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For Better or For Worse: An Exploration of Law and Black Identity in America

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For Better or For Worse: An Exploration of Black Identity and Law in America

Senior Project Submitted to
The Division of Social Studies
of Bard College

by
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I will forever be grateful to the Human Rights department that has been responsible for my political metamorphosis. The Human Rights department has provided me with exposure to a language that has advanced my understanding of oppressive systems. I can now call the violations that I see daily in Black communities by its name—human rights violations. Human rights has given me a name and a tool to fight the struggle the oppression that continues to exist in the world. The study of human rights in the four years at Bard, has allowed me to be confident and assertive when speaking out against injustices. Four years in the Human Rights department has equipped me with necessary critical analysis skills that is required for one to be able to overthrow, or at least fight, systems of oppression. It is this department that has taught me that pragmatic relationship between law, human rights, and politics. May the human rights department continue to leave such an impact on Bardians. Special thanks to Peter Rosenblum and Thomas Keenan who has advised me over the four years, and hopefully will continue to be a part of my growth. Special thanks to my family, Students at the Center, Jim Randels and Kalamu ya Salaam for dropping the seeds that I needed to swallow to make this experience, the experience of a life time. Special thanks to the Posse Foundation for enabling the opportunity for young New Orleanians to come and study at Bard College—who may have otherwise would not have been able to.

I entered Bard as a caterpillar and I am flying out as a radical butterfly. To you all, thank you for my metamorphosis.



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*May the struggle for
Black Liberation continue,
by any means necessary.*





**The Puncturing of Law into Black
Identity**

There is a story of an African American mother giving comfort to her adolescent son the best way she knew how—with the law. It goes as follows:

My son was about five or six when he first learned about the enslavement of his ancestors in this country. He became very frightened that those days might return. I reassured him as best as I could, but the only thing that seemed to provide him any comfort at all was to sit on the floor with him and read the words of the Thirteenth amendment to the Constitution. I also explained to him several times how difficult it would be to amend the Constitution to allow the return of slavery. I read to him from one of those small pamphlet versions of the Constitution that law publishing houses put out. And do you know, that child wouldn't go to sleep without a copy of the Constitution under his bed that night, and for many months afterwards.¹

Law has been punctured into Black identity making itself an enemy and sometimes an ally for African Americans and their fight for Black liberation. The identity and history of that African American little boy and his ancestors has incorporated law in ways that his white five or six year old counterpart would not be able to relate to. The 1724 Three-Fifth Compromise to the Constitution legally mandated that five of his ancestors be counted as equivalent to three whites. This dehumanized the value of Black bodies by asserting that Blacks were not equal to whites.² The 1924 Racial Integrity Act provided a legal definition of what it meant for his ancestors to be Black³. It created the 'one drop rule' that classified any one with one drop of African or Native American blood as Black. Moreover, now that Black identity had been given a legal definition and categorized, the

¹ Judy Scales-Trent, "Legal Canon," in *Recognizing Race in the American Legal Canon*, by Fran Ansley, [Page #], excerpt from "Letter to Fran Ansley," *NYU Press*.

² "Three Fifth Compromise," <http://www.government-and-constitution.org/us-constitution/three-fifths-compromise.htm>

³ I shall use "African American and "Black" interchangeably throughout this project. When using "Black" I shall use an upper-case 'B' to reflect my view that Blacks, like Asians, Latinos, and other "minorities," constitute a specific cultural group and, as such, require denotation as a proper noun.

law was able to use its power to oppress his ancestors even more. The 1924 Racial Integrity Act made it illegal for his ancestors to marry into white families. The law determined what it meant for Blacks to be human, what it meant to be Black and who Blacks could love. This was only the beginning. The 1865 Black Codes would transition into Jim Crow Laws. The legalized Jim Crow laws determined where his ancestors could sit, what water fountain they could drink out, where they could eat, what school they could attend, what swimming pool they could swim in, etc. The Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Fair Housing Act of 1968 ended the legal sanctions to Jim Crow.

The young African American boy can cling to the constitution for a sense of protection and experience a feeling of relief from the Thirteenth amendment but as he grow older he will learn that the fight for liberation in America continues. He will soon learn that the Thirteenth amendment that he sat on the floor and read with his mother has not fully made slavery illegal. The Thirteenth Amendment to the United States Constitution abolished slavery and involuntary servitude, except as punishment for a crime. Black identity continues to be criminalized. In fact, in the United States, more Black men are in prison or jail, on probation or parole than were enslaved in 1850.⁴ Michelle Alexander has called the mass incarceration of African Americans the New Jim Crow. She argues that today it is perfectly legal to discriminate against criminals in nearly all the ways that it was once legal to discriminate against African Americans.⁵ Despite the fact that the crime rate within African communities continues to decrease,

⁴ Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: New Press, 2010), [Page 2]

⁵ Ibid

their incarceration continues to shoot up. The law continues to keep its paws punctured into black identity.

W.E.B. Dubois once posed a question to Black America in his novel, *The Soul of Black Folk*. He asks, “How does it feel to be a problem?” To be Black in America has meant to have your very body and the bodies of your children to be assumed to be criminal, violent, and malignant solely because they are Black.”⁶ The young African American could go on to go to graduate as valedictorian in high school, attend an Ivy League University, or even become the president of the United States, but his black identity would still be perceived as a problem. James Baldwin states, “To be Black and conscious in America is to be in a constant state of rage.”⁷ One might ask, why is it that conscious Blacks are constantly outraged? Surely, in the 1960s when Blacks were fighting for Civil Rights they had a lot to be outraged about. However, presently, The Civil Rights Act has passed, America uses and respects the language of human rights, and the president of The United States of America is a Black man and the first lady is a Black woman. How can it be a problem to be Black and how can rage be associated with Black identity, when The Declaration of Independence specifically mentions three rights that Blacks possess by birth, or by nature—life, liberty, and the pursuit of happiness?⁸ These rights are unalienable therefore no one may rightfully deny these rights.

6 W. E. B Du Bois and Richard Allen, *The Souls of Black Folk* (Old Saybrook, Conn.: Tantor Media, 2009), 3.

7 James A. Baldwin. BrainyQuote.com, Xplore Inc, 2016.

<http://www.brainyquote.com/quotes/quotes/j/jamesabal146202.html>, accessed April 18, 2016.

⁸Thomas Jefferson, "The Declaration of Independence," *Historic American Documents*, Lit2Go Edition, (1776), accessed April 18, 2016, <http://etc.usf.edu/lit2go/133/historic-american-documents/4957/the-declaration-of-independence/>.

Despite the progression, America continues to see Blacks in a constant state of rage. I ask, in the year of 2016, why do Blacks in America continue to be in a constant stage of rage? What is the foundation of the rage? I reply, the law and the white supremacy that it has allowed to continue to flourish in the United States of America. This project explores the ways in which Black identity has been bound up in law and how law, for better or for worse, has shaped, helped and constrained Black movements that have fought for Black liberation, for better or for worse.

Without the law, it would have been impossible for Black identity to be a problem in the ways that history has shown. Without the law, the system that has continued to oppress and criminalize Black identity would not have been able to sustain itself. Racism was able to grow into a systemic institution when it transitioned from being mere thoughts and feelings of people, to protected laws that had legal consequences and thus was required to be abided by the entire country. It was law that made it possible for society to directly discriminate and oppress Blacks. The American system of law oppressing a group of individuals based on race and criminalizing skin color is unique to Blacks. Blacks are the only race that has constantly been subjected and targeted by law due to their skin color. There has been no laws discriminating against Caucasians for the sole reason that their skin color is white. Caucasians have not been in a constant state of rage—but rather a constant state of enjoying all of their rights. The American Caucasian population has controlled the law rather than have had their existence and identity bound up and in tension with law.

When this paper asserts that Black identity has been bound up in law, it is arguing an array of things. Black identity being bound up with law means that law has controlled

and determined what Blacks can do and what they could not. Most commonly, Black identity being bound up with law has meant that law has controlled major aspects of Black identity. In years such as the 1960s Black identity being bound up with law was pushed even further. This paper shows that being bound up with law has meant that the law has affected the everyday lives of Blacks and the actions that they have been able to make in response to constantly being deemed as a problem in America. Being bound up with law has meant that the law has defined and shaped the ways in which students, activists, lawyers and the general population has understood their struggle and has shaped the possible tactics and actions that the population could use for their fight for freedom. The Black identity being bound up with law has meant having to deal with the law responding to their resistance with more oppressive laws. Challenging the law often proved to be a costly activity that required Blacks resisting the law required their own legal defense.

It was tension with the law that mobilized the Black community and created direct action and litigation. It was law that protected white supremacy. America's white supremacy came at the cost of Blacks living as second class citizens. While the law has had a negative impact on the Black population, it has sometimes been for bettering the Black community, than worsening it. Law has been used as a tool of advocacy for the Blacks to demand and fight for their rights. Years of litigation through the courts to obtain civil rights have been the root cause of Black identity being bound up with law. In simple terms, this is the story of law and the Black identity. Law has oppressed the Black population. The Black population has resisted that oppression {the law} by direct action (challenging the law) or through the courts with legal litigations. When the Black

population has not resisted the law, it has allowed the law to maintain control over their everyday life and identity.

Therefore, I argue to be Black has meant to be in constant tension with the law. What it has meant to be Black in America, has meant to always have to fight laws, that in some shape or form, have controlled your life, for better or for worse. Law and Black identity cannot be separated from each other and have an intermingled relationship. It is impossible to understand what the Black identity has been composed of in America without understanding the ways in which law has been punctured into black identity. Through this relationship, law has kept its paws punctured into Black bodies⁹ and their Black liberation movements. Movements such as the Black Power movement and the Civil Rights movement at its core have been bound up in law.

In attempt to expose the ways law has kept its paws in Black identity, this paper provides a comparative analysis of how law was used in the Civil Rights Movement in comparison to what is being viewed as the equivalent –the era of The Black Lives Matter Movement. This paper poses the question of whether or not Black identity and its movement is still bound up in law, and explores possibilities as to why or why not. It finds that the Black Lives Matters Movement has not engaged in litigation, but has resisted the present day oppression that has surfaced in the Black community and has labeled it state violence. The NAACP LDF has continued to wage legal cases against the American government but has not involved and mobilized the Black population for

support as it had done in the 1960s. The regulations of how one can argue racism in legal channels have also changed, as the focus on critical race theory will show.

In the era of Black Lives Matter, the Black community becomes infatuated and interested in the law when it is time to find out whether or not a police officer will be indicted for the killing of an unarmed African American. It is often found that each and every Black person will be able to summarize the case details of Trayvon Martin, Michael Brown, Eric Gardner, and Sandra Bland. It seems as though, the new definition of Blacks being bound up in law now means flipping on the news channel and protesting. Does being bound up in law mean to only focus on issues of police brutality in 2016? The Black Lives Matter describes itself as “a chapter-based national organization working for the validity of Black life” that is “working to (re)build the Black liberation movement.”¹⁰ The movement was created in response to police brutality and largely focuses on police brutality and criminal justice issues. The mass of young people that are supporters of Black Lives Matter matches the criteria of the masses of students that were involved in The Student Nonviolent Coordinating Committee (SNCC) and other youth and student led organizations. Both populations were enrolled student bodies that heavily used direct action to resist laws. However, one will not find a student in the Black Lives Matter Movement learning how to file a suit against the United States government, engaging in rent strikes, and challenging the law with the law as students in SNCC did in the 1960s. Students in the Black Lives Matter movement are fond of participating in creative protest—such as shutting down highways and picketing in public spaces. Thus,

10 ."Black Lives Matter," Black Lives Matter, accessed April 18, 2016, <http://blacklivesmatter.com/about/>.

performing sit-ins as SNCC did in the 1960s would be of no issue but engaging in actions that could directly change different oppressive categories of the Black population as SNCC did, has remained untouched by the Black Lives Matter Movement.

I argue that there has been a shift in what the Black community is currently challenging. During the Civil Rights Era, Blacks challenged Jim Crow Laws and segregation. In the era of Black Lives Matter, there are no more Jim Crow laws and segregation has ended. Black bodies have the right to exist on paper. Blacks are entitled to human rights. In the era of Black Lives Matter, Blacks are fighting to be respected and recognized as a human being by two groups —Whites and police officers. One may argue that the decision for a few whites and police officers to wrongly kill African Americans is not an issue of law—but an issue of character and morality of those persons. America, on paper, has thousands of freedoms and rights that are given to its citizens—including African Americans. This was not always the case in 1960s. Certainly racism still exists in America, but can the American legal system be held accountable for the racist action of every person? Is it America or the law that tells police officers to kill Blacks? No. The accountability has become difficult to trace back to the laws and thus difficult to challenge. The students fighting for freedom in 2016, have a different struggle than the students that were involved in the Black liberation movement during the civil rights era. Yet, the Black Lives Matter movement argues that the issue that Blacks face in 2016 is still state violence. During the Civil Rights movement, there were hundreds of cases being filed by lawyers and the local population, because there were hundreds of laws to be challenged. It could be for this reason that Black Lives Matter has chosen to focus on

validating and claiming the human existence of African Americans to the world, as the racism issue cannot be traced to a single law.

During the Civil Rights Movement students joined The National Association for the Advancement of Colored People Legal Defense Fund (NAACP LDF) in legal battles. The NAACP was the founder of battling legal cases against Jim Crow. Where are they now? What are they doing? Some leaders such as Thurgood Marshall believed that it was only the place of lawyers to fight America's legal system. It appears as if Thurgood Marshall would have never agreed to the protest that Black Lives Matter participants have engaged in.¹¹ While exploring whether or not law is being used as a tool to obtain Black liberation in America, this paper will examine components of critical race theory to be able to better explore how law is being used in 2016 for Black liberation and whether or not there are constraints.

The relevancy of this senior project lies in its goal to be able to better critique whether or not Blacks are on the correct path in fighting for Black liberation. The struggle that has been fought before this generation comes with lessons that can be learned and guidance for those who continue to fight for Black liberation. Tamiko Brown-Nagin, the author of *Courage to Dissent: Atlanta and the Long History of The Civil Rights Movement* has argued that it was the combination of work from lawyers, students and activist that put an end to Jim Crow. She states, "The gift they pass to the present generation is not a doctrinaire set of goals or methods but the tradition of protest

¹¹Brown-Nagin, Tomiko. *Courage to Dissent: Atlanta and the Long History of the Civil Rights Movement*. Oxford, USA: Oxford University Press, 2012.

itself, the will to object to injustice, in some way.”¹² In the mist of responding to law puncturing itself into Black identity, it is of essential that the Black community is critical and strategic about the methods that they are using to fight for the variety of needs that the Black community requires.

¹²Brown-Nagin, Tomiko. *Courage to Dissent: Atlanta and the Long History of the Civil Rights Movement*. Oxford, USA: Oxford University Press, 2012. [pg.432]



**Bound up in Law: A Critique of the
Black Identity in the 1960's**

The Jim Crow era has been described as a racial apartheid that I find very similar to that of South Africa. Black bodies were controlled by Jim Crow laws in the American South for three quarters of a century beginning in the 1890s.¹³ The laws affected almost every aspect of daily life, mandating segregation of schools, parks, libraries, drinking fountains, restrooms, buses, trains, and restaurants. Legally, on paper, Black bodies received "separate but equal" treatment under the law — in actuality, public facilities for Blacks were nearly always inferior to those for whites. Blacks were systematically denied rights that were afforded to them based on being American. The right to vote in most of the rural South was denied to Blacks. Blacks were treated as second class citizens. Nearly 100 years after the Emancipation Proclamation, Blacks in Southern states still inhabited an unequal world of disenfranchisement, segregation and various forms of oppression, including race-inspired violence--a reason to constantly be in rage.¹⁴

By the 1960s Blacks began to fight the system that controlled their human existence by legally determining the 'who, what, when, where, how and the why' in their lives since the 1600s—the law. On May 17, 1954, the Supreme Court unanimously ruled that "separate but equal" public schools for Blacks and whites were unconstitutional.¹⁵ This called for white schools to have to desegregate, on paper. The 'victory' came as a result of years of previous litigation from the National Association for the Advancement of Colored People's (NAACP) opening up the path for Thurgood Marshall to argue for *Brown vs Board of Education*. However, although it would be illegal for Blacks to

13 <http://www.history.com/topics/black-history/civil-rights-movement>

14Ibid

15 Brown-Nagin, *Courage to Dissent*: Atlanta, [Page 5].

continue to learn in ‘separate but equal’ schools, the southern states ignored the law for thirteen years.

What value do rights have if they are not enforced or practiced in actuality? Blacks began to challenge the law in a variety of ways during the Civil Rights Movement. In Courage To Dissent Tomiko Brown- Nagin argues that during the Civil Rights Movement, the fight for freedom was a multi-faceted struggle. African Americans’¹⁶ fight for freedom during the Civil Rights Struggle was bound up with law. According to Brown-Nagin, the focus on the Civil Rights Movement has mostly focused on the role that the NAACP and lawyers have played in the fight. It has silenced and ignored the contribution from students and the local population who were not trained in law. Tomiko Brown-Nagin asks,

What would the story of the mid-twentieth struggle for civil rights look like if legal historians de-centered the US Supreme Court, the national NAACP, and the NAACP LDF and instead considered the movement from the bottom up? ¹⁷

She replies, “The answer I contend is this: a picture would emerge in which local Black community members acted as agents of change—law shapers, law interpreters, and even law makers.”¹⁸ To establish that it was more than lawyers being bound up with law in the Black community is establishing a variety of things. As the individuals who became bound up with law through resistance began to diversify in gender and class, the fight for liberation became more problematic. Black identity being bound up with law came with the cost of individuals wanting to fight and resist laws in different ways. One oppressive law to the poor could have been more vital to challenge than what it was to someone in

¹⁶ Used interchangeably with Black throughout paper

¹⁷ Brown-Nagin, *Courage to Dissent*: Atlanta, [Page 7]

¹⁸Ibid

middle class. What it has meant to be bound up with law has affected the Black population in different ways. The law could have a greater effect on a woman who was a mother than what it had on a single man. The issues that a mother found important to challenge could have been righteously different to another Black identity. The Black population understood that it was bound up with law, but it also understood that the way different Black identities understood their struggle with the law was sometimes different. This resulted in conflict.

Conflict arose between the younger generation and the older generation who were fighting for change in the civil rights movement. Conflict also arose between poor Blacks and working/middle class Blacks. The creation of conflict and tension within the Black community was a cost that the Black community faced from everyone being in a constant state of rage about the law but for different reasons. This conflict did not become widely relevant until SNCC began engaging in activities that the local population—and not just lawyers could participate in, in the fight for Black liberation. Prior to March 15, 1960, the fight for civil rights had only been launched through the courts. It was not until two hundred African American students launched the first sit-in in Atlanta, Georgia that the dynamics would change.¹⁹ Sit-ins consisted of civil disobedience, deliberately challenging and breaking the law. Nagin-Brown found that “as important as the NAACP and its lawyers were, members of the local Black communities, in Atlanta and elsewhere, steered the movement’s course on a day-to-day basis.”²⁰ This change shifted the focus of

¹⁹Brown-Nagin, *Courage to Dissent: Atlanta*, [Page 2].

²⁰ Ibid

the movement from legal experts steering the movement to everyday locals. Brown-Nagin adds,

Legal action was displaced as the paramount strategy for achieving civil rights, replaced by direct action staged on a mass scale by thousands of young people who had previously been on the sidelines of the struggle for racial justice.²¹

Not everyone in the local population was able to have involvement in the fight towards the end of Jim Crow prior to direct action. Brown-Nagin quotes Julian Bond. Julian Bond was one of the students that established SNCC. He would later go on to be elected in the Georgia House of Representatives and Georgia State Senate. As a student, he stated

The sit-ins represented an exciting new extension of the involvement of people without legal expertise in the civil rights movement. Before the boycott and the sit-ins, the movement had been all about ““filing a suit””²²

In the 1960's there was an emergence of Blacks fighting the law back. There were a number of organizations that participated in mobilizing the Black population. These organizations included, but were not limited to SNCC, NAACP, CORE, and COFO. The organizations required support from the local community and provided them a different way to get involved with fighting the law. The everyday local community was organized by students, activists, and lawyers. They participated in the boycotts, the picketing lines, and other campaigns that were created. As African Americans, their identity was already bound up in law whether they resisted or not, but the mobilizing and radicalizing of the Black population made their identity bound up in law even more so.

In Hands on the Freedom Plow: Personal Accounts by Women in SNCC, fifty-two women provides narratives of exactly what it was like to be bound up in the civil rights

21 Brown-Nagin, *Courage to Dissent*: Atlanta, [Page 140].

22 Brown-Nagin, *Courage to Dissent*: Atlanta, [Page 80].

movement, thus bound up in law. Being involved in resisting the law and fighting for freedom was no easy task. It mean to constantly be working on activities and making sacrifices for Black liberation, it had to be maintained. The editors states

Young women with journalistic, administrative, and secretarial skills volunteered or were recruited to work in the office. However, in an organization making social change they had to use their skills in new ways and learn new skills, often without any training or guidance. Other women maintained contact with the Justice Department and hosted visiting dignitaries. Sometimes the work required dealing with strong emotions. Jane Bond, who used her secretarial skills to help her husband, Howard Moore, SNCC's lawyers, took care of her family and assisted with movement work while struggling with the fear that her husband might be killed. Office staff taking field reports and affidavits from field secretaries or answering emergency calls from the field on the organization's WATS (Wide Area Telephone Service) line found there were times when they had to keep their feelings in check to of their jobs.²³

The maintenance of the movement and Black identity being bound up in law happened at the hands of women being involved in SNCC. One may argue that they were the backbone of the movement.

The organizing in SNCC was often based on female leaders, some of whom were prominent in their communities before SNCC ever arrived. The dynamic interaction between SNCC organizers and local community activist is a recurring topic. Usually it was the local women who made it possible for the students to operate in these dangerous areas, offering food, shelter, and meeting places and providing protection and guidance along with a readiness to fight for freedom beside the students.²⁴

The editors states,

Most of our contributors were influenced by the events of the preceding decade, the 1950s: the 1955 lynching of fourteen year old Emmett Till, the repression of the McCarthy era, the Montgomery Bus Boycott of 1956-1957, the bravery of the little rock Nine in 1957 , the determination of the African liberation struggles against colonialism.²⁵

When this paper asserts that Black identity being bound up in law has meant Blacks responding to legal oppression, this is what it means. Black identity has constantly been

23 Faith S. Holsaert, *Hands on the Freedom Plow: Personal Accounts by Women in SNCC* (Urbana: University of Illinois Press, 2010), [Page 299].

24 Holsaert, *Hands on the Freedom*, [Page 300].

25 Holsaert, *Hands on the Freedom*, [Page 5].

in a stage of experiencing the cruel vicious paws of the law. It was the legal lynching of Emmett Till that outraged the Black population. There was no doubt that Roy Bryant and J. W. Milam had slayed fourteen year old Emmett Till. The evidence was clear that the men were indeed guilty but yet the all-white Mississippian southern jury showed that the law had no respect for Black identity. The jury was all white because no Black person was registered to vote in Mississippi, and thus could not serve on the jury. It was the selling of the story for \$3500 of how J.W. Milam and Rob Bryant abducted and murdered Emmitt Till to Look Magazine in 1956 that outraged the Black community.²⁶ Even after confessing that two men indeed slaughtered Emmett Till, it was of no interest to the law. It was the legalized interrogation and the fear of legal consequences that was soaked into the radical Black population of being labeled a communist that shifted the agendas of how Black radicals achieved their goals. The legalized apartheid despite having American citizenship is what led to the bus boycotts and Black students in Arkansas challenging the state. There has been an overwhelming amount of legal atrocities that the Black identity has become bound up in responding to. However, the women found that it had mostly been the above incidents that lead them to join the movement for Black liberation.

The personal narratives that the women provide show a number of ways that the local community was bound up in law and the ways they came to participate in the movement. The movement required the support of the local community. If it had not been for the local population supporting SNCC workers, the projects would have been impossible to accomplish. During the 1960s the law affected those fighting for Black

26 Emmitt Till's Trial," <http://law2.umkc.edu/faculty/projects/ftrials/till/tillaccount.html>.

liberation in ways that freedom fighters of 2016 would not have to endure. Students in 2016 will not lose scholarships for participating in student-led movements. Committing to the movement meant dedicating your life to the struggle by any means necessary. The movement required maintenance, and therefore, individuals had their identity bound up in making sure that it did not go from a movement to a moment.

The narrative that shows what it meant to be bound up in law that has reflected and includes the stories of other omen in the book is the story of Gwendolyn Zoharah Simmons. She is described as “a college student torn between meeting her high academic goals and her growing commitment to the Movement. Her activism is met with fierce opposition from Black college administrators and her family.”²⁷ Gwendolyn’s story is a story that mirrors a number of students who became involved in the movement. Simmons received a scholarship to study at Spellman College. Gwendolyn’s identity being bound up in law meant that the way she understood the struggle, where she stood in it and what she could do for it became her priority. Coming from a family that had been slaves and worked in the domestic field, it was exceptional news. Her mother parting words was “to not get in any trouble with boys or to let anything pull me to me away from my school work”. A narrative that has been silenced is parents and families discontent and disdain for their children getting caught up in the movement.

Black parents had been exposed to the cruel ways of racist America and were too familiar with lynching and killings like the murder of Emmett Till. Students having their identity being bound up in law meant sacrificing good relationships with their loved ones

27 Holsaert, *Hands on the Freedom*, [Page 9].

and even sacrificing their education. The universities and colleges such as Spelman did not support students becoming involved with SNCC.

The Spelman administrators warned us Spelman women to stay clear of any involvement with the Movement. We were there, we were told often, to get an education, not to get involved in demonstrations and protests. They made it clear that any young ladies who got involved would be summarily dismissed, especially those of us who were on scholarships.²⁸

This is one of the risks that the Black population in 2016 would not have to face. Students are free to engage in protest without having their scholarships threatened and rebuked. Although Gwendolyn promised not to do anything that would jeopardize her education, she got involved in the Movement.

At first I just volunteered to type press releases, stuff envelopes, and help mimeograph. I tried to pick work that was useful but out of the limelight and definitely away from any news cameras or police paddy wagons. I assured myself that I was just going to do a little support work nothing heavy that might cause me to be discovered by Spelman or, even worse, Mama. I convinced myself that I would never participate in any demonstrations or marched and that I would study doubly hard to make sure that I kept my grades up and did not endanger my scholarship, lest I be sent home in ruin and disgrace.²⁹

Being bound up in law for some students meant having to keep their commitment to the movement at a minimum and behind the camera. Considering that most demonstrations that students waged desired media attention, this was no easy task. She states “this worked my freshman year” but “I didn’t do well, however, during my second year.”, “I did my best to balance my schoolwork with my SNCC duties, but it was becoming harder.”³⁰ Gwendolyn “had been bitten by the bug of resistance”. She remarks “there was no turning back for me, but I still wanted to finish college and make something of

28 Holsaert, *Hands on the Freedom*, [Page 300].

29 Holsaert, *Hands on the Freedom*, [Page 300].

30 Holsaert, *Hands on the Freedom*, [Page 17].

myself.”³¹ Gwendolyn had most likely been thinking about Ruby Doris Smith Robinson when she pondered on her involvement in the movement and the college education that had not been afforded to members in her family. Ruby was described as “a woman who brought so much talent, energy, leadership, and commitment to her job. She put her college education on hold to work full-time in the Movement.”³² This story is not unique to Ms. Gwendolyn or Ruby; it was a price that came with being bound up in the law. Gwendolyn began organizing demonstrations and participating in them—resulting in her being jailed twice and making headlines news. The first time she made the front page of the *Atlanta Constitution* “Spelman Girls arrested for Disorderly Conduct in Desegregation Attempt at Local Restaurant.”³³ Gwendolyn was placed on probation and was warned that her scholarship was being risked. The administration also called her family. Yet, Gwendolyn found herself bound up in another demonstration, but the nonviolent tactic failed when a white woman became violent.

When she grabbed one of my arms and embedded her fingernails into my flesh with such fury that I began to bleed, I punched her with all my might and shoved her away from me. Then I began throwing cups, saucers, and dishes at the attackers, trying to keep them off me. The place was in shambles, and a bloody row was in progress when ‘Atlanta’s finest’ came in. They arrested all of us, but none of our attackers.³⁴

The students—including Gwendolyn was charged with ‘inciting to riot, rioting, disorderly conduct, assault and battery, and destruction of private property.’³⁵ Being bound up in law for Gwendolyn came with a costly price. She states, “I couldn’t imagine what the headlines would read this time—or rather, I could. It was really going to be bye-

31 Ibid

32 Holsaert, *Hands on the Freedom*, [Page 16].

33 Holsaert, *Hands on the Freedom*, [Page 19].

34 Holsaert, *Hands on the Freedom*, [Page 20].

35 Holsaert, *Hands on the Freedom*, [Page 21].

bye Spelman.”³⁶ Gwendolyn was indeed expelled but later reinstated when students protested Spelman on her behalf. The movement proved to be a reliable resource for those who had their lives bound up in it. Lawyers paid a vital role for the students. Not only did they help with legal matters they spoke on behalf of the students for strict universities who wanted their students out of the movement. “Attorney Howard Moore really had to struggle to get some of the chargers dropped and our bail reduced. He also called upon the Spelman administration to intervene on our behalf.”³⁷ Gwendolyn went from contributing to small tasks to serving on SNCC coordinating committee and working on the plans for the Mississippi Summer project. being bound with ‘typing, mimeographing (this was the days of the photocopier), working in the print shop, helping with the pamphlets , ballots, registration forms, Freedom School primers, Mississippi Freedom Democratic Party posters, signs and so forth.”³⁸ She adds that ‘things were really jumping, and they needed all the help they could get with every conceivable task’.³⁹

Being bound up in law began having a major impact on Gwendolyn’s life. Her Black identity bound up in law shifted her mindset from that of an adolescent to an adult. She went to Atlanta as a newly eighteen year old but despite her legal age-she had all intention on abiding by her families wishes. However being bound up and dedicated to resistance, she was forced to start making decisions on her own. When an opportunity came to spend the summer in Mississippi working on the Mississippi Freedom Summer Project she concluded that her mother would never agree to her going but stated “I was

36 Ibid

37 Ibid

38 Holsaert, Hands on the Freedom, [Page 23].

39 Ibid

nineteen and legally an adult; I didn't really need her permission."⁴⁰ However, the day before it was time to go to Mississippi her family was in Atlanta prepared to bring her back to Memphis. Her mother explained that the dean informed her of Gwendolyn's plan.

She told me how ashamed she was that I was planning to turn off with these SNICK people to 'God-awful-Mississippi'. She couldn't believe it. She said she thought those snick Negroes had hypnotized me possibly putting something in my food to make me go crazy.⁴¹

There was nothing placed in Gwendolyn's food but her identity became bound up in resisting unjust laws. Although Gwendolyn was bought home, SNCC agreed to send a money order to cover the bus fare for her return. When she received the money order she argued that she was over eighteen years old and legally could do anything she pleased. In response, her family informed her that if she left she could no longer return. Being bound up with law meant risking family relationships for the sake of the Black struggle for liberation. It meant for a lot of students in addition to Gwendolyn, that they had to leave their family behind and make individuals in the movement and supporters of movement, their new adopted family. Gwendolyn used the money order and made her way to Ohio for the orientation for the upcoming project in Mississippi. Being bound up in law meant working long hours, taking a variety of tasks on, and financially receiving very little in return. It was by far, not a, for profit business, but a long term investment filled with challenges.

I was put on staff and began receiving my ten-dollar-a-week salary. As SNCC staff I was given a job as an assistant trainer for the orientation. The first week's daytime hours were filled with workshops on issues ranging from African American history, to the philosophy and strategic use of nonviolent resistance, to

40 Ibid

practical issues like what to do if you're stopped by lawmen, how to use walkie-talkies, and other important lessons.⁴²

The Mississippi Freedom Summer Project in Laurel is the perfect example to use of how the local community became bound up with the Movement, as the Movement was being bound up in challenging laws. The movement depended on locals for support. It was “two brave women, Mrs. Carrie Clayton and Mrs. Eberta Spinks that came forward and offered to house” the three students that went to Mississippi. When the students needed to build a headquarter to begin their organizing, it was of no surprise that no conservative southern white person in Mississippi would to help them. Also, having one's identity bound up in movement was a task that the local Blacks were very conscious about as the consequences of being involved in resistance could be deadly—especially in Mississippi. Gwendolyn states “At first, many people were quite afraid. Everybody said there was only one Black landowner in town who owned a property large enough for what we needed. When we approached him about renting an old boarded-up nightclub, he flatly refused.”⁴³ Although he refused, it also showed that his Black identity, unwilling to support was bound up in law. His unwillingness to be involved showed that there was stopping him from wanting to be involved. This ‘something’ could have been fear of the Ku Klux Klan, lynching, being murdered, losing his job, or having his building burned.

There are a variety of reasons that could have induced fear into him, and they all were possible because of the legal oppression of Blacks. It was the law that controlled the way that Blacks thought of their life, whether it meant resisting or allowing the law to continue to control you. This is what it looked like to have the law to have its paws

42 Ibid

43 Holsaert, *Hands on the Freedom*, [Page 27].

punctured into your Black body. No matter what choice a Black person made, it still was responding to the law in some shape or form. To resist or not to resist, was still bound up with law. The work of making resources available to the Black community in Laurel, Mississippi was bound up in law, because it was the law that had made these resources such as books and libraries unavailable. The component of registering the local Black community to vote was bound up in law because it was the law that made it possible for Blacks to not vote for centuries before. Each and every activity that students from SNCC engaged in was bound up in law. Something as small as distributing informational pamphlets to the Black community was bound up in law because it was the law that had allowed for Blacks to receive a poor education if any education at all. It was where legal cases such as Emmett Till that has been ingrained in Blacks conscious and that shaped the way they thought about their struggle and what possibilities were able to happen and if the cost were worth it. For some Blacks it would be—for others like the Black landowner and Gwendolyn's family it would not. Some Blacks felt that being an oppressed Black person was better than being a dead Black person and others lived and died by the saying of "I rather be dead before I be a slave!"—both opinions carry weight and logic.

The three students were able to use the home of Mrs. Clayton, the woman whom they resided with, for their headquarters. As more students were sent to Mississippi, more housing with the local community had to be found and a bigger headquarter was needed. Gwendolyn found a wealthy Black realtor who was willing to rent out his boarded up night club as is at an exorbitant rent. Although Gwendolyn understood she was getting ripped off —she had no other choice. Surely, the local Black realtor knew it and took

advantage of it. He stated “It’s just business. After all, I’m taking a real chance renting to you folks. Suppose crackers decide to burn the place down? I’ll lose everything.”⁴⁴ While it was unfortunate that the Black local took advantage of the movement, he however, contributed to the movement being able to sustain itself in Laurel—at extraordinary cost. Nevertheless, others in the Black community supported the students by any means necessary. Gwendolyn states “the local community helped us refurbish the old dump and turn it into a fairly nice office space”.⁴⁵ The work that the students engaged in Mississippi was deadly. Gwendolyn describes Mississippi as Ku Klux Klan territory.⁴⁶ The presence of the students was not taken lightly.

One of the most devastating acts was their firebombing of our offices and beautiful fifteen-hundred volume library. What Golden had predicted actually occurred, and they did burn his building, which was uninsured. Over the summer, crosses were burned, people’s jobs were threatened and lost and all of us were harassed by both city officials and county officials. There were arrests and death threats. For some of the older Black people, seeing Klansmen in their robes was a frightening thing as historically someone was lynched whenever the Klan paraded

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The local reaction to the counter resistance to the student’s movement showed their loyalty and commitment.

The threats were so intense that Mrs. Spinks had begun sitting up all night with her shotgun at the ready in case there was an attack upon her or Mrs. Clayton, who lived across the street. She would laugh and say ‘They might get me, but I’m going to get one or two of them first.’ She was so wonderful; she would tell me, ‘sleep soundly, honey. Mrs. Spinks ain’t going to let no one harm you. They’ll get to you over my dead body!’ She and so many others in Laurel and across the state were willing to give their lives for us and the movement.⁴⁸

44 Holsaert, *Hands on the Freedom*, [Page 28].

45 Holsaert, *Hands on the Freedom*, [Page 29].

46 Holsaert, *Hands on the Freedom*, [Page 30].

47 Ibid

48 Holsaert, *Hands on the Freedom*, [Page 300].

With life and death on the line, there is no better way to show the seriousness in how the local Black communities were willing to have their identities bound up in law through resistance. The students arrived to their assigned locations with little to no resources. The projects were in Atlanta, Mississippi, Alabama, New Orleans, North Carolina and other places. Local communities from all over performed similar risks. Another student Annette Jones White, recalled the support she received from the local community in Georgia.

I was amazed at the diversity of the people present: college professors, public school teachers, doctors, ministers, maids, labors, the elderly, high school students, and college students. A well-known and well-loved mentally challenged member of our community who went by the name of Slim was also in attendance. Everyone there rallied behind the students arrested at the bus station.⁴⁹

There was a diverse group of individuals in the 1960s that supported the Movement. Gwendolyn successfully finished her job for the summer—but like most individuals who had become leaders she felt responsible for the community that had given her so much support. She confess, “while Mrs. Spinks, Mrs. Clayton, and all the others would not ask us to put our educations on hold, I could see their concern for the future without all the human and material resources that we bought with us. I felt a real commitment to this community.”⁵⁰

Before going to Mississippi Gwendolyn stated “I reassured myself that I would stay for the summer and be back at school in time for fall 1964 semester.”⁵¹ However here and three other students decided to stay in Laurel Mississippi for a total of eighteen months.⁵²

She continued to work to work for SNCC until 1968 and immediately afterward worked

49 Ibid

50 Holsaert, *Hands on the Freedom*, [Page 31].

51 Holsaert, *Hands on the Freedom*, [Page 310].

52 Holsaert, *Hands on the Freedom*, [Page 31].

for the National Council of Negro Women. It was not until 1980 that Gwendolyn Simmons returned to college to finish the education she interrupted to work full-time in the movement. This would not be the last time that individuals in the movement would put their education off and make sacrifices for the movement.

Diane Nash was SNCC's first female field secretary at the age of twenty-three in Mississippi. After miscommunication with her lawyer about her requirement to appear in court she was served with a warrant for her arrest. Her two options was to leave the state to escape the warrant or to go to jail as a civil right worker. The warrant carried a two and a half year jail sentence. Diane chose to serve the sentence even though she was six months pregnant because she felt responsible for the residents who she had encouraged to register to vote. Blacks who registered to votes were often instantly fired from their jobs and had to figure out how they would house and continue to feed their families.

She writes,

It would have been wrong to encourage people to make such tremendous sacrifices, to put themselves in such jeopardy and then leave them before we reached the goal of getting the right to vote. If I left, I knew I would never again be able to look at myself in the mirror and respect the person I saw.⁵³

This is how committed individuals were to the movement. This is what it looked like to be bound up in law. Diana and her husband—Bevel was willing to have their newborn daughter in prison and to have her separated from her mother for the sake of carrying out a commitment to the local community in Delta, Mississippi. She states “to begin with, my husband and I had planned to spend the rest of our lives in Mississippi working for the

⁵³ Holsaert, *Hands on the Freedom*, [Page 54].

liberation of Black people.”⁵⁴ Diane was to turn herself into Judge Russell Moore. Judge Russell Moore was the same judge over the trial of Byron De La Beckwith, the murder of Medgar Evers. The gun that was used to kill Medgar Evers was eventually found in Judge Moore’s home. On April 30th 1962, Diane turned herself into Judge Moore. To her surprise, the judge sentenced her to ten days with no visitation instead of the two years in a half term that she was prepared to serve for the movement. This project does not have space to go into detail on how each and every woman was bound up in the movement but there are a few names with short descriptions that have selectively been chosen to show the ways that Black identity has been bound up in law.

Janie Culbreth Rambeau: One of the students expelled from Albany State College for participating in the civil rights movement describes the mounting grievances that ripened into a mass movement in Albany, Georgia.⁵⁵

McCree L. Harris: A public school teacher finds a way to use her position to support the Movement in spite of the opposition of her school board.⁵⁶

Janet Jemmott Moses: A young New York teacher leaves her job and joins the Movement.⁵⁷

Ruth Mae Harris: A college student put her education on hold to join the Movement and becomes a member of the SNCC Freedom Singers.⁵⁸

Gloria Richardson Dandidge: A soft spoken working mother with dep family roots on Maryland’s Eastern Shore becomes the militant head of the Cambridge Movement.⁵⁹

E. Jeanne Breaker Johnson: raised with family members’ example of courage and strength, a Spelman college student chooses the movement instead of finishing school.⁶⁰

Betty Garman Robinson: A young woman rebels against her family’s race and class prejudices and becomes a lifelong social justice organizer.⁶¹

54 Ibid

55 Holsaert, Hands on the Freedom, [Page 300].

56 Holsaert, Hands on the Freedom, [Page 140].

57 Holsaert, Hands on the Freedom, [Page 266].

58 Holsaert, Hands on the Freedom, [Page 144].

59 Holsaert, Hands on the Freedom, [Page 273].

60 Holsaert, Hands on the Freedom, [Page 344].

Barbara Jones Omolade: A new SNCC staffer explains her decision to join the Movement in a 1964 letter to her parents.⁶²

Martha Prescod Norman Noonan: Defying her parents to join the Movement, a Black University of Michigan student faces struggles with her fears.⁶³

Gloria House: An African American graduate student from UC Berkeley joins the Alabama Movement, witnesses the murder of a fellow civil rights worker, and stays on to help build independent political parties.⁶⁴

To explain what it has meant to be bound up in law and the way that law has maintained its presence in Black identity requires for one to examine a number of factors of Black identity. Gender, class, and state were always relevant. What it meant to be bound up in law to one person could have been different to what it mean for the next. What it meant for the local community was different than what it mean for the student activist which was different from what it meant to lawyers, and the differences continued on. Nevertheless, being bound up in the law was no easy job. It was especially challenging for students who made major sacrifices to be involved in the moment. Janie Culbreth Rambeau admits,

Many people paid a dear price for the cause of human justice. There were some students who got so involved that they never finished college and gave up possible lifetime careers for the movement. Some were not mentally, emotionally, or physically able to return. Some have since suffered mental breakdowns and nervous disorders. There were people who lost their jobs because their children or other family members were involved. I do not feel that anyone can go through a movement like that without being affected by it. In some ways I was not ready for everything that happened to me—jail, being expelled, canvassing. I don't think anyone was, but it was time and there was no turning back.⁶⁵

61 Holsaert, *Hands on the Freedom*, [Page 366].

62 Holsaert, *Hands on the Freedom*, [Page 388].

63 Holsaert, *Hands on the Freedom*, [Page 483].

64 Holsaert, *Hands on the Freedom*, [Page 503].

65 Holsaert, *Hands on the Freedom*, [Page 68].

Considering the sacrifices that the students made the last thing they wanted to hear was that the NAACP was taking claim for the major work that was happening in the movement.

NAACP vs. The Students and Local Population

The focus on the NAACP in bringing change to the community silenced all the sacrifices that the women mentioned above. Not only does the dominant focus on the NAACP silence the students' involvement and contributions—but also the local community's contribution. Tension with students and representatives of the NAACP would prove to be a long lasting phenomenon. Janie Culbreth Rambeau states

Often students are not given credit for the things they started and the sacrifices they made in the Movement. The NAACP and the Albany Movement Committee were very important entities, but what made Albany stand out was that fact that overall it was the people's movement. I'm pained when I read books or see articles that call Albany Dr. Martin Luther King Jr's Waterloo. It was the people's movement, not his.⁶⁶

The argument that Janie makes matches the conclusion to that of Brown-Nagin when she exclaims that a picture of Black community members acting as agents of change would emerge if legal historians de-centered the US Supreme Court, the National NAACP, and the NAACP LDF. It seemed to become a battle of control for whether the NAACP or students were making the most change, although they both were contributing to the movement in substantial ways. Students criticized the NAACP and the NAACP criticized students. The question of whether or not law or direct action was the best tool to use to obtain Black liberation was heavily debated—although it was the combination of both that helped end Jim Crow. The tactics that both parties, the students and the NAACP,

⁶⁶ Ibid

used consisted of them being bound up in law, whether it was direct action or litigation. Neither the students nor the NAACP was perfect. Both parties made mistakes and created unfortunate situations for the Black population with their movement work. The NAACP and the students were too bound up with law to fully notice that the work that they accomplished complimented each other, rather than restrained and jeopardized each other. The portrayal of unity between students and the NAACP ignores the pragmatic relationship that existed. Though the relationship was pragmatic, they both needed each other to sustain their work in the movement.

The students who were interested in using direct action argued that the leaders of the NAACP and the Legal Defense Fund (LDF) were ‘too conservative and behind the times.’⁶⁷ However, Thurgood Marshall in addition to others ‘insisted that the way to change America was through the courts.’⁶⁸ Brown-Nagin states that ‘Marshall scoffed at the idea that a mass movement of people untrained in law could break Jim Crow.’⁶⁹ This statement portrays that Thurgood Marshall thought that the local community had no place in fighting for their freedom, besides waiting on the results from the lawyer’s litigation. Marshall’s thoughts showed that he felt the fight for desegregation was a job for lawyers. To the contrary, Brown-Nagin states Dr. Martin Luther King believed that “legal advocacy and direct activism could be perfectly compatible, even necessary to each other.”⁷⁰ Dr. Martin Luther King Jr., himself, stated “direct action and legal action

67 Brown-Nagin, *Courage to Dissent*: Atlanta, [Page 4].

68 Ibid

69 Ibid

70 Ibid

complement one another; when skillfully employed, each becomes more effective.”⁷¹

Brown-Nagin writes:

The problem was not the students’ end goal; the older leaders assured local college students that they supported the push to end segregation in public accommodations. It was the students’ preferred tactic that bothered the established leaders; they objected to direct action as to confrontational and disruptive of the customary method of resolving racial controversies—biracial negotiation.⁷²

The elders were more comfortable with using the courts and law as a tool whereas the students preferred seeking redress in the streets. One difference between the literature that Brown-Nagin and Hoasert have produced in comparison to other literature available on the civil rights movement is the focus on the wide range of participants rather than just lawyers. Literature and media—including films and documentaries have failed to show the tension between those interested in the courts and those interested in demonstrations. NAACP leaders and students are often portrayed working side by side and together. This is the image that has dominated the portrayal of the Civil Right movement.

Based on Brown-Nagin’s research “the students wanted not only to remove the courts from their roles as mediators of the struggle for civil rights but also to eliminate the NAACP and LDF as the strategic and tactical leaders of the movement.”⁷³ Even with removing the courts from their role, the sit-ins and demonstrations challenged laws that the courts upheld. Yet, it stood that the students felt as though the organizations ‘relied too heavily on law and underutilized community members themselves as agents for change.’⁷⁴ John Lewis⁷⁵, only a student at the time, exclaimed “we were all about a mass

71 Ibid

72 Brown-Nagin, *Courage to Dissent: Atlanta*, [Page 2].

73 Brown-Nagin, *Courage to Dissent: Atlanta*, [Page 138].

74 Ibid

movement, an irresistible movement of the masses. Not a handful of lawyers in a closed courtroom, but hundreds, thousands of everyday people taking their cause and belief to the streets.”⁷⁶ Members of the local community, including students, ‘had chosen non-violent civil disobedience as their protest form, justifying their action on the ground that the laws and customs of segregation were unjust and thus undeserving of obedience.”⁷⁷ Whether Blacks were fighting Jim Crow in the courts or in the streets they were bound up in law. Direct action itself was a challenge to the law. Direct action meant direct action against unjust laws. The sit-ins were a form of resistance towards the law. The Black community, who were against or for desegregation, had an opinion on what the law had become. They were either for it or against it. Either way, they were bound up in the law. Therefore, Blacks as a community were bound up with the law.

The students’ disobedience itself was also bound up in law as it required legal representation. This complicated the relationship between the NAACP and SNCC. Every arrest that resulted in the community involvement in activities led by SNCC accompanied the need of an attorney. The students wanted to abandon the NAACP and the LDF but it was these two organizations that were responsible for defending them. Despite the support that the students depended on from the NAACP and the LDF, students heavily criticized the organizations. It would have been impossible for SNCC and Committee on Appeal for Human Rights (COAHC) to be able to engage in any of the activities they created without lawyers. It would also have been impossible for the NAACP and LDF to maintain their relevancy without the students. The student’s constant engagement in

75 Atlanta City Council member, later elected into congress

76 Brown-Nagin, *Courage to Dissent: Atlanta*, [Page 138].

77 Ibid

direct action and need of resources created good fundraising opportunities for the organizations. The students described that the organizations had ‘lost touch with the people’,⁷⁸ were ‘too Uncle Tomish’⁷⁹ and ‘too conservative’⁸⁰. Brown-Nagin quotes Thurgood Marshall’s thoughts on the subject. “Marshall questioned whether LDF should represent ‘crazy colored students’ who had the temerity to trespass on whites’ property in clear violation of the law. He was a lawyer, not a missionary.”⁸¹ Students received resources and funding for bail from the NAACP and the LDF while engaging in activities that the organization disagreed with. Thurgood Marshall did not believe in civil disobedience nor did most of the NAACP leaders. The idea to deny representation to students was challenged by “NAACP members, Black churches, Black newspapers, and others who insisted that the organizations help the students.”⁸² The NAACP lawyers would intervene and defend students when they faced expulsion from their university and the local community intervened and defended students when they were facing getting cut loose by the NAACP.

When there were victories, they did not happen without cost. The cost that were associated with the movement are silenced in the stories that society has been exposed to about the civil rights movement. Class struggles within the fight for Black liberation has also been silenced. For example, the NAACP legal drive to desegregate certain schools did not always end well for poor Blacks. A number of schools decided to shut down their establishments instead of integrating them. When this would happen, middle class

78 Brown-Nagin, *Courage to Dissent*: Atlanta, [Page 140].

79 Ibid

80 Ibid

81 Ibid

82 Ibid

Blacks, such as members of the NAACP and LDF were able to send their children to other institutions. Consequently, poor Blacks were left to be uneducated. Len Holt, a young attorney, states “the closure lasted for five years, and the children of Black agricultural workers were not long removed from sharecropping and slavery—‘standing around doing nothing.’”⁸³ When Holt brought this to the attention of the NAACP it was not taken seriously. The cost that was associated with the schools shutting down was a cost only for working and poor class Blacks. Because of this, it was an easy cost for NAACP leaders to dismiss, since it did not affect them. The movement was certainly bound up with law, but it was also bound up in cost.⁸⁴ This is one of the examples of how the movement work could be unfortunate for the Black community, even when the intention was good.

The NAACP and SNCC campaigns’ legal actions both had cost that accompanied their actions. Both organizations criticized the negative cost that came about, yet, no costs were greater or less than the other. For example, SNCC waged campaigns to desegregate hotels, restaurants, department stores, theaters, and municipal facilities. Sit-ins happened at places where Blacks were employed. When the students arrived and challenged segregation at the above places, the Black employers were often fired from their jobs. The Black employers were often supporters of the students, but yet still had financial responsibilities for their families.⁸⁵ Roy Wilkins, then the executive secretary of the NAACP, quotes “If we are expected to pay the bills, we must be in on the planning and

83 Brown-Nagin, *Courage to Dissent: Atlanta*, [Page 140].

the launching, otherwise the bills will have to be paid by those who plan and launch.”⁸⁶ The quote was in regards to the NAACP constantly having to come to SNCC’s legal defense and bail bonding when it was in result of direct action that they did not agree on. The quote could also express the views of the Black working class who were fired. Certainly every fired person was not happy about their new profound unemployed-status that resulted from students’ direct action. Lonnie King states “if I have to choose between sitting beside whitey and a job that pays money, I want the job.”⁸⁷ It is a mistake for one to assume that everyone was on board with desegregation. This quote shows that desegregation was not always a top priority, income was either equally or more important. This is a portrayal of what Brown-Nagin means by pragmatic civil rights. “Pragmatism privileged politics over litigation, placed a high value on economic security, and rejected the idea that integration (or even desegregation) and equality were one and the same.”⁸⁸ Individuals in the Black community felt as if they were all fighting for different things and it created tension. However, the end goal remained the same, the end of Jim Crow.

Julian Bond, a member of SNCC, implemented a rent strike in an impoverished area, Vine City, Atlanta. The rent strikes would teach the students three valuable lessons. The first lesson was that the law had the power to constrain and control the movement’s work and it would be difficult and sometimes impossible to uplift the iron fist that the law held. The second lesson is that class had to be heavily considered in the planning of

86 Brown-Nagin, *Courage to Dissent*: Atlanta, [Page 182].

87 Brown-Nagin, *Courage to Dissent*: Atlanta, [Page 200].

88 Brown-Nagin, *Courage to Dissent*: Atlanta, [Page 8].

demonstrations and campaigns. The work of the movement could accompany cost that the poor working class communities could not afford.

While discussing the conditions of Vine City, Brown-Nagin describes “the primitive dwellings there lacked basic features that separated human existence from that of animals. Without electricity, heat, or indoor plumbing, inhabitants were left to freeze in subzero.”⁸⁹ Because these conditions mirrored slums, landlords were called slumlords. In continuing to describe the neighborhoods, Brown-Nagin adds, “The people of these neighborhoods inhabited overcrowded wooden shacks with leaky roofs on unpaved streets overrun by vermin living in and feeding on the garbage and trash in the streets.”⁹⁰ In the rent strike, tenants refused to pay their landlords until the landlords made the desired improvements to the property. SNCC’s goal was for the rent strike to “empower the poor to seek concrete changes in their everyday lives, to dramatize the injustices of life in the ghetto, and to pressure both private parties and local government to address the need for safe, affordable housing for low-income citizens.”⁹¹ However, the power of the law proved that Blacks could only attempt to change their lives to a certain extent. Slum lords were protected by their property rights. After a given eviction notice, it was bound by the law that the resident had twelve days to pay the full amount due to landlord. Legally, if a person had not paid their rent they could be evicted. The law held an iron fist on the rent strike. It constrained what SNCC initially imagined to accomplish.

Brown-Nagin clarifies that “as a rule, renters did not enjoy a contractual right to demand that a landlord make major repairs.” While the conditions Brown-Nagin

89 Brown-Nagin, *Courage to Dissent*: Atlanta, [Page 267].

90 Ibid

91 Brown-Nagin, *Courage to Dissent*: Atlanta, [Page 269].

described were unethical, by law, landlords were not required to make the repairs that every tenant required. The law was not on their side, the law protected the interest of the property owner. In addition to the law working against the rent strikes, unplanned cost also worked against it. SNCC wanted to dramatize and publicize the issues that were in the neighborhood. However, this could result in a negative action for the campaign. For example, “tenants could be compelled to vacate property declared unfit for human habitation.”⁹² Brown-Nagin describes this as “an unsatisfactory solution for residents with few resources and housing options.”⁹³ The removal, just as an eviction, was something that poor families could not afford. A consequence was that “Atlanta razed slums without ensuring replacement housing; predictably, the city’s slum clearance policies resulted in ‘Negro Removal’.”⁹⁴ If the law had recognized rent strikes and had upheld the rights to the tenants the rent strike could have been more successful. Eviction was made possible by the law. Once again, the law had influenced what work was possible by the movement.

This would not be the first time that the law would restrict SNCC’s movement. The students would continue to find that although the law was sometimes helpful, there were instances where it constrained their desired actions. For example, the state of Georgia was not a fan of the student’s sit-ins and demonstrations. “On February 11, 1960, state representatives Francis W. Allen introduced a bill that would slow down SNCC’s movements. The bill proposed to criminalize a person’s failure to leave the premises of

92 Ibid

93 Brown-Nagin, *Courage to Dissent: Atlanta*, [Page 271].

94 Ibid

certain establishments when requested to do so by proprietors.”⁹⁵ The Georgia senate unanimously passed a revised version of the proposed bill. Brown-Nagin states

Those convicted of violating the law could be imprisoned for a maximum of eighteen months and fined \$1,000. With the passage of the law legislators committed to law and order signaled their intent to use facially neutral laws to defeat direct action just as they had undermine LDF’s school desegregation strategy with pupil placement laws. Attorney General Cook promised that the law would be invoked against ‘gangs of Negroes’ who demanded service from the state’s white merchants. The sit-in movement would be bottled up in court, as its members were prosecuted for engaging in protest.⁹⁶

The proposed law increased the costs that were associated with demonstrating. It would be difficult to afford a thousand dollar fine for a large amount of students in addition to risking having to serve the legal prison time that would be attached to the law. The law restricted how the students could challenge land lords and it also restricted the students from being able to participate in sit-ins. The students agreed to delay their protest. The students heavily depended on the funds from the NAACP, thus the funds and the expertise of law from the older generation (NAACP) undermined the direct action that the students wished to participate in. The NAACP assured the students that they were hurting the litigation for desegregation.

In the meantime, SNCC launched a legal suit that attempted to make the eviction process of housing fairer for indigent citizens. In the case of an eviction, SNCC found that the average tenant who was considered poor would not able to afford to challenge their evictions in court because it required money. A tenant does not have to be wealthy to have access to the courts. Howard Moore Jr, SNCC’s general counsel, argued that this

95 Brown-Nagin, *Courage to Dissent*: Atlanta, [Page 271].

96 Ibid

procedure violated the tenant's 14th amendment. The legal campaign was not successful and the Supreme Court refused to hear the case. Students of SNCC would go on to learn how to file their own suits with what is called omnibus litigation in movement lawyering.

The Courts and the Movement

Courage to Dissent provides its readers with access to all of the cases that were being litigated by The NAACP, SNCC, and other attorneys. This section specifically examines the role that lawyers played in the movement and how students who were not lawyers were able to file lawsuits against the courts. In doing so, this section examines how the law was used to help and support the movement in addition to the examining the methods that worked best in using the law to end Jim Crow and introduces movement lawyering and “*omnibus pro se* suits”. While the previous sections shows that the civil rights movement consisted of more than just lawyers –it is not to denigrate the role that lawyers played in the fight in the 1960's. Brown-Nagin clarifies that “Lawyers would defend civil right workers after arrest, represent them at trial, and file affirmative constitutional challenges against segregation.” And “The LDF proved a major source of legal representation for SNCC and the national NAACP was a bountiful source of bail funds.”⁹⁷ When one thinks of the Civil Rights Movement typically the only lawyers that come to mind are the NAACP and the LDF. However, there was a wide range of lawyers that were involved in the Civil Rights Movement. Organizations such as The Guild, the Committee to Assist Southern Lawyers, in addition to volunteer lawyers and law students represented civil rights activist through the American South. Len Holt was a young African-American attorney who graduated from Howard University School of Law and

97 Brown-Nagin, *Courage to Dissent*: Atlanta, [Page 175].

had no affiliation with the NAACP or the LDF.⁹⁸ “Holt worked with more politically militant and less legally orthodox organizations, including the Congress of Racial Equality (CORE) and the National Lawyers Guild (NLG).”⁹⁹ Both of these organizations would prove to be resourceful to SNCC. Holt, himself, made an enormous contribution as a lawyer to the movement by introducing movement lawyering, omnibus litigation, and ‘pro se’ cases.

In movement lawyering “political activist would define the objectives of civil rights campaigns, and lawyers would solve problems arising out of the strategy as circumstances dictated.”¹⁰⁰ Holt goal of movement lawyering was “to change the student movement’s relationship to civil rights lawyers”¹⁰¹, and he was very successful at it. Holt argued that “lawyers were not destined to dominate their clients.” Civil rights litigation and political action could be synergistic if lawyers immersed themselves in local communities and learned their strategic objectives” and that “their primary task was to find ways of helping the Black people themselves resist the efforts of the power structure to derail their own forward movement to enforce the constitutional promises of freedom and equality.”¹⁰² SNCC was elated to adopt to Holt’s approach as they criticized the NAACP and LDF for being disconnected from the people and having different interest. Because of the new style of lawyering that catered to the students’ goals, the students that once were critical of the law now “marched in the streets, but supplemented

98 Brown-Nagin, *Courage to Dissent: Atlanta*, [Page 187].

99 Brown-Nagin, *Courage to Dissent: Atlanta*, [Page 188].

100 Ibid

101 Brown-Nagin, *Courage to Dissent: Atlanta*, [Page 190].

102 Brown-Nagin, *Courage to Dissent: Atlanta*, [Page 191].

demonstrations with litigation”¹⁰³ For the first time, COAHR and SNCC both chose to use litigation over direct action.

One major difference between the movement lawyer and the civil rights lawyer was that the movement lawyer made omnibus legal claims against segregation. With omnibus suits, Not only were the students able to get involved with the fight to the end of Jim Crow, they were able to have to roles that had a great significance in law—even though they were not lawyers. Lawyers played a major role in shaping the students and everyday people to become better equipped to fight for their desired goals. Holt explains that “the omnibus suit ‘infected’ the law with a sense of urgency by simultaneously attacking every facet of Jim Crow in a local community. In one complaint in one suit, it seeks to do the same job of righting wrongs that formerly took a series of suits.”¹⁰⁴ Instead of a suit only challenging one place, the omnibus suite combined all public places together in one suit. Brown-Nagin adds that “the litigation might name twenty, fifty, or one hundred public officials as defendant—including local judges who presided over segregated courtrooms.”¹⁰⁵ The omnibus suits shifted the relationship between activist and the law. Before the omnibus suits, the local activist tended to only be present in court—when it was case specifically dealing with their arrest. The omnibus suites was successful in mobilizing activist and the local community to actively have the opportunity to become engaged in lawsuits by being the drafters and bringing the suits to the court. The opportunity gave momentum to the movement and led Blacks to feel powerful.. Prior to Holt, the only individuals filling suits were lawyers.

103 Ibid

104 Brown-Nagin, *Courage to Dissent: Atlanta*, [Page 192].

105 Ibid

When Holt began working with SNCC he taught the students how to file omnibus suits pro se, which is “without a lawyer’s aid.”¹⁰⁶ Holt provided “tutorials on civil rights litigation, explained in detail the form and procedures to be followed in filing a complaint in federal district court, covered everything from the amount of the required filing fee and the form of the case caption to the federal statutes and constitutional provisions providing the cause of action for civil rights suits, and the proper wording of the prayer for relief.”¹⁰⁷ In addition to tutoring SNCC in the basic points of legal practice, Holt also encouraged SNCC leaders to ‘pass along the information to everyday citizens.’¹⁰⁸ SNCC took the advice of Holt, and “printed information manuals and ‘do it yourself legal kits’ that outlined federal court practice so that citizens in the communities across the South could file omnibus protest suits as well.”¹⁰⁹ The omnibus suits were met with success. COAHR filed, an omnibus pro se, *Brown v. Atlanta* that challenged municipal Atlanta.¹¹⁰ Brown-Nagin explains that the suit “sought to abolish racial segregation and racial discrimination in the use and enjoyment of every public facility.”¹¹¹ After a year, in 1962, U.S. District Court Judge Lewis Morgan¹¹² agreed with the students and struck down all of Atlanta’s ordinances that required segregation in all of the public places that the student listed. The victory of *Brown v. Atlanta* set a precedent for cases such as *Burton v Willington Parking Authority*, *Homes v. Atlanta*, and *Sanders v. Gray* to follow.

106 Brown-Nagin, *Courage to Dissent: Atlanta*, [Page 194].

107 Brown-Nagin, *Courage to Dissent: Atlanta*, [Page 195].

108 Ibid

109 Ibid

110 Ibid

111 Ibid

112 Brown-Nagin, *Courage to Dissent: Atlanta*, [Page 196].

Although the students were triumphed with their success, there were limitations in how the helpful the victory proved to be. The court victory did not have a court order to implement enforcement, therefore, white segregationist did not abide the law. Getting the court victory was one thing, but having the victory implemented was another. The slow desegregation of public schools is an example. Brown-Nagin states “For the most part, the facilities that the suit targeted remained closed or segregated. It took political and economic pressure, applied by SNCC and COAHR in ongoing protest, to give the court orders teeth.”¹¹³ Demonstrations led by the two organizations created negative publicity that resulted in the mayor’s push for implementation. The time to file for the omnibus suit and to have it implemented took more than two years.¹¹⁴ Another limitation to the omnibus suits was that there was no legal claim or Supreme Court precedent that supported an omnibus legal attack on discrimination by private factors—only public. In addition to this, the law did not solve de facto segregation. A space could be legally desegregated—but it did mean that one was obliged to utilize a place that was desegregated or just as we see in every day spaces of students in America, the Black students tend to sit with the Black students and vice versa. Despite the fact that the law had limitations on the ways in which it could help Black movements, it remained a useful tool that the students use.

The students continued to protest and challenge Jim Crow laws that contributed to the success of the omnibus suits. Lawyers from different organizations provided legal and financial assistance to Blacks during the Civil Rights Movement. Len Holt

113 Brown-Nagin, *Courage to Dissent: Atlanta*, [Page 198].

114 Ibid

introduction to movement lawyering changed the way the Blacks were bound up with the law. It would be the first time that Blacks without a legal degree would legally challenge Jim Crow. The Black population became agents of their own change. This was the beginning of the Black Power Movement.



**A Perceived Threat to America:
The Emergence of the Black Power
Movement and the Influences of the
Law in Destroying the Black Panther
Party**

The civil rights movement played an essential role in undermining the legal structure of white supremacy, but it did not solve all of the issues that the Black identity faced. Fannie Lou, a former SNCC member, states “we learned the hard way that even though we had all the law and all the righteousness on our side—the white man is not going to give up his power to us. We have to build our own power.”¹¹⁵ The Civil Rights Act of 1964 and the Voting Rights Act of 1965 had been passed into law, outlawing segregation in public accommodations and granting African Americans the right to vote. The acts did not, however, solve every problem. In *Black Power: Radical Politics and African American Identity*, Jeffery Ogbar asks “How could the African American effort to integrate with whites bring about a proliferation of “Black” professional societies, associations, and student centers in an age with unprecedented white acceptance of Black people?”¹¹⁶ He replies, “Answers lay beyond the scope of the civil rights movement, which, while dismantling the pervasive legal underpinnings of racial subjugation, expressed no profound concern over the psychological consequences of being Black (or white) in a virulently anti-Black society.”¹¹⁷ Once the Black population understood this change, in addition to having to deal with an increasing amount of police brutality the Black identity adapted to a new identity. The new Black identity embraced Black Nationalism. The most viable definition of Black Nationalism is one that includes group consciousness among Black people and the belief that they, independent of whites, can achieve liberation by the creation and maintenance of Black institutions to serve the best

115 525

116 Jeffrey Ogbonna Green Ogbar, *Black Power: Radical Politics and African American Identity* (Baltimore: Johns Hopkins University Press, 2004), [Page 5].

117 Ogbar, *Black Power: Radical Politics*, [Page 2].

interest of the people.¹¹⁸ Ogbar argues that Black power affected African American identity and politics as much as any speech, march, or legal victory of the civil rights movement. Black power was about self-determination. It was all about being your agent of change, and finding self-love of the Black identity.

The Nation of Islam (NOI), Malcolm X, Stokely Carmichael, and the Black Panthers would become the face of the Black power movement. The civil rights movement brought on many examples of white aggression and terror to substantiate the NOI's belief that whites were demons and that integration was the preoccupation of fools, idiots, and enemies of the Black nation.¹¹⁹ The Nation of Islam insisted that no sane person would ever love his murderous, rapist enemy and that the desire to integrate with whites must be a symptom of the dysfunctional slave culture that Black people embraced.¹²⁰ The Black population at large responded positively to these ideas—including SNCC. In 1966, SNCC elected Stokely Carmichael as chairman. As chairman he turned SNCC in a sharply radical direction, making it clear that white members, once actively recruited, were no longer welcome.¹²¹

In June 1966, James Meredith, a civil rights activist who had been the first Black student to attend the University of Mississippi, embarked on a solitary “Walk Against Fear” from Memphis, Tennessee to Jackson, Mississippi. The walk attempted to ensure Black voters that it was okay to register to vote. When Meredith made it in Mississippi by twenty miles, he was shot. SNCC students continued to march in place of Meredith.

118 Ogbar, *Black Power: Radical Politics*, [Page 3].

119 Ogbar, *Black Power: Radical Politics*, [Page 20].

120 *ibid*

121 <http://www.history.com/topics/black-history/stokely-carmichael>

Carmichael gave a speech at the end stating “We been saying ‘freedom’ for six years. What we are going to start saying now is Black Power.”¹²² SNCC was successful at getting the Black power phenomenon to the local community. Their experience in grass root activism was a useful skill.

In the works were Huey Newton and Bobby Seale starting the Black Panther Party for Self Defense (BPP) which started off as the People’s Party. Police brutality was the driving force behind the creation of the party. Bobby Seale states “the Black Panther Party was formed to resist police brutality and the murder of Black people in the same manner that the Vietnamese people were resisting U.S. imperialist aggression—by violence if necessary!”¹²³ The Panthers eventually developed into a Marxist revolutionary group that called for the arming of all African Americans, the exemption of African Americans from the draft and from all sanctions of so-called white America, the release of all African Americans from jail, and the payment of compensation to African Americans for centuries of exploitation by white Americans. At its peak in the late 1960s, Panther membership exceeded two thousand individuals and the organization operated chapters in several major American cities.¹²⁴ Prior to the Black Power Movement and the Black Panther Party Blacks tolerated violence from Whites but feared violence against representatives of white supremacy.

One may argue that Blacks adopting their lives to mimic what Black Power meant was no crime, whether it was joining the Black Panther Party or The Nation of Islam. America, did not take the Black Power Movement lightly. The thought of Blacks rising

122 Ibid

123 Ogbar, Black Power: Radical Politics, [Page #].

124 Ogbar, Black Power: Radical Politics, [Page #].

up, becoming radical, was a threat to the American government. The Federal Bureau of Investigation (FBI) describes the Black Panther as follows.

The Black Panther Party (BPP) is a Black extremist organization founded in Oakland, California in 1966. It advocated the use of violence and guerilla tactics to overthrow the U.S. government. In 1969, the FBI's Charlotte Field Office opened an investigative file on the BPP to track its militant activities, income, and expenses. This release consists of Charlotte's file on BPP activities from 1969 to 1976.¹²⁵

If the law has had its paws punctured in any movement, it was the Black Panther Party. The American government blatantly and viciously used the law to destroy the Black Panther Party. The leaders that were not assassinated by the hands of police were imprisoned. The American government attacked the movement with the law.. *The Assassination of Fred Hampton: How the FBI and the Chicago Police Murdered a Black Panther* by Jeffrey Haas perfectly shows how like never before Black identity became targeted by the law and killed with law, If it had not been for lawyers role in defending the Panthers—they all would have been imprisoned, in addition to the local Black community who engaged in their own protest activities. The lack of lawyers to defend the Panthers would have bought an end to the party faster than the Counter Intelligence Program (COINTELPRO). What lawyers were to the Panthers is what pollen is to a bee, a vital necessity for survival.

The FBI, directed by John Edgar Hoover, created the Counter Intelligence Program (COINTELPRO). According to FBI documents, one of the purposes of the COINTELPRO program was to "expose, disrupt, misdirect, discredit, or otherwise

125 <https://vault.fbi.gov/Black%20Panther%20Party%20>

neutralize the activities of the Black nationalists".¹²⁶ In the words of Hoover, they wanted to prevent the rise of a "Black messiah".¹²⁷ With the rise of Blacks organizing there were a number of leaders of organizations who could have been viewed as the Black messiah. The first targeted messiah was Dr. Martin Luther King Jr. The FBI had Blackmailed Dr. King by threatening to release tapes showing his infidelity if he didn't kill himself. "There is only one thing left for you to do. You know what it is," the cryptic FBI note attached to the tapes read.¹²⁸ King had been getting harassed by the FBI until his assassination. With the emergence of the Black Panthers on the scene COINTELPRO had a new target. Of the 295 documented actions taken by COINTELPRO to disrupt Black groups, 233 were directed against the Black Panther Party.¹²⁹ Petty charges to charges of murder were thrown on members of the Panthers. Haas tells the story of Fred Hampton 'being arrested on several occasions for technical traffic violations.'" He concludes that the harassment became so great that Fred stopped driving.¹³⁰ The tactic was simple; criminalize every action even if it meant creating false ones to incarcerate. The charges could range from petty traffic tickets to murder and carried heavy time, if all of the Panthers would have been indicted on charges, the movement would have been in jail.

Certainly, the government did not like the idea of Blacks carrying around guns, and thus introduced the Mulford Act. The Mulford Act was a 1967 California bill which repealed a law allowing public carrying of loaded firearms. Named after Republican

126 Jeffrey Haas, *The Assassination of Fred Hampton: How the FBI and the Chicago Police Murdered a Black Panther* (Chicago, Ill.: Lawrence Hill Books/Chicago Review Press, 2010), [Page 82].

127 Ibid

128 Haas, *The Assassination of Fred*, [Page 176].

129 Ibid

130 Haas, *The Assassination of Fred*, [Page 32].

assemblyman Don Mulford, the bill was crafted in response to members of the Black Panther party conducting armed patrols of Oakland neighborhoods while conducting what would later be termed cop watching.¹³¹ Bobby Seale led some members of the party to march fully armed into the California state legislature in Sacramento showing that the right to bear arms was a constitutional right. It was fairly easy for the government to create new laws to constrain Black radical movements.

In 1969, four lawyers including Haas started the People's Law Office (PLO). They defended the Panthers, the Yung Lords, and two white groups, Rising up Angry and the Young Patriots.¹³² Fred Hampton recruited the PLO to be the Panther's lawyers. "He laid out the Panther program, told Skip and Don that 'police are trying to destroy the Panthers anyway they can. We need your help.'¹³³ He later assured the lawyers that "Flint¹³⁴ and the rest of the lawyers who wanted to help the Panthers, had better get their act together because what the Panthers are doing is serious and the police are serious about trying to stop us."¹³⁵ Fred was not mistaken. The police did everything in their power to stop the movement by using their legal advantage.

On January 24, 1969, the Chicago police arrested Fred following an FBI tip that he was appearing on a local TV station. In front of the live cameras he was led away on an old traffic warrant. Later, Fred told police that when he got into the police car, he noticed he hadn't been cuffed. When placed in the back seat he saw there was a gun resting there. 'I spotted a setup he said' I put my wrists outside the car and started screaming, 'There's a gun in the car that somebody left. His quick thinking worked. That day he avoided police bullets.¹³⁶

131 <http://www.mrossman.org/www/mulford.html>

132 Haas, The Assassination of Fred, [Page 49].

133 Haas, The Assassination of Fred, [Page 50].

134 John Flint, attorney at PLO

135 Haas, The Assassination of Fred, [Page 70].

136 Ibid

This would not be the end of police officers attempting to trap Fred. The number of charges being thrown on him were countless. The most interesting charge probably was when Fred Hampton was accused of robbing an ice cream truck and distributing it to the public. The prosecution brought the ice cream vendor back from Vietnam to testify, an unusual expense and effort in a case with no injuries and so little loss, but Cook county state's attorney Edward Hanrahan wanted Fred in jail.¹³⁷ The robbery was unarmed and the vendor was pushed down. Fred Hampton would go on and be convicted to two to five years in the state penitentiary for the robbery of the ice cream truck. Fred's bond was revoked and he was taken into custody. He was soon transferred to Menard prison in southern Illinois to begin his sentences.¹³⁸ His lawyers would appeal and win his case a few months later. PLO represented more than the Panthers and thus seen the viciousness of the law working against any political party that was challenging police brutality. The People's Lawyers took on the Weatherman case in September of 1969. Twelve weathermen were arrested for demonstrating outside the Conspiracy Eight Trial—including Bobby Seale. The police lied and exaggerated about what took place, not knowing that the incident had been video. Although no one was injured on either side, the arrestee's were all charged with at least two felony counts of aggravated battery, a felony count of mob action, and several misdemeanors.¹³⁹ Video footage showed only minor shoulder shoving between the protestors and the police. The protestors did not attack the police as they argued. One eight-five pound demonstrator was charged with offenses carrying up to the thirty years for what the videotape disclosed was a light touching of an officer's shoulder in response

137Haas, *The Assassination of Fred*, [Page 48].

138Haas, *The Assassination of Fred*, [Page 51].

139 *ibid*

to him pushing her.¹⁴⁰ The PLO would get the cases dropped. The cycle continued. On October 4th someone shot into the Panther office, and received a shot back. The gunfire had prompted someone to call the police. When the police came they raided the Black Panther office, seizing \$3,000 dollars in cash and taking property and records including the names of contributors. Food for the breakfast program was dumped on the floor, and legally purchased weapons were confiscated and never returned. The police officers heavily beat the Panthers that were located inside the office, to the point that they required medical treatment. Yet, the next morning they were charged with attempted murder of the cops who came to the Panther office.¹⁴¹ The PLO focused on the physical state of the Panthers arguing the officer's story was impossible, once again the lawyers had saved the Panthers and others in struggle.

Jose Cha-Cha Jimenez founded the Young Lords Party, a Puerto Rican nationalist group. The police were constantly harassing and arresting Cha-Cha for organizing the Puerto Rican community against the city's gentrification plan. Hass states "For a period of 1969, Dennis represented Cha-Cha and went to court regularly to get him released on bond.¹⁴² A few months after, another raid happened at the Panther's office and eight of them were arrested and charged with harboring a fugitive. It later came out that the 'fugitive' was in fact an FBI informant. The PLO defended them and procured their release on bond.¹⁴³ Despite the demanding working that the PLO engaged in, its reward of truly helping the people and the movement was greater than its financial benefits. Hass

140 Ibid

141 Haas, *The Assassination of Fred*, [Page 61].

142 Haas, *The Assassination of Fred*, [Page 45].

143 Haas, *The Assassination of Fred*, [Page 51].

confesses, “Getting paid depended on whether money was coming in. When we started in 1969, we hoped to make two hundred dollars per month each. For me that was enough for basic living.”¹⁴⁴ The lawyers made great sacrifices to be able to help the movement—they even took up arms. He explains

We took the possibility of a police attack on our office seriously. We had built-in gun cabinets stocked with a legally purchased and registered shotgun and a nine-millimeter handgun. Some of my partners had taken target practice a few times and I went to a private pistol range with the nine millimeter.¹⁴⁵

Not only was their clients’ movement work dangerous, it also posed a threat to their own their lives. The same way that Black identity was bound up in law, lawyers were bound up in the movement. The movement controlled their lives. Personal relationships were jeopardized and scarce paychecks were promising. The lawyer’s willingness to take the cost of being bound up in the movement even if it meant losing their lives made them revolutionaries themselves. Although this was the era of Black Power and SNCC had separated from its white supporters, white aid was no enemy to the Panthers. As for whites, Huey Newton relied on white San Francisco attorney Charles Garry when he was charged with killing a police officer because as pointed out, Gary was successful in the white judicial system and had never lost a capital case.¹⁴⁶ Regardless of their race, the Panther’s lawyers worked as if the Panthers were their own blood brothers. The movement they defended had become one they believed in and supported to the extreme that they felt it was worth jeopardizing their life. In discussing the viciousness of the law, Gaas states “I certainly did not appreciate the strength, staying power, and violence the

144 Haas, *The Assassination of Fred*, [Page 68].

145 Haas, *The Assassination of Fred*, [Page 56].

146 Haas, *The Assassination of Fred*, [Page 41].

U.S. government would use to suppress our movement.”¹⁴⁷ He did say the movement, but rather our movement. This attitude can explain the drive that went behind the Fred Hampton case. Fred Hampton was assassinated on December 04, 1969.

The People’s Law Office quickly mobilized and filed civil rights law suits in June of 1970 seeking damages on behalf of the Hampton and Clark families and the surviving Panthers. Through these lawsuits, the office was able to uncover and prove that the raid was set up by an FBI informant-provocateur pursuant to the FBI’s secret COINTELPRO program and its mandate to “neutralize” the Black Panther Party and its leadership. PLO maintained its loyalty to its movement when it engaged in thirteen years of intense litigation that would prove FBI misconduct to the U.S. Senate Committee, chaired by Senator Frank Church, that FBI’s COINTELPRO Program was bent on destroying the BPP and its leadership. The definition of the COINTELPRO Program to the present does not tell the truth of its intention. The attorneys won a landmark decision on appeal, successfully defended it in the U.S. Supreme Court, and obtained a settlement of \$1.8 million dollars.

During the Black Power era law deeply punctured its way into the Black liberation movement. The law without embarrassment or shame killed, brutalized, and targeted Blacks. The role of lawyers in the movement became even more meaningful than what it was during the beginning of the civil rights movement. Blacks shifted their identity into Black Nationalism, welcoming a new form of the Black body to get punctured into by the paws of the law. Story after story shows how Black identity has bound up in law. There has never been a moment where the Black body could have

147 Haas, *The Assassination of Fred*, [Page 55].

freedom from the law. Even if being bound up in law was not happening in a negative way, Blacks used the law to their advantage.



**The Expulsion of the Race Card in
the Legal System: Examining
Critical Race Theory**

In the century where America clings to the claims of being post-racial and color-blind, critical race theory serves as a multi-faceted theoretical challenge that evaluates how the relationship between race, critical theory and law proves such claims to be inaccurate. The introduction of *Critical Race Theory: The Key Writings That Formed the Movement* by Cornel West, Kimberlee Crenshaw, Gary Pellar, Kendall Thomas, and Neil Gotanda lays down a foundation of what critical race theory is how it emerged, and why it is important. Critical Race Theory's (CRT) scholarship attempts to understand how law continues to maintain and contribute to the up keeping of white supremacy and oppression of people of color in America. It also aspires to use the academia to assist in changing this regime.¹⁴⁸ Kimberlee Crenshaw's article on *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law* further explains the role of ideologies and racism in the American problem. The goal of this chapter is to investigate the expulsion of race in the legal system in cases that validity may essentially be centered around or involve race and attempts to further structure the narratives from chapter one into a bigger dialogue.

Situating Black Identity Bound Up In Law into a Legal Narrative

At the foundation of American history is racism. Throughout America history, the subordination of Blacks was rationalized by a series of stereotypes and beliefs that made

148. West, "Introduction," introduction to *Critical Race Theory: The Key Writings*, [Page xv].

their conditions appear logical and natural.¹⁴⁹ Stereotypes against African Americans was used to rationalize the oppression that was inflicted upon them. Historically, all of the good qualities was assigned to whites while all the bad qualities was assigned to Blacks. White represented the superior positive adjectives and Blacks represented inferior negative adjectives. The negative subordination that she discusses is what led to African Americans being classified as ‘other.’ This led to the creation of racist ideology.

Historical Oppositional Dualities¹⁵⁰

| White Images | Black Images |
|------------------|-------------------|
| Industrious | Lazy |
| Intelligent | Intelligent |
| Moral | Immoral |
| Knowledgeable | Ignorant |
| Enabling Culture | Disabling Culture |
| Law-abiding | Criminal |
| Responsible | Shiftless |
| Virtuous- pious | Lascivious |

Crenshaw states ‘The oppositional dynamic symbolized by this chart was created and maintained through an elaborate and systematic process. Laws and customs helped create ‘races’ out of a broad range of human traits.’¹⁵¹ The system is what she calls legal ideology. Law is an essential feature in the illusion of necessity because it embodies and reinforces ideological assumptions about human relations that people accept as natural or

¹⁴⁹ Kimberlee Williams Crenshaw, "Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law," *Harvard Law Review* 101, no. 7 (May 1988): [Page 1370].

¹⁵⁰ Williams Crenshaw, "Race, Reform, and Retrenchment," [Page 1373].

¹⁵¹ *Ibid*

even immutable.¹⁵² Therefore, the stereotypes being connected to Black identity has to happen before the law can adequately contribute. The racist ideology has to be created first. It was only after Blacks were viewed as inferior that laws began to oppress their identity. After the racist ideology is created it is then that the law is able to have a strong impact. Crenshaw argues that people act out of their lives, mediate conflicts, and even perceive themselves with reference to the law. By accepting the bounds of law and ordering their lives according to its categories and relations, people think they are confirming reality—the way things must be.¹⁵³ Thus, if the law is bluntly upholding white supremacy and treating Blacks as second class citizen then people assume that their actions are just and therefore, do not question them. The upholding and maintaining of subordinate concepts of Black identity creates another way that law has punctured itself into black identity.

Crenshaw argues that there are two forms of subordination—material and symbolic subordination. Material subordination refers to the ways that discrimination and exclusion economically subordinated Blacks to whites and subordinated the life chances of Blacks to those of whites on almost every level.¹⁵⁴ For example, this includes when Blacks are paid less for the same work, segregation limiting access to decent housing, and where poverty, anxiety, poor health care, and crime create a life expectancy for Blacks that is five to six years shorter than for whites.¹⁵⁵ Symbolic subordination, on the other hand, refers to the formal denial of social and political equality to all lacks, regardless of their accomplishments. These examples include segregated and social exclusions such as

¹⁵² Williams Crenshaw, "Race, Reform, and Retrenchment," [Page 1331].

¹⁵³ Williams Crenshaw, "Race, Reform, and Retrenchment," [Page 1352].

¹⁵⁴ Williams Crenshaw, "Race, Reform, and Retrenchment," [Page 1377].

¹⁵⁵ Ibid

the use of separate parks, dining facilities, and drinking fountains.¹⁵⁶ It was the power of the state, often through law, that upheld Black subordination prior to the civil rights reform. Crenshaw believes that the segregation was not subordinating because it was separate but because it was the law that legalized the separation and therefore made individuals believe that African Americans were inferior. In this case, one can say the law had a negative impact on Black identity. But at the same, law could prove to be positive. Crenshaw acknowledges that state power has made a significant difference between life and death –in the efforts of Black people to transform their world. Attempts to harness the power of the state through the appropriate rhetorical/legal incantation should be appreciated as intensely powerful and calculated political acts achieved by Blacks.¹⁵⁷ Crenshaw is speaking to the very achievements that we have seen SNCC and the NAACP accomplish.

Through the language of rights Blacks in the 1960s were able to fight for Black liberation. By using claims based on rights they were able to mobilize state power to their benefit against the symbolic oppression that had been formed against them. Crenshaw argues that rights have been important in the struggle for Black liberation. She states “they may have legitimated racial inequality, but they have also been the means by which oppressed groups have secured both entry as formal equals into the survival of their movement in the face of private and state repression.”¹⁵⁸ The backlash from private parties that SNCC and the NAACP LDF faced and the way that the law was to no avail to protect the movements from privatized parties are examples of what Crenshaw is talking

¹⁵⁶ Ibid

¹⁵⁷ Williams Crenshaw, "Race, Reform, and Retrenchment," [Page 1382].

¹⁵⁸ Williams Crenshaw, "Race, Reform, and Retrenchment," [Page 1384].

about. It was with the constant litigation centered on the language of rights that made the change possible. It is without a doubt that law has not always been on the side of Black liberation, but yet, it would be a huge mistake to dismiss the ability the law had in helping Blacks. Crenshaw writes,

Even if we imagine the wrong word when we think in terms of legal discourse, we must nevertheless exist in a present world where legal protection has at times been a blessing—albeit a mixed one. Critics criticize law because its functions to legitimate existing institutional arrangement, it is precisely this legitimating function that has made law receptive to certain demands in this area.¹⁵⁹

While rights were useful it is hard to imagine any other tactic that Blacks would have been able to use in their fight for black liberation. Crenshaw writes “a realistic examination of the limited alternatives available to Blacks make it clear that the legal reform was a viable pragmatic strategy for Blacks confronted with the threat of unbridled racism on one hand and co-option on the other.¹⁶⁰ Crenshaw argues the only way Blacks would have been able to obtain their rights were indeed through legal rights ideology. They articulated their demands through legal rights ideology. The NAACP LDF choice to use litigation and the courts in addition to SNCC’s willingness to become involved with the legal tactic is a reflection of the way Blacks understood their struggle. Nevertheless, Crenshaw also acknowledges the multi-faceted system that it took for the progress to happen. She understands that it took more than law. She remarks,

Simply critiquing the ideology from without or making demands in language outside the rights discourse would have accomplished little. Rather, Blacks gained by using a powerful combination of direct action, mass protest, and individual acts of resistance, along with appeals to public opinion and the courts couched in the language of the prevailing legal consciousness.¹⁶¹

¹⁵⁹ Williams Crenshaw, "Race, Reform, and Retrenchment," [Page 1331].

¹⁶⁰ Williams Crenshaw, "Race, Reform, and Retrenchment," [Page 1335].

¹⁶¹ Williams Crenshaw, "Race, Reform, and Retrenchment," [Page 1382].

Civil rights activist and lawyers induced the federal government to aid Blacks and triggered efforts to legitimate and reinforce the authority of the law in ways that benefited Blacks.¹⁶²

By civil rights activist and lawyers asserting their rights, legal reforms were promulgated that transformed the Black experience by lifting formal barriers that had subordinated all Black people and produced their formal and political designation as ‘other.’¹⁶³ The language of rights stems from the law. Rights carry legitimacy and weight because they are found within legal documents such as the American constitution.

Issues of Black Identity and Law within the Legal System Currently

The era of the civil rights movement has ensured Blacks that law had been a useful tool in obtaining victory in different struggles. The emergence of the Reagan Administration in the 1970s created a shift. Serious attacks on the civil rights constituency included Reagan’s attempt to fire members of the US Commission on Civil Rights, the Administration’s opposition to the 182 amendment of the Voting Rights Act, and Reagan’s veto of the Civil Rights Restoration Act.¹⁶⁴ The administration came to be viewed as anti-Black and opposed to the Civil Rights legislation that Blacks had fought so hard to obtain. Now in 2016, Crenshaw began to speak of a new struggle. She exclaims, “The struggle it seems, is to maintain a contextualized, specified world view that reflects the experience of Blacks. The questions remains whether engaging in legal reform precludes this possibility.”¹⁶⁵ When Crenshaw states ‘the experiences of Blacks’ she is referring to the continuation of Black oppression and the flourishing of white supremacy. She acknowledges that Black people do not create their oppressive worlds

¹⁶² Ibid

¹⁶³ Ibid

¹⁶⁴ Williams Crenshaw, "Race, Reform, and Retrenchment," [Page 1338].

¹⁶⁵ Williams Crenshaw, "Race, Reform, and Retrenchment," [Page 1349].

moment to moment but rather are coerced into living in worlds created and maintained by others.¹⁶⁶ In 2016, this means that the Blacks are still living in the world that is being dominated by white supremacy. She adds, the most significant aspect of Black oppression seems to be what is believed about Black Americans. Crenshaw argues that there are mainly two belief systems negatively affecting Blacks. The first issue is that America has moved towards a state of being color blind. The second issue is that whites have maintained their views towards African Americans.

The scholarship of critical race theory discusses what has changed in the relationship between race and law. It explains why race within the law cannot be used as a tool to obtain freedom as it had before and how that change happened. The Supreme Court continues to play a major role in African Americans not being able to use the law to fully combat the discrimination they face. As most Americans, the Supreme Court has created its eyes to be color blind and have seen race as a topic of the past. Crenshaw confesses,

The end of Jim Crow has been accompanied by the demise of an explicit ideology of white supremacy. The white norm, however, has not disappeared; it has only been submerged in popular consciousness. It continues in an unspoken form as a statement of the positive social norm, legitimating the continue domination of those who do not meet it. Nor have the negative stereotype associated with Blacks been eradicated.¹⁶⁷

Despite these proclamations the views of a post racial America remains. The introduction of *Critical Race Theory* argues that the appropriation of Dr. Martin Luther King's 'injunction that a person should be judged by the content of his character rather than the

¹⁶⁶ Williams Crenshaw, "Race, Reform, and Retrenchment," [Page 1357].

¹⁶⁷ Williams Crenshaw, "Race, Reform, and Retrenchment," [Page 1379].

color of his skin'¹⁶⁸, otherwise colorblindness, was the foundation of the change. The passing of the Civil Rights Act in addition to the claims of America being color-blind, created the idea that race was no longer an issue. When the Civil Rights Act was passed in 1964, America claimed to live by the idea that one should be judged by character rather than race. However, racism could not have disappeared overnight. CRT scholarship acknowledges that “by and large however, the very same whites who administered explicit policies of segregation and racial domination kept their jobs as decision makers in employment offices of companies, admissions offices of schools, lending offices of banks, and so on.”¹⁶⁹ This shows that the passing of the Civil Rights Act did not end discrimination. It merely made discrimination harder and almost impossible to reach. Discrimination became an invisible iron fist. Critical race scholars have argued that for one to be color blind one must also have consciousness of color. Crenshaw states, “the appeal to color-blindness can thus be said to serve as part of an ideological strategy by which the current Court obscures its active role in sustaining hierarchies of racial power.”¹⁷⁰ The Supreme Court having a role in upholding white supremacy is problematic. When state and local courts have proven to be biased and racist in the past—historically it was the Supreme Court that lawyers have utilized for intervening. However, the right wing decisions that the Supreme Court has made is a huge backlash against African Americans, as it has undermined the African American continued struggle in America.

168Ibid

169West, "Introduction," introduction to *Critical Race Theory: The Key Writings*, [Page xvi].

170West, "Introduction," introduction to *Critical Race Theory: The Key Writings*, [Page xxvii].

Critical Race scholars argue that the foundation of the dynamics of race being able to quickly shift may have resulted from racial power within itself being perceived as “rare and aberrational rather than as systemic and ingrained.”¹⁷¹ This is the very notion that Black Lives Matter attempts to have people understand. America’s racism (and other countries) issue is systemic, ingrained and far from rare. Racism was defined as ‘intentional, albeit irrational, deviation by a conscious wrongdoer from otherwise neural, rational, and just ways of distributing jobs, power, prestige and wealth.’¹⁷² America’s flawed view of the definition of what racism is and the way it works has played a role in the emerging thought that racism could be demolished overnight and has no importance in 2016 by the ‘color blind’ American population and Supreme Court.

Critical Race Scholars argues that race must be examined and evaluated and deemed important rather than optional or unessential in determining how law upholds and protects white supremacy. The focus on race being important is one of the many differences that set critical race theory apart from critical legal theory. Critical Legal studies (CLS) is a theory that challenges and overturns accepted norms and standards in legal theory and practice. Proponents of this theory believe that logic and structure attributed to the law grow out of the power relationships of the society.¹⁷³ CLS solely challenged legal theory and practice, but was not a movement that was race conscious. The CLS’s refusal to acknowledge race as an important factor led to CRT scholars creating critical race theory. CRT viewed the CLS movement as being a part of the very issue that they challenge; race having no importance in law. CRT’s scholars aims for

171 Ibid

172 West, "Introduction," introduction to Critical Race Theory: The Key Writings, [Page xiv].

173 West, "Introduction," introduction to Critical Race Theory: The Key Writings, [Page xxxiii].

their writings to point out that race still have relevance in the age where institutions and government, including the Supreme Court, has made it extremely difficult to use race in legal cases. The organizers of Critical Race theory coined the term to make it clear that their work locates itself in intersection of critical theory and race, racism and the law.¹⁷⁴ Every explanation as to what has led to the expulsion of race being used in law has to do with the Supreme Court.

In the last few years, the Supreme Court had all but foreclosed the adoption of race-consciousness responses to racial inequality by state and local governments. In a cramped conception of the scope of national power under the fourteenth amendment, the Adarand Court has pressed further and formally forbidden even the federal government from taking race explicitly into account in addressing societal-wide discrimination.¹⁷⁵

Despite the findings that the Supreme Court continued to find eliminating race in the discussion of the American legal system, African Americans continued(s) to face discrimination without an outlet to fully address the discrimination as it is—racism.

The Supreme Court’s decision in the case of *Washington vs Davis* in 1976 established that intent of racial discrimination by the state action would be required to be proven.¹⁷⁶ In addition to this, it found that “in the language of the fourteenth amendment, race is a ‘suspect classification’ which demands judicial strict scrutiny.”¹⁷⁷ The legal requirement of improving intent in cases brought before the court, in addition to race being heavily scrutinized, marks a difference between a lawyer and the Black population in the sixties and seventies, and a lawyer and the Black population in the age of Black Lives Matter. West states “traditional civil rights lawyers found themselves fighting, and

174Ibid

175 West, "Introduction," introduction to *Critical Race Theory: The Key Writings*, [Page xxvii].

176West, "Introduction," introduction to *Critical Race Theory: The Key Writings*, [Page xvii].

177Ibid

losing rearguard attacks on the limited victories they had only just achieved in the prior decade, particularly with respect to affirmative action and legal requirements for the kinds of evidence required to prove illicit discrimination.”¹⁷⁸ As of 2016, America is a country that continues to face issues of racial inequalities in police brutality, mass incarceration, education, and health, economic and social opportunities but the concept of race neutrality hinders the use of law for Black gains.

The current court has effectively conscripted liberal theories of race and racism to wage a conservative attack on governmental efforts to address the persistence of societal-wide racial discrimination.¹⁷⁹ CRS finds that liberals are generally willing to concede that racism continues to be an ‘obvious and boring fact’ of American life but are unwilling to move toward a direct critique of the hidden racial dimensions of the meritocratic mythology that their conservative opponents have so deftly used to control the terms of the current debate.¹⁸⁰ In discussing the conservative stand the Supreme Court has decided to uphold, critical race scholars states that the Supreme Court is ‘camouflaging its conservative agenda’.¹⁸¹ The scholars also find that American government must play a role in the eradication of racial inequality, and it certainly will not happen with the Supreme Court’s current views on race.

It would be impossible to prove that the human resources department of a company was refusing to hire an African American based on their skin color. While it would be impossible to prove intent, it would not be logically absurd for one to argue that

178 West, "Introduction," introduction to *Critical Race Theory: The Key Writings*, [Page xxvii].

179 Ibid

180 West, "Introduction," introduction to *Critical Race Theory: The Key Writings*, [Page xxix].

181 Ibid

the employer, who was an anti-segregationist before the passing of the Civil Rights Act, was discriminating in hiring African Americans. Crenshaw writes, "Society's adoption of the ambivalent rhetoric of equal opportunity law has made it that much more difficult for Black people to name their reality. There is no longer a perpetrator, a clearly identifiable discriminator."¹⁸² The consequence of these views are not only found in the legal system, but in the fact that the American public truly no longer obtain the logic to understand any possible Black struggle. Today, the claim that equal opportunity does not yet exist for Black America may fall upon deaf ears—ears deafened by repeated declarations that equal opportunity exist through equal opportunity law.¹⁸³ Nevertheless, Crenshaw argues practically speaking, all companies can be equal opportunity employers by proclamation alone.¹⁸⁴ A company does not have to prove to society that its hiring practices are just because society as a whole has come to believe that it no longer discriminates against Blacks.¹⁸⁵ Therefore, racism alone simply no longer can be an explanation for the current condition of depressed Blacks. Crenshaw explains that society now applies the same stereotypes to the mass of Blacks that white supremacist had applied in the past, but bases these modern stereotypes on notions of 'culture' rather than genetics.¹⁸⁶ In 2016, we find that Blacks are labeled as victims of self-imposed ignorance, lack of direction, and poor work attitudes.¹⁸⁷ The new stereotypes influences the way that American people think of the free market. By believing that Blacks are inferior and the economy rewards those who work hard (the superior), whites see that Blacks are indeed worse off than whites are,

¹⁸² Williams Crenshaw, "Race, Reform, and Retrenchment," [Page 1347].

¹⁸³ Ibid

¹⁸⁴ Ibid

¹⁸⁵ Ibid

¹⁸⁶ Williams Crenshaw, "Race, Reform, and Retrenchment," [Page 1380].

¹⁸⁷ Ibid

which reinforces their sense that the market is operating fairly and impartially; those who should logically be on the bottom are on the bottom.¹⁸⁸ If equal opportunity is the rule in America, and the market is an impartial judge; if Blacks are on the bottom, it must reflect their relative inferiority.¹⁸⁹ This then has an effect on the psychological state of some Blacks. For Blacks who have not made it, the lack of an explanation for their underclass status may result in self-blame and other self-destructive attitudes.¹⁹⁰ Crenshaw pushes the consequences of the legal formations even further. She argues that the formations could possibly be responsible for the loss of collectivity among Blacks. She writes,

As Blacks moved into different spheres, the experiences of being Black in America became fragmented and multifaceted, and the different context presented opportunities to experience racism in different ways. The social, economic, and even residential distance between the various classes may complicate efforts to unite behind issues as a racial group.¹⁹¹

The stories in SNCC and the NAACP already outlines that class has been a component that has created tension within the movement and within the organizations. Crenshaw is arguing that today's time is no different from the 1960's class remains an issue. She states,

Although white only signs may have been crude and debilitating, they at least presented a readily discernible target around which to organize. Now, the targets are obscure and diffuse, and this difference may create doubt among some Blacks whether there is enough similarity between their life experiences and those of other Blacks to warrant collective political action.¹⁹²

Despite the possible conflicts and let downs of the law, Crenshaw argues that until whites recognizes the hegemonic function of racism and turn their effort towards neutralizing it,

¹⁸⁸ Ibid

¹⁸⁹ Ibid

¹⁹⁰ Ibid

¹⁹¹ Williams Crenshaw, "Race, Reform, and Retrenchment," [Page 1384].

¹⁹² Ibid

the Black community must develop and maintain a distinct political consciousness in order to prevail against the co-opting force of legal reform.¹⁹³ She states “history has shown that the most valuable political asset of the Black community has been its ability to assert a collective identity and to name its collective political reality.¹⁹⁴ Such advice could prove to be useful to the emergence of the Black Lives Matter Movement that has continued to mobilize itself and fight for black liberation for African Americans’ in today’s society.

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¹⁹³ Ibid

¹⁹⁴ Ibid



Critiquing the Black Lives Matter

Movement: A Human Rights

Movement

In the heart of Black Lives Matter you can find that W.E.B. Dubois' notion that being Black in America continues to being a problem and Baldwin's notion that Blacks are in a constant state of rage is still relevant in 2016. The Black Lives Matter Movement has been compared and called the new Civil Rights Movement but from the exploration of the Civil Rights Movement this project has maintained, I argue that it is different. The way that Black Lives Matter engages with society, law, government and the Black population is different than the Civil Rights Movement. The Black lives Matter Movement (BLMM) has categorized itself as a human rights movement and not a civil rights movement. This chapter will explore the struggle that African Americans faced to be able to apply human rights to their identity, creating the path for a movement like Black Lives Matter to be able to use the language of human rights as a tool for their fight for liberation. The language of human rights has replaced the language of law that we found in the sixties. However, there is legal work that continues to be conducted for the Black community. The NAACP LDF continues to fight cases around economic, education, and health issues in the Black community. The People's Law Office that defended the Panthers in Chicago has continued on with its legal work helping the Black communities. Even though the movement has chosen to use a different tactic to obtain Black liberation, lawyers throughout America continue to take on the legality of the movement and the Black identity. The Black Lives Matter movement is bound up with law with direct action. Protestors have faced the same treatment of police as protestors in the Civil Rights Movement did. This chapter will explore the differences between the two movements while critiquing what improvements the Black Lives Matter Movement can make.

The Black Lives Matter asserts that it is bound up in Human Rights. The legal document that it depends on for its support is none other than the United Nations Universal Declaration of Human Rights. Time and time again, the legitimacy of the claims that the Black Lives Matter movement fight for has been tied to human rights. There has been many moments where Opal Tometi, a cofounder of Black Lives Matter and the executive director of the Black Alliance for Just Immigration uses the human rights language.

Black Lives Matter is not a civil rights movement—it's a human rights one. Black Lives Matter often called a "civil rights" movement. But to think that our fight is solely about civil rights is to misunderstand the fundamental aspirations of this movement. It is about the full recognition of our rights as citizens; and it is a battle for full civil, social, political, legal, economic and cultural rights as enshrined in the United Nations Universal Declaration of Human Rights.¹⁹⁵

The Black liberation movement in the U.S. –from its inception as an anti-slavery moment, through the Civil Rights Era, and up to now has never been only for civil rights. The movement is a struggle for the human rights and dignity of Black people in the U.S, which is tied to Black people's struggle for human rights across the globe.¹⁹⁶

In the 1950s, Malcolm X and Martin Luther King also used the language of human rights to internationalize the issue of racial inequality in the United States. Fredrick C. Harris, a professor of political science and director of the Center on African-American Politics and Society at Columbia University states,

Malcolm X enlisted the assistance of heads of states in Africa and the Middle East to condemn the United States for their treatment of Black Americans. He discovered that by framing the mistreatment of Black Americans as an international human rights issue instead of a national civil rights one, 'those grievances can then be brought into the United Nations and be discussed by people all over the world.' For him, as long as the discussion was centered on

¹⁹⁵ <https://www.dissentmagazine.org/article/black-lives-matter-new-civil-rights-movement-fredrick-harris>

¹⁹⁶ Ibid

civil rights, ‘your only allies can be the people in the next community, many of whom are responsible for your grievance.’ Malcolm X wanted ‘to come up with a program that would make our grievances international and make the world see that our problem was no longer a Negro problem or an American problem but a human problem.’¹⁹⁷

In framing racial discrimination in the language of human rights the Black Lives Matter movement is progressing the work that the civil rights movement started. Members of the Black community have taken head to what Malcolm X described. A number of incidents dealing with police brutality has been taken to the attention of the international community. The parents of Trayvon Martin and Jordan Davis created a case for the UN Committee on the Elimination of All Forms of Racial Discrimination in Geneva that raised the issue of discriminatory policing.¹⁹⁸ The parents of Mike Brown and local activist groups in Ferguson also filed a case with the UN Committee Against Torture (UNICAT) in November 2014.¹⁹⁹ Brown’s parents submitted a statement to the Committee that read in part, “The killing of Mike Brown and the abandonment of his body in the middle of a neighborhood street is but an example of the utter lack of regard for, and indeed dehumanization of, Black lives by law enforcement personnel.”²⁰⁰ After examining the case, the Committee Against Torture recommended that it undertake independent and prompt investigations into allegations of police brutality and expressed concerns about racial profiling and the “growing militarization of policing activities.”²⁰¹ It reviewed the human rights record of the United States in May of 2015. The review

197 Ibid

198 Ibid

199 Ibid

200 Ibid

201 Ibid

procedure of the UN Human Rights Council recommended strengthening legislation to combat racial discrimination and addressing excessive use of force by the police.²⁰²

In 1951, there was a “We Charge Genocide” campaign created by members of the Black community whose family members were victims of racial violence and activist such as W.E.B. Dubois, Paul Robeson, and Claudia Jones. They petitioned that the United Nations examined human rights abuses against African Americans and made claims that African Americans were being persecuted, denied the right to vote, and “pauperized” because of their race—as a question of both Black humanity and as a human rights issue.²⁰³ The document states “above all we protest this genocide as human beings whose very humanity is denied and mocked.”²⁰⁴

In 2014, The Black Youth Project (BYP), an activist member-based organization of Black 18-35 year olds, dedicated to creating justice and freedom for all Black people through building a collective focused on transformative leadership development, direct action organizing, advocacy and education²⁰⁵, sent yet another ‘We Charge Genocide’ case to the United Nations. However, this time it went to Geneva at the hands of eight African American youth.²⁰⁶ BYP addressed the United Nations Committee Against Torture with the goal of increasing visibility of police violence in Chicago and to call out the continued impunity of police officers who abuse, harass, and kill youth of color in Chicago every year.²⁰⁷ Other African Americans would also take the lead in using the

202 Ibid

203 <http://www.blackpast.org/we-charge-genocide-historic-petition-united-nations-relief-crime-united-states-government-against>

204 Ibid

205 <http://byp100.org/>

206 <http://wechargegenocide.org/tag/united-nations/>

207 Ibid

United Nations as a medium to get their voices heard. Martinez Sutton addressed UNCAT regarding the death of his sister Rekia Boyd, who was killed by an off duty Chicago police detective in 2012.²⁰⁸ Shubra Ohri from People’s Law Office, the same law office that defended the Black Panther Party, followed up on the Burge torture cases, which CAT condemned in past reviews, and pushed CAT to support the reparations Ordinance in Chicago.²⁰⁹ Nikki Patin of Black Women’s Blueprint (organization based in NYC but she lives in Chicago) addressed police rape as torture against Black women.²¹⁰ Monica James from Transformative Justice Law Project testified on the profiling and abuse of transgender women of color by the state (including law enforcement) and isolation of transgender women in prison.²¹¹

The Fight in 1941 that Made It Possible

Using the language of human rights has Black indeed allowed Black Lives Matter supporters to go beyond its neighbors as Malcolm X described. However, African Americans using the United Nations and human rights language as a tool to gain some form of Black liberation did not happen without a fight. Carol’s Anderson, *A Hollow Mockery: African Americans, White Supremacy, and the Development of Human Rights in the United States*, provides a narrative to that journey. After World War II, America stood firm that it needed to do something to prevent the atrocities that happened in Europe, to ever happen again. However, while America cried ‘never again’, African Americans were experiencing similar treatment on American soil. On August 14, 1941

208 Ibid

209 Ibid

210 Ibid

211 Ibid

America issued the Atlantic Charter.²¹² The Atlantic Charter consisted of Four Freedoms: the freedom of speech, the freedom of worship, the freedom from want, and the freedom from fear.²¹³ With African Americans living as second class citizens in the United States, they interpreted it as ‘a pledge by the federal government to to remove the barriers that had systematically prevented them from reaping the benefits from centuries of the unpaid and barely paid hard labor, which had built the wealthiest nation on earth.’²¹⁴ Pittsburg Courier journalist George Schuyler remarked that “what struck me...was that the Nazi plan for Negroes approximates so closely what seems to be the American plan for Negroes.”²¹⁵ The terrorism that the Nazi’s inducted was not far fetch from the terrorism that the Ku Klux Klan, police and sheriff’s departments, lynch mobs, and racial oppression in America,²¹⁶ inflicted on African Americans. The African American population led by the NAACP understood the impact that the Charter could have on their lives, but it was not the intention of the American government to include African Americans in the document.

“When Churchill insisted that the Atlantic Charter was, for all intents and purposes a ‘white only’ affair, Walter White and other members of the Black leadership repudiated the prime minister and called on President Roosevelt to issue a Pacific Charter ‘so that dark-skinned people and colonial peoples may be given greater hope of real political democracy and freedom from economic exploitation’²¹⁷

212 Carol Anderson, "A Hollow Mockery: African Americans, White Supremacy, and the Development of Human Rights in the United States," in *Eyes off the Prize: The United Nations and the African American Struggle for Human Rights, 1944-1955* (Cambridge, UK: Cambridge University Press, 2003), [Page 80]

213 <http://www.fdrlibrary.marist.edu/fourfreedoms>

214 Anderson, "A Hollow Mockery: African," in *Eyes off the Prize*, [Page 81]

215 Ibid

216 Ibid

217 Anderson, "A Hollow Mockery: African," in *Eyes off the Prize*, [Page 82].

Yet, the United States had no interest in human rights or changing the status of African American identity. Nevertheless, there was an obligation to be fulfilled. Anderson writes, “Caught between the bitter harvest of the Holocaust and the ‘strange fruit’ of lynching, the United States searched desperately to find some of way to ‘assert America’s moral leadership in the field’ of human rights while maintaining the status quo of Jim Crow and racial inequality.”²¹⁸ It was clear that America wanted to keep its lynching laws, which, the Southern Democrats described as “necessary to protect the fair womanhood of the South from beats”²¹⁹ It was those same Southern Democrats that ‘dominated more than sixty percent of the Senate and the House Committees which determined not only domestic legislation but foreign affairs and the shape of the post war world.’²²⁰ Anderson goes on to state that same party “drowned federal anti-lynching bills, anti-poll tax measures, Fair Employment Practices Committees, and other civil rights legislation.”²²¹ This was the party that was responsible for determining the U.S. response to the founding of the United Nations and the UN’s human rights initiatives.

Former Texas Senator, Tom Connally, whom supporting lynching, was a key member of the U.S delegation at the founding conference for the United Nations. His racist views along with others in the committee, made it difficult to create a language of human rights that could apply to all humans without jeopardizing America’s white supremacy. For example,

Despite numerous please from other delegations and the consultants, he refused to even entertain the notion that all people, regardless of race, had the right to

218 Anderson, "A Hollow Mockery: African," in *Eyes off the Prize*, [Page 84].

219 Ibid

220 Ibid

221 Ibid

education. If the cacophony continued and the United States gave in, he warned any UN Charter with the right to education embedded in it would never pass through his committee. The senator was unwilling to scuttle the entire treaty in order to maintain the Jim Crow education that was essential to Black political and economic disenfranchisement.²²²

John Foster Dulles was a foreign policy guru that came with the idea to add an amendment “nothing in the Charter shall authorize intervention in matters which are essentially within the domestic jurisdiction of the State concerned.”²²³ It also stated that the UN could not “require a state to change its immigration policy or Jim Crow legislation”.²²⁴ This amendment saved the US from having to do anything on its own soil meaning it met the expectation of the Southern Democratic Party. However, every party and individual that was a part of the conference did not have views that reflected such and thus disapproval was met with Dulles’ proposal.

In the meantime, the State Department decided to take the lead on drafting the Covenant on Human Rights. For the treaty to get through the Southern-dominated Senate, the Truman administration broke the Covenant in two, separated civil and political rights from economic and social rights, proposed removing the most ‘offensive’ rights like voting and inserted a federal-state clause that meant that even though the federal government may sign and ratify the treaty, no state in the system would be bound by its tenets.²²⁵ Eleanor Roosevelt, the so-call friend of the Negro, was delighted. She promised the south that the federal government would never interfere in ‘murder cases’

222 Anderson, "A Hollow Mockery: African," in *Eyes off the Prize*, [Page 85].

223 Ibid

224 Anderson, "A Hollow Mockery: African," in *Eyes off the Prize*, [Page 86].

225 Anderson, "A Hollow Mockery: African," in *Eyes off the Prize*, [Page 87].

investigate concerns over ‘fair trials’ or insist on the ‘the right to education.’²²⁶ As Anderson summarizes, “Eleanor Roosevelt had just assured the Dixiecrats that the sacred troika of lynching, southern justice, and Jim Crow schools would remain untouched even with a covenant on human rights.”²²⁷ Furthering undermining the seriousness of human rights, Durward Sandifer, a key State Department official, admitted that if the United States had its way the Commission would be ‘of little use’ regardless of the extent of the human rights violations.²²⁸ The Genocide convention would also become an issue. If ratified, it could trump state’s rights, transform lynching into an international crime, and obligate the federal government to prosecute those who had, heretofore, killed Black Americans with impunity.²²⁹ The entire idea of what human rights was intended to be in order to maintain and create peace and justice in the international world, threatened America’s Negro problem. Certainly, the African American and the NAACP realized the issue.

In 1947, the NAACP petitioned the UN Commission on Human Rights to investigate the conditions under which African Americans lived and died in the United States.²³⁰ Under W.E.B. Dubois leadership the NAACP created *An Appeal to the World*.²³¹ The unwelcomed petition included the number of violations of human rights that African Americans experienced. Eleanor Roosevelt insisted that,

The NAACP had made a big mistake in going to the UN to air African Americans’ grievances because the petition played into the Soviets hands,

226 Ibid

227 Anderson, "A Hollow Mockery: African," in *Eyes off the Prize*, [Page 88].

228 Ibid

229 Anderson, "A Hollow Mockery: African," in *Eyes off the Prize*, [Page 91].

230 Anderson, "A Hollow Mockery: African," in *Eyes off the Prize*, [Page 89].

231 Ibid

and she, intimated, the only petitions the USSR ever supported were those authored by known communist-dominated groups.²³²

Anderson adds, “Roosevelt also warned Du Bois that the NAACP did not ever want to run the risk again of ‘exposing the United States to distorted accusations by other countries’ and that ‘colored people in the United States would be better served in the long run if the NAACP Appeal were not placed on the UN Agenda.’²³³ Afterwards, Eleanor Roosevelt resigned from the NAACP board of directors, an expensive cost for the organization. Considering the cost, the NAACP begged Roosevelt to remain on their board and she later agreed to stay. However, the NAACP “announced to a State Department official that he it had ‘no intention’ of pressing its case ever again before the United Nations.”²³⁴

In response to the various amendments that were proposed in response to the human rights legislation, Republican Senator John W. Bricker of Ohio, proposed the Bricker Amendment. The Bricker amendment would reinforce significant America’s battlements against the foreign invasion of human rights law. It also included the provision that all forty-eight legislatures had to ratify treaties and executive agreements. The passing of the amendment would ‘rein the eager beavers in the UN’ and ‘prevent some Americans’ from using UN treaties ‘as a substitute for national legislation on purely domestic matters’.²³⁵ By one vote, the amendment was struck down. The reluctance and resistance of engaging in the language of human rights solely because human rights legislations could possibly stop African Americans from being lynched or

232 Anderson, "A Hollow Mockery: African," in *Eyes off the Prize*, [Page 90].

233 Ibid

234 Ibid

235 Anderson, "A Hollow Mockery: African," in *Eyes off the Prize*, [Page 91].

receiving a quality education was well felt. Black identity and the tactics that Blacks could have possibly used in their struggle were bound up in law that they could not successfully challenge or influence. It was up to the lawmakers to determine the destiny of African Americans. African Americans being able to use the UN and the language of human rights in their continued fight for Black liberation was not a right that was automatically given to the Black population. It took a great fight for Dubois, the Black Youth Project, and others in the Black community to have access to the UN and for the Black Lives Matter Movement to be able to consider it a human rights movement and classify its issues as a human rights issue. Fortunately, the NAACP promise to ‘never again’ press its issues before the UN, was a promise un-kept. African Americans continue to bring the human rights violations and use the language of Genocide while broadcasting its issues to the international world.

The Black Lives Matter has become a transformative outlet for all Black people from different historical, cultural, socioeconomic and political identities. It is a source of solidarity for the survivors of colonization, exploitation, capitalism and police brutality—even outside of the borders of North America.²³⁶ The movement has gained supporters from Toronto, Ethiopians in Israel, Palestine and Ottawa. In Ferguson, police officer used tear gas bombs on protestors. Palestinians shortly after began showing their support via twitter. One Palestinian tweeted “Always make sure to run against the wind to keep calm when you're teargassed, the pain will pass, don't rub your eyes! #Ferguson

²³⁶http://www.theroot.com/articles/culture/2015/08/black_lives_matter_has_become_a_global_movement.html

Solidarity”²³⁷ Another tweeted, “Don't Keep much distance from the police, if you're close to them they can't tear gas you. To #Ferguson from #Palestine”²³⁸ Protestors in Hong Kong used the “Hands up, don't shoot” which has been used by African American protestors after the slaying of Michael Brown, to show support with the struggle in America. The systemic anti-Black racist discrimination against Ethiopians living in Israel became connected to the larger Black Lives Matter movement, with Ethiopian Jews demanding that their Black lives mattered, too. Much as in Ferguson and Baltimore, they demanded an end to discrimination and police brutality in Israel. When two African Americans were killed by Toronto Canadian police, Toronto Black Lives Matter Toronto shut down both sides of a major highway in July to agitate and advocate for the families.²³⁹ When Sandra Bland mysteriously died in police custody, individuals in Ottawa created a mural to show their support. One issue that the Black Lives Matter movement has showed is that Blacks are suffering all over the world. To be perceived a problem because you are Black is not just in America, but around the world. The rights that each and every individual argues they are entitled to is based on their human rights. The human rights language triumphs culture, religion, tradition, and local laws

International support to the African American struggle is not a new phenomenon as it has been seen in the 1960's but yet core activists of the Black Lives Matter movement have been quick to assert that their current wave of protest “is not your grand mamma's civil rights movement.”²⁴⁰ In addition to adapting the human rights language a

237<http://www.telegraph.co.uk/news/worldnews/northamerica/usa/11036190/Palestinians-tweet-tear-gas-advice-to-protesters-in-Ferguson.html>

238 Ibid

239http://www.theroot.com/articles/culture/2015/08/black_lives_matter_has_become_a_global_movement.html

240 Brown-Nagin, *Courage to Dissent*: Atlanta, [Page 89].

lot has changed from the era of the Civil Rights Movement. The BLM movement continues to make conscious decision to avoid mistakes from the past. First and foremost, they reject charismatic leadership model that has dominated Black politics for the past half century.²⁴¹ While the movement was started by three Black women, two of whom are queer women and one who is a Nigerian-American, they are not the face of the Black Lives Matter Movement—the people are. Frederick Harris writes,

Black Lives Matter activists today recognize that granting decision-making power to an individual or a handful of individuals poses a risk to the durability of a movement. Charismatic leaders can be co-opted by powerful interests, place their own self-interest above that of the collective, be targeted by government repression, or even be assassinated, as were Martin Luther King and Malcolm X. The dependence of movements on charismatic leaders can therefore weaken them, even lead to their collapse.²⁴²

This is a lesson that the movement has learned from the past, as this paper has explored all of these things happening at some point in time. Fred Hampton coined the slogans “you can kill a revolutionary, but you can’t kill the revolution” and “you can lock up a freedom fighter, like Huey Newton, but you can’t lock up a freedom fighting.” It seems as though although the slogans were fierce and catchy, they proved to be inadequate. Jeffrey Haas also reflected back on the issue.

Looking back on history, it’s not so clear that you can’t kill a revolution or a movement if you assassinate its leaders. It’s unlikely the Chinese Revolution would have succeeded with Mao dead, or that the Vietnamese would have obtained their independence without Ho Chi Minh...The murder of Patrice Lumumba in the Congo in 1961 and Salvador Allende in Chile in 1973 are examples of freedom struggles that were defeated because the CIA determined to kill their leaders.²⁴³

241 "Black Lives Matter is a Global Movement,"

http://www.theroot.com/articles/culture/2015/08/black_lives_matter_has_become_a_global_movement.html.

242 *ibid*

243 Haas, *The Assassination of Fred*, [Page 66].

The Black Lives Matter Movement's understanding of how easy it is for a movement to die after the leaders have been assassinated is the reason why they have chosen to work in groups. Also, it is not everyone's intention or goal to be assassinated for the movement. History has proven Haas to be correct and certainly the BLMM has taken heed to these claims. The Black Lives Matter movement has insisted on a group-centered model of leadership, rooted in ideas of participatory democracy. While the movement has modeled itself after the Student Nonviolent Coordinating Committee (SNCC), they also operate on the principle that no one person or group of individuals should speak for or make decisions on behalf of the movement."²⁴⁴ Ashley Yates a cofounder of BLM recalled the time where a police officer grabbed her by the arm at a New York protest and referred to her by her Twitter handle, @brownblaze. She confesses, "It does something to your idea of freedom as an American when you know you're being surveilled," Yates said. "They let you know that they know who you are and they're watching."²⁴⁵ The harassment of individuals in a movement is not unfamiliar in America as we have seen it with the BPP.

BLMM argues that its focus is not only criminal justice and policing but a variety of things. However, researching the movement shows that their main focus—if not their only focus is indeed the criminal justice system. It is not a negative matter that would be frowned upon, thus the reasoning why BLMM continues to respond that it's more –when its tactics shows otherwise, is unclear. Every movement starts from somewhere, the BLMM can be mastering the criminal justice component and then growing and gaining skills to actually implement its other goals. The important thing to note is that the

244 "A Year of Black Lives Matter," <http://www.theatlantic.com/politics/archive/2015/12/black-lives-matter/421839/>.

245 *ibid*

movement is young. There is room for improvement as there is room for improvement with all movements. The BLMM is learning and preparing to grow and the activists are looking to expand the ways the movement engages in politics. Tarik Mohamed is a New York BLM activist who is at the forefront of the change. He admits, “The movement is evolving and there are different ways that people are working to advance that and make that happen.”²⁴⁶ He continues by adding that, “We need to continue to evolve our political voice, and that’s what I’m trying to do.”²⁴⁷ SNCC did not start off engaging in legal activities until a couple of years of first starting. The BLMM is not fighting the law with the law but with direct action. However, this may soon change. Across the country, Black Lives Matter activists are investing time and effort to recruit and train a legal aid and emergency response network.

In challenging the criminal justice system the BLM community has made progressive moves. There are a number of events that has happened from the constant focus on issues within police brutality. In May of 2015, Obama called for an end to transfers of certain kinds of military-style equipment from the federal government to police departments.²⁴⁸ In December, the FBI announced a new effort to improve its tracking of fatal police shootings.²⁴⁹ Later, Chicago’s mayor Rahm Emanuel and Baltimore’s mayor Stephanie Rawlings-Blake fired their police chiefs amid protests over police brutality.²⁵⁰ The movement has also made its mark on the recent presidential campaign. BLM activists interrupted the presidential candidates at events and campaign

246 "A Year of Black Lives Matter," <http://www.theatlantic.com/politics/archive/2015/12/black-lives-matter/421839/>.

247 Ibid

248 Ibid

249 Ibid

250 Ibid

rallies and reached some success. Democratic candidates Bernie Sanders and Martin O'Malley rushed to release detailed criminal-justice platforms after high-profile clashes with Black Lives Matter activists. In August, Hillary Clinton convened a meeting with activists who showed up at a New Hampshire campaign event intending to disrupt it.²⁵¹ However, in response to the mobilizing in Ferguson, President Obama urged change would “requires we listen, and not just shout..”²⁵² But this is exactly what the BLM did, they showed up to the campaign places and shouted. They demanded that Black lives and the oppression it faces be demanded. Considering the need for the presidential candidate to gain the Black vote, it did not fall on deaf ears.

The claim that Black Lives Matter has also not fallen on deaf ears. Black Lives Matter is indeed a popular slogan in today's society—especially when a threat to a Black life happens. However, it begs to question what qualifies as a movement. There has been a lot of discussions using the concepts of Black lives matter. But will the discussions have the efficiency to turn into actual actions? The movement has the publicity it needs but will it seize the moment as Fred Hampton once said? The organizations that contributed to the civil rights movement were political. They understood the politics of their oppression, but they also found out meaningful ways to fight it. The Black Lives Matter movement is being called the biggest grassroots movement in the country right now. There is a lot of work to be done for the Black Lives Matter movement to live up to the claim. There have not been any tangible gains yet won by the movement, but in a few years with more experience, there is potential. In addition to gaining a political voice, the movement lacks strategic tactics. The demands that the

251 Ibid

252 <https://www.whitehouse.gov/the-press-office/2014/08/18/statement-president>

BLMM make are huge and must be followed up with tactics that can actually lead to them. In the provided critique, Ansa Asaka, an attorney is recommending that the movement makes itself be involved with the law a bit more. He writes,

Instead of engaging in such juvenile publicity stunts, the movement must present a clear set of demands to elected officials and candidates. The movement must demand that all politicians pass legislation that is in accord with those demands. Instead of just tweeting and marching, the activists should be conducting effective and massive voter registration and education drives. If we do not vote, we cannot complain about politicians not implementing reforms. If we do not vote, we cannot complain about juries and grand juries letting killers like Darren Wilson and George Zimmerman go free. Through the vote, we are able to serve on juries and render justice.²⁵³

Asaka's criticism holds a lot of weight. It is one thing to make the demands, but it is equally important to ensure that there is a plan. Frederick Douglass once said, "Power concedes nothing without a demand. It never did and it never will." Thus, the demand has to happen. This requires strategic thinking. All movements have always required strategic thinking. Alicia Garza was asked whether or not BLMM is going towards abolition of the police and she responded "The point to me is to be able to dig into these questions as opposed to being prescriptive about what the answers are."²⁵⁴ This project takes a strong stand against her viewpoint. BLMM has stated repeatedly that its goal is to fight white supremacy and institutional racism. However, how will this happen if there is no planning on what it will take? When there is a lack of discussion on methods and tactics? Organizations in the 1960's were strategic. SNCC focused on the questions and even more so zoomed in on what they thought the answers were. SNCC found its way bringing change to policy. The BMM has had no victories in legislation or policy in local, state, or

²⁵³ One year later, the #BlackLivesMatter Movement is a Failure,

<http://www.rippdemup.com/justice/one-year-later-the-blacklivesmatter-movement-is-a-failure/>.

²⁵⁴ "A Q&A With Alicia Garza, Co-Founder of #BlackLivesMatter." <http://www.thenation.com/article/qa-alicia-garza-co-founder-blacklivesmatter/>.

national parties. Pressuring the presidential candidates to acknowledge the criminal justice system is by far the closest. The failure of being strategic has led to Bruce Dixon, going as far as calling the movement a brand.

Maybe movements nowadays are really brands, to be evoked and stoked by marketers and creators when needed. But it's hard to imagine a brand transferring the power from the wealthy to the poor. It's hard to imagine a brand being accountable to its membership, even if you could be a member of a brand. And it's impossible for a brand to prefigure, to get us ready to imagine and become the kind of people we'll need to be to build the new world after capitalism.

He adds,

Why doesn't the #BlackLivesMatter movement, supposedly focused upon the unique needs of people of color, have any critique of the Black political class, almost all Democrats, who have been key stakeholders in the building of the prison state, in gentrification and school privatization from New Orleans to Detroit and beyond, and who helped peddle the subprime mortgages to Black families which exploded and cut Black family wealth by nine-tenths? Have they even noticed that a Black president has closed and privatized more public schools than any other in US history? For all the big words they use, do they ever mention the word "capitalism"?²⁵⁵

Once again, these are criticisms that carry weight in the evaluation of the Black Lives Matter movement. Although the Black Lives Matter movement has a long way to go in the ways in interacts with people, government, and law there are organizations picking up the slack. The movement itself may not be bound up in law, but there are multiple of law firms that is working towards the cause of Black liberation within the limits of the law. The way that the Black population is being bound up in law has change and shifted the roles that lawyers both Black and white continue to make law a tool and relevant. Even with the expulsion of the race card in creating legal suits, lawyers are using every method

²⁵⁵ "Where's the #BlackLivesMatter Critique of the Black Misleadership Class, or Obama or Hillary?," <http://blackagendareport.com/wheres-the-blacklivesmatter-critique-of-black-political-class>.

and tactic possible to better the lives of Black people. By any means necessary, the fight for black liberation must continue.



Seize the Moment

This historical and present day analysis has shown the relationship between law and Black identity. The law has not always been the friend of African Americans, nor has it proved itself to be trusted, as the young African American boy believed. The rights in the constitution has not always been meaningful for African Americans, just as the thirteenth amendment does not solve the modern day slave system. The law relationship with Black identity has been deadly and constraining at its worst, and useful and empowering at its best. Black identity has been bound up in law in a number of ways. In the civil rights era, bound up in law has sometimes meant figuring out the different tactics of how to engage with the law. This led to a variety of discussions within the Black community across the lines of class.

The women of SNCC and the Black Panthers became bound up with the movement. Yet, the movement was in response to conditions in Black communities that were created/maintained through the law. The Black Panthers had no desire to change the law, but the work they engaged in became targeted by the law, and then destroyed by the law. Through the destruction of the Black Panther Party, with COINTELPRO, the law showed the way it could demolish an attempt to uplift the Black race, and had no issue with assassinating 'black messiahs' such as Fred Hampton or massively incarcerating them, as members of the Black Panther Party became America's political prisoners. Black identity being up in law has meant there has been a psychological state in which African Americans saw their struggle, as struggles of law, a practical sense in which

struggles aimed to reverse discriminatory law or discrimination that prevented the equal enforcement of the law, and an essential sense in which the law was inscribed in all facets of the struggle. The journey continues on. In 2016, the law has not removed its paws out of Black identity. Critical race theory argues that the law has viciously made the fight for black liberation a more complicated battle. This calls for movements, such as the Black Matter Movement, to continue to mobilize and strengthen its political voice in order to strategically fight for Black liberation. The race neutrality that has occurred in the American legal system no easy fight, but nevertheless, a fight that must be waged. From members of SNCC, the NAACP LDF, CORE, The Guild, People Law Office, the Black local community, the Black Panthers, present day students activist, and lawyers, the law continues to have a role in the struggle for black liberation. As, Fred Hampton said, activist must seize the moment and continue to fight for freedom in America. In that battle, the law will continue to be bound up in Black identity, for better or for worse.

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