11, 2016), <https://perma.cc/WU9D-RK3E>.

262. Britany Spanos & Sarah Grant, *Songs of Black Lives Matter: 22 New Protest Anthems*, ROLLING STONE (July 13, 2016), <https://perma.cc/S474-8C24>.

263. Daniel Kreps, *Eric Garner’s Family Drop Moving New Song ‘I Can’t Breathe’*, ROLLING STONE (July 11, 2016), <https://perma.cc/KMZ3-AWJG>.

264. Spanos & Grant, *supra* note 255.



in the air/In despair don't shoot/I just wanna do good."<sup>265</sup> QuestLove may have summed it up: "...[I]t ain't fair when your protector is your predator."<sup>266</sup>

Sexual assault and harassment have increased in TV representation as well. An episode of CBS's *Murphy Brown* featured staff of "Murphy in the Morning" sitting through a sexual-harassment seminar, and the main character remembering a traumatic experience involving a professor who attacked her when she was nineteen years old.<sup>267</sup> When the character confronted the harasser, he dismissed the account and criticized the #MeToo movement, saying it's just "women dredging up the past, pointing fingers, ruining reputations."<sup>268</sup> Episodes also addressed rape and sexual assault victims calling out their accusers, including the *Handmaid's Tale*,<sup>269</sup> *Law & Order SVU*,<sup>270</sup> and *13 Reasons Why*.<sup>271</sup> The movement's effect was palpable in popular culture as well: books published around sociology, feminism and feminist theory spiked by 70%; Merriam-Webster's 2017 word of the year was "feminism,"<sup>272</sup> and Time's Person of the Year in 2017 was "The Silence Breakers," those who came forward with their stories of sexual assault.<sup>273</sup> In the music world, Kesha's song "Praying" discussed her sexual assault by her producer, though some have noted that #MeToo has not infiltrated the music world in the same way it has politics, television, and movies.<sup>274</sup>

**Noa Ben-Asher:** To add to Linda's helpful list, two large scale TV productions that have received much attention lately – *Handmaid's Tale* and *Big Little Lies* – communicate some of the strongest messages of #MeToo. Though different in style and genre, the messages of white male dominance, female solidarity, trauma, and reproductive and sexual freedom loom large in both shows. I think both shows call for close and critical analysis as they very much represent, in my mind, a certain predominant feminist mindset. Unsurprisingly,

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265. *Id.* See also Daniel Kreps, *Hear Jay Z Tackle Police Brutality on Raw New Song 'spiritual'*, ROLLING STONE (July 8, 2016), <https://perma.cc/3PRJ-7AHJ>.

266. THE ROOTS, *IT AIN'T FAIR* (Motown Records 2017).

267. *Murphy Brown: #MurphyToo* (CBS television broadcast Oct. 11, 2018).

268. *Id.*

269. Hulu Original, *The Handmaid's Tale: The Last Ceremony*, HULU (June 20, 2018), <https://perma.cc/THM6-RZRK>.

270. *Law & Order: SVU: Remember Me Too* (NBC television broadcast May 23, 2018).

271. Netflix, *13 Reasons Why: Bye*, NETFLIX (May 18, 2018), <https://perma.cc/9AHE-YRJV> (showing a woman of color testifying against her white male harasser, saying that she was afraid that she wasn't the "right victim" to stand up to him in what would come down to a "he-said, she-said" trial. Her account was followed by the accounts of multiple women accusing the same man. The white, male judge in the show lets the young man off with a stern warning and three months of probation.)

272. Kristine Phillips, *'Feminism is Merriam-Webster's Word of the Year, Thanks in Part to Kellyanne Conway*, PITT. POST-GAZETTE (Dec. 12, 2016), <https://perma.cc/ZJ25-JR6T>.

273. *Id.*

274. Hanif Abdurraqib, *Year In Music: The Slow Road to Music's #MeToo Moment*, BILLBOARD (Dec. 13, 2018), <https://perma.cc/A5E9-W6GX>.

and this fits with the critique made by many of you, the treatment of race on these shows is simplistic or absent.

9. *Does law have the potential to produce meaningful and transformative solutions to the phenomena that led to either or both movements? Does law pose an obstacle to transformative change?*

**Osamudia James:** The law is only one part of larger movements for change and works better in some circumstances than others. Legal challenges can sap movements of their emotional and rhetorical energy: boiling down a movement into a specific right that the law recognizes, against a party over which a court has jurisdiction, in pursuit of a remedy that the law can provide, can be sterile, draining, and ultimately unsuccessful. Although Critical Race Theorists have taught us that legal rights can be important for minority groups, providing crucial prohibitions on discrimination, Critical Legal Studies has also taught us that those legal rights can be illusory, giving citizens just enough of a sense of equality such that a fundamentally unfair system is legitimized, to say nothing of what it takes to actually vindicate rights. The latter takes resources, representation, and access to the direct services that do not necessarily follow from the big wins of impact litigation through which a legal right has been secured. In the wake of the *Brown v. Board of Education* victory,<sup>275</sup> leaders like Dr. Martin Luther King, Jr. insisted that litigation could never be a replacement for participatory democracy, and that in the end, it was up to black people to stand up non-violently to the segregation that had suffered a “legal death” but not a factual one.<sup>276</sup>

Laws also cannot prevent people from simply abandoning the sites of legal victories. I might not really care, for example, if my neighbor believes that black lives matter; I only care that laws make it so that my neighbor can’t legally exclude me from buying the house next to hers. At the same time, even as *Shelley v. Kraemer* struck down racially restrictive covenants,<sup>277</sup> the law did not prevent the widespread flight that enabled Whites to avoid integration, thus keeping black people socially and economically isolated despite a legal victory against covenants. Ultimately, then, laws must work in conjunction with social movements, policy commitments, and market incentives, to produce substantive and lasting change.

**Linda Greene:** The Supreme Court has set an extremely deferential standard to determine whether a court may award civil damages for police misconduct under 42 U.S.C. 1983: we analyze this question from the perspective “of a reasonable officer on the scene, rather than with the 20/20 vision of

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275. *Brown v. Bd. of Ed. of Topeka, Shawnee Cty., Kan.*, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954).

276. See, e.g., Herbert Lovelace, *King Making: Brown v. Board and the Rise of a Racial Savior*, 57 AM. J. LEG. HIST. 393, 402-03 (2017).

277. *Shelley v. Kraemer*, 334 U.S. 1, 68 S. Ct. 836, 92 L. Ed. 1161 (1948).

hindsight.”<sup>278</sup> More recent cases reinforce this deferential standard,<sup>279</sup> even in a case in which the police had an opportunity to use less than deadly force in the instance of a confined person whom the police knew to be mentally ill.<sup>280</sup>

But these immunity standards are not dispositive of redress. Citizen journalists with smart phones, police cameras, and Black Lives Matter-driven social media has changed the civic calculation on civil liability. Although the settlements for the most outrageous police killings of Black men range from five to seven million<sup>281</sup>—far short of the twenty-plus million dollar settlements for sexual harassment against prominent white women<sup>282</sup>—it is clear that video footage refuting police assertions of “threat,” as well as persistent demonstrations have driven both individual settlements alongside systemic reform in some cities.

New political consensus influence by the Black Lives Matter movement may spur the consideration of more measured use of force policies. The Police Use of Force Project tracks use-of-force policies in the Nation’s 100 largest cities with the aim of determining whether they have “meaningful protections against police violence.”<sup>283</sup> The site offers information on policies that reduce the risk of deadly force. Insert footnote 274(1) The site reports that forty-four departments require officers to de-escalate situations when possible.<sup>284</sup>

Eighty-four police departments use a Force Continuum or Matrix, defining the types of force/weapons that can be used to respond to specific types of resistance;<sup>285</sup> twenty-seven explicitly prohibit chokeholds or limit the tactic to situations where deadly force is authorized.<sup>286</sup> Additionally, sixty-seven police

278. *Graham v. Connor*, 490 U.S. 386, 109 S. Ct. 1865, 104 L. Ed. 2d 443 (1989).

279. *See Plumhoff v. Rickard*, 572 U.S. 765, 134 S. Ct. 2012, 188 L. Ed. 2d 1056 (2014).

280. *City & Cty. of San Francisco, Calif. v. Sheehan*, 135 S. Ct. 1765, 191 L. Ed. 2d 856 (2015).

281. Julia Marsh, *City Approves \$4M Payment to Eric Garner’s Family*, N.Y. POST (Aug. 2, 2017), <https://perma.cc/D39K-WDAN>; Richard Fausset, *Family Reaches a \$6.5 Million Settlement for South Carolina Police Shooting Case*, N.Y. TIMES (October 8, 2015), <https://perma.cc/V4AK-S99K>; Mary Mitchell, *\$5 million settlement in Laquan McDonald case stirs debate*, CHI. SUN TIMES (June 24, 2016), <https://perma.cc/4PXV-857M>; Sheryl Gay Stolberg, *Baltimore Announces 6.4 million Dollar Settlement in Death of Freddie Gray*, N.Y. TIMES (Sept. 9, 2015), <https://perma.cc/Y6BK-U293>; Mitch Smith, *Tamir Rice Family to receive 6 Million from Cleveland*, N.Y. TIMES (April 26, 2016), <https://perma.cc/YJ6M-A825>; Adeel Hassan, *Minneapolis to Pay \$20 Million to Family of Police Shooting Victim*, N.Y. TIMES (May 3, 2019), <https://perma.cc/CMJ3-5SJ5> (showing that the largest settlement came after a black, Muslim police officer shot and killed a white woman in Minneapolis).

282. Roger Yu, *Fox Settles Carlson’s Sexual Harassment Lawsuit Against Ailes for \$20M*, USA TODAY (Sept. 6, 2016), <https://perma.cc/PE2E-N6GK>; Emily Steel & Michael S. Schmidt, *Bill O’Reilly Thrives at Fox News, Even as Harassment Settlements Add Up*, N.Y. TIMES (Apr. 1, 2016), <https://perma.cc/XMG4-NUSQ>; Nathaniel Popper, *CBS Settles With Women Who Accused Charlie Rose of Sexual Harassment*, N.Y. TIMES (Dec. 11, 2018), <https://perma.cc/Z97U-9GHK>.

283. *How Police Use of Force Policies Can Help to End Police Violence*, POLICE USE OF FORCE PROJECT, <https://perma.cc/WF6Q-38VB> (last visited June 14, 2019).

284. *Id.*

285. *Id.*

286. *Id.*

departments require officers to give a verbal warning before using deadly force, seventeen police departments prohibit officers from shooting at people in moving vehicles unless the person poses a deadly threat by means other than the vehicle, and forty-two require officers to exhaust all other reasonable alternatives before resorting to using deadly force. Insert footnote 277(1)

Relevant to #MeToo, current law has the potential to influence change. Sexual Harassment is actionable under Title VII of the Civil Rights Act of 1964 and *Meritor Savings Bank v. Vinson*. Insert footnote 277(2)(a) and (2)(b) #MeToo may help redefine the standards under which these claims are evaluated. *Meritor Savings Bank* requires severe and pervasive treatment, and the plaintiff in *Meritor* met that test after she showed that she had been raped multiple times by her boss, including in the bank vault at work. Insert footnote 277(3) The Supreme Court has since clarified that *Meritor* set a ceiling, rather than a floor, and this standard does not require a significant effect on the plaintiff's "psychological well-being" or lead her to "suffer injury," but it does require something more than a "mere utterance of an . . . epithet which engenders offensive feelings in an employee."<sup>287</sup> Ultimately, severity is judged from the "perspective of a reasonable person in the plaintiff's position, considering 'all the circumstances.'"<sup>288</sup> Here's where the #MeToo Movement comes in: by helping redefine what a "reasonable person" in these circumstances may consider "severe." Should probably be a footnote but maybe that is an original idea. While some scholars argue that the standard should be a "reasonable woman," that standard has not been adopted by the federal courts.<sup>289</sup> By continuing to keep these issues in the public eye, the movement may be able to shift men's perspectives on the topic. While many sexual harassment lawsuits in the past have targeted individual employers for the environment in specific workplaces, some recent #MeToo litigation has targeted an expanded group of defendants, including entire companies, senior management, and corporate boards.<sup>290</sup> Title VII also authorizes attorney's fees for the lawyers of prevailing plaintiffs.

Although a number of wealthy women have hired lawyers and won multi-million dollar settlements,<sup>291</sup> many women who experience sexual harassment and sexual assault work for low wages and do not have the money to hire lawyers.<sup>292</sup> In order to be more effective, the MeToo movement must have the

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287. *Harris v. Forklift Sys.*, 510 U.S. 17, 21 (1993).

288. *Oncale v. Sundowner Offshore Servs.*, 523 U.S. 75, 81 (1998) (quoting *Harris v. Forklift Sys.*, 510 U.S. 17, 23 (1993)).

289. See Kathleen A. Kenealy, *Sexual Harassment and the Reasonable Woman Standard*, 8 LAB. LAW 203 (1992).

290. See Susan L. Saltzstein & Jocelyn E. Strauber, *#MeToo Litigation: The Changing Landscape*, N.Y.L.J. (Feb. 28, 2019), <https://perma.cc/F8EP-A7AW>.

291. See Kevin McCoy *Sexual harassment: Here are some of the biggest cases*, USA TODAY (Oct. 25, 2017),

<https://perma.cc/VRU6-6GGP>, Emily Steel, *Costs for Fox's Harassment Settlements Rise to \$50 Million* N.Y. Times (Aug. 14, 2017) <https://perma.cc/Q8GB-9FYZ>.

292. National Women's Law Center, *TIME'S UP Legal Defense Fund Annual Report 2018*, pages 1-3 (2018), <https://perma.cc/U4X2-XHJ7>, Ariel Ramchandani, *There's a Sexual-Harassment Epidemic on America's Farms*, (Jan. 29, 2018), <https://perma.cc/KRX6-82TK>,

tools to deter or punish sexual harassment and assault through more broadly available legal assistance. The TIME'S UP Legal Defense Fund, working with the National Women's Law Center, has established a network of almost 800 lawyers who work pro bono, charge a reduced rate, or receive financial support from the Defense Fund to take cases.<sup>293</sup> The Fund reports that "more than 3,700 people from all 50 states and D.C. have sought legal help from the TIME'S UP Legal Defense Fund, and that number grows every day."<sup>294</sup>

#MeToo also has potential to effect change in workplace culture, getting to the root of the cause of sexual assault so that lawsuits are not the only vehicle for redress, but the question remains what apart from lawsuit might motivate companies to seek voluntary reform. insert footnote 285(1) There is some evidence that a workplace that tolerates sexual harassment is less profitable,<sup>295</sup> and this insight may lead some boards to embrace a comprehensive approach to both the elimination of sexual harassment and the establishment of a positive culture that protects and empowers employees across the intersections of race, gender identity, and sexual orientation.<sup>296</sup>

10. *What role should law play in achieving a society that is race-conscious and gender-conscious? Should we view race consciousness and gender consciousness with skepticism?*

**Linda Greene:** It is an American paradox that as our society becomes more conscious of the complexity of gender identity and sexual orientation and embraces the consumption of the sport and artistic contributions of blacks, the call for color-blindness has both deep resonance<sup>297</sup> and constitutional legitimacy.<sup>298</sup>

Law must play a role, but its role will be largely determined by politics. As to questions regarding police use of deadly force, criminal responsibility depends upon laws, prosecutorial discretion, and "woke" judges and juries. As to civil

Stefanie K. Johnson and Juan M. Madera, *Sexual Harassment Is Pervasive in the Restaurant Industry. Here's What Needs to Change*, HARV. BUS. REV. (Jan. 18, 2018), <https://perma.cc/UT58-4K6H>.

293. National Women's Law Center, *supra* note 292, at 1.

294. National Women's Law Center, *supra* note 292, at 1.

295. See Sarah Dobson, *Sexual harassment linked to declines in profitability*, Employers with higher 'scores' see lower future stock returns: study, CANADIAN HR REP. (Oct. 1, 2019), <https://perma.cc/B67A-SEHV>.

296. See DaviaTemin, *A 15-Point Plan For Boards And CEOs To Eradicate Sexual Harassment In Their Organizations*, FORBES (Jan. 17, 2018), <https://perma.cc/J6FA-A5ET>.

297. See Scott Jaschik, *Poll: Public Opposes Affirmative Action* (July 8, 2016), <https://perma.cc/3K8F-PHDE>

(stating that in 2016, a Gallup poll found that 65 percent of those surveyed by Gallup disagreed with the Fisher v. University of Texas decision that permitted race conscious admissions in higher education, 31 percent supported the decision, and 4 percent had no opinion).

298. See Fisher v. Univ. of Tex. 136 S. Ct. 2198, 2208 (2016) (holding that that a race conscious admissions plan must be "narrowly tailored to achieve the university's permissible goals, [and that] the school bears the burden of demonstrating that "available" and "workable" "race-neutral alternatives" do not suffice).

liability, the Supreme Court is unlikely to alter existing generous immunity doctrines<sup>299</sup> or/to/and? set a floor that bars judicial judgments, but the politics of settlement has been altered by visual technology and the social media empowered Black Lives Matter movement.

Race matters.<sup>300</sup> It is impossible to achieve true equality without first being aware of the circumstances that make us unequal to begin with. In terms of viewing race consciousness and gender consciousness with skepticism, I would say we should not. A core project of the 21<sup>st</sup> century must be the creation of greater consciousness about the manner in which conscious and unconscious biases shape our identities and both race and gender relations. One important effort in this respect is the Ohio State University Kirwan Center for the Study of Race and Ethnicity<sup>301</sup> and its Implicit Bias project<sup>302</sup> that seeks to mainstream concern about “the complex underpinnings of how peoples’ conception of race influences our perceptions, thoughts, and relationships.”<sup>303</sup> The LGBTQ related movements are also important in anti-essentialist understandings of identity.

*11. How do the Black Lives Matter and the #MeToo movements affect your teaching, scholarship, and community engagement?*

**Osamudia James:** I am black. I am female. I am raising two black children, a boy and a girl. I am married to a black man. There is not a day I send my children off to school when I don’t worry that a school resource officer will respond to my son with violence because he “looked” aggressive, or that a teacher will read my daughter’s self-assurance as a sign that she is “asking” for sexual violence. When my husband is away from home and the doorbell rings, the constant worry I nurse over whether a traffic stop has resulted in his death paralyzes me for just a moment before I answer the door. The one time I called police in response to a possible intruder, I asked a white neighbor to sit with me while I waited, to help ensure that when the police arrived, they wouldn’t assume the intruder was *me*. The two movements, therefore, don’t just shape my teaching, scholarship, and community engagement. Rather, they function as sharp slogans that reflect a set of personal and professional commitments I’ve had no choice but to honor my entire life.

**Bridget Crawford:** I teach mostly “money law” courses.<sup>304</sup> I teach Federal Income Taxation, Corporation & Partnerships, and Wills, Trusts & Estates.

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299. See *Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011) (stating that qualified immunity protects officers who “make reasonable but mistaken judgments about open legal questions”).

300. See *Schuetz v. Bamn*, 134 S. Ct. 1623, 1676.

301. KIRWAN INST. FOR THE STUDY OF RACE AND ETHNICITY, <http://kirwaninstitute.osu.edu/> (last visited June 25, 2019).

302. *Implicit Bias*, KIRWAN INST. FOR THE STUDY OF RACE AND ETHNICITY, <https://perma.cc/A8UH-ZTQF> (last visited June 25, 2019).

303. *Id.*

304. See Alice G. Abreu, *Tax Counts: Bringing Money-Law to LatCrit*, 78 DENV. U.L. REV. 575, 575 n.1 (2001) (“By ‘money-law,’ I mean the areas traditionally viewed as

Many people might not immediately think of these courses as implicating the substance and strategy of social justice movements. But as part of the Tax Cuts and Jobs Act of 2017,<sup>305</sup> the newly enacted Internal Revenue Code section 162(q) seems to me to be a direct response to concerns raised by the #MeToo and Time's Up movements that some women who had brought or threatened legal action against their harassers had been required to sign settlement agreements with strict non-disclosure clauses.<sup>306</sup> Generally speaking, in the past, employers have been able to take deductions for employment settlement agreements, including those pertaining to sexual harassment claims. Under the new law passed by Congress, any sexual harassment or "sexual abuse" settlement that is subject to a nondisclosure agreement is per se non-deductible.<sup>307</sup> Although the IRS has not provided any guidance on what "sexual abuse" is, I am hopeful that this provision will make corporations less likely to include non-disclosure clauses in these cases.

As a money law teacher, I talk about death all the time. It's a legal event for tax purposes and for purposes of many property transfers.<sup>308</sup> But regular talk about death does not inure me to the shock of news reports of repeated brutality against and killings of African-American people in this country. When a Black Muslim police officer shot Justine Ruszczyk Damond, an unarmed white woman in Minnesota in 2017, the officer was convicted of murder and Ms. Ruszczyk's family received a payment of \$20 million from the city of Minneapolis.<sup>309</sup> But

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comprising the business curriculum: tax, corporations, securities, commercial law (UCC), securities, banking, antitrust and the like.").

305. See An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018. Pub. L. No. 115-97, 131 Stat. 2054 (2017). Because of some arcane procedural Senate rules, the law is not technically called the Tax Cuts and Jobs Act, but for convenience, I use it anyway.

306. See, e.g., Elizabeth Tippet, *Non-Disclosure Agreements and the #MeToo Movement*, Disp. Resol. Wint, 2019 <https://perma.cc/3ZTA-YPP3> ("The #MeToo Movement has turned a spotlight on confidential settlement agreements and how they might prevent victims from speaking out.").

307. See I.R.C. § 162(q) (limitation on deduction for certain settlements).

308. There are special rules for example, that apply to the basis of assets acquired from a decedent. See I.R.C. § 1014 (providing that the basis of property acquired from a decedent is its fair market value as of the decedent's date of death or as of the alternate valuation death). Life insurance proceeds, if paid "by reason of the death of the insured" generally do not give rise to taxable income. See I.R.C. § 101(a) (providing that gross income does not include amounts paid by reason of the death of the insured, in most cases).

309. See, e.g., David K. Li, *Justine Damond's Family Agrees to \$20 Million Settlement with Minneapolis Over Police Shooting Death*, NBCNews.com (Apr. 20, 2019), <https://perma.cc/77X3-J4RB> (describing settlement between Damond's family and city of Minneapolis three days after trial convicting police officer of third-degree murder); Mitch Smith, *Philando Castile Family Reaches \$3 Million Settlement*, N.Y. TIMES, June 26, 2017, <https://perma.cc/E9K9-GLFT> (describing settlement between Castile's mother and city of St. Anthony, Minnesota ten days after trial acquitting police officer of second-degree manslaughter and other charges); and the family of Michael Brown reportedly received a settlement of \$1.5 million. The family of Tamir Rice received \$6 million; *id.* (reporting on settlements received in cases of Brown, shot by police in Ferguson, Missouri, in 2014 and Rice, the 12-year old shot by police in Cleveland, Ohio, in 2014).

when a Latino police officer shot and killed Philando Castille during a routine traffic stop in Minnesota in 2016, the officer was acquitted.<sup>310</sup> Mr. Castille's family received \$3 million. Diamond Reynolds, Castille's girlfriend who was in the car with Castille when he was shot and killed by the police, received a settlement of approximately \$800,000.<sup>311</sup> We must confront the racialized roots of the difference in these settlements.

Income and wealth have never been shared equally by all segments of U.S. society. The inequalities that have always existed are getting worse, not better. The 400 richest people in the U.S. hold as much wealth as all African-American households in the entire country plus one-third of all Latinx households combined.<sup>312</sup> I can make my students aware of these disparities and start a conversation about the origins of economic inequality, which is something Mehrsa has studied at length. The pressing question then becomes what is the lawyer's role in remedying inequality, whether in the criminal law or in the very structure of the financial system itself? What is my personal responsibility in remedying inequality? I must say that I have not yet answered either of those questions to my own satisfaction. I don't have the answers. I'm not sure I will arrive at answers. But I cannot stop trying every time I step into the classroom.

**Noa Ben-Asher:** In teaching the more doctrinal courses, especially Torts and Family Law, I push students to think carefully about how race, gender and other characteristics shape decision-making. The framework of stereotyping often helps students tease out legal assumptions. The two movements have provided legitimacy and some basic language for those of us who want to emphasize social justice throughout the curriculum.

**Lolita Buckner Inniss:** Both Black Lives Matter and #MeToo most definitely affect my teaching and scholarship. Starting with Black Lives Matter, I see the movement as a crystallization and a valorization of what I have been teaching and researching about for over twenty-five years. I started my full-time law teaching career as a clinical professor of immigration law. My clinic had as its explicit focus the plight of Haitian asylum seekers, a large majority of whom were women who had been sexually assaulted by agents of the state. Haiti, as many people know, is a majority black country, and a poor country, and one whose culture has traditionally been intensely patriarchal. A significant part of my challenge in representing my clients was in helping judges to see beyond the

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310. See, e.g., Mitch Smith, *Minnesota Officer Acquitted in Killing of Philando Castille*, N.Y. TIMES, June 16, 2017, <https://perma.cc/ZLG5-YMF4> (reporting on acquittal of police officer on charges of second-degree manslaughter and endangering safety after a jury deliberated for five days).

311. See, e.g., Mark Berman, *Diamond Reynolds Agrees to \$800,000 Settlement Stemming from Philando Castile's Death*, WASH. POST, Nov. 29, 2017, <https://perma.cc/ABK6-NVY6> (reporting on settlement with Reynolds, who, together with her 4-year old daughter, was a passenger in the car when Castille was shot; Reynolds livestreamed the incident on Facebook).

312. See, e.g., Dedrick Asante-Muhammad et al., *The Ever-Growing Gap*, INST. for POL'Y STUD. (Aug. 2016), <https://tinyurl.com/y22ytyff> (comparing collective wealth of members of Forbes 400 list with entire African-American and 1/3 of U.S. Latinx populations).



neutral, white, masculinist approaches to dispensing justice that too often disregarded or failed to see all together the perils that my clients had undergone. My difficulty in framing representation approaches was not lessened by the fact that, like Osamudia, I too, am a black woman. Some judges simply assumed that anything I advocated was counter to the neutral approaches that were preferred. Moreover, I was frequently unable to persuade judges about the particular concerns of my clients using my knowledge of Haiti and its people that I had gained as an undergraduate who had closely studied and visited Haiti. Looking back at my work in the immigration clinic, I can now see that what was missing were explicit, widespread *social* calls to arms that would have helped me to articulate in *legal* terms what it meant to be, as many of my clients were, people at the standing at the intersection of race and gender-based harms.

*12. How can law teachers bring aspects of the Black Lives Matter and/or #MeToo phenomena into the classroom?*

**Osamudia James:** Both movements exist during a particular place and time in our society. They are not the first attempts to forge a more egalitarian country, and they will not be the last. Although it makes sense to study them as movements, particularly in those courses committed to specifically engaging civil rights gains, the entire law school curriculum should be informed by engagement with the societal dynamics that give rise to Black Lives Matter and #MeToo: raced and gendered power imbalances that result in racial subordination and sexual violence. These dynamics inform the development and application of law, and law schools cannot hope to produce lawyers capable of honoring a commitment to justice without that understanding.

In my law classes, I give students opportunities to consider both how identity shapes the development of the law, particularly through those who are crafting it, as well as how identity will shape how litigants and other actors in the legal system will experience the law. In my Torts classes, for example, the concept of the “reasonable person” is used to help students understand what the standard of care is; that is, what would a reasonable person have done to avoid foreseeable risks in a particular situation? As we start to explore this concept, I ask students to close their eyes and imagine the “reasonable person.” When I ask them what they’ve imagined, some are brave enough to admit they pictured an able-bodied white male. With that admission, we can then consider whether an able-bodied white male’s response to a perceived threat might differ from that of an able-bodied white female’s response in, say, a dark and isolated parking lot at night. This is one of many conversations that allow students to consider how the standards we create in the law may privilege a particular set of experiences, to the disadvantage of those who, when attempting to vindicate claims, are drawing on laws that never contemplated them

Openings like this exist all over the law school curriculum, with first-year courses like Torts, Constitutional Law, Criminal Law, and Property presenting opportunities for students to learn how race and gender, or the failure to consider both, are central to doctrinal development. My hope is that in addition to teaching about the structure, development, and legal implications of Black Lives Matter and #MeToo, faculty also teach about the dynamics of race and gender

embedded in the “race-neutral” laws and cultural norms that render both movements necessary.

13. *What are the most promising research questions with respect to either or both of these movements?*

**Bennett Capers:** I know this may sound as if I’m downplaying sexual harassment or sexual autonomy—which I’m not—but I’d really like some kind of research into what we’re not talking about when we talk about sexual autonomy. Recently I reread Katherine Franke’s essay *Theorizing Yes*, and she refers to a question she asks her students that I can’t get out of my head.<sup>313</sup> When she teaches sexual harassment, she asks her students which incident they would find most humiliating or objectionable: a boss asking you, out of nowhere: (i) for a kiss; (ii) to babysit his kids; or (iii) to serve coffee at a staff meeting.<sup>314</sup> For what it’s worth, few of her students find the request for a kiss the most objectionable incident.<sup>315</sup> All of this makes me wonder if, by focusing on sexual harassment and autonomy right now, we are missing issues that may be more important, especially to those who have less power. Don’t get me wrong. So much of my research and scholarship is devoted to sexual assault law.<sup>316</sup> But still, Franke’s question makes me wonder if one reason #MeToo has not had as much traction among poor women, women of color, or other disadvantaged groups is because there are so many other issues that take precedence. So, I’d love research on what really matters to people, and again what we’re not talking about when we talk about sex. I suppose a similar question could be asked of the Black Lives Matter movement, i.e., what are we not talking about when we talk about blue on black violence.

**Bridget Crawford:** Bennett’s response gets me thinking. What is the basis for the claim that the #MeToo movement has not had much traction among poor women or women of color? After all, it was the Alianza Nacional de Campesinas, a group representing Latina farmworkers, that first used the open-letter format to express solidarity among women facing workplace sexual

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313. Katherine M. Franke, *Theorizing Yes: An Essay on Feminism, Law, and Desire*, 101 COLUM. L. REV. 181 (2001).

314. *Id.* at 201-02.

315. *Id.* at 202.

316. See, e.g., Bennett Capers, *Future Sex*, N.Y.U. ANN. SURV. (forthcoming 2019); Bennett Capers, *Evidence Without Rules*, 94 NOTRE DAME L. REV. 867 (2018); Bennett Capers, *Rape, Truth, and Hearsay*, 40 HARV. J. OF L. & GENDER 183 (2017); Bennett Capers, *Real Women, Real Rape*, 60 UCLA L. REV. 826 (2013); Bennett Capers, *Real Rape Too*, 99 CALIF. L. REV. 1259 (2011).

harassment.<sup>317</sup> The Alianza's letter was the impetus for the "Dear Sisters" letter that later marked the "founding" of the Time's Up movement.<sup>318</sup>

It's familiar (and perhaps even expected) that even liberals will critique or dismiss explicitly feminist work with charges that only the most privileged (white and middle-class or upper-class) women benefit. Is it true that #MeToo has not benefited or been embraced by poor women of all colors and women who are racial minorities? But is it empirically accurate?

I think it is quite valid to point out that the #MeToo movement's visibility has a great deal to do with the fact that so many celebrities—white, black, Asian, Latinx—are involved. But the visibility of famous women in the #MeToo movement does not mean that non-famous, non-privileged women are left out. The Time's Up Legal Defense Fund does support cases by famous women or those who can afford their own counsel. The Fund has supported legal action by workers at McDonald's, Walmart, the postal service, and paramedics in Chicago.<sup>319</sup> Plaintiffs have been disabled women, women of color and women working for minimum wage.<sup>320</sup>

We need to move beyond the simple critique of "feminist" analysis; feminism is not one lens or one perspective. It is capacious enough to permit examination of the experience of gender dynamics along multiple axes.

**Linda Greene:** Research should look at the tangible effects that each movement has produced. With respect to the Black Lives Matter movement, the research might explore whether there are statistically significant relationships between specific reforms and a reduction in the uses of lethal and nonlethal force. For both movements, why are the voices of black women (who are founders of both movements) absent in the public conversation? Is that phenomenon related

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317. See, e.g., Cat Cardenas, *Meet the Women of Alianza Nacional de Campesinas, The Org That Inspired Hollywood's Time's Up Initiative*, Remezcla.com (Jan. 28, 2019), <https://perma.cc/NYE3-JZUG> ("[W]hen actresses began speaking out against . . . powerful men, the campesinas of Alianza weren't shocked by the allegations. They knew what it felt like to be afraid to speak up, and they knew what it felt like to want to work, without the pain, without the exploitation that came along with it. They were ready to help. After a series of conversations with female farmworkers, [Alianza co-founder Mónica] Ramírez drafted an open letter to their sisters in Hollywood....").

318. See *supra* text accompanying note 79.

319. See, e.g., Alexia Fernández Campbell, *Women Who Work at McDonald's Plan Walkout Tuesday over Sexual Harassment*, Vox.com (Sept. 18, 2018), <https://perma.cc/QAB7-949E>; David Crary, *Five Chicago Paramedics Among Seven Women Nationwide Pursuing MeToo cases*, CHI. SUN TIMES (Oct. 4, 2018), <https://perma.cc/2PR7-23HU>; Press Release, *Two Women Sue U.S. Postal Service for Employing Serial Sexual Harasser Who Has Been Victimized Female Letter Carriers in the Bay Area for Over 15 Years*, Legal Aid at Work (Jan. 15, 2019), <https://perma.cc/T6RN-PA23>; Michael Corkery, *Low-Paid Women Get Hollywood Money to File Harassment Suits*, N.Y. TIMES (May 22, 2018), <https://perma.cc/WCE8-M7KN>.

320. *Id.*

to the absence of diversity in the newsrooms of America, or to the failure of news organizations to audit their practices for implicit bias against black women?<sup>321</sup>

There is also evidence that transgender women may be overlooked by both movements and that black women may be particularly vulnerable to violence.<sup>322</sup> As actor Asia Kate Dillon has said:

Victims of anti-transgender violence in the United States are overwhelmingly transgender women of color who live at the dangerous, and too often deadly, intersections of transphobia, racism, sexism and criminalization, which often leads to high rates of poverty, unemployment and homelessness.

Transgender people in the United States, especially transgender women of color, experience fatal violence at a disproportionate rate.

Black Trans Lives Matter. Validating this message means challenging all people who benefit from the invention of whiteness and from white supremacy, self-identified nontrans men in particular (both straight and gay among you).<sup>323</sup>

Additionally, research could explore the potential of “video” evidence to empower both redress and reform? “Citizen” journalists,<sup>324</sup> police body cameras,<sup>325</sup> and street cameras<sup>326</sup> have transformed the conversation about racialized police violence, creating a counter narrative about the use of force. Is there a similar potential with respect to #MeToo, which remains largely stuck in a “he-said, she-said” space?

Other topics could ask whether the law of sexual harassment incorporate more robust presumptions of illegal behavior. For example, should the law incorporate a *zone* approach in which the subject of the conversation (e.g., sex or dress versus work topics); the place of the conversation (site of employment versus hotel rooms and superior’s home), or the activity (work vs. massages) give rise to a presumption of illegal harassment, shifting the burden of proof to the employer to demonstrate a legitimate work related purpose.

321. Issac J. Bailey, *How Implicit Bias Works in Journalism*, NIEMAN REP. (Nov. 13, 2018), <https://perma.cc/DU4U-7FWE>.

322. Maggie Astor, *Violence Against Transgender People Is on the Rise, Advocates Say*, N.Y. TIMES (Nov. 9, 2017), <https://perma.cc/E3Z9-46RQ>; Liam Stack, *Third Transgender Woman Killed in Dallas: ‘People Are Afraid’*, N.Y. TIMES (June 3, 2019), <https://perma.cc/B42Z-TDCH>.

323. Asia Kate Dillon, *Stand Up for the Most Marginalized Among Us*, N.Y. TIMES, June 19, 2019, <https://perma.cc/T488-V6UK>.

324. Valeriana Colon, *Citizen Journalist to Activist: the Language Behind Black Lives Matter*, ASS’N FOR CONTINUING HIGHER ED. (2016).

325. See, e.g., A., *Considering Police Body Cameras*, 129 HARV. L. REV. 1794 (Apr. 10, 2015).

326. See, e.g., CAMPAIGN ZERO: BODY CAMS/FILM THE POLICE (last accessed June 14, 2019), <https://perma.cc/9G3G-JVJ7>.

Finally, research could focus on a phenomenon known as “slacktivism,” the practice of supporting a political or social cause by means such as social media. How can we get the majority to support a cause beyond a retweet?

**Lolita Buckner Inniss:** I think that some of the most promising research questions addressing Black Lives Matter and #MeToo involve the role of surveillance in creating and perpetuating harms. As both Bennett and Linda have mentioned, investigations of the role of surveillance are crucial to both movements. I would note additionally that while many contemporary discussions of surveillance often address “high tech” surveillance methods such as security video or police body cameras, the question of “low tech,” more conventional surveillance also looms large in thinking about these movements. This conventional surveillance to which I refer involves the notion of watching those who have been deemed Others. It has long been understood in scholarly domains that there is power inherent in watching people as a form of control. Much of this work dates back to Jeremy Bentham and his work *Panopticon Writings*.<sup>327</sup> A panopticon, as Bentham envisioned it, was a type of prison building designed to allow an observer to observe all prisoners without the prisoners discerning that they are under observation. Bentham’s concept of the panopticon was given new currency when Michel Foucault, in *Discipline and Punish: The Birth of the Prison*, took it up.<sup>328</sup> Foucault gave the concept of the panopticon greater metaphorical purchase with his emphasis on the ability to “see-without-being-seen” as the essence of power itself.<sup>329</sup>

Outsiders like black men and all women are often at the center of both state-based and private low-tech programs of watching, listening and following, whether those schemes are meant to control movements (either of the physical or social variety), work, maternal behavior, cross-racial interactions, sexual activity, body shape, or numerous other disparate aspects of daily life. To be truly free, I would assert, is to be *seen*, as in to be included in society, but not *watched*. Vision, viewing and observing are socialized and are fully discursive.<sup>330</sup> Hence, important research direction for both the Black Lives Matter and #MeToo movements is to make transparent the ways in which visibility shapes norms.

#### 14. *What are the futures of the Black Lives Matter and #MeToo movements?*

**Linda Greene:** Martin Luther King, Jr. wrote that “the practical cost of change for the nation up to this point has been cheap. The limited reforms have

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327. JEREMY BENTHAM, *THE PANOPTICON WRITINGS* (Miran Bozovic ed., 1995).

328. MICHEL FOUCAULT, *DISCIPLINE & PUNISH: THE BIRTH OF THE PRISON* (Alan Sheridan trans., 1995).

329. Lolita Buckner Inniss, *It's the Hard Luck Life: Women's Moral Luck and Eucatastrophe in Child Custody Allocation*, 32 RUTGERS WOMEN'S RTS. L. REP. 56, 77-79 (2011). I would assert, however, that just as much, and perhaps more power comes from seeing others and making clear those observations are taking place.

330. Jonathan Crary, *Techniques of the Observer: On Vision and Modernity in the Nineteenth Century* 18 (1990).

been obtained at bargain rates. There are no expenses, and no taxes are required, for Negroes to share lunch counters, libraries, parks, hotels and other facilities with whites.”<sup>331</sup> Similarly, Keeanga-Yamahtta Taylor expands on this idea: “The success of a relative few African-Americans is upheld as a vindication of the United States’ colorblind ethos and a testament to the transcendence of its racist past.”<sup>332</sup> She continues that too often the Black elite “validated the political and economic underpinnings of US society while reaffirming the apparent personal defects of those who have not succeeded.”<sup>333</sup> Taylor claims that the Black Lives Matter movement must “realize its potential to make deeper connections to and create relationships with organized labor.” This means that white folks must do more than become an “ally.” “There is nothing wrong with being an ally . . . it doesn’t quite capture the degree to which Black and white workers are inextricably linked. It’s not as if white workers can simply choose to not ‘ally’ with black workers to no peril of their own.”

Black Lives Matter has a robust future. Since 2015, when Officer Van Dyke of the Chicago Police Department shot Laquan McDonald 16 times, Black Lives Matter has played an integral part of the activity that led to Federal Judge issuing a Consent Decree in Chicago (discussed above).

#MeToo, on the other hand continues to be a part of everyday conversation and news. Tarana Burke is hopeful that #MeToo will continue to empower women.<sup>334</sup> She hopes that black women will be able to be empowered equally as white women who have seen their accusers not just outed, but also fired or forced to face charges. This means the movement must continue to create resources for marginalized communities: low-income, LGBTQ+, black women and men, Latinx, disabled, etc.

Important in this discussion is addressing the differences between what happened to Clarence Thomas and what happened to Brett Kavanaugh (and how we explain those differences). Hill faced skepticism that sexual harassment even had relevance when it came to assessing the fitness of a nominee for the supreme court. Dr. Blasey Ford faced broad agreement that, if Kavanaugh sexually assaulted Ford when they were teenagers, it would render him unfit for a lifetime appointment to the court. Ultimately, Thomas was confirmed by a vote of fifty-two to forty-eight, while Kavanaugh was confirmed by a vote of fifty to forty-eight.

**Osamudia James:** It depends on what we understand the two movements to actually be. The hashtags #BlackLivesMatter and #MeToo and the movements they stand for are both cultural signifiers and springboards for policy prescriptions. When used in social media, they link phenomena to a larger tapestry of inequality. When used by advocacy groups, they reflect a set of

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331. MARTIN LUTHER KING JR., WHERE DO WE GO FROM HERE: CHAOS OR COMMUNITY?

332. KEEANGA-YAMAHTTA TAYLOR, FROM #BLACKLIVESMATTER TO BLACK LIBERATION.

333. *Id.*

334. Chris Snyder & Linette Lopez, *Tarana Burke on why she created the #MeToo movement – and where it’s headed*, BUSINESS INSIDER (Dec. 13, 2017), <https://perma.cc/XNK7-Y238>.

commitments that animate organizing efforts. The slogans themselves, however, are not the work.

**Lolita Buckner Inniss:** I predict a fairly long and robust future for the #MeToo movement, at least in as much as it will continue to serve a vital function in articulating the concerns of women, who make up half the population. Black Lives Matter will face far more challenges to its viability as a matter of broad public focus, largely because it is perceived as a movement that addresses a much smaller, often disfavored population.

#### CONCLUSION

(by Linda S. Greene, Lolita Buckner Inniss, Bridget J. Crawford)

The Black American struggle for civil rights and the struggle for women's empowerment in the twentieth century—continuing into the twenty-first century—are two of the most important stories in American history. Though these have not been, and are not now, two separate stories, they are all too often told as such. In these several pages, we have come together to contemplate what it means that, in the second decade of the second millennium, we are still faced with ongoing struggles for women's and black rights. We still grapple for how to make manifest the real promise of freedom through the lens of gender, race and other identity markers. We continue.

“When I liberate others, I liberate myself.”<sup>335</sup>  
—Fannie Lou Hamer

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335. HAMER, *supra* note 1.

