

BLACK LIVES MATTER AS A DISTINCTIVE AMERICAN CIVIL RIGHTS MOVEMENT:
A LOOK AT IDEOLOGY AND TWO FOCAL POINTS FOR THE MOVEMENT

by
Michael G. Palmere

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Abstract

Black Lives Matter (BLM) is a distinctive American civil rights movement that began in 2012 following the killing of Trayvon Martin. Even though the not guilty verdict for George Zimmerman was the flashpoint that sparked a now decade-long social movement, the concerns of BLM are not exclusive to justice system failures. In addition to critiques of the criminal justice system, BLM is concerned with matters such as police brutality and removal of monuments that memorialize the Confederacy as well as colonial beneficiaries of slavery. The latter especially speaks to the claim that BLM is a social movement distinct from previous American civil rights movements such as the 19th-century abolitionist movement and the Civil Rights movement of the 1950s and 60s. BLM situates its ideology in the literature of Critical Race Theory (CRT). This distinguishing aspect of BLM—that it seeks to undercut the philosophical citadel of American liberalism rather than revive the promise of America’s *Declaration of Independence*—is what detaches it from the charge of America’s mid-20th century civil rights movement. Briefly, this might be exemplified by the fact that it was not just Confederate monuments that were coming down in the last couple of years. Instead, it was also these symbols of colonialism such as a monument to Christopher Columbus coming down in South Carolina and even vandalism of statues depicting America’s slave-owning founders.

This thesis will be divided into three chapters. The first chapter of this project establishes the thesis that the distinguishing aspect of BLM is that its ideology critiques liberalism’s color-blind ethic in a way that previous movements have not fully articulated. The second chapter presents the thesis that police lethal use of force procedures are regularly found to be confusing as both institutional actors (e.g., police department leadership, attorneys general) and the general public process police bodycam footage release. Institutional instability—that being confusing

procedures that lack standard application—generates consensus among the public that something needs to be done. Finally, the third chapter provides the thesis that Heritage Law strength—that is, the structure of laws institutionalizing the protection of historical monuments—is a significant determinant for the cadence of Confederate monument removal. This project’s investigation of the ideology of BLM, as well as two focal points for the movement (police use of force reform and Confederate monument removal), will distinguish BLM from previous emancipatory, civil rights movements in American history, particularly the civil rights movement of the 1950s and 60s.

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Introduction

Black Lives Matter (BLM) is a distinctive American civil rights movement that began in 2012 following the killing of Trayvon Martin. Even though the not guilty verdict for George Zimmerman was the flashpoint that sparked a now decade-long social movement, the concerns of BLM are not exclusive to justice system failures. In addition to critiques of the criminal justice system, BLM is concerned with matters such as police brutality and removal of monuments that memorialize the Confederacy, including monuments to the colonial beneficiaries of slavery. The latter example speaks to the claim that BLM is a social movement distinct from previous American civil rights movements, in particular the civil rights movement of the 1950s and 60s. BLM situates its ideology in the literature of Critical Race Theory (CRT). CRT, existing in the critical tradition, embraces the general ethic of self-awareness and “a self-conscious[ness] [in] relation to the society around it.”¹ In the case of BLM’s ideology, this means prompting self-awareness regarding the gap between liberalism in theory and liberalism in practice. The distinguishing aspect of BLM—that it seeks to undercut the philosophical citadel of American liberalism rather than revive the promise of America’s *Declaration of Independence*—is what detaches it from the charge of America’s mid-20th century civil rights movement. Briefly, this might be exemplified by the fact that it was not just Confederate monuments that were coming down in the tumultuous months following George Floyd’s murder. Instead, it included symbols of colonialism such as a monument to Christopher Columbus coming down in South Carolina.² It also included vandalism of statues depicting America’s slave-owning founders.³

¹ James Gordon Finlayson, “Political, Moral, and Critical Theory: On the Practical Philosophy of the Frankfurt School,” In *The Oxford Handbook of Continental Philosophy*, 630, 2007.

² Bristow Marchant, “Christopher Columbus statue in Columbia removed, mayor cites fear of vandalism,” *The State*, June 12, 2020, <https://www.thestate.com/news/local/article243485776.html>.

³ Annie Gowan, “As statues of Founding Fathers topple, debate rages over where protesters should draw the line,” *The Washington Post*, July 7, 2020, <https://www.washingtonpost.com/national/as-statues-of-founding-fathers->

This research will present BLM in this light—that, through examples such as police accountability protests and efforts to remove symbols celebrating America’s disingenuous promise (i.e., monuments to Confederate and colonial figures), BLM encourages a critical self-awareness of the gap between the promise of liberalism and its practice.

The relevance and importance of this topic can be located in the far-reaching impact of BLM since 2012, but especially since George Floyd’s murder in 2020. Its impact was not exclusive to politics. It extended into socio-cultural concerns and economic matters as well. Critics of the movement might boil it down to just the Defund the Police mantra heard during the many protests. Even though many municipalities have, in part, embraced this call through significant reallocations of resources and obligations away from police and to other social service providers, BLM has influenced the social and cultural fabric of America as well. Corporations have drastically reengineered marketing campaigns to remove stereotypical images of blacks and establish a more socially conscious approach to bringing their goods and services to market. On the economic front, cities such as Asheville, North Carolina have instituted reparation schemes to acknowledge the generational impact felt by descendants of slaves.⁴ In addition to these changes, the most visually apparent relevance were the hundreds of thousands of people in the streets following George Floyd’s murder. Before this, individual instances of unarmed black men killed by police had received attention beyond their individual communities (e.g., Eric Garner’s 2014 death by police chokehold in New York City). However, George Floyd’s murder sparked a much larger response that prompted institutions, both political and social, to make significant changes.

topple-debate-rages-over-where-protesters-should-draw-the-line/2020/07/07/5de7c956-bfb7-11ea-b4f6-cb39cd8940fb_story.html

⁴ Neil Vigdor, “North Carolina City Approves Reparations for Black Residents,” *The New York Times*, July 16, 2020, <https://www.nytimes.com/2020/07/16/us/reparations-asheville-nc.html>

BLM finds itself in the midst of two other schools of thought regarding racism in America. One school, exemplified by the thinking of Thomas Sowell and the All Lives Matter (ALM) movement, might best be described as the black conservatism school. The other school, represented by Malcolm X during the American Civil Rights movement of the 1950s and 60s as well as the Not Fucking Around Coalition (NFAC) during the BLM era, could be categorized as the black nationalism school. BLM finds itself somewhere in the middle, certainly rejecting many premises of the black conservatism school and largely rejecting the supremacism of the black nationalism school. Instead, BLM seeks to highlight entrenched institutional obstacles to black social, political, and economic equity. How might those institutional obstacles be overcome? The monument removals and vandalism seem to suggest a tear-it-down ethic. However, reform of corporate marketing on the socio-cultural front, police reform measures on the political front, and reparation schemes on the economic front all suggest that incremental institutional reform and reimagining, instead of outright destruction is the most likely course of action as BLM moves forward.

To briefly cover these contrasting schools of thought, it seems apt to identify the philosophical object of concern for each school. Black conservatism might be captured by recent comments made by Thomas Sowell on the matter of systemic racism. In a 2020 interview Sowell claimed that systemic racism “really has no meaning that can be specified and tested in the way that one tests hypotheses.”⁵ This concern from Sowell harkens back to Dr. Martin Luther King Jr.’s (MLK) charge that people should “not be judged by the color of their skin but by the content of their character.”⁶ Former Housing and Urban Development (HUD) Secretary and

⁵ Charles Creitz, “Thomas Sowell says concept of systemic racism ‘has no meaning,’ warns US could reach ‘point of no return,’” *Fox News*, July 12, 2020, <https://www.foxnews.com/media/thomas-sowell-systemic-racism-has-no-meaning>

⁶ Martin Luther King Jr., “‘I Have A Dream’ Speech,” *NPR*, August 28, 1963,

2016 presidential candidate Ben Carson said, when questioned about BLM, that “all lives matter...[BLM] is so typical of political correctness in our country...we have to stop submitting to those who want to divide us into all these special interest groups and start thinking about what works for everybody.”⁷ Black conservatism’s ethic, or object of philosophical concern, is color-blindness. As Michael C. Dawson put it, “political and social equality are considered to be at least secondary concerns [for black conservatism], since the path to moral inclusion and full citizenship must be in their view based on black economic self-sufficiency.”⁸ In contrast, BLM does take those matters of equality as primary concerns and rejects color-blindness for color-consciousness.

On the other hand, for the black nationalism school of thought, the object of concern is quite different than it is for black conservatism. Here, the reality of oppression—in the case of America, white supremacist oppression—must be acknowledged. Once this step has been made, nationalism is used as a tool to overcome the oppressors in a way that establishes a new nation that frontloads the interests of blacks. Keally McBride sums this scheme up by saying, “nationalism [is] a tool for creating the collective that can disrupt the [supremacist] powers.”⁹ Recently, this can be seen in a faction of BLM called the Not Fucking Around Coalition (NFAC) which set off violent protests in Louisville, Kentucky in July of 2020 following Breonna Taylor’s killing.¹⁰ Their founder, John Fitzgerald Johnson, claims that “his group emerged as a

<https://www.npr.org/2010/01/18/122701268/i-have-a-dream-speech-in-its-entirety>

⁷ David Sherfinski, “Ben Carson: ‘Of course all lives matter — and all lives includes black lives,’” *The Washington Times*, October 15, 2015, <https://www.washingtontimes.com/news/2015/oct/15/ben-carson-course-all-lives-matter-and-all-lives-i/>

⁸ Michael C. Dawson, “The Black Public Sphere and Black Civil Society,” In *The Oxford Handbook of African American Citizenship, 1865-Present*, 379-380, 2012.

⁹ Keally McBride, “Frantz Fanon, *The Wretched of the Earth*,” In *The Oxford Handbook of Classics in Contemporary Political Theory*, 5, 2017.

¹⁰ Sarah Ladd, “Police: 3 Black militia members injured in negligent gun discharge, may result in charges,” *Louisville Courier Journal*, July 26, 2020, <https://www.courier-journal.com/story/news/local/2020/07/26/nfac-shooting-louisville-being-investigated-negligent-shooting/5514492002/>

response to enduring racial inequality and police brutality.”¹¹ However, just like BLM has tactical factions such as NFAC, it also has philosophical factions. BLM, as the first chapter will illuminate, rather than being a black nationalist movement, could be more appropriately characterized as a social critique of liberalism in general. Rather than reviving the promise of America’s *Declaration of Independence*—something MLK sought to do—BLM would like to critique that promise and rebuild it from a structural perspective that is not intended to exclusively benefit the black community.

This research project will be divided into three chapters. The first chapter of this project establishes the thesis that the distinguishing aspect of BLM is that its ideology critiques liberalism’s color-blind ethic in a way that previous movements have not fully articulated. BLM’s liberal critique is illuminated in the literature of CRT. This chapter goes on to open the literature of liberalism, CRT’s critique of liberalism, and a comparison of tactics between the American Civil Rights movement of the 1950s and 60s and BLM. With regard to liberalism, three of its central tenets—freedom/equality, recognition, and universal reason—are presented in order to set the stage for CRT’s critique. This critique takes on liberal thinkers such as John Locke and John Stuart Mill and contrasts them with thinkers from the field of critical theory such as Herbert Marcuse, Richard Delgado, and Charles Mills. Generally, what the the critique encourages is what Charles Mills calls an *Occupy Liberalism* ideological movement where concepts such as domination can be integrated within a liberal framework which celebrates its emancipatory power.¹² In addition to this debate between CRT and liberalism, the chapter

¹¹ Nicole Chavez, Ryan Young and Angela Barajas, “An all-Black group is arming itself and demanding change. They are the NFAC,” *CNN*, October 25, 2020, <https://www.cnn.com/2020/10/25/us/nfac-black-armed-group/index.html>

¹² Charles W. Mills, *Black Rights/White Wrongs: The Critique of Racial Liberalism*, New York: Oxford University Press, 2017, 4.

considers what makes BLM different from the 1950s/60s American Civil Rights movement. In particular, the social movement tactics of both are examined. In broad strokes, the 1950s/60s American Civil Rights movement, through tactics such as lunch counter sit-ins, sought to garner sympathy and revive the promise of America's *Declaration of Independence*, something Abraham Lincoln called for and why MLK summoned his thinking so often. On the other hand, BLM relies on more in-your-face tactics such as Black Brunch. BLM seeks the radical restructuring of institutions in order to illuminate that, despite measures of law that seek equity, there is still something missing when it comes to the fight for equality. Finally, the chapter concludes that the ideology of BLM is inextricably linked to CRT's critique of liberalism. The American Civil Rights movement of the 1950s and 60s sought a revival of America's founding principles through non-violent social action in order to leverage the white majority into a realm of empathy toward black subjugation. On the other hand, BLM seeks to account for the institutional and systemic racism that has survived the supposed legal victories for black individuals as a result of the American Civil Rights movement. CRT claims that this should be conceptualized as a critique of the liberalism that sparked America's founding: the promise of natural freedom and equality, the desire for individual recognition, and the belief in a reason that could be universally shared. These ideals are not enjoyed by all and BLM spotlights that disparity. The assumption of the American Civil Rights movement—that black oppression could be removed through sympathy and proper reason—is not assumed by BLM. Rather, BLM wants to take on the promises of liberalism in a much more fundamental way by redefining its promise.

The second chapter presents the thesis that police lethal use of force procedures are regularly found to be confusing as both institutional actors (e.g., police department leadership, attorneys general) and the general public process police bodycam footage release. Institutional

instability—that being confusing procedures that lack standard application—generates consensus among the public that something needs to be done. Public consensus—that is, agreement outside the bounds of institutions—has seemed to produce institutional consensus, in particular the decision to promptly release bodycam footage from a fatal encounter. Generally, the thesis is that instances of confusing use of force procedures within the policing institution have a positive effect on public consensus. In order to present a comprehensive discussion regarding this claim, the chapter takes a look at literature on police use of force, instability, and consensus. Through studies of three cases of police lethal use of force in Utah, the BLM protests that followed, and the timeline regarding release of bodycam footage, the chapter concludes that there is meaningful interplay between institutional process breakdown, the social movements that follow, and the institutional consensus that comes about in the shadow of public concern. In two of these cases where lethal police use of force procedures were confusing and indiscriminately applied, protests followed which called for transparency surrounding the details of these fatal encounters with police. This prompted institutional actors, particularly local police departments and the district attorney to release police bodycam footage quickly. In one case, low levels of public consensus, evident in the lack of protests following a confusing instance of police lethal use of force, resulted in a lack of institutional consensus, particularly when it came to the decision to release bodycam footage. In all three of these cases, there was confusion among both the public and the district attorney regarding why less-than-lethal measures like TASERs were deployed simultaneously with lethal force. This tendency for lethal and less-than-lethal methods to be used simultaneously represents an institutional process breakdown. Although some of the training recommendations presented by the district attorney in these cases have been implemented by police departments, the changes regarding matters of law have received less attention. It is clear

from the state chokehold ban, passed in Utah in June of 2020, that a great degree of public consensus is needed to move the needle on levels of state-wide institutional consensus. However, public consensus, even on a small scale, matters in terms of producing institutional change. Specifically, the presence of protests following a confusing instance of lethal police use of force has a positive impact on the timely release of bodycam footage. This same public consensus, however, does not account for much change when it comes to more impactful institutional consensus, such as officers being criminally charged, or police reform measures being passed at the state-level. For this kind of institutional change to trigger, levels of public consensus must be immense as is evident in the protests following George Floyd's death and the subsequent police reform measures that occurred at state and local levels.

Finally, the third chapter provides the thesis that Heritage Law strength—that is, the structure of laws institutionalizing the protection of historical monuments in law—is a significant determinant for the cadence of Confederate monument removal. The chapter utilizes Confederate monument history and critical juncture theory literature to set the stage for a discussion of two cases study states: North Carolina (NC) and South Carolina (SC), their institutional arrangements regarding Heritage Laws, and their experience with removal/relocation following George Floyd's murder. Generally speaking, NC has an executive-driven Heritage Law while SC has a legislative-driven one. The paper establishes a weak versus strong Heritage Law dichotomy wherein executive-driven Heritage Laws are characterized as weak and legislative-driven Heritage Laws are characterized as strong. The chapter concludes with some stark outcomes between the two case study states. In NC, as of October 15th, 2020 18 monuments to the

Confederacy have been removed or relocated.¹³ When taking into account the Raleigh case of June 2020 where 3 monuments came down immediately following a day of violence,¹⁴ it became apparent that the unilateral agency exercised by NC's governor (prompted by the contingent nature of social unrest) contributed to this rapid outcome. In this case, the conclusion is that the contingent nature of social unrest in the context of a weak Heritage Law allowed for unilateral action by the governor and produced a greater number of Confederate monument removals. In the SC case, there were no Confederate monuments removed or relocated in 2020 as of October 15, 2020.¹⁵ When weighing this absence against the hypothesis, it seems that both agency and contingency as well as the impact of weak institutions were not contributing factors. In fact, the opposite seems to be true, especially when evaluating the institutional integrity of their Heritage Law. Unlike NC's law which allows for unilateral action, SC's law requires a high bar of legislative approval where two-thirds of both houses of SC's General Assembly must approve monument removals. The conclusion in this case is that the character of SC's Heritage Law is strong due to this immense legislative obstacle. Therefore, strong Heritage Laws result in lower numbers of Confederate monuments beings removed. Laying these findings against the backdrop of critical juncture theory produces some interesting insights. The nature of critical junctures, particularly when it comes to the issue of Confederate monument removal, seems to rely upon the agency exacted by powerful actors. These actors are sometimes able to justify their actions by explaining the contingent nature of a flashpoint (e.g., public safety concerns). Deciding

¹³ "SPLC Whose Heritage? Reports over 100 Confederate Symbols Removed Since George Floyd's Murder," Southern Poverty Law Center, October 15, 2020, <https://www.splcenter.org/presscenter/splcs-whose-heritage-reports-over-100-confederate-symbols-removed-george-floyds-murder>.

¹⁴ Josh Chapin, "Demonstrators topple 2 statues from Confederate monument outside NC Capitol building," *ABC 11*, June 20, 2020, <https://abc11.com/6256848/>. Virginia Bridges and Josh Shaffer, "To cheers and music, workers dismantling 75-foot Confederate monument at NC Capitol," *The News & Observer*, June 21, 2020, <https://www.newsobserver.com/news/politics-government/article243693472.html>.

¹⁵ "SPLC Whose Heritage? Reports over 100 Confederate Symbols Removed Since George Floyd's Murder."

whether 2020 constituted a critical juncture for NC—a state where 18 Confederate monuments were removed in a matter of months—requires a look at the conditions that allowed for such a rapid change.¹⁶ Agency, contingency, and weak institutions are all building blocks of critical junctures. In this case, the stability of NC’s Confederate monument protection can be quantified. Nearly three-quarters of the Confederate monuments that were removed or relocated in NC since 1868 came down in 2020.¹⁷ Due to this outcome, it seems fair to characterize NC’s experience in 2020 with Confederate monument removal as a critical juncture.

¹⁶ “SPLC Whose Heritage? Reports over 100 Confederate Symbols Removed Since George Floyd’s Murder.”

¹⁷ “Whose Heritage? Public Symbols of the Confederacy,” Southern Poverty Law Center, February 1, 2019, <https://www.splcenter.org/20190201/whose-heritage-public-symbols-confederacy>.

Chapter I

The Ideology of Black Lives Matter (BLM): Critical Race Theory's Critique of Liberalism in the Shadow of America's Civil Rights Movement

On June 6, 2020, 500,000 people across the United States rallied for greater police accountability.¹⁸ They showed up for many reasons, but the death of George Floyd stirred something inside of them that made the summer of 2020 catalytic. Reverend Al Sharpton captured the spirit of these reasons in Floyd's memorial:

What happened to Floyd happens every day in this country, in education, in health services, and in every area of American life, it's time for us to stand up in George's name and say...get your knee off our necks.¹⁹

Less than 2 weeks prior to the memorial, Floyd, an unarmed black man, died by cardiopulmonary arrest as a Minneapolis police officer knelt on his neck for 8 minutes and 46 seconds. He pleaded with the officer 16 times, "I can't breathe."²⁰ Ten months later, that police officer faced a jury in a murder trial. Despite the murder conviction resulting from the trial,²¹ activists from the Black Lives Matter (BLM) movement did not see the verdict as a cause for "parade;" rather, they saw it as a singular, although meaningful, event in a larger "revolution."²² The social justice activism evident following Floyd's murder certainly does not mark its distinction as a movement. America has a long history of activism that has at its heart,

¹⁸ Larry Buchanan, Quoctrung Bui, and Jugal K. Patel, "Black Lives Matter May Be the Largest Movement in U.S. History," *The New York Times*, July 3, 2020, <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html>

¹⁹ Al Sharpton, "George Floyd's Memorial Service Eulogy," <https://www.rev.com/blog/transcripts/reverend-al-sharpton-eulogy-transcript-at-george-floyd-memorial-service>

²⁰ State of Minnesota vs. Derek Michael Chauvin, "Criminal Complaint." District Court 4th Judicial District, <https://www.hennepinattorney.org/-/media/Attorney/Derek-Chauvin-Criminal-Complaint.pdf?la=en&hash=1E453C8A0834E00805D32DA7132616A1D28F7AD5>

²¹ State of Minnesota vs. Derek Michael Chauvin, "Verdict - Count 1," District Court 4th Judicial District, April 20, 2021, <https://www.mncourts.gov/mncourtsgov/media/High-Profile-Cases/27-CR-20-12646/Verdict104212021.pdf>

²² Trevor Hughes, "'No justice, no streets;' Still grieving, Minneapolis residents wonder how city will move forward after Derek Chauvin trial," *USA Today*, April 4, 2021, <https://www.usatoday.com/story/news/nation/2021/04/04/derek-chauvin-trial-minneapolis-reckons-george-floyds-death/4848181001/>

the charge of eradicating racism (e.g., the abolitionist movement of the 19th-century and the American Civil Rights movement of the mid-20th century). The distinguishing aspect of BLM is that its ideology critiques liberalism's color-blind ethic in a way that previous movements have not fully articulated. BLM's liberal critique is illuminated in the literature of Critical Race Theory (CRT). While in a Birmingham jail cell during America's mid-20th century civil rights movement, Dr. Martin Luther King Jr. (MLK) wrote that, "privileged groups seldom give up their privileges voluntarily."²³ The same reluctance seems to apply to ideologies, including what Francis Fukuyama called the "broad acceptance of liberalism."²⁴ In the case of this research, BLM's ideology, inspired by CRT, takes aim at American liberalism and its institutions. To be clear, imagining an upheaval of American liberalism and a rewriting of the founding principles is certainly out of reach for BLM as other American emancipatory movements have realized. Yet, the critical lens BLM applies to both liberalism and the American founding principles convincingly highlights their inherent irony.

Prior to exploring the tenets of liberalism and CRT's critique of those cherished tenets, some basic terms need to be clarified. First, BLM is an American social movement sparked by the killing of Trayvon Martin in 2012; it seeks to "combat rampant institutional inequality and police brutality" through a "reconceptualization of radical ethics for black politics."²⁵ Second, liberalism, broadly, is a political ideology; it is constituted by "an individualist creed, celebrating a particular form of freedom and autonomy;" it "involv[es] the development and protection of systems of individual rights, social equality, and constraints on the interventions of social and

²³ Martin Luther King Jr., "Letter from Birmingham Jail," *The Atlantic Monthly* 212, no. 2 (August 1963), https://www.csuchico.edu/iege/_assets/documents/susi-letter-from-birmingham-jail.pdf

²⁴ Francis Fukuyama, *The End of History and the Last Man*, New York: The Free Press, 1992, 233.

²⁵ Christopher J. Lebron, *The Making of Black Lives Matter*, New York: Oxford University Press, 2017, xix.

political power.”²⁶ Third, CRT is a “movement that challenges the ability of conventional legal strategies to deliver social and economic justice and specifically calls for legal approaches that take into consideration race as a nexus of American life.”²⁷ Although these are the three central concepts of this paper, their interplay exists due to the relevance of BLM in American political and social discourse.

BLM has taken on many issues of racial injustice during its nearly 10-year history (e.g., monuments that memorialize the Confederacy as well as figures affiliated with 15th to 19th-century colonialism and slave ownership, police brutality, and economic justice). Although loosely structured, their website says that the overall mission of BLM is “to eradicate white supremacy and build local power to intervene in violence inflicted on Black communities by the state and vigilantes.”²⁸ Chris Lebron calls BLM, “the movement that seeks to redeem a nation.”²⁹ Although there is not an official leader of BLM,

Alicia Garza, Patrisse Cullors, and Opal Tometi... created #BlackLivesMatter...as a call to action for Black people after 17-year-old Trayvon Martin was posthumously placed on trial for his own murder and the killer, George Zimmerman, was not held accountable for the crime he committed. Thus, it was the death and failure of our justice system to account for the unnecessary death of a black American that prompted three women to offer these three basic and urgent words to the American people: black lives matter.³⁰

BLM works “like the way a corporate franchise works, minus revenue and profit ...#BlackLivesMatter is akin to a social movement brand that can be picked up and deployed by any interested group of activists inclined to speak out and act against racial injustice.”³¹ The movement “seeks to finally undo this nation’s murderous racial history [and]... represents a civic

²⁶ Michael Freeden and Marc Stears, “Liberalism,” In *The Oxford Handbook of Political Ideologies*, 2013, 330.

²⁷ Chris Demaske, “Critical Race Theory,” First Amendment Encyclopedia, Middle Tennessee State University, 2009, <https://www.mtsu.edu/first-amendment/article/1254/critical-race-theory>

²⁸ “About,” Black Lives Matter, <https://blacklivesmatter.com/about/>.

²⁹ Lebron, *The Making of Black Lives Matter*, x.

³⁰ Lebron, x-xi.

³¹ Lebron, xi.

desire for equality and a human desire for respect, the intellectual roots of which lie deep in the history of black American thought.”³² Both BLM activists and CRT scholars claim that “what is needed today is a reconceptualization of radical ethics for black politics.”³³ This is why BLM has taken an institutional/structural approach to account for unrealized expectations following the American Civil Rights movement of the mid-20th century. In his book, *The Making of Black Lives Matter*, Chris Lebron presents the following tactics which capture BLM’s spirit: (1) shameful publicity, (2) counter-colonization of the white imagination, (3) unconditional self-possession, and (4) unfragmented compassion.³⁴ In addition to Lebron’s outline of BLM’s tactics, he summons the canon of African-American thought by showing the influence of writers such as Frederick Douglass and Ida B. Wells, the art of the Harlem Renaissance and the literature of Langston Hughes and Zora Neale Hurston, as well as the activism of Anna Julia Cooper, Audre Lorde, and the Black Panthers. Despite these influencers of BLM, this research will focus on the impact of CRT, starting with the work of legal scholars such as Derek Bell in the 1970s. As this paper proceeds, BLM’s spirit will become evident in the literature of CRT and underpin the argument that the ideology of BLM is bound up in CRT concepts and represents a critique of liberalism which has enjoyed such a privileged position in American political thought.

This project will be broken down into four sections. Section I will survey the tenets of liberalism, specifically those which CRT critiques. This review will include the thought of prominent figures such as John Locke and John Stuart Mill. Section II will present the CRT critique of liberalism. This critique is founded upon the assumption that American efforts towards racial justice (e.g., the abolitionist movement of the 19th-century and the American Civil

³² Lebron, xii-xiii.

³³ Lebron, xix.

³⁴ Lebron, xx-xxi.

Rights movement of the mid-20th-century) left gaps that BLM has identified. Section III offers a differentiation between the American Civil Rights movement of the mid-20th century and the BLM movement of the 21st-century. Each has its own unique relationship with liberalism. Finally, Section IV will conclude that BLM has a distinct ideology, informed by CRT, which critiques liberalism's color-blind ethic in a way that previous movements have not fully articulated.

I. Liberalism's Tenets Relevant to the CRT/BLM Critique
Individual Freedom/Equality

Freedom, generally, seems to mean the ability to conduct oneself without constraint as well as the ability to exercise self-restraint when it comes to being master of oneself. However, thinkers such as Isaiah Berlin have parsed the notion of freedom in order to articulate it more clearly. For Berlin, there is positive and negative freedom. Positive freedom "derives from the wish on the part of the individual to be his own master."³⁵ It is freedom *to* do something. On the other hand, negative freedom, what Berlin calls "the area within which a man can act unobstructed by others,"³⁶ is freedom *from* something or *from* some sort of coercion (i.e., not just government coercion, but also social, economic, and other sources of coercion which may shift the perceived role of government from oppressor to protector). That latter notion was held by earlier liberals such as John Locke and John Stuart Mill. Locke, a central influencer of America's founders, considered all people (explicitly white men at the time) to be born into what he called "a state of perfect freedom."³⁷ This "perfect freedom" was accompanied by a natural state of equality.³⁸ Locke saw the equality among men, in the state of nature, as something "so evident"

³⁵ Isaiah Berlin, *Four Essays on Liberty*, Oxford: Oxford University Press, 1969, 22.

³⁶ Berlin, *Four Essays on Liberty*, 16.

³⁷ John Locke, *Second Treatise of Government*, edited by C. B. Macpherson, Indianapolis: Hackett Publishing Company, 1980, 8.

³⁸ Locke, *Second Treatise of Government*, 8.

that it established an “obligation to mutual love amongst” them.³⁹ As John A. Simmons put it, “persons are free to make their own choices and control their own lives within the [bounds of the Law of Nature] and others are obligated to refrain from interfering.”⁴⁰ In fact, man is so free and equal in the state of nature that he acts as both judge and executioner.⁴¹ In order to ensure the “peace and *preservation of all mankind*... [man] has a right to punish the transgressors of that law to such a degree, as may hinder its violation.”⁴² Authority to constrain these rights to natural freedom and equality only comes when rational men agree to establish an authority among them. At the time, this idea stood in contrast to the notion that “superior power, social class, and custom...[constituted the] natural order of authority and subjection.”⁴³ To suggest that, by their nature and not by some predetermined order, man was free and equal was a novel idea.

Another thinker following Locke, John Stuart Mill, saw freedom, and the expression that accompanied it, as “security against corrupt or tyrannical government.”⁴⁴ Mill saw constraint on freedom as “depriv[ing] [people] of the opportunity of exchanging error for truth [or]... [shielding the] clearer perception and livelier impression of truth, produced by its collision with error.”⁴⁵ Similar to Locke, once authority is established among the public, Mill agrees that, “everyone who receives the protection of society owes a return for the benefit, and the fact of living in society renders it indispensable that each should be bound to observe a certain line of conduct towards the rest.”⁴⁶ He goes on to further qualify the notion of conduct. It first involves

³⁹ Locke, 8.

⁴⁰ John A. Simmons, “John Locke’s *Two Treatises of Government*,” In *The Oxford Handbook of British Philosophy in the Seventeenth Century*, 2013, 544-545.

⁴¹ Locke, 9

⁴² Locke, 9.

⁴³ Simmons, “John Locke’s *Two Treatises of Government*,” 545.

⁴⁴ John Stuart Mill, *On Liberty*, Kitchner: Batoche Books, 2001, 18.

⁴⁵ Mill, *On Liberty*, 18.

⁴⁶ Mill, 69.

restraint from injuring “certain interests”⁴⁷ of others. For Mill, these interests are what we call rights.⁴⁸ Additionally, this conduct involves “each person’s bearing his share of the labours and sacrifices incurred or defending the society or its members from injury and molestation.”⁴⁹ In cases where a “person’s conduct affects the interests of no persons besides himself... there should be perfect freedom, legal and social, to do the action and stand the consequences.”⁵⁰ Interestingly, Mill has a foundational assumption that “no person is an entirely isolated being” and has a “direct or indirect” effect on the community.⁵¹ Mill goes on to sum up this point neatly: “whenever...there is a definite damage, or a definite risk of damage, either to an individual or to the public, the case is taken out of the province of liberty, and placed in that of morality or law.”⁵² There is a generational aspect or consideration to this line of thinking as well since most people are born into an existing society. The existing generation has “powers of education...ascendency which the authority of a received opinion always exercises over the minds who are least fitted to judge for themselves.”⁵³ They set the boundaries for rights and what injury to those rights and individual freedoms looks like. In the view of Locke and Mill, freedom and equality are natural to humanity. Rather than ascribing to the conventional thinking that inherited status and pre-established hierarchies are natural, these thinkers saw impositions on freedom and equality only coming from the institutions people set on the way *out* of this natural and equal state.

Recognition

⁴⁷ Mill, 69.

⁴⁸ Mill, 69.

⁴⁹ Mill, 69-70.

⁵⁰ Mill, 69-70.

⁵¹ Mill, 74.

⁵² Mill, 75.

⁵³ Mill, 76.

Much like notions of freedom and equality for early liberal thinkers, the matter of recognition makes the individual its prime object of focus. A later respondent to these liberal ideals, G.W.F Hegel (although not a quintessential, classical Anglo-American liberal himself), saw the matter of recognition as integral to each person's life. Hegel's conception of spirit is arrived at when one realizes that "a self-conscious being is an object [and] it is as much I as object."⁵⁴ The basis of that self-consciousness's existence is recognition.⁵⁵ He goes on to define recognition as "the dualization of self-consciousness within its own unity" where there are two entities: "one getting all the recognition, the other doing all the recognizing."⁵⁶ For Hegel, these two entities are "defined in terms of their 'proving' themselves and one another through a life-and-death struggle."⁵⁷ The freedom of the individual, or recognition as Master, is then realized "only by risking life itself."⁵⁸ Death is that "natural negation" that, when one is unwilling to risk life for recognition of their consciousness, leaves the individual/Slave "without the required recognitional status."⁵⁹ However, in this state, the Master becomes dependent on the Slave for their own recognition; and the Slave, through their labor, grows in consciousness of their worth. At this point, through this dialectical process and rising consciousness of the Slave, that the Master is ultimately challenged, and the process continues. It is this struggle in the state of nature that prompts people to recognize the need for government among them.

Alexandre Kojève, a 20th-century philosopher and Hegelian scholar, picked up a crucial insight from Hegel—that in order to know history, "one must...know [the] Man who realizes it

⁵⁴ G.W.F. Hegel, *The Phenomenology of Spirit*, translated by Peter Fuss and John Dobbins, Notre Dame: University of Notre Dame Press, 2019, 91.

⁵⁵ Hegel, *The Phenomenology of Spirit*, 91.

⁵⁶ Hegel, 92-93.

⁵⁷ Hegel, 93.

⁵⁸ Hegel.

⁵⁹ Hegel, 94.

is.”⁶⁰ Kojève sees Hegel as identifying a missing link in Cartesian philosophy. Instead of saying “I think, therefore I am,” Hegel says that the identification of *I* [aside from a thinking being] has been neglected.⁶¹ Hegel’s *I* is the one that “reveals...being that *reveals* Being.”⁶² It is almost animalistic to solely “contemplate a thing” and become “absorbed.”⁶³ In that respect, man forgets *himself*. However, a man that “experiences a desire...becomes aware of *himself*.”⁶⁴ He must use the word *I* in identifying that a desire exists. Furthermore, there is this bifurcation between the object of contemplation and the *I* “which is not that thing.”⁶⁵ Kojève summarizes Hegel’s definition of desire by saying that it is the “act of transforming a contemplated thing by an action.”⁶⁶ This *action* negates the object’s independence and “make[s] it *mine*.”⁶⁷ Self-consciousness is established when the “given being [the one solely contemplating],” transforms their object of desire and “*negates* it in its independence.”⁶⁸ Kojève captures this idea succinctly by saying that “man is what he is only to the extent that he *becomes* what he is.”⁶⁹ This is the necessary act of “transcendence” that allows self-consciousness to come about.⁷⁰ Enslavement is to “desire Being.”⁷¹ To realize freedom, man must desire the liberation of non-Being.⁷² This is the process of becoming *human*: “man must act not for the sake of subjugating a *thing*, but for the sake of subjugating another *Desire*.”⁷³ This establishes man’s right to, and sense of

⁶⁰ Alexandre Kojève, “Chapter 2 – Summary of the First Six Chapters of *The Phenomenology of Spirit*,” In *Introduction to the Reading of Hegel: Lectures on the Phenomenology of Spirit*, edited by Allan Bloom, Ithaca: Cornell University Press, 1969, 32.

⁶¹ Kojève, “Chapter 2 – Summary of the First Six Chapters of *The Phenomenology of Spirit*,” 36.

⁶² Kojève, 36.

⁶³ Kojève, 37.

⁶⁴ Kojève, 37.

⁶⁵ Kojève, 37.

⁶⁶ Kojève, 37.

⁶⁷ Kojève, 38.

⁶⁸ Kojève, 38.

⁶⁹ Kojève, 38.

⁷⁰ Kojève, 39.

⁷¹ Kojève, 40.

⁷² Kojève, 40.

⁷³ Kojève, 40.

ownership of, a thing. To go one step forward, this process establishes “*superiority* over the other.”⁷⁴ This sense of *recognition* is the basis of the “*human, non-biological I.*”⁷⁵ For Hegel, the distinction between humanity and non-humanity rests in the capacity to “put one’s life in danger in order to attain ends that are not immediately vital;” this is the “fight for *Recognition.*”⁷⁶ “Therefore, human, historical, self-conscious existence” can be found in those moments in history where “bloody fights [or] wars for prestige” were present.⁷⁷ Kojève provides another concise definition at this point based on his reading of Hegel’s work: “human *reality* is nothing but the fact of the *recognition* of one man by *another* man.”⁷⁸ Furthermore, this distinction between master and slave can be found in “the existence of the victor and of the vanquished, and it is *recognized* by both of them.”⁷⁹ This is the sort of individualistic recognition emblematic of liberalism. However, Hegel and Kojève are not the only ones to address the topic. Along with his discussion of freedom and equality, Locke takes on the matter of individual recognition as well.

In discussing the state of nature, Locke sees the many inconveniences that come with it having a direct impact on the individual and not necessarily the collective, especially regarding his thoughts on the evils of monarchy. In order to ward off the “noxious creature[s]” that violate the “principles of human nature” and jeopardize “society [and] security” among men, “God hath certainly appointed government to restrain...partiality and violence.”⁸⁰ Proper reasoning would lead one to the conclusion that each individual is capable of that unrestrained partiality in the state of nature. Locke thus considers “civil government [to be] the proper remedy for the

⁷⁴ Kojève, 40.

⁷⁵ Kojève, 40.

⁷⁶ Kojève, 41.

⁷⁷ Kojève, 41.

⁷⁸ Kojève, 41.

⁷⁹ Kojève, 42.

⁸⁰ Locke, 11-12.

inconveniencies [e.g. partiality and violence] of the state of nature.”⁸¹ This ends up becoming the major issue inherent in absolute monarchy for Locke—that these “monarchs are but men” and “truth and keeping of faith belongs to men, as men, and not as members of society.”⁸² Monarchs therefore have the same capacity for disproportionate punishment that exists in the state of nature and this reality ends up being the cause for instituting civil government which recognizes inherent, natural rights of the individual and not absolute hierarchies. To be clear, it is individuals, in the liberal view, not collectives that seek state recognition in an attempt to negate those absolute hierarchies. This point regarding skepticism of the old tradition—recognizing the absolute and unquestioned reasoning of established hierarchies—leads into the next tenet of liberalism.

Universal Reason

In what some might consider to be the pre-history of liberalism, one thinker presents his conception of human reason. Thomas Hobbes saw people in the state of nature as subject to their passions and desire for power. People are driven through curiosity to “enquire into the cause of things”⁸³ because it positions them advantageously to establish order in their present state—namely, a state that is “solitary, poor, nasty, brutish, and short.”⁸⁴ However, in this endeavor—this “love” of finding causes—a “natural religion” develops where one origin will have “no former cause;” man calls this sense of eternity God.⁸⁵ These eternal things are, what Hobbes calls, “powers invisible;” they “seed” the fear that is a central motivator for man.⁸⁶ Over time, and the institutionalization of power among men, they “nourish, dress, and form [those invisible

⁸¹ Locke, 12.

⁸² Locke, 12-13.

⁸³ Thomas Hobbes, *Leviathan*, London: Electric Book, 2017, 92.

⁸⁴ Hobbes, *Leviathan*, 113.

⁸⁵ Hobbes, 92.

⁸⁶ Hobbes, 93.

powers] into laws.”⁸⁷ This process of institutionalizing power, motivated by those eternal causes man sees as gods, is “the greatest use of [man’s] power.”⁸⁸ It is their surety for survival. Unlike the individualistic predicament of freedom, equality, and recognition, the matter of reason, especially articulated by Hobbes and incorporated into later thinkers like John Stuart Mill, is something, through the liberal lens, that is common to all people. All individuals are assumed to be capable of right reason under proper circumstances. This universal reason prompts individuals to realize the benefits of civil government and stable associational ties given their individual tendencies toward a “diversity”⁸⁹ of passions and their individual quests for recognition, commonly through violent means. Reasoning has at its heart a drive toward realizing convictions people believe to be true, as John Stuart Mill will explain.

John Stuart Mill’s discussion of freedom of expression sees the individual’s recognition of their interests as paramount. In fact, he calls restraint upon individual expression a “peculiar evil [that]... rob[s] the human race; posterity as well as the existing generation.”⁹⁰ At this point, he takes a step back and considers why people might be critical of his position. First, not listening to our inner opinions, or “conscientious conviction[s]” as Mill would call it, “leave[s] all our interests uncared for, and all our duties unperformed.”⁹¹ It is natural for humans to “assume [their] opinions to be true for the guidance of [their] own conduct,” as well as “forbid bad men to pervert society by the propagation of opinions which we regard as false and pernicious.”⁹² Mill also asserts that “there must be discussion, to show how experience is to be interpreted;”⁹³ this comes in the unconstrained expression of opinion. Furthermore, it is this

⁸⁷ Hobbes, 93.

⁸⁸ Hobbes, 93.

⁸⁹ Hobbes, 85.

⁹⁰ Mill, 19.

⁹¹ Mill, 20.

⁹² Mill, 21.

⁹³ Mill, 21.

process that provides a “stable foundation for a just reliance on” opinions.⁹⁴ Allowing for freedom of expression is “a standing invitation to the whole world to prove them unfounded.”⁹⁵ Now, Mill insists, “there are...certain beliefs so useful...to well-being that it is as much the duty of governments to uphold those beliefs, as to protect any other of the interests of society.”⁹⁶ For Mill, these matters are “not a question of the truth of doctrines, but of their usefulness.”⁹⁷ Still, who, or what, decides the utility of a particular opinion? The answer seems to be the actual, mulled-over, truth of the opinion. “When law or public feeling do not permit the truth of an opinion to be disputed, they are just as little tolerant of a denial of its usefulness.”⁹⁸ However, do all opinions and perceived convictions deserve to be even granted the opportunity for deliberation? As some critics of this liberal ethic might contend, some opinions need to be snuffed out even before they reach the doors of deliberation. They are so harmful to society that deliberating upon them would be tantamount to granting their purveyors a bullhorn to distribute their thinking to a much larger, sometimes easily captivated, audience.

II. CRT’s Critique of Liberalism

Individual Freedom/Equality

The assumption within liberalism that an insistence on individual rights and freedoms will result in large-scale freedom and equality has been hotly contested in the 20th and 21st centuries, particularly within CRT scholarship. Liberalism inherently developed a color-blind ethic since it sees rights and freedoms as universal, rather than being exclusive to a particular privileged group. One contemporary commentator, philosopher Charles Mills, thinks that the

⁹⁴ Mill, 22

⁹⁵ Mill, 22.

⁹⁶ Mill, 23.

⁹⁷ Mill, 23.

⁹⁸ Mill, 24.

traditional liberal emphasis upon individual freedom has allowed social harms like racism to flourish, especially aimed at blacks. He defines racism as,

The belief that (i) humanity can be divided into discrete races, and (ii) these races are hierarchically arranged, with some races superior to others. The second sense would then refer to institutions, practices, and social systems that illicitly privilege some races at the expense of others, where racial membership (directly or indirectly) explains this privileging.⁹⁹

Of critical importance to this research, Mills explains CRT's critique of liberalism. He encourages his readers to look at this critique as the *Occupy Liberalism* movement, similar in thrust to the *Occupy Wall Street* movement in that it "challenge[s] plutocracy, patriarchy, and white supremacy in the United States."¹⁰⁰ Mills quickly sums up radicalism by saying that it "refer[s] generally to ideas/concepts/principles/values endorsing pro-egalitarian structural change to reduce or eliminate unjust hierarchies of domination."¹⁰¹ It is liberalism that refers to the "political philosophy and the institutions and practices characteristically tied to that political philosophy."¹⁰² Although liberalism in the United States can refer to particular ideas on both sides of the political spectrum (hence the idea of *liberal democracy*), the larger idea of liberalism is best defined by "the anti-feudal ideology of individualism, equal rights, and moral egalitarianism that arises in Western Europe in the seventeenth-eighteenth centuries to challenge the ideas and values inherited from the old medieval order."¹⁰³ In large part, the "emancipatory development" of liberalism, especially in the United States, has been blocked by "group interests, group power, and successful group political projects."¹⁰⁴ Mills says that this has come from "historic domination of conservative exclusionary liberalisms." These fall under the

⁹⁹ Mills, *Black Rights/White Wrongs: The Critique of Racial Liberalism*, 4.

¹⁰⁰ Mills, 10.

¹⁰¹ Mills, 11.

¹⁰² Mills, 11.

¹⁰³ Mills, 11.

¹⁰⁴ Mills, 13.

umbrella of “hegemonic varieties of liberalism.”¹⁰⁵ Although there will be “material barriers (vested group interests) and political barriers (organizational difficulties)” to emancipatory liberalism, it will take a shift in “majoritarian norms” to make a real difference.¹⁰⁶ This shift in norms that Mills prescribes seems to speak to the heart of what the earlier, liberal, social-contract theorists thought was the promise of convening government among people—that it is recognized and sought to preserve the inherent freedom and equality of individuals. However, as the CRT critique has established, that promise has not been realized.

Although the social contract was originally conceived as “being self-consciously brought into existence through a ‘contract’ among human beings in a pre-social, pre-political stage of humanity,” Mills sees a “patent absurdity” in one of its key insights: the notion that “human beings are naturally equal” and the “moral equality of people in the state of nature demands an equality of treatment.”¹⁰⁷ Mills asks, “what if... the personhood of some persons was historically disregarded, and their rights disrespected?”¹⁰⁸ He says that “we...need to acknowledge that race had underpinned the liberal framework from the outset, refracting the sense of crucial terms, embedding a particular model of rights-bearers, dictating a certain historical narrative, and providing an overall theoretical orientation for normative discussions.”¹⁰⁹ In reality, this has been a “non-ideal social contract.”¹¹⁰ Repairing this broken contract seems to involve a treatment of how the contract has failed both individual as well as collective freedom and equality. The CRT critique encourages accounting for and recognizing the disposition of groups and not just individuals.

¹⁰⁵ Mills, 13.

¹⁰⁶ Mills, 14.

¹⁰⁷ Mills, 29.

¹⁰⁸ Mills, 29.

¹⁰⁹ Mills, 29.

¹¹⁰ Mills, 30.

Recognition

One author that can help account for the matter of group recognition, particularly black recognition is Frantz Fanon. Fanon is familiar with the colonial legacy that accompanied liberalism, especially in the Caribbean. He says that being black is a constant process of comparison.¹¹¹ “He is constantly preoccupied with self-evaluation and with the ego-ideal. Whenever he comes into contact with someone else, the question of value, of merit, arises.”¹¹² It is a condition of insecurity: “every position of one’s own, every effort at security, is based on relations of dependence, with the diminution of the other.”¹¹³ Similar to the Hegelian Master-Slave dialectic, Fanon presents a comparison between the Antillean (Master) and the Martinicans (Slaves). The Martinican “comes on to the stage only in order to furnish it...I [the Antillean] am the Hero.”¹¹⁴ From the Martinican perspective, “each one of them wants to be, to emerge.”¹¹⁵ As Fanon steps back from this Antillean/Martinican dialectic, he says, “the Negro is seeking to protest against the inferiority that he feels historically [and]...he attempts to react with a superiority complex.”¹¹⁶ At the end of this struggle, “there remains only one solution for the miserable Negro: furnish proofs of his whiteness to others and above all to himself.”¹¹⁷ Fanon goes on to provide an interesting note on the process of colonization: “For twenty years they poured every effort into programs that would make the Negro a white man. In the end, they dropped him and told him, ‘You have an indisputable complex of dependence on the white man.’”¹¹⁸ He then goes on to summon some of Hegel’s thinking on the matter. In Fanon’s words,

¹¹¹ Frantz Fanon, “The Negro and Recognition,” In *Black Skin, White Masks*, translated by Charles Lam Markmann, New York: Grove Press, 1967, 2716.

¹¹² Fanon, “The Negro and Recognition,” 2716.

¹¹³ Fanon, 2737.

¹¹⁴ Fanon, 2737.

¹¹⁵ Fanon, 2747.

¹¹⁶ Fanon, 2747.

¹¹⁷ Fanon, 2785.

¹¹⁸ Fanon, 2828.

“Man is human only to the extent to which he tries to impose his existence on another man in order to be recognized by him...It is on that other being, on recognition by that other being, that his own human worth and reality depend.”¹¹⁹ Desire, resulting in conflict with the Other, is “the first milestone on the road that leads to the dignity of the spirit.”¹²⁰ It is the “transformation of subjective certainty of my own worth into a universally valid objective truth.”¹²¹ Interestingly, from a historical perspective, “the Negro steeped in the inessentiality of servitude was set free by his master. He did not fight for his freedom.”¹²² Hegel saw this physical fight for freedom as necessary for recognition and freedom. Fanon sums this up by saying, “the Negro is a slave who has been allowed to assume the attitude of a master. The white man is a master who has allowed his slaves to eat at his table.”¹²³ This is the predicament of de facto slavery despite de jure abolition: “he went from one way of life to another, but not from one life to another.”¹²⁴ Fanon says, “the Negro knows nothing of the cost of freedom, for he has not fought for it. From time to time he has fought for Liberty and Justice, but these were always white liberty and white justice.”¹²⁵ Fanon presents an eerily familiar conversation in contemporary society: “[the] white man tells him: ‘Brother, there is no difference between us.’ And yet the Negro knows that there is a difference. He wants it.”¹²⁶ It is in this white, and more broadly liberal, insistence on color-blindness that Fanon captures the distinction between individual and group recognition. The modern, white liberal, as well as some contemporary black conservatives such as Thomas Sowell, will insist that the promise of America’s founders, influenced by liberal thinkers like

¹¹⁹ Fanon, 2839.

¹²⁰ Fanon, 2849.

¹²¹ Fanon, 2860.

¹²² Fanon, 2871.

¹²³ Fanon, 2871.

¹²⁴ Fanon, 2881.

¹²⁵ Fanon, 2881.

¹²⁶ Fanon, 2881.

Locke and Mill, is evident because America's documents and laws have claimed freedom and equality. However, for parts of the black community that identify with the CRT's critique, that insistence and presentation of evidence (i.e., claiming that the American Civil Rights movement of the mid-20th century produced the Civil Rights Acts of 1957 and 1964, the Voting Rights Act of 1965, as well as judicial decisions such as *Brown v. Board of Education*), falls upon deaf ears. From the critical perspective, these de jure milestones have not produced a de facto reality of freedom and equality for blacks, although others might see them as a piece of the incremental progress toward racial justice. In fact, as Chris Demaske put it, the ethic of color-blindness and free speech in America has "ma[de] heroes out of bigots and fan[ned] the flames of racial violence."¹²⁷ Charles Mills also discusses how domination, conceptually, needs to be integrated into American political and social discourse in order to fully understand this gap between expectation and reality.

Mills sees liberalism as having numerous failures when it comes to accounting for black oppression. In particular, he thinks that "liberalism's failure to systematically address structural oppression in supposedly liberal-democratic societies is a contingent artifact of the group perspectives and group interests privileged by those structures."¹²⁸ In other words, the notion of group oppression needs to be incorporated into liberalism's ontology. In its present state, he calls it an "evasive ontology."¹²⁹ Theories, such as liberalism, cannot speak meaningfully about the "social shaping of individuals while denying that group oppression is central to that shaping."¹³⁰ He brings in the example of Marxism's claim that class domination needed to be incorporated into liberalism's ontology in order to say that racism, and the oppressive social structures of

¹²⁷ Demaske, "Critical Race Theory."

¹²⁸ Mills, 16.

¹²⁹ Mills, 16.

¹³⁰ Mills, 15.

white dominance, needs to be added in the same manner. Additionally, Mills claims that it is a crucial aspect of recognition to admit that “the theorists who developed the dominant varieties of liberalism have come overwhelmingly from the hegemonic groups of the liberal social order (bourgeois white males).”¹³¹ This reality then suggests that those hegemonic groups continued to perpetuate a liberal ontology without oppression and domination as meaningful features. Mills calls this “ignoring...the real betrayal of the liberal project.”¹³² Furthermore, liberalism recognizes “individuals rather than social collectives [as] the locus of *value*.”¹³³ It ends up being the shaping of the individual—that they can be dominated and opposed due to the primacy of certain “group memberships—” that becomes the impetus to incorporate oppression and recognize groups, and not just individuals, in liberalism’s ontology.¹³⁴ Along with the issue CRT raises with matters of recognition, they also critique the universal reason-vamindedness of the liberal project.

Universal Reason

Liberalism’s insistence that there is reason that can be achieved for all individuals under certain circumstances, and that reason becomes the spark for instituting civil government among people, raises serious concern for CRT scholars. Notably, Richard Delgado has commentated on the matter of free speech and expression that has accompanied liberalism’s color-blind ethic, particularly in America. Like other CRT thinkers, Delgado and his co-author Stefanicc raise the centrality of racism in CRT’s critique of liberalism and its universal reason tenet while presenting their four elements of CRT:

First, racism is ordinary, not aberrational...Second... our system of white-over-color ascendancy serves important purposes, both psychic and material, for the dominant group...The second feature [is] sometimes called ‘interest convergence’ or material

¹³¹ Mills, 16.

¹³² Mills, 17.

¹³³ Mills, 18.

¹³⁴ Mills, 18.

determinism...A third theme of critical race theory, the ‘social construction’ thesis, holds that race and races are products of social thought and relations...A final element concerns the notion of a unique voice of color.¹³⁵

Their outline of CRT’s elements is a unique view that seems specific to the overall critique of liberalism’s universal reason ethic. Like Fanon suggested earlier, thinking that one reality exists for multiple social groups that have undergone vastly different experiences is short-sighted.

From a legal perspective though, Delgado and Stefanicc claim that this ethic of “color blindness...will allow us to redress only extremely egregious racial harms, ones that everyone would notice and condemn.”¹³⁶ Judicially, this issue becomes manifest with the matter of rights.

“In our system, rights are almost always procedural (for example, to a fair process) rather than substantive (for example, to food, housing, or education)...that system applauds affording everyone equality of opportunity but resists programs that assure equality of results.”¹³⁷

Seemingly major civil rights legislation or judicial decisions are celebrated but quickly followed by a realistic sobriety. “After the singing and dancing die down, the breakthrough is quietly cut back by narrow interpretation, administrative obstruction, or delay.”¹³⁸ In a separate legal article Delgado explains this issue further as the distinction between legal formalism and legal realism when it comes to the matter of free speech:

The old, formalist view of speech as a near-perfect instrument for testing ideas and promoting social progress is passing into history. Replacing it is a much more nuanced, skeptical, and realistic view of what speech can do...to understand how expression functions in our political system.¹³⁹

¹³⁵ Richard Delgado and Jean Stefanicc, *Critical Race Theory: An Introduction*, New York: New York University Press, 2017, 7-11.

¹³⁶ Delgado and Stefanicc, *Critical Race Theory: An Introduction*, 27.

¹³⁷ Delgado and Stefanicc, 28.

¹³⁸ Delgado and Stefanicc, 29.

¹³⁹ Richard Delgado, “First Amendment Formalism Is Giving Way to First Amendment Legal Realism,” *Harvard Civil Rights–Civil Liberties Law Review* 29, no. (1994): 170.

He raises issue with the “marketplace of ideas”¹⁴⁰ argument frequently heard in First Amendment advocacy. “First Amendment free speech can often help us avoid error and arrive at a consensus.”¹⁴¹ However, “systemic social ills like racism and sexism” threw a wrench into the possibility of meaningful consensus.¹⁴² This is the first theme of First Amendment legal realism. The other themes are “understanding of the free expression paradigm as a tool for legitimating the status quo”¹⁴³ and the “idea that language and expression can sometimes serve as instruments of positive harm.” Delgado sees this legal transition as promising. “We are beginning to ask the ‘who-benefits?’ question about free speech and to raise the possibility that scoundrels and bigots can easily hide under the mantle of the First Amendment.”¹⁴⁴ He wonders, “could there be no-value speech, or negative-value speech, which not only could, but should be restricted?”¹⁴⁵ Thankfully, other thinkers have weighed in on this matter.

Twentieth-century critical philosopher Herbert Marcuse wrote at length on the matter of tolerance in the liberal, democratic context. Marcuse sees a certain reality that is hard to escape when it comes to liberal tolerance: “the objective of tolerance would call for intolerance toward prevailing policies, attitudes, opinions, and the extension of tolerance to policies, attitudes, and opinions which are outlawed or sup-pressed.”¹⁴⁶ He calls this predicament a “partisan goal [and] a subversive liberating notion and practice” which “serv[es] the cause of oppression.”¹⁴⁷ Since the theory which constitutes the tolerance within the liberal ethic would never be put into practice, it is the “task [of the intellectual] to break the concreteness of oppression in order to

¹⁴⁰ Delgado, “First Amendment Formalism Is Giving Way to First Amendment Legal Realism,” 171.

¹⁴¹ Delgado, 171.

¹⁴² Delgado, 171.

¹⁴³ Delgado, 172-73.

¹⁴⁴ Delgado, 172-73.

¹⁴⁵ Delgado, 173.

¹⁴⁶ Herbert Marcuse, “Repressive Tolerance,” In *A Critique of Pure Tolerance*, by Robert Paul Wolff, Barrington Moore, Jr., and Herbert Marcuse, Boston: Beacon Press, 1970, 81.

¹⁴⁷ Marcuse, “Repressive Tolerance,” 81.

open the mental space in which [a] society can be recognized as what it is and does.”¹⁴⁸ In fact, in democratic contexts, “tolerance strengthens the tyranny of the majority.”¹⁴⁹ It is “constituted authorities” that determine the nature and object of tolerance.¹⁵⁰ For CRT theorists, such as Charles Mills, these partisan authorities, at least in the American experience, are “white contractors [who] subordinate and exploit nonwhite non-contractors for white benefit.”¹⁵¹ The universal reason that liberalism initially suggested has been undermined. Mills asks, “what if... the personhood of some persons was historically disregarded, and their rights disrespected?”¹⁵² He says that “we...need to acknowledge that race had underpinned the liberal framework from the outset, refracting the sense of crucial terms, embedding a particular model of rights-bearers, dictating a certain historical narrative, and providing an overall theoretical orientation for normative discussions.”¹⁵³ In reality, this has been a “non-ideal social contract.”¹⁵⁴ Mills goes on to further define racial liberalism as the “actual liberalism that has been historically dominant since modernity: a liberal theory whose terms originally restricted full personhood to whites (or, more accurately, white men) and relegated nonwhites to an inferior category, so that its schedule of rights and prescriptions for justice were all color-coded.”¹⁵⁵ Therefore, the “rethinking, purging, and deracializing of racial liberalism should be a priority for us.”¹⁵⁶ In fact, it has been the project of BLM to articulate these evident and entrenched philosophical grievances, and

¹⁴⁸ Marcuse, 81-82.

¹⁴⁹ Marcuse, 82.

¹⁵⁰ Marcuse, 83.

¹⁵¹ Mills, 28-29.

¹⁵² Mills, 30.

¹⁵³ Mills, 30.

¹⁵⁴ Mills, 30.

¹⁵⁵ Mills, 30.

¹⁵⁶ Mills, 31.

identify the reality of Mills' "racial liberalism,"¹⁵⁷ in ways that go beyond the efforts of the 20th-century American Civil Rights movement.

III. Why BLM is Distinct from the American Civil Rights Movement

20th-century philosopher Reinhold Niebuhr said that man has an "inclination...to find the source of evil in his life in some particular event in history."¹⁵⁸ Both the mid-20th century American Civil Rights movement and the 21st-century BLM movement have seemingly similar "source[s] of evil."¹⁵⁹ Broadly, this could be called anti-black racism. However, the former seems to seek a renewal of the liberalism of Locke and Mill in order to combat that evil and the latter seems firmly rooted in CRT's critique of liberalism as they take on their own target of evil. For the American Civil Rights movement of the 1950s and 1960s, the ethic seemed to be a renewal of the promises of America's liberal founding and the evil they sought to uproot seemed to be inequity, cured by placing "individual personal protections [for blacks] on a more secure basis."¹⁶⁰ Although MLK is considered the philosophical leader of this movement, he was inspired by the writings of President Abraham Lincoln and his thinking on the spirit of America's *Declaration of Independence*. To be clear, it was not just King and Lincoln that looked to the *Declaration* in order to call into question the present disposition of its principles. Both Seneca Falls and Malcolm X did the same. However, for this project, it will be King's philosophy, and the thinking of Lincoln that inspired him, that will be examined. Lincoln summoned the words of the *Declaration*, what he called a "revolutionary document,"¹⁶¹ in two of his speeches: the first, an 1854 speech in Peoria, Illinois, and the second, an 1858 speech in

¹⁵⁷ Mills, 31.

¹⁵⁸ Reinhold Niebuhr, *The Nature and Destiny of Man*, Louisville: Westminster John Knox Press, 1996, 96.

¹⁵⁹ Niebuhr, *The Nature and Destiny of Man*, 96.

¹⁶⁰ Mills, 58.

¹⁶¹ Abraham Lincoln, "Letter to H. Pierce and Others," Monticello Digital Classroom, April 6, 1859, <https://classroom.monticello.org/media-item/abraham-lincoln-to-henry-l-pierce/>

Chicago. In Peoria, while discussing the potential for slavery to move into western territories as a result of the Missouri Compromise, Lincoln argued that “zeal for the spread of slavery”¹⁶² was antithetical to America’s founding. The insistence in the *Declaration of Independence* that governments “derive their just power from the consent of the governed”¹⁶³ is the cause for uprooting hierarchical structures, analogous to the “relation of masters and slaves,” which Lincoln called “a total violation of this principle.”¹⁶⁴ During his Chicago speech, he expounds on this inherent evil of hierarchical structures when he says that the natural equality between men “is the electric cord...that links the hearts of patriotic and liberty-loving men together.”¹⁶⁵ Despite acknowledging the oppression of blacks in the American experience, King tapped into this spirit of the American founding that Lincoln celebrated. “We will win our freedom because the sacred heritage of our nation and the eternal will of God are embodied in our echoing demands.”¹⁶⁶ He goes further in saying that “freedom is never voluntarily given by the oppressor; it must be demanded by the oppressed.”¹⁶⁷

The form this demand would take would be non-violent civil disobedience and the mental tension, not physical harm that results from it:

Just as Socrates felt that it was necessary to create a tension in the mind so that individuals could rise from the bondage of myths and half-truths to the unfettered realm of creative analysis and objective appraisal, so must we see the need for nonviolent gadflies to create the kind of tension in society that will help men rise from the dark depths of prejudice and racism to the majestic heights of understanding and brotherhood.¹⁶⁸

¹⁶² Abraham Lincoln, “Peoria Speech,” National Park Service, October 16, 1854, <https://www.nps.gov/liho/learn/historyculture/peoriaspeech.htm>

¹⁶³ United States, John Dunlap, Peter Force, David Ridgely, and Printed Ephemera Collection, In Congress, July 4, a declaration by the representatives of the United States of America, in General Congress assembled.

¹⁶⁴ Lincoln, “Peoria Speech.”

¹⁶⁵ Abraham Lincoln, “Speech at Chicago, Illinois,” Teaching American History, July 10, 1858, <https://teachingamericanhistory.org/library/document/speech-at-chicago-illinois/>

¹⁶⁶ King, “Letter from Birmingham Jail.”

¹⁶⁷ King, “Letter from Birmingham Jail.”

¹⁶⁸ King, “Letter from Birmingham Jail.”

These terms from King's 1963 letter sound similar to CRT themes; however, they also assume that the oppressor will, through proper reason, discontinue their oppressing. CRT says, "the current system, built by and for white elites, will tolerate and encourage racial progress for minorities only if this promotes the majority's self-interest."¹⁶⁹ This point then seems to begin the distinction between the liberal project of America's Civil Rights movement and the CRT-driven, 21st-century BLM movement.

The particular evil that BLM seeks to uproot is systemic racism. When Sharpton and others talk about systemic racism, they are referring to "systems and structures that have procedures and processes that disadvantage African Americans."¹⁷⁰ N'dea Yancey-Bragg sums up the goal for BLM: "a shift in policy and resources that prioritize black lives. Don't tell us black lives matter if you can't show us in your institution and organization how they do."¹⁷¹ From a tactical perspective, the American Civil Rights movement of the 1950s and 1960s differed from BLM's movement and that difference can also speak to their philosophical orientation, particularly the liberal critique BLM has at the heart of its ideology. According to Clarissa Rile Hayward, the tactics of the American Civil Rights movement, particularly non-violent lunch counter sit-ins, were successful in the "contrast they drew between peaceful protestors and violent racists."¹⁷² The act of them sitting silently was the message. On the other hand, BLM has adopted more "face-to-face confrontation" tactics such as Black Brunch.¹⁷³

¹⁶⁹ Demaske, "Critical Race Theory."

¹⁷⁰ N'dea Yancey-Bragg, "What is Systemic Racism? Here's what it means and how you can help dismantle it," *USA Today*, June 15, 2020, <https://www.usatoday.com/story/news/nation/2020/06/15/systemic-racism-what-does-mean/5343549002/>

¹⁷¹ Rhea Boyd, "A Discussion on Black Lives, Protest, and Democracy," Harvard University Kennedy School of Government Ash Center, YouTube Livestream, June 11, 2020.

¹⁷² Clarissa Rile Hayward, "Disruption: What Is It Good For?" *The Journal of Politics* 82, no. 2 (April 2020): 450.

¹⁷³ Hayward, "Disruption: What Is It Good For?" 450.

BLM's tactics involve "disruption"¹⁷⁴ that can "impel negotiation"¹⁷⁵ and can put an otherwise ignorant subset of the public in a position where they must pay attention. This is especially meaningful when political elites are "forced to take sides" because the disruption is loud enough and precisely targeted enough for "communities and...people who otherwise never have to think or feel" the pain of black communities to begin taking it into consideration.¹⁷⁶ To be specific, Black Brunch has been a tactic used by BLM following "highly publicized incidents of police violence against black Americans."¹⁷⁷ Black Brunch targets "white spaces,"¹⁷⁸ like upscale restaurants, and although disruptive—invading these high-end spaces and loudly reciting the names of black victims of police brutality—they offered "an invitation to the diners to 'Stand now and chant with us if you believe that black lives matter.'"¹⁷⁹ The intent here is different than what activists in the 1960s sought to achieve—namely, winning public sympathy. In the case of Black Brunch, the intent was, in a precise manner, to "withdraw cooperation from an important power relationship"—that being the tendency of the "American restaurant industry" to "hire white men to work as [highly-paid] servers in upscale restaurants...and men and women of color for low-paying kitchen [or] bussing jobs."¹⁸⁰ However, the target of their efforts was not just the restaurant itself; it was the white patrons, many of whom "h[eld]...principled beliefs" that could be "activated" through their disruption and, in turn, "shape [their] opinions."¹⁸¹ The patron whose dormant principles could be activated through disruption would otherwise be willfully

¹⁷⁴ Hayward, 448.

¹⁷⁵ Hayward, 459.

¹⁷⁶ Hayward, 451.

¹⁷⁷ Hayward, 448.

¹⁷⁸ Hayward, 448.

¹⁷⁹ Hayward, 449.

¹⁸⁰ Hayward, 452.

¹⁸¹ Hayward, 452.

ignorant to the fact that they were being served by higher-paid whites while their food was cooked and bussed by lower-paid blacks.

The willfully ignorant patron presents the same problem King raised when discussing “the white moderate”¹⁸² in his letter. This was the individual that was “more devoted to ‘order’ than to justice; who prefer[ed] a negative peace which is the absence of tension to a positive peace which is the presence of justice.”¹⁸³ The white patron falls into this category. Their willful ignorance satisfies their “goal of maintaining an understanding of the self as a good person” while “enjoying the benefits of complicity in practices that violate [their] principles.”¹⁸⁴ Black Brunch and other protest efforts that could be characterized as destabilizing the normal order of things could move indifference to engagement. Issues such as systemic racism, that most in the general public, particularly the white community, choose not to weigh-in on suddenly start to converge toward a consensus on the matter. Sometimes that consensus is merely the belief that we, as a nation, need to be concerned about these issues; that they matter and shouldn’t be ignored. The issue of doing something about it, on an institutional level, becomes a whole other matter. However, at least the seed has been planted for political elites to be put in a position where they are “forced to take sides.”¹⁸⁵

This tactical example speaks to the philosophical differentiation between the American Civil Rights movement and BLM. BLM admits, in the spirit of CRT, that the “current system, built by and for white elites, will tolerate and encourage racial progress for minorities only if this promotes the majority’s self-interest.”¹⁸⁶ Therefore, the majority cannot be won over by appeals

¹⁸² King, “Letter from Birmingham Jail.”

¹⁸³ King, “Letter from Birmingham Jail.”

¹⁸⁴ Hayward, 451.

¹⁸⁵ Hayward, 451.

¹⁸⁶ Demaske, “Critical Race Theory.”

to sympathy. Rather, those that desire to uproot the evil of systemic racism must admit that the philosophical foundations of American—namely, liberalism and the freedom, equality, recognition, and universal reason it purports—are racist, and that they must be “reth[ought], purg[ed], and deracialize[ed].”¹⁸⁷ This point speaks to BLM’s intention to target institutions and structures that will outlast individuals.

IV. Conclusion

The ideology of BLM is inextricably linked to CRT’s critique of liberalism. From the liberal tradition, work from thinkers such as John Locke and John Stuart Mill has been presented in order to flesh out the relevant tenets of liberalism that CRT critiques. In particular, the notion that liberalism promotes individual freedom and equality has been presented and rebutted in order to suggest that freedom and equality have been extended for particular individuals not subject to the oppression and domination of majority group interests, particularly along racial lines. In addition, the liberal tenet that recognition is achieved for the individual in order that the inconveniences of the state of nature can be overcome has also received a critique from CRT. Largely, individual recognition has been enjoyed by the white community and group recognition has been undermined for the black community especially due to their inherent dependence on majority, white interests. Finally, the ethic of universal reason celebrated by liberalism—the sense that, under certain circumstance people can reason their way into equitable social and political arrangements—has been critiqued in that the effort to achieve a color-blind society has allowed for the flourishing of procedural, rather than substantive rights to be extended to those in the minority.

¹⁸⁷ Mills, 31.

On a secondary point, a distinction between the American Civil Rights movement of the 1950s and 1960s and the BLM movement of the 21st-century must be drawn to show that they are philosophically distinct movements. The American Civil Rights movement sought a revival of America's founding principles through non-violent social action in order to leverage the white majority into a realm of empathy toward black subjugation. On the other hand, BLM seeks to account for the institutional and systemic racism that has survived the supposed legal victories for black individuals as a result of the American Civil Rights movement. Their tactics involve more "face-to-face"¹⁸⁸ confrontations that seek to "impel negotiation"¹⁸⁹ from an otherwise disinterested, and unincentivized, white majority. The victory BLM seeks is much less individualistic than the American Civil Rights movement and concentrates on institutional and structural solutions that previous social justice legislation and judicial decisions have not provided.

The ideology of BLM was presented as a fundamental critique of the liberal ethic America was founded upon and helped explain why this is not just another social justice movement. Furthermore, it will differentiate BLM from previous civil rights movements in American history. The activism evident in the streets of America following the murder of George Floyd beg the necessary *why* question. BLM should be seen as more than a response to the death of unarmed black men at the hands of the police. It should be conceptualized as a critique of the liberalism that sparked America's founding: the promise of natural freedom and equality, the desire for individual recognition, and the belief in a reason that could be universally shared. These ideals are not enjoyed by all and BLM spotlights that disparity. The assumption of the American Civil Rights movement—that black oppression could be removed through sympathy

¹⁸⁸ Hayward, 450.

¹⁸⁹ Hayward, 459.

and proper reason—is not assumed by BLM. Rather, BLM wants to take on the promises of liberalism in a much more fundamental way: redefining its promise.

Chapter II

Institutional Instability within Utah's Police Use of Force Procedures: Have Institutions Responded to Public Consensus?

On June 6, 2020, 500,000 people across the United States demonstrated for greater police accountability.¹⁹⁰ They showed up for many reasons, but the death of George Floyd stirred something inside of them that made the summer of 2020 catalytic. Reverend Al Sharpton captured the spirit of these reasons in Floyd's memorial:

What happened to Floyd happens every day in this country, in education, in health services, and in every area of American life, it's time for us to stand up in George's name and say...get your knee off our necks.¹⁹¹

Less than 2 weeks prior to the memorial, Floyd, an unarmed black man, died by cardiopulmonary arrest as a Minneapolis police officer knelt on his neck for 8 minutes and 46 seconds. He pleaded with the officer 16 times, "I can't breathe."¹⁹² Sharpton brings into focus how Floyd's death was emblematic of the larger problem of systemic racism.

Despite the many efforts of protestors and racial justice advocates in the last decade, especially the Black Lives Matter (BLM) movement, nothing much was changing; from 2017 to 2019, blacks, despite being about 12% of the U.S. population,¹⁹³ experienced 24% of deaths at the hands of police¹⁹⁴ (whites are 60% of the population¹⁹⁵ and experience 42% of deaths at the hands of the police¹⁹⁶). In fact, blacks in 80% of U.S. states had death-by-

¹⁹⁰ Buchanan, Bui, and Patel, "Black Lives Matter May Be the Largest Movement in U.S. History."

¹⁹¹ Sharpton, "George Floyd's Memorial Service Eulogy."

¹⁹² State of Minnesota vs. Derek Michael Chauvin, Criminal Complaint. District Court 4th Judicial District.

¹⁹³ "Population Distribution by Race/Ethnicity," Kaiser Family Foundation, 2018, <https://www.kff.org/other/state-indicator/distribution-by-raceethnicity/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%22>.

¹⁹⁴ "State Comparison Tool," Mapping Police Violence, 2017–2019, <https://mappingpoliceviolence.org/states>.

¹⁹⁵ "Population Distribution by Race/Ethnicity," Kaiser, 2018.

¹⁹⁶ "State Comparison Tool," Mapping Police Violence, 2017–2019.

police rates higher than their share of the state population.¹⁹⁷ This disproportionate metric highlights just one pillar of the systemic racism Sharpton presented: police accountability.

Specifically, police lethal use of force procedures are regularly found to be confusing as both institutional actors and the general public processes bodycam footage. This footage also shows a process without standards on when to use less-than-lethal measures and when to use lethal ones. Specific instances of lethal use of force by police in Utah will be examined against the backdrop of consensus from the public regarding how the fatal encounter was handled and the eventual presence of, or lack of, consensus on the part of institutions. This research will pursue the question of whether these instances of confusing use of force procedures within the policing institution have a positive effect on public consensus. Furthermore, does public consensus prompt institutional consensus?

Initial observations, particularly following George Floyd's death, would seem to suggest that the institutional instability evident during confusing instances of police lethal use of force generates consensus among the public that something needs to be done, particularly when it comes to public views on police bodycams. According to a 2016 Pew Research Center Poll, "about nine-in-ten Americans (93%) favor the use of body cameras by police so officers can record their interactions with citizens" and "a smaller but still substantial majority also believe that body cams would make officers act more appropriately (66%)."¹⁹⁸ To go further, public consensus—agreement outside the bounds of institutions—has seemed to produce institutional consensus, as 13 states and municipalities have banned

¹⁹⁷ "State Comparison Tool," Mapping Police Violence, 2017–2019.

¹⁹⁸ Rich Morin and Renee Stepler, "The Racial Confidence Gap in Police Performance," Pew Research Center, September 29, 2016, <https://www.pewresearch.org/social-trends/2016/09/29/the-racial-confidence-gap-in-police-performance/>

chokeholds and instituted other police accountability measures since Floyd's murder.¹⁹⁹ A more recent update in September of 2021 reported that "at least 32 of the nation's 65 largest police departments have banned or strengthened restrictions on the use of neck restraints"²⁰⁰ following Floyd's murder. On a smaller scale, institutional consensus could simply be the decision to promptly release bodycam footage from a particular fatal encounter.

Public consensus is evident in the presence, absence, and degree of protest following a fatal encounter with police, as well as shifts in polling data specific to BLM and police accountability questions. This consensus reflects public opinion and not some agreement reached by political institutions that have the power to address deeper systemic issues. Instability in general, especially involving the proliferation of nationwide protests, would seem to suggest a system far from the prospect of making progress on systemic racism. However, the instability experienced post-2017 has produced greater levels of public consensus. Institutional consensus—actual legislation, judicial adjudication, or executive action—has not been impacted as much by this instability. The deterioration of systemic racism seems to rely on both types of consensus. This research will explain why one state, Utah, is "anomalous"²⁰¹ in that it has an extreme disparity between black deaths by police rates and the black percentage of the state population. Investigating Utah's journey over the last few years will support the thesis that institutional instability has a positive relationship with public consensus and public consensus has a positive effect on institutional consensus.

¹⁹⁹ Harmeet Kaur and Janine Mack, "The cities, states and countries finally putting an end to police neck restraints," *CNN*, June 16, 2020, <https://www.cnn.com/2020/06/10/world/police-policies-neck-restraints-trnd/index.html>.

²⁰⁰ Kimberly Kindy, Kevin Schaul, and Ted Mellnik, "Half of the nation's largest police departments have banned or limited neck restraints since June," *The Washington Post*, September 6, 2021, <https://www.washingtonpost.com/graphics/2020/national/police-use-of-force-chokehold-carotid-ban/>

²⁰¹ John Gerring, "Case Selection for Case-Study Analysis: Qualitative and Quantitative Techniques," *The Oxford Handbook of Political Methodology* (August 2008), 13.

This paper's focus on institutional procedures, their ability to stir up protests when they are found to be confusing, and the institutional reform that results from this clash, speaks to a distinctive facet of the BLM movement. Namely, focusing on winning the sympathy of an otherwise bystander public—something the American Civil Rights movement of the 1950s and 60s sought—is not a primary concern for BLM. Rather, as this paper will suggest, a focus on institutional arrangements and how they have been crafted to systemically disadvantage black Americans, are central objects of concern for BLM. Their efforts, in contrast to the mid-20th century civil rights movement, are an attempt to redefine rather than revive the promise of America's founding. That redefinition involves recognizing modes of subjugation and dominance as crucial elements of the American story. It involves a distinction between the promise of American liberalism and its practice. In this case, in the eyes of BLM, the practice of policing in America stands in conflict with its objective—that is, protecting and serving the public.

First, in order to more precisely understand the independent variable—instability—a definition of police use of force will be provided. Second, the legal protections granted to officers vis-à-vis qualified immunity will illuminate how despite an unstable systemic process (lethal use of force), instability goes unaddressed and leaves the public questioning how the outcomes of the policing institution do not meet their expectations, particularly tied to the “protect and serve” ethic. Finally, a conceptual analysis will showcase competing schools of thought regarding instability and the consensus it has the capacity to prompt.

I. Police Use of Force and Culpability

When Sharpton and others, especially BLM activists, talk about systemic racism, they are referring to “systems and structures that have procedures and processes that disadvantage

African Americans.”²⁰² Upon deeper analysis of those “procedures and processes”²⁰³ that pervade modern policing, this disadvantage becomes more evident. Use of force is itself a procedure that requires training, examination, and after-action review. In one study examining New York City’s Stop, Question, and Frisk Program, NYPD officers were required to fill out a form providing greater detail on their use of force. This form can provide some use of force instances that might help define the concept. They include “seven uses of force:” “(1) put hands on a civilian, (2) force to a wall, (3) handcuff, (4) draw weapon, (5) push to the ground, (6) point a weapon, (7) pepper spray or strike with a baton.”²⁰⁴ Obviously, the actual discharge of a weapon by the police would be the most elevated use of force measure, but these instances demonstrate how use of force is a spectrum of actions that are meant to physically coerce an individual. In light of the data presented, it becomes evident that fatal use of force in particular is disproportionately being exacted upon blacks. This claim is not speaking to the righteousness of a particular use of force instance. Rather, it is speaking to clear trends in the institution as a whole.

Another facet of fatal use of force is the criminal accountability associated with controversial instances where taking a life did not seem justified given the facts of the case. This is especially concerning when the victim was both black and unarmed, as was the case with George Floyd and others like Eric Garner. Although the criminal accountability outcome in Floyd’s case is still unknown, there are instances where criminal accountability has been decided, such as Garner’s case. As a part of this criminal accountability for police officers, there is a significant systemic intersection between the policing institution and the judicial institution.

²⁰² Yancey-Bragg, “What is Systemic Racism?”

²⁰³ Yancey-Bragg, “What is Systemic Racism?”

²⁰⁴ Roland G. Fryer Jr, “An Empirical Analysis of Racial Differences in Police Use of Force,” *Journal of Political Economy* 127, no. 3 (2019), 1210–1261.

One of the main complaints from BLM regarding police accountability is that the qualified immunity principle has shielded culpable law enforcement officers from punitive action by virtue of their official role. In a recent legal study on qualified immunity, Lindsey de Stefan offers what she refers to as “the modern test for qualified immunity.”²⁰⁵ In *Harlow v. Fitzgerald*, the,

standard for qualified immunity involves two different questions, both of which must be answered affirmatively in order for a plaintiff’s suit to proceed against an official: (1) Did the defendant violate the plaintiff’s constitutional right?; and (2) Was a constitutional right clearly established at the time of the violation?²⁰⁶

In other words, immunity can be granted to law enforcement officers if they are acting in their official capacity and they violate constitutional rights only because the rights of others, especially the officers, are being compromised. As a result, law enforcement officers have a broad ability to claim immunity on that basis, whether it be in the protection of the public or the protection of their own life, especially in resisting arrest cases. As this particular study indicates, the qualified immunity standard, especially allowing for a broad interpretation of “clearly established right [to violate the constitutional rights of others],” puts the general public in a position where “civil [not criminal] liability...[seems to be the only effective] way to demonstrate that our officers are our guardians and that they are accountable to us.”²⁰⁷ In one case described later, sometimes even civil liability is a hurdle for the families of those killed.

Civil accountability, although effective at times in terms of money judgements, feels watered down to those who have raised the issue of systemic racism within policing. It is just another process that comes across as disadvantaging those that share disproportionate levels of

²⁰⁵ Lindsey de Stefan, “‘No Man is Above the Law and No Man is Below It’: How Qualified Immunity Reform Could Create Accountability and Curb Widespread Police Misconduct,” *Seton Hall Law Review* 47, no. 2 (2017), 554.

²⁰⁶ *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982) referenced in *Pearson v. Callahan*, 555 U.S. 223, 232 (2009).

²⁰⁷ de Stefan, 567–568.

death at the hands of the police. What Megan Francis calls “the unmaterring of black lives”²⁰⁸ becomes more apparent and what is painted as accountability comes across as disingenuous, especially when the outcomes of these civil cases are shrouded by non-disclosure agreements.

II. Institutional and Social Instability

The “protect and serve” ethic of the police requires an appraisal regarding whether that ethic has been undermined by the data that has been presented thus far. When “protect” is seen by some as “target,” then the integrity of the institution has been compromised; it has been corrupted and destabilized. The topic of instability has had a great amount of treatment throughout the 20th and 21st centuries. There have been many definitions offered, covering the integrity of elites, the institutions they inhabit, and civil society in general. These definitions are helpful in conceptualizing the independent variable of this research project: instability.

From a more traditional perspective, instability itself has been better understood in the context of what stability, particularly in political systems, looks like. While defining stability, Leon Hurwitz, Keith M. Dowding, and Richard Kimber offer five qualifiers of instability: (1) the presence of violence,²⁰⁹ (2) the absence of “government longevity [or] endurance,”²¹⁰ (3) a “constitutional order” perceived as illegitimate,²¹¹ (4) frequent “structural change,”²¹² and (5) instability “as a multifaceted societal attribute.”²¹³ When considering the institution of policing, one of these qualifiers, more than the others, resonates with the grievances that have been levied by BLM and others concerned with systemic racism. The perception of institutional legitimacy

²⁰⁸ Megan Francis, “*A Discussion on Black Lives, Protest, and Democracy*,” Harvard University Kennedy School of Government Ash Center, YouTube Livestream. June 11, 2020, <https://youtu.be/Cj-gnbzp00>.

²⁰⁹ L. Hurwitz, “Contemporary Approaches to Political Stability,” *Comparative Politics* 5, no. 3 (April 1973), 449.

²¹⁰ Hurwitz, “Contemporary Approaches to Political Stability,” 452.

²¹¹ Hurwitz, 455; Keith M. Dowding and Richard Kimber, “The Meaning and Use of ‘Political Stability,’” *European Journal of Political Research* 11 (1983), 230.

²¹² Hurwitz, 457.

²¹³ Hurwitz, 458.

becomes corrupted when a particular group, in this case black Americans, feels targeted and not protected by police. The perception becomes even more entrenched when the data is available to substantiate that concern. Laura S. Underkuffler, writing on institutional corruption, speaks to the reason why so many see the institutionally undermining actions of some officials as compromising the legitimacy of that very institution. “We are outraged because of the evil, the arrogance, the flagrant disregard of deeply entrenched social norms that their tenure exhibits.”²¹⁴ As U.S. Senator and former presidential candidate said, institutional corruption, and the delegitimizing tide that follows, creates an atmosphere of “cynicism and discouragement.”²¹⁵

Instability also has the capacity to shake things up in a way that brings disparate parties to the table. A competing perspective on instability is that, especially when it is experienced outside the bounds of institutions and more in the realm of civil society, it can “impel negotiation” among an otherwise “bystander public.”²¹⁶ In this light, instability can be healthy for systemic issues. David Waddington has commented on the tendency to see instability on the part of civil society as merely protests and riots wrought with “spontaneity, emotionality, and destructiveness.”²¹⁷ Through this competing lens, there is an evident void in traditional thinking that, while amplifying the propensities of the protestors, observers gloss over their “grievances”²¹⁸ their “underlying political motives and rationality”²¹⁹ and the “flashpoint”²²⁰ that sparked their engagement.

²¹⁴ Laura S. Underkuffler, “Defining Corruption,” in *Corruption, Global Security, and World Order*, edited by Robert I. Rotberg, 27–42, (Baltimore: Brookings Institution Press, 2009), 39.

²¹⁵ Elizabeth Warren, “Remarks at National Press Club,” Speech, Washington, DC, August 21, 2018, <https://www.warren.senate.gov/imo/media/doc/2018.08.21%20Speech%20on%20Corruption.pdf>.

²¹⁶ Hayward, 459.

²¹⁷ David Waddington, “Riots,” *The Oxford Handbook of Social Movements* (July 2015), 2.

²¹⁸ Waddington, 14.

²¹⁹ Waddington, 2.

²²⁰ Waddington, 4.

Dr. Martin Luther King Jr. (MLK) commented on this point extensively when he encouraged non-violent civil disobedience. In his “Letter from a Birmingham Jail,” he stresses the point that injustice necessitates tension:

Just as Socrates felt that it was necessary to create a tension in the mind so that individuals could rise from the bondage of myths and half truths to the unfettered realm of creative analysis and objective appraisal, so must we see the need for nonviolent gadflies to create the kind of tension in society that will help men rise from the dark depths of prejudice and racism to the majestic heights of understanding and brotherhood.²²¹

For King, the system he sought to upset was unstable; injustice is unstable. Privilege pervaded the system and systemically excluded people of color from both the political process and the national community at large. However, as he pointed out, “privileged groups seldom give up their privileges voluntarily.”²²² This atmosphere required tension to upset the imbalance.

Interestingly, the American Civil Rights Movement of the 1960s and the BLM movement of the 2010s and 2020s differ from a tactical perspective. According to Clarissa Rile Hayward, the tactics of the Civil Rights Movement of the 1960s, particularly non-violent lunch counter sit-ins, were successful in the “contrast they drew between peaceful protestors and violent racists.”²²³ The act of them sitting silently was the message. On the other hand, BLM has adopted more “face-to-face confrontation” tactics.²²⁴

Instability—in this case meaning “disruption”²²⁵ that can “impel negotiation”²²⁶—can put an otherwise ignorant subset of the public in a position where they must pay attention. This is especially meaningful when political elites are “forced to take sides” because the disruption is loud enough and precisely targeted enough for “communities and...people who otherwise never

²²¹ King, “Letter from Birmingham Jail.”

²²² King, “Letter from Birmingham Jail.”

²²³ Hayward, 450.

²²⁴ Hayward, 450.

²²⁵ Hayward, 448.

²²⁶ Hayward, 459.

have to think or feel” the pain of black communities to begin taking it into consideration.²²⁷

Disruption has the capacity to encourage a consensus that could start merely as the belief that we as a nation need to be concerned about these issues; and that they matter and should not be ignored. The issue of doing something about it on an institutional level becomes a whole other matter. However, the seed has been planted for not just the public but for political elites to be put in a position where they are “forced to take sides.”²²⁸

III. Institutional versus Public Consensus

The distinction within the dependent variable—between broad, general, or public levels of consensus and the actual legislative products, executive action, or judicial adjudication that is considered institutional consensus—is significant. This research is ultimately concerned with gauging the move in institutional consensus following public instances of consensus, such as protests and trends in polling. Recent polling data points to a spike in support for BLM following George Floyd’s death. In June 2020, for the first time since BLM started making headlines, a majority of the American public supported the movement.²²⁹ However, this does not mean that the particular majority that supports BLM also supports specific legislation to ban police chokeholds, to hold police criminally accountable in these high-profile cases, or to enact executive action that meaningfully addresses the issue of police brutality and not just offers incentives to enact accountability measures.²³⁰ Research on the concept of consensus has offered numerous perspectives. In light of the discussion on systemic racism, this distinction between

²²⁷ Hayward, 451.

²²⁸ Hayward, 451.

²²⁹ Nate Cohn and Kevin Quealy, “How Public Opinion Has Moved on Black Lives Matter,” *The New York Times*, June 10, 2020. <https://www.nytimes.com/interactive/2020/06/10/upshot/black-lives-matter-attitudes.html>.

²³⁰ Donald J. Trump, “*Executive Order on Safe Policing for Safe Communities*,” The White House, June 16, 2020, <https://www.whitehouse.gov/presidential-actions/executive-order-safe-policing-safe-communities/>.

institutional and public consensus is meaningful. Hence, it may help to zoom out a bit and examine the concept in general.

One school of thought on consensus sees the role of political elites as crucial. A clear-cut way to define consensus is to say that consensus has been reached when a legislative measure is both passed and signed into law. Bryan D. Jones, James L. True, and Frank R. Baumgartner see the challenge of arriving at institutional consensus and define it as “trends in incrementalism” where consensus should be viewed in degrees, or what he calls “increases in consensus.”²³¹ This sheds light on a key issue with the concept: consensus hardly ever involves agreement on both the ends and the means. Almost always, the means are where political elites become hung up. Due to this struggle over the means, other authors, such as Hugh Bochel and Andrew Defty, have offered definitions of consensus that can account for this challenge.

According to Bochel and Defty, even before the means can be addressed, there is a process of “convergence” on the ends among political elites that allows for “more substantive convergence”²³² on the means over time and as new coalitions develop. The institutional consensus that this school of thought offers matters in terms of addressing the concern of those who are seeking a more meaningful discussion on systemic racism. As Rhea Boyd put it, the goal is “a shift in policy and resources that prioritize black lives. Don’t tell us black lives matter if you can’t show us in your institution and organization how they do.”²³³ This point highlights how even when institutions reach a consensus, that consensus is still subject to ongoing public appraisal.

²³¹ Bryan D. Jones, James L. True, and Frank R. Baumgartner, “Does Incrementalism Stem From Political Consensus or Institutional Gridlock?” *American Journal of Political Science* 41, no. 4 (October 1997), 1321.

²³² Hugh Bochel and Andrew Defty, “MPs’ Attitudes to Welfare: A New Consensus?” *Journal of Social Policy* 36, no. 1 (January 2007), 4.

²³³ Boyd, “A Discussion on Black Lives, Protest, and Democracy.”

Another perspective on consensus speaks to the reality that it is not just institutional consensus that matters in terms of creating change and moving forward in a way that reflects at least some broad-based agreement on political issues. Like one piece of research presented in the section on instability, sometimes what matters is not what is voted for but the act of putting political elites in a position where they are “forced to take sides.”²³⁴ Furthermore, this pressure is sometimes simply, as Hans Peter Gruner puts it, an effort to reach “an implicit agreement not to vote for extreme policy proposals.”²³⁵ This is largely accomplished through public not institutional pressure. In particular, David Waddington says that protests, especially those that are of the scale of the ones following George Floyd’s death, can force “a ‘moment of critical reflection’ in which the chronically troublesome issues which have become almost subconsciously submerged as ‘natural’ parts of the everyday lives of particular sections of society suddenly become salient and contentious.”²³⁶ The increased “salien[ce] and contention”²³⁷ comes as a result of broad-based, public consensus on an issue: in this case, systemic racism within policing and the instability of their lethal use of force procedures.

Public consensus, as opposed to institutional consensus, reflects an attempt to move the needle of progress in some way, especially when institutions are not delivering outcomes that are consistent with their mission. This consensus is evident in the protests that follow the death of someone at the hands of the police, especially when the details of that death create confusion and beg for answers from political institutions, such as local law enforcement agencies and district attorneys. These protests are wrought with emotion, and their message is one that demands not just answers but institutional reform. In addition, trends in polling data that reflect greater regard

²³⁴ Hayward, 451.

²³⁵ Hans Peter Gruner, “Inequality and Social Consensus,” *Theory and Decision* 67 (2009), 239.

²³⁶ Waddington, 4.

²³⁷ Waddington, 4.

for the issue of systemic racism generally and police accountability in particular represent a red flag for political institutions. In the eyes of the public, the expectations they have for the institution of policing, specifically, are far removed from the outcomes that are being realized. This gap is not sustainable, and this research intends to find out whether that gap begins to close in the presence of public consensus.

IV. Methodology

The methodology of this research project will be an “extreme”²³⁸ case study. In the “extreme-case method,” a particular case has an “extreme value on an independent (X_I) or dependent (Y) variable of interest.”²³⁹ For the purposes of this research, the independent variable, institutional instability and black death-by-police rates higher than the black percentage of the state population as a proxy, is especially extreme in the case of Utah. From 2017–2019, Utah had a black death-by-police rate 17 times higher than the black percentage of the state population. The next closest state was Rhode Island where the black death-by-police rate was nearly 9 times higher than the black percentage of the state population. The entire U.S. had a rate 2 times higher than the national black percentage of the population.²⁴⁰

The “extreme-case method” is helpful in that measuring “extremeness” is an exercise in understanding the “prototypic or paradigmatic [nature] of some phenomena of interest.”²⁴¹ To put it another way, “concepts are often defined by their extremes.”²⁴² Therefore, when conceptualizing institutional instability, the tendency is to focus on instances of instability that clearly show a distinctiveness from an institution that is producing outcomes commensurate to

²³⁸ Gerring, 11.

²³⁹ Gerring, 11.

²⁴⁰ “*State Comparison Tool*,” Mapping Police Violence, 2017–2019.

²⁴¹ Gerring, 11.

²⁴² Gerring, 11.

the expectations of society as a whole, not just a particular subset. Utah is clearly distinct in light of the U.S. average. Given that the “extreme-case method” is “exploratory” in nature, the “possible causes” of institutional instability and the “possible effects” of public consensus will be pursued in an “open-ended” manner that leaves itself open to “evolv[ing] hypothes[es].”²⁴³

The operating hypothesis is that institutional instability has a positive relationship with public consensus and public consensus has a positive effect on institutional consensus. This hypothesis could be characterized as a circular relationship where institutional instability begins the process of consensus-building, first within the public and then within institutions. As reform is realized through institutional consensus, the public then begins another phase of appraisal where the integrity of the reforms are gauged. Using data from January 2017–July 2020, Utah will be “describe[d] and analyze[d]” in manner that is “comprehensive” and accounts for “context.”²⁴⁴ Instances of public and institutional consensus during this time period will be described and measured in terms of their effect. Values that will be taken into consideration are timelines for bodycam footage release, the presence or absence of charges brought against officers in lethal use of force encounters, the presence or absence of civil suits by families of the victim, polling data on BLM, and police accountability protests with 10 or more attendees.

V. The Utah Case: Has Public Consensus Prompted Institutional Consensus?

Out of the 36 people killed by police in Utah between 2017 and 2019, 6 were black. That represents about a 17% share in the death-by-police rate²⁴⁵ despite blacks being only about 1% of the population in the state.²⁴⁶ Utah, having a black death-by-police rate 17 times higher than the black share of the state population, is an extreme example of how fatal police use of force is used

²⁴³ Gerring, 12.

²⁴⁴ Louise G. White, *Political Analysis: Technique and Practice*, 4th ed, (Fort Worth: Harcourt Brace College Publishers, 1999), 116.

²⁴⁵ “State Comparison Tool,” Mapping Police Violence, 2017–2019.

²⁴⁶ “Population Distribution by Race/Ethnicity,” Kaiser, 2018.

disproportionately against blacks.²⁴⁷ There are some metrics that are more meaningful than others in terms of why certain cases receive attention from families of the victims and activists. *The Washington Post* keeps a database on police shootings that have occurred since 2015. Aside from demographic data, some of the metrics *The Post* takes into account regarding those who have been shot and killed are mental illness, whether there was bodycam recording, whether or not the individual was fleeing from police, and what kind of weapon (if any) they were armed with.²⁴⁸ To be clear,

The Post is documenting only those shootings in which a police officer, in the line of duty, shoots and kills a civilian — the circumstances that most closely parallel the 2014 killing of Michael Brown in Ferguson, Mo., which began the protest movement culminating in Black Lives Matter and an increased focus on police accountability nationwide. The Post is not tracking deaths of people in police custody, fatal shootings by off-duty officers or non-shooting deaths.²⁴⁹

These details matter to both the public at large and institutional actors who are both adjudicating individual cases and deciding on whether broader, institutional reform is warranted. This case study will examine both the public and institutional consensus regarding what should be done following these lethal use of force encounters between police and blacks.

Patrick Harmon

In the summer of 2017, a black male, armed with a knife, was shot in the back by Salt Lake City police as he was fleeing on foot. Patrick Harmon was staying at a shelter in Salt Lake City and according to a lawsuit filing from his estate, “was stopped [on August 13th]...riding a bicycle without a red tail light.”²⁵⁰ While being taken into custody for an active felony warrant,

²⁴⁷ “State Comparison Tool,” Mapping Police Violence, 2017–2019.

²⁴⁸ “Police Shootings Database,” *The Washington Post*, January 1, 2015, Last updated July 21, 2020, <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/>.

²⁴⁹ Julie Tate, Jennifer Jenkins, Steven Rich, John Muyskens, Kennedy Elliot, Ted Mellnik, and Aaron Williams, “How the Washington Post is examining police shootings in the United States,” *The Washington Post*, July 7, 2016, https://www.washingtonpost.com/national/how-the-washington-post-is-examining-police-shootings-in-the-united-states/2016/07/07/d9c52238-43ad-11e6-8856-f26de2537a9d_story.html.

²⁵⁰ Estate of Patrick Harmon Sr. vs. Salt Lake City and Officer Clinton Fox, 3rd District Court Utah, Filed July 1, 2019, Dismissed July 10, 2020, <https://www.courthousenews.com/wp-content/uploads/2019/07/Police-Killing.pdf>.

“Harmon pulled his arms away from the officers and strained to break free.”²⁵¹ He began running away from police when one officer “drew his TASER” and a second officer, who had already drawn his gun, yelled, “‘I’ll fucking shoot you!’ and immediately fired three shots in rapid succession.”²⁵² Almost simultaneously, the other officer “fired his TASER” and “Harmon fell immediately to the ground.”²⁵³ From released bodycam footage, it’s clear that both the officer that shot Harmon and the officer that fired his TASER “did not issue any commands or warnings...other than yelling, ‘I’ll fucking shoot you!’ less than a second before opening fire.”²⁵⁴ Later that night, Harmon died as a result of three gunshot wounds, two in his lower back and one that entered in the back of his upper thigh, which “injured the femoral artery...causing significant blood loss.”²⁵⁵

Following Harmon’s death, there were two instances of public consensus in the form of protest: one which resulted in institutional consensus and one that did not at least directly. First, on September 30th, about 80 protesters, including Harmon’s family, “gathered to call for the release of [police] body camera footage” and express “confusion over how the shooting happened.”²⁵⁶ One participant said, “This is about transparency.”²⁵⁷ Another said “[Black people are] still scared to carry knives. . .because soon as [police] see us with them, they see a threat, and there you go getting shot.”²⁵⁸ Officer Clinton Fox, who shot and killed Harmon, alleged he was going for a knife in his pocket and verbally threatening the officers, “You’ll get cut...I’m

²⁵¹ Estate of Patrick Harmon Sr. vs. Salt Lake City and Officer Clinton Fox.

²⁵² Estate of Patrick Harmon Sr. vs. Salt Lake City and Officer Clinton Fox.

²⁵³ Estate of Patrick Harmon Sr. vs. Salt Lake City and Officer Clinton Fox.

²⁵⁴ Estate of Patrick Harmon Sr. vs. Salt Lake City and Officer Clinton Fox.

²⁵⁵ Estate of Patrick Harmon Sr. vs. Salt Lake City and Officer Clinton Fox.

²⁵⁶ Tiffany Frandsen, “Family members, activists call for answers,” *The (UT) Salt Lake City Tribune*, September 30, 2017, <https://www.sltrib.com/news/2017/09/30/protesters-call-for-release-of-police-bodycam-footage-in-fatal-shooting-of-salt-lake-city-bicyclist/>.

²⁵⁷ Frandsen, “Family members, activists call for answers.”

²⁵⁸ Frandsen, “Family members, activists call for answers.”

gonna cut you.” From the “three bodycam angles,” none support these allegations.²⁵⁹ Lex Scott, the head of Black Lives Matter Utah, was in attendance. She said, “Black people have the right to make it to trial. We don't care if you have a criminal record a mile long. We deserve our day in court.”²⁶⁰ Patrick Harmon and the family he left behind never received their day in court. A civil suit, filed in 2019, was dismissed in the summer of 2020. However, institutions were moved toward consensus, prompted by rallies like the one on September 30th.

On October 4th, District Attorney Sim Gill released bodycam footage showing the encounter between Harmon and police as well as a decision that criminal charges would not be pursued against Officer Fox. His “use of deadly force was ‘justified’ under Utah State law.”²⁶¹ Even though this was an institutional win for those seeking “transparency”²⁶² in the September 30th protests, it lacked a sense of justice in that police officers were not being held accountable. Due to the protestors’ continuing anger and frustration, another rally was held the weekend following the release of Sim Gill’s letter. On October 8th, “more than 100 people gathered outside the Salt Lake City Public Safety Building”²⁶³ to protest how Harmon’s case had been handled. Participants are remembered saying things like “We are here to show our anger, our disappointment.”²⁶⁴ Others said, “This is the civil rights movement of our generation and it's time to show up and get involved.”²⁶⁵ Interestingly, in a form of institutional consensus, a Salt Lake City Citizen’s Review Board was established. However, it lacked the power to “have an

²⁵⁹ Estate of Patrick Harmon Sr. vs. Salt Lake City and Officer Clinton Fox, 3rd District Court Utah.

²⁶⁰ Frandsen, “Family members, activists call for answers.”

²⁶¹ Sim Gill, “Letter to Sheriff Rosie Rivera and Chief Mike Brown. Re: *SLCPD Officer Fox’s Use of Deadly Force*,” Salt Lake County District Attorney’s Office, October 4, 2017, [https://slco.org/uploadedFiles/depot/fDistrictAttorney/press_release/L-Rivera,%20Brown%20\(SLCPD%20OICI\)%2017-1004.pdf](https://slco.org/uploadedFiles/depot/fDistrictAttorney/press_release/L-Rivera,%20Brown%20(SLCPD%20OICI)%2017-1004.pdf).

²⁶² Frandsen, “Family members, activists call for answers.”

²⁶³ Lisa Nico, “Hundred attend Black Lives Matter rally in Salt Lake,” *KUTV*, October 9, 2017, <https://kutv.com/news/local/hundreds-attend-black-lives-matter-rally-in-salt-lake>.

²⁶⁴ Nico, “Hundred attend Black Lives Matter rally in Salt Lake.”

²⁶⁵ Nico, “Hundred attend Black Lives Matter rally in Salt Lake.”

impact on how the city is policed.”²⁶⁶ A central recommendation from the board was that “body cam video [be] released no less than 24 hours after any officer-involved critical event, unedited, [and] with full sound.”²⁶⁷

In the case of Patrick Harmon, the Salt Lake City Police Department demonstrated an instance of institutional instability. The officer who killed Harmon shot him in the back as he was running away, gave a verbal announcement that he was going to fire only seconds before he shot, and employed lethal force nearly simultaneously with a less-than-lethal measure (TASER). Additionally, the evidence is scant that Harmon had a knife, was reaching for it, and verbally threatened officers that he was going to use the knife on them. Despite this instance of instability, two rallies followed Harmon’s death that demanded bodycam footage be released and charges be brought against the officer. Although the bodycam footage was released only a few days following the rally, the district attorney decided not to pursue charges and an eventual civil suit was pursued by Harmon’s family, where the proceedings were dismissed when a judge ruled “that what officers did was ‘legally, objectively reasonable.’”²⁶⁸ However, with the help of a second, larger rally, a Citizen’s Review Board was established. In a November 2021 ruling, “the 10th U.S. Circuit Court of Appeals overturned a lower court’s decision to dismiss a lawsuit filed by the family of Patrick Harmon, Sr. against the Salt Lake City Police Department,” stating that “Mr. Harmon was unarmed and did not start back toward the officers. Accepting these facts as true, use of deadly force would not be justified.”²⁶⁹

Elijah James Smith

²⁶⁶ Nico, “Hundred attend Black Lives Matter rally in Salt Lake.”

²⁶⁷ Nico, “Hundred attend Black Lives Matter rally in Salt Lake.”

²⁶⁸ Ben Winslow, “Federal appeals court reinstates lawsuit over SLC police shooting,” *Fox 13 – Salt Lake City*, November 11, 2011, <https://www.fox13now.com/news/local-news/federal-appeals-court-reinstates-lawsuit-over-slc-police-shooting>

²⁶⁹ Winslow, “Federal appeals court reinstates lawsuit over SLC police shooting.”

In the aftermath of Patrick Harmon’s death, a younger black man, Elijah Smith, armed with a screwdriver, was gunned down while attempting to hide from police. On April 8th, 2018, Smith, 20, was reported to be involved in a retail theft following a 911 call. Police pursued him on foot through a residential neighborhood until Smith “took refuge in [someone’s] garage.”²⁷⁰ Three officers entered the home and headed toward the garage. The first officer to enter had his TASER drawn, while the second two, “Officers Green and Wright went in with their service weapons drawn.”²⁷¹ Smith was “hiding in a corner behind a parked vehicle. The officers identified themselves and ordered Smith to ‘get your hands up’ and ‘get your hand out of your pocket.’”²⁷² Smith had raised one hand, but the other kept moving from the up position to his front pants pocket. The officers continued shouting commands, and Smith revealed that he had a screwdriver in his front pants pocket. While he was slowly moving toward the officers, “Officer Martinez fired his Taser™, making contact with Mr. Smith, and Officer Green fired his service weapon three times toward Mr. Smith.”²⁷³ Martinez’s TASER deployment and Green’s service weapon shots happened “within two seconds of each other”²⁷⁴ and only 24 seconds after the officers had entered the garage, according to West Valley City Police Chief, Colleen Jacobs.²⁷⁵

One week following Smith’s death on April 14th, family members and other protestors assembled outside the West Valley City Building to express their sense of injustice and demand

²⁷⁰ Sim Gill, “Letter to Sheriff Rosie Rivera and Chief Mike Brown. Re: *Use of Deadly Force by Officer Nicholas Green*,” Salt Lake County District Attorney’s Office, September 20, 2018, <https://slco.org/uploadedFiles/depot/fDistrictAttorney/WVPD%20OICI%204.8.18%20Signed%20Letter.pdf>.

²⁷¹ Gill, “Letter to Sheriff Rosie Rivera and Chief Mike Brown.”

²⁷² Gill, “Letter to Sheriff Rosie Rivera and Chief Mike Brown.”

²⁷³ Gill, “Letter to Sheriff Rosie Rivera and Chief Mike Brown.”

²⁷⁴ Sim Gill, “Letter to Sheriff Rosie Rivera and Chief Mike Brown. Re: *Use of Deadly Force by Officer Nicholas Green*,” Salt Lake County District Attorney’s Office, September 20, 2018, <https://slco.org/uploadedFiles/depot/fDistrictAttorney/WVPD%20OICI%204.8.18%20Signed%20Letter.pdf>.

²⁷⁵ Chantal Da Silva, “Elijah James Smith: Police Video Shows Utah Intruder Shot Dead By Officer In Family Garage,” *Newsweek*, April 18, 2018, <https://www.newsweek.com/elijah-james-smith-police-video-shows-utah-intruder-shot-dead-officer-family-890548>.

“body camera footage...and the firing of the officer who fired the fatal shot.”²⁷⁶ Around 50 participants showed up to support Smith and call for police accountability. One advocate, David Newlin, organizer for Utah Against Police Brutality (UAPB), told the crowd that he “believes the...police pulled out their guns before thinking.”²⁷⁷ Other protestors shouted, “Black Lives Matter” and “He was not a threat...justice for Elijah.”²⁷⁸ Members of his family said the police “cut his dreams” and “an innocent life was taken.”²⁷⁹ This disruption did help nudge the West Valley City Police to release bodycam footage 3 days later.

However, the district attorney did not weigh-in on criminal culpability for Officer Green until 5 months later. In the case of Patrick Harmon, it took less than 2 months. In the interim, public frustration began to grow. On May 3rd, a group of 20 protestors filed into the West Valley City Police Department lobby and “for two solid hours, chants of ‘Justice for Elijah!’ and ‘Community control now!’ filled every inch of the small space.”²⁸⁰ The protestors, led by “UAPB organizer Carly Halderman,” also “shared stories about why they fight police violence and talked about what they think community control should look like.”²⁸¹ Another organizer, Jacob Jensen, commented on how close together the TASER deployment and fatal shots happened. He said it raises the important question of “which officer acted correctly?”²⁸² Officers Martinez and Green “can’t both be right. If the cop that used a less-than-lethal method was

²⁷⁶ Jessica Miller and Tiffany Caldwell, “This wasn’t right’: Protestors call for release of bodycam footage, Utah officer’s firing after a 20 year-old black man was shot and killed by police,” *The (UT) Salt Lake City Tribune*, April 14, 2018, <https://www.sltrib.com/news/2018/04/15/this-wasnt-right-protesters-call-for-release-of-bodycam-footage-utah-officers-firing-after-a-20-year-old-black-man-was-shot-and-killed-by-police/>.

²⁷⁷ Miller and Caldwell, “This wasn’t right.”

²⁷⁸ Miller and Caldwell, “This wasn’t right.”

²⁷⁹ Miller and Caldwell, “This wasn’t right.”

²⁸⁰ “Utah protestors take over police station lobby to fight for Teamster murdered by cops,” *Fight Back News*, May 4, 2018, <http://www.fightbacknews.org/2018/5/4/utah-protesters-take-over-police-station-lobby-fight-teamster-murdered-cops>.

²⁸¹ “Utah protestors take over police station lobby to fight for Teamster murdered by cop.”

²⁸² “Utah protestors take over police station lobby to fight for Teamster murdered by cop.”

correct, then the cop who killed Elijah was wrong.”²⁸³ From Jensen’s perspective, an institutional process—police use of lethal force—has been delegitimized by a clear instance of no established standard.

On September 20th, District Attorney Sim Gill, released a letter to the West Valley City Police Chief, the Sheriff of the Unified Police Department of Greater Salt Lake, and the public at large. Although Officer Green never offered a statement as to his state of mind when he fired the fatal shots, Gill was able to conclude that he “would be legally entitled to the affirmative defense of ‘justification’ under Utah State Law.”²⁸⁴ Under the particular law Gill is referencing (Utah Code § 76-2-404(1)), a person’s “imminent use of unlawful force, infliction or threatened infliction of death or serious bodily injury, or [delay in] apprehension” that would “inflict...death or serious bodily injury” are all qualifiers for an officer’s legitimate use of force.²⁸⁵ Hence, the Smith case qualified Green for justified use of force.

Although in Smith’s case, institutional consensus was reached in terms of gaining transparency of how the events of April 8th transpired through bodycam footage, the public consensus over police accountability that manifested over multiple protests did not produce a result that both held Officer Green accountable and set an institutional standard for other officers. However, as one protester put it, institutional instability had been spotlighted in that there was not a clear process of when lethal force should be employed, especially when there are multiple officers involved and especially when one has less-than-lethal capability: Officers Martinez and Green “can’t both be right. If the cop that used a less-than-lethal method was correct, then the cop who killed Elijah was wrong.”²⁸⁶ In two separate cases, a TASER was

²⁸³ “Utah protestors take over police station lobby to fight for Teamster murdered by cop.”

²⁸⁴ Gill, “Letter to Sheriff Rosie Rivera and Chief Mike Brown.”

²⁸⁵ Gill, “Letter to Sheriff Rosie Rivera and Chief Mike Brown.”

²⁸⁶ “Utah protestors take over police station lobby to fight for Teamster murdered by cop.”

deployed almost simultaneously with a service weapon. This institutional process, lacking a clear standard, is unstable.

Diamonte Riviore

In late 2018, there was yet another case of a young black man, armed with a knife, who was tased and fatally shot at the same time. On October 11th, the mother of Diamonte Riviore's girlfriend called 911. She reported that Riviore was "holding a knife to [her] daughter's throat."²⁸⁷ Three West Jordan Police Department officers were dispatched to their apartment. One of these officers, Brian White, "had arrested Mr. Riviore in connection with a domestic dispute, involving the same victim, the previous week."²⁸⁸ When the officers arrived at the apartment, Riviore's girlfriend answered the door with her daughter in her arms and told the officers that Riviore "had [a] knife and that he was 'in the back.'"²⁸⁹ The officers proceeded to the back bedroom where they could hear Riviore in the bathroom with the door cracked. The three officers could see through the cracked door that Riviore was holding a knife. He started making motions with the knife as he quickly opened and closed the door a few times but did not advance towards the officers. Two of the officers, both with the last name Jones, "drew their tasers, while Officer White drew his service weapon."²⁹⁰ They started issuing commands for Riviore to "come out and drop the knife."²⁹¹ Both officers with TASERS "attempted unsuccessfully to [use] less-lethal force"²⁹² due to Riviore quickly cracking and then shutting the door. The officers claimed that Riviore made one final attempt to open the door and "step

²⁸⁷ Sim Gill, "Letter to Sheriff Rosie Rivera and Chief Mike Wallentine. Re: *Use of Deadly Force by Officer Brian White*," Salt Lake County District Attorney's Office, April 25, 2019, <https://slco.org/uploadedFiles/depot/fDistrictAttorney/diamonte%20OICI%20signed%20Letter.pdf>.

²⁸⁸ Gill, "Letter to Sheriff Rosie Rivera and Chief Mike Wallentine."

²⁸⁹ Gill, "Letter to Sheriff Rosie Rivera and Chief Mike Wallentine."

²⁹⁰ Gill, "Letter to Sheriff Rosie Rivera and Chief Mike Wallentine."

²⁹¹ Gill, "Letter to Sheriff Rosie Rivera and Chief Mike Wallentine."

²⁹² Gill, "Letter to Sheriff Rosie Rivera and Chief Mike Wallentine."

out...as if he were going to lunge out of the door at us.”²⁹³ This time, Officer White fired his service weapon three times after which Riviere “retreated into the bathroom, closing the door, and locking it.”²⁹⁴ After breaking down the door and discovering Riviere lying flat on the ground and bleeding out from the gunshot wounds, the officers tried unsuccessfully to revive him.²⁹⁵

It was six months until Salt Lake County District Attorney Sim Gill released both bodycam footage from the officers as well as his decision on whether to bring charges against Officer White. In an April 25, 2019 letter, Gill wrote that “Officer White’s belief that deadly force was necessary to defend himself and/or the other officers on scene is reasonable in light of all the facts presented to us in our review.”²⁹⁶ Between the time of Riviere’s death and Gill’s decision, there were no protests. Therefore, there was no large public outcry for transparency that could nudge institutional actors, such as the West Jordan Police Department or district attorney, to release bodycam footage early as was evident in the Harmon and Smith cases.

Public consensus in the form of protest didn’t occur until June 14, 2020, likely prompted by the mounting concern over George Floyd’s death. In this gathering, nearly “200 people participated in a rally, which included a march from Marin City to Mill Valley.”²⁹⁷ Marin City, California was Riviere’s hometown. It seems that the Riviere case is one that supports the hypothesis that a lack of public consensus will translate into a lack of institutional consensus. The fact that there were no protests following Riviere’s death contributed to the delay on the part of institutional actors to release bodycam footage. In the Harmon and Smith cases, protests that quickly followed their deaths prompted a quick release of bodycam footage. However, despite

²⁹³ Gill, “Letter to Sheriff Rosie Rivera and Chief Mike Wallentine.”

²⁹⁴ Gill, “Letter to Sheriff Rosie Rivera and Chief Mike Wallentine.”

²⁹⁵ Gill, “Letter to Sheriff Rosie Rivera and Chief Mike Wallentine.”

²⁹⁶ Gill, “Letter to Sheriff Rosie Rivera and Chief Mike Wallentine.”

²⁹⁷ “Marin City man remembered at memorial rally,” *Marin Independent Journal*, June 14, 2020, <https://www.marinij.com/2020/06/14/marin-city-man-remembered-at-memorial-rally/>.

this crucial difference between Riviere’s case and the others, it shares the quality of spotlighting an institutional process breakdown. Specifically, the tendency of officers to issue commands just before using lethal force as well as the tendency to deploy both less-than-lethal and lethal force simultaneously is indicative of an institution that is unstable and in need of process improvement.

VI. Consensus Moving into 2020

Interestingly, in July of 2020, the district attorney that was involved in all three cases, Sim Gill, “sent a letter to every state lawmaker, that included his ideas and suggestions for changing laws and police policy when it comes to use of force.”²⁹⁸ In the letter, Gill included 22 suggestions that he thinks could assuage the frustrations involving the “expectations of the community collid[ing] so strongly with what the law requires[;] a re-examination of what the law is, and a fulsome discussion of where it might go, is not just timely but crucial.”²⁹⁹ Gill, as a central institutional actor, shows a kind of consensus on use of deadly force methods and laws supporting the practice. It seems from Gill’s letter that he and others in a position of political power agree that the disparity between the “expectations of the community”³⁰⁰ and the practices of law enforcement officers in deadly force incidents needs to be addressed. However, he goes beyond acknowledging reconciliation between those two factors as an end worth pursuing. He clearly articulates the means in the form of changes to the law that could support this reconciliation.

²⁹⁸ Lauren Steinbrecher, “Salt Lake County DA suggests changes to Utah’s laws for police use of force,” *Fox 13 – Salt Lake City*, July 14, 2020, <https://www.fox13now.com/news/local-news/salt-lake-county-da-suggests-changes-to-utah-laws-for-police-use-of-force>.

²⁹⁹ Sim Gill, “Policy Reform Ideas for Law Enforcement Use of Deadly Force,” Salt Lake County District Attorney, July 2020. <https://ewscripps.brightspotcdn.com/d0/8e/7287e64a4bfbb5bf86f31a295567/slco-da-proposal-officer-use-of-deadly-force-july-13-2020-1.pdf>.

³⁰⁰ Gill, “Policy Reform Ideas for Law Enforcement Use of Deadly Force.”

Additionally, polling data from Utah indicates a shift in concern for these matters. The BLM movement has made among other police accountability measures “more use of less than lethal weapons”³⁰¹ a focus of their awareness efforts. A poll conducted by CIVIQS and *The New York Times* points to a positive trend toward greater regard and support for BLM. Between April 2017 and July 2020, support for BLM among Utah respondents has increased 13% (from 29% to 42%).³⁰² As further evidence for a jump in support for BLM, especially following George Floyd’s death, there have been 13 major police accountability protests in Utah from May 2020 to July 18, 2020.³⁰³ In total, these protests saw nearly 5,000 participants, many of whom showed up multiple days in a row.³⁰⁴ Likely the most significant measure of institutional consensus during this period was the Utah governor, Gary Herbert, signing a police chokehold ban into law.³⁰⁵ In the legislature, the measure passed by a 69–5 margin.³⁰⁶ The character of this bill’s passage could fairly be characterized as overwhelming institutional consensus prompted by the public consensus lawmakers saw in the streets for days on end.

VII. Conclusion

Institutional instability, evident in confusing instances of deadly use of force processes by police in Utah, has given rise to public consensus, some instances of which have prompted institutional consensus. In both the Patrick Harmon and Elijah Smith cases, protests following their deaths, which called for transparency surrounding the details of their fatal encounters with police, prompted institutional actors, particularly local police departments and the district

³⁰¹ “About,” Black Lives Matter, <https://blacklivesmatter.com/about/>.

³⁰² Cohn and Quealy, “How Public Opinion Has Moved on Black Lives Matter.”

³⁰³ “Recent protests for racial justice and police accountability,” Count Love, May–July 2020, <https://countlove.org>.

³⁰⁴ “Recent protests for racial justice and police accountability,” Count Love.

³⁰⁵ Ben Winslow, “Utah’s governor signs chokehold ban bill,” *Fox 13 – Salt Lake City*, June 25, 2020, <https://www.fox13now.com/news/local-news/utahs-governor-signs-chokehold-ban-bill>.

³⁰⁶ Bethany Rogers and Taylor Stevens, “Utah lawmakers ban knee-on-neck chokeholds,” *The (UT) Salt Lake Tribune*, June 18, 2020, <https://www.sltrib.com/news/politics/2020/06/18/knee-on-neck-chokehold/>.

attorney to release police bodycam footage quickly. In the case of Diamonte Riviere, it is evident that a lack of public consensus results in a lack of institutional consensus, particularly when it comes to the decision to release bodycam footage. In all three of these cases, there was confusion among both the public and the district attorney regarding why less-than-lethal measures like TASERs were deployed simultaneously with lethal force. This tendency for lethal and less-than-lethal methods to be used essentially simultaneously represents a process breakdown.

In his July 2020 letter to Utah lawmakers, District Attorney Sim Gill spoke on this issue. Out of his 22 recommendations, there are a few that apply directly to the context of these cases:

- Require that law enforcement use the least lethal force that is reasonably available, effective, and make the defense of justification unavailable when an officer fails to do so.
- Require that law enforcement attempt de-escalation or non-escalation whenever reasonably possible and make the defense of justification unavailable when an officer fails to do so.
- Limit or eliminate qualified immunity for excessive force cases based on state law.
- Always require an oral warning prior to the use of deadly force and consider mandating the warning be unambiguous or further defined.
- Improve and mandate extensive officer training on the value and effective uses of less than lethal force.
- Improve and mandate extensive officer training on the value and effective uses of de-escalation techniques.
- Develop policies addressing use of force when the suspect is fleeing and once the threat posed by a suspect is sufficiently abated.³⁰⁷

Although some of these training recommendations have been implemented by police departments, the changes regarding matters of law have received less attention. It is clear from the chokehold ban, passed in June of 2020, that a great degree of public consensus is needed to move the needle on levels of institutional consensus. However, public consensus, even on a small scale, matters in terms of producing institutional change. Specifically, the presence of protests following a confusing, unstable instance of lethal, police use of force has a positive impact on the timely release of bodycam footage. This same public consensus however, does not

³⁰⁷ Gill, "Policy Reform Ideas for Law Enforcement Use of Deadly Force."

account for much change when it comes to more impactful institutional consensus, such as officers being criminally charged, or police reform measures being passed at the state-level. For this kind of institutional change to trigger, levels of public consensus must be immense as is evident in the protests following George Floyd's death.

Chapter III

Rapid Confederate Monument Removal Amidst Heritage Laws: Was 2020 a Critical Juncture for North Carolina?

In May of 2017, Mayor Mitch Landrieu of New Orleans gave a speech about the removal of Confederate monuments. He said,

Monuments purposefully celebrate a fictional, sanitized Confederacy; ignoring the death, ignoring the enslavement, and the terror that it actually stood for.³⁰⁸

While he was giving the speech, four monuments were being removed after a nearly one-and-a-half-year legal battle. In December 2015, the New Orleans City Council voted 6-1 to remove these monuments,³⁰⁹ but their decision was quickly met by a two-pronged attack. First, the United States 5th Circuit Court of Appeals issued an injunction,³¹⁰ halting the city's removal of the monuments pending arguments from multiple parties suing the city. Second, the Louisiana Legislature attempted to pass a bill which would "block local governments...from removing Confederate monuments."³¹¹ In the end both attacks failed, and the four monuments in New Orleans were removed pursuant to the original city council vote. However, Louisiana lacked what other former Confederate states had as a means to legally enshrine the protection of these monuments. The strength of these legal protections has determined how quickly monuments have come down.

³⁰⁸ Mitch Landrieu, "Removal of Confederate Monuments in New Orleans" (speech, New Orleans, LA, May 19, 2017), *The New York Times*, <https://www.nytimes.com/2017/05/23/opinion/mitch-landrieus-speech-transcript.html>.

³⁰⁹ Kevin M. Levin, "Confederate Monuments Will Come Down in New Orleans," *The Atlantic*, December 17, 2015, <https://www.theatlantic.com/politics/archive/2015/12/new-orleans-remove-confederate-monuments/421059/>.

³¹⁰ Jeff Adelson, "City must leave Confederate monuments in place while case is appealed, 5th U.S. Circuit Court rules," *The New Orleans Advocate*, March 28, 2016, https://www.nola.com/news/politics/article_90696b55-08bd-5c70-b8e1-5b320609504e.html.

³¹¹ Jessica Williams, "Bill filed in Legislature to prevent takedowns of Confederate monuments," *The New Orleans Advocate*, March 8, 2016, https://www.nola.com/news/politics/article_02649411-34b6-5e58-bb41-df55c3223626.html.

Legal obstacles to Confederate monument removal are commonly referred to as Heritage Laws. These laws provide for “statewide uniformity of regulation”³¹² regarding the “process for both protection and removal of Confederate monuments.”³¹³ Despite the strength of these laws in preventing local determination on the issue of monument removal, there has been a short period of rapid change following George Floyd’s murder and the social unrest that ensued in the summer of 2020; this is known in the literature as a critical juncture. In particular, states with Heritage Laws have seen monuments falling at an unprecedented rate. Two of these states—North Carolina and South Carolina—have Heritage Laws on the books, yet one has deviated from their path of institutionalizing monument protection and the other has stayed the course. The conditions that give rise to a break from institutionalization and shape a critical juncture can be illuminated by an investigation of these states’ differing outcomes. At first glance, it seems that Heritage Laws that provide for a monument removal request or review process outside the state legislature could be characterized as weaker than laws that require legislative approval without alternative “venues of policy action”³¹⁴ such as executive branch review boards.

Understanding political change, especially the rapid change that is at the heart of this research, is a necessary component for explaining political phenomena. Scholars have coined the term “critical juncture”³¹⁵ to account for rapid change following a “period of extreme stability.”³¹⁶ Typically, critical juncture theory can be found within the body of literature known as historical institutionalism or political development studies. The importance of rapidity within

³¹² W. Davis Riddle, “How Devolved Is Too Devolved?: A Comparative Analysis Examining the Allocation of Power Between State and Local Government Through the Lens of the Confederate Monument Controversy,” *Georgia Law Review* 53, no. 367 (2018): 391.

³¹³ Riddle, “How Devolved Is Too Devolved?” 368.

³¹⁴ Frank R. Baumgartner and Bryan D. Jones, “Agenda Dynamics and Policy Subsystems,” *The Journal of Politics* 53, no. 4 (November 1991): 1045.

³¹⁵ Giovanni Capoccia, “Critical Junctures,” *The Oxford Handbook of Historical Institutionalism* (March 2016): 1-3.

³¹⁶ Baumgartner and Jones, “Agenda Dynamics and Policy Subsystems,” 1044-1045.

that literature lies in the thinking that “long-term development patterns can hinge on distant...decisions of the past.”³¹⁷ Patterns of stability—what Leon Hurwitz calls institutional “endurance—”³¹⁸ develop from these flashpoints. Therefore, a thorough understanding of the institutions—those “organizations, rules, and policies—”³¹⁹ that shape political life requires an investigation of the critical moment that cultivated them.

This paper’s focus on institutional arrangements speaks to a distinctive facet of the Black Lives Matter (BLM) movement. Namely, focusing on winning the sympathy of an otherwise bystander public—something the American Civil Rights movement of the 1950s and 60s sought—is not a primary concern for BLM. Rather, as this paper will suggest, a direct attack on symbols of American white supremacy and European colonialism, as well as the institutions that have allowed systemic racism to manifest, are central objects of concern for BLM. Their efforts, in contrast to the mid-20th century civil rights movement, are an attempt to redefine rather than revive the promise of America’s founding. That redefinition involves recognizing modes of subjugation and dominance as crucial elements of the American story. It involves a distinction between the promise of American liberalism and its practice.

Against the backdrop of rapid change for the institution of Confederate monument protection, this research will be divided into seven sections. Section I will lay out the path by which Confederate monument protection has been institutionalized and how 2020 could be characterized as a significant upheaval to this path. Section II will provide an academic review of literature on the topic of rapid change following a “period of extreme stability.”³²⁰ Scholars call this cadence of change a critical juncture. Section III will explain the comparative case study

³¹⁷ James Mahoney, *Legacies of Liberalism*, Baltimore: Johns Hopkins University Press, 2002, 8.

³¹⁸ Hurwitz, 452.

³¹⁹ Capoccia, “Critical Junctures,” 1.

³²⁰ Baumgartner and Jones, 1044-1045.

methodology used to produce this research. Section IV will offer a legislative and historical analysis of Heritage Laws in North and South Carolina in order to tease out the legal nuances that may account for differences in monument removal outcomes. Sections V and VI are case studies of North and South Carolina’s experience with Confederate Monuments in 2020, taking into account Heritage Laws that may differ in meaningful ways. Finally, Section VII offers a conclusion that weighs the findings against the hypothesis—that Heritage Law strength is a significant determinant for the cadence of Confederate monument removal. This could further be characterized as a negative relationship between Heritage Law strength and monument removal or relocation numbers.

I. The Path of Institutionalizing Monument Protection

Heritage Laws have characterized the institutionalization of Confederate monument protection. Confederate monuments started being erected in 1861.³²¹ However, the majority of monuments in places of public prominence today were not put in place until the early-20th century and were donations to municipalities by private organizations, such as the United Daughters of the Confederacy (UDC).³²² This timeliness factor points to the perception that these monuments had less to do with memorializing figures of the Confederacy and more to do with a re-telling and sanitizing of American history. “Most of these Confederate monuments were built during the Jim Crow era and in response to the civil rights movement — a sign that they were meant to explicitly represent white supremacy in the South.”³²³ The earliest efforts to enshrine the protection of these monuments in law was a 1904 statute passed in Virginia. It allowed for the county circuit court and board of supervisors to approve the placement of Confederate

³²¹ “Whose Heritage? Public Symbols of the Confederacy.”

³²² “Whose Heritage? Public Symbols of the Confederacy.”

³²³ German Lopez, “The battle over Confederate statues, explained,” *Vox*, August 23, 2017, <https://www.vox.com/identities/2017/8/16/16151252/confederate-statues-white-supremacists>

monuments on public property. However, local governments within the county did not have any legal avenue for removing them.³²⁴

This theme of local governments lacking the legal power to remove monuments is shared by other states with Heritage Laws on the books. The two states in question for this research—North Carolina and South Carolina—both require local governments to either appeal an executive branch appointed review board or the state legislature in order to legally remove or relocate monuments on public property.³²⁵ Although their Heritage Laws were established in 2015 and 2000 respectively, both states had very few removals over their history. According to a database maintained by the Southern Poverty Law Center, North Carolina has had 154 symbols of the Confederacy³²⁶ erected since their first in 1868.³²⁷ Only 24 have been removed.³²⁸ South Carolina has raised 194³²⁹ since 1867.³³⁰ Through the state’s history, two have been removed.³³¹ It seems that despite the recent institutionalization of monument protection in these two states, the path towards widespread removal has not historically deviated. In fact, with the recent establishment of Heritage Laws, that path is even further dependent upon the traditional narrative; Confederate monuments in the Carolinas do not come down. Despite the history and institutional incentive, vis-à-vis Heritage Laws, to stay on this path, 2020 has presented a juncture by which this path of dependence could be upended.

³²⁴ Zachary Bray, “Monuments of Folly: How Local Governments Can Challenge Confederate ‘Statue Statutes,’” *Temple Law Review* 91, no. 1 (Fall 2018): 24.

³²⁵ Bray, “Monuments of Folly,” 36-37, 40-44

³²⁶ “Whose Heritage? Public Symbols of the Confederacy.”

³²⁷ “Civil War Monuments by Date,” Documenting the American South, University Library, The University of North Carolina at Chapel Hill, https://docsouth.unc.edu/commland/results/?sort=dedication_date&subject=5.

³²⁸ “Whose Heritage? Public Symbols of the Confederacy.”

³²⁹ “Whose Heritage? Public Symbols of the Confederacy.”

³³⁰ John T Winberry, “‘Lest We Forget:’ The Confederate Monument and the Southern Townscape,” *Southeastern Geographer* 55, no. 1 (Spring 2015): 25.

³³¹ “Whose Heritage? Public Symbols of the Confederacy.”

The summer of 2020 has represented a critical juncture for the institutionalization of monument protection. On June 6, 2020, less than 2 weeks following George Floyd’s murder, 500,000 people across the United States rallied for greater police accountability and to raise awareness regarding the dynamic nature of systemic racism.³³² One issue symbolizing the sanctioned nature of systemic racism for activists was the prevalence of Confederate monuments, especially in former Confederate states. According to the Southern Poverty Law Center, 93 Confederate symbols have been removed or relocated since George Floyd’s murder (May 25, 2020-September 15, 2020).³³³ Compare this to 67 being removed or relocated over the course of the previous three years (2017-2019).³³⁴ A few months carried with it more change than multiple years. That change could be measured. The independent variable despite this rapid change was the presence of Heritage Laws. The dependent variable—monument removal—measures differently for the two states in question. North Carolina had 18 monuments removed or relocated while South Carolina had none.³³⁵ What conditions allowed for a disparate number of Confederate monuments to come down in North Carolina versus South Carolina despite both states having Heritage Laws on the books? A comparative case study of the two states will show that the strength of Heritage Laws determines if a course of path dependence continues or if a critical juncture upends the status quo and a period of rapid change ensues that delegitimizes the existing law. There is a negative relationship between the strength of Heritage Laws and the number of Confederate monuments that are removed or relocated.

II. Critical Junctures: Upending Path Dependence in Swift Fashion

³³² Buchanan, Bui, and Patel, “Black Lives Matter May Be the Largest Movement in U.S. History.”

³³³ “SPLC Whose Heritage? Dataset Updates.” September 15, 2020. Southern Poverty Law Center. <https://www.splcenter.org/presscenter/splc-whose-heritage-dataset-updates-september-15-2020>.

³³⁴ “Whose Heritage? Public Symbols of the Confederacy.”

³³⁵ “SPLC Whose Heritage? Reports over 100 Confederate Symbols Removed Since George Floyd’s Murder.”

The literature on institutional change and critical junctures can trace its roots back as early as the 1940s.³³⁶ In particular, the motivation behind studying “the role of timing and sequence” in institutional change was driven by a desire to better understand “administrative capacities and organizational routines of national bureaucracies.”³³⁷ However, this scholarly drive did not develop without internal strife. Institutions— “the rules, norms, and practices that organize and constitute social relations—”³³⁸ change based on certain conditions. In the absence of these conditions, institutions generally maintained a steady path. This stability is known in the literature as path dependence and institutionalization serves as a proxy for that stability.³³⁹ Institutionalization is widely thought “to generate stability...by limiting the range of alternatives actors confront.”³⁴⁰ The “rules, norms, and practices”³⁴¹ that constitute institutions are more widely accepted than those “alternatives.”³⁴² Therefore, a dependent relationship develops between society and the norms they have enshrined in their institutions. However, according to scholars, these relationships can take different forms.

The relationship between society and its institutionalized norms develops according to certain debated conditions within the literature. These conditions can be outlined in four categories: (1) the image of a particular policy and the institutional venue in which that policy seems most appropriately assigned,³⁴³ (2) agency and contingency,³⁴⁴ (3) historical sequence and

³³⁶ Karl Polanyi, *The Great Transformation: The Origins of Our Time* (Boston: Beacon Press, 1944).

³³⁷ Tullia G. Falletti, Orfeo Fioretos, and Adam Sheingate, “Historical Institutionalism in Political Science,” *The Oxford Handbook of Historical Institutionalism* (March 2016): 3.

³³⁸ Falletti, Fioretos, and Sheingate, “Historical Institutionalism,” 5.

³³⁹ Falletti, Fioretos, and Sheingate, 9-10.

³⁴⁰ Falletti, Fioretos, and Sheingate, 5.

³⁴¹ Falletti, Fioretos, and Sheingate, 5.

³⁴² Falletti, Fioretos, and Sheingate, 5.

³⁴³ Baumgartner and Jones, 1046.

³⁴⁴ Capoccia, 4.

crisis,³⁴⁵ and (4) weak institutions.³⁴⁶ The review that follows will adjudicate between these scholarly points of view and offer a plausible explanation regarding the recent context of rapid change presented in the introduction.

Policy image and institutional venue represent dynamic conditions that certainly give shape to critical junctures. According to Baumgartner and Jones, critical junctures are “short bursts of rapid change” following a “period of extreme stability.”³⁴⁷ The rapid nature of this change is fueled by “an interaction between [policy] image and [institutional] venue.”³⁴⁸ This interaction has the capacity to “create, destroy, or alter policy subsystems.”³⁴⁹ Sometimes, these changes, or outright destruction of “subsystems,”³⁵⁰ occur over a long period of time which would not constitute a critical juncture. Quick, “rapid”³⁵¹ change is a necessary feature of their definition. However, when “dramatic events” occur, “opportunities”³⁵² are presented for the manipulation of policy “image” and institutional “venue,” or “avenues of appeal for the disaffected.”³⁵³ In other words, at certain moments the perfect storm for institutional change arrives. However, this conceptualization of institutional venue as a necessary critical juncture condition does not seem as meaningful in the case of Confederate monument removal in states with Heritage Laws. These laws restrict venue shopping by providing a specific venue for action, appeal, or review. For North Carolina, that is the executive branch. For South Carolina, it is the

³⁴⁵ Sidney Verba, “Sequences and Development,” in *Crises and Sequences in Political Development (SPD-7)*, Princeton: Princeton University Press, 2015, 283-316.

³⁴⁶ Steven Levitsky and Victoria Murillo, “Variations in Institutional Strength,” *Annual Review of Political Science* 12 (2009): 119–122.

³⁴⁷ Baumgartner and Jones, 1044-1045.

³⁴⁸ Baumgartner and Jones, 1045.

³⁴⁹ Baumgartner and Jones, 1045.

³⁵⁰ Baumgartner and Jones, 1045.

³⁵¹ Baumgartner and Jones, 1044.

³⁵² Baumgartner and Jones, 1046.

³⁵³ Baumgartner and Jones, 1045.

legislative branch. Despite this conceptual shortcoming for this particular inquiry, Baumgartner and Jones still offer another condition: policy image.

When it concerns “image,” the focus can sometimes shift from a more technical aspect of policy to an “ethical [or] social” focus where a “broader range of participants can suddenly become involved.”³⁵⁴ When it comes to “venue,” rhetorical shifts can highlight certain positive aspects of a policy and imagine new “avenues of appeal” where the historically “disaffected” can finally be heard.³⁵⁵ Of course, this approach seems to be missing emphasis on an important component of change: agency. Without effective, incentivized agents, shifting policy “image” and imagining new institutional “venues of action” seems like a car without a driver.³⁵⁶ Additionally, the policy image condition of critical junctures and the manipulation that can accompany it—although present in the fight to both remove and preserve Confederate monuments—does not seem as significant as other conditions. Policy image may be significant when there is not yet a law on the books, but both states in question have laws on the books. In this case, the agency exercised by “powerful actors,”³⁵⁷ in the context of weak or strong Heritage Laws, seems like a much more illustrative condition to understanding and adjudicating this particular critical juncture.

The role of agency and contingency in institutional change places the focus on the actors involved in decision-making and the palette of choices available to them during moments of possible change. Capoccia and Kelemen stress agency and contingency in their work on critical junctures and institutional change. Like other scholars, they offer their own definition of critical junctures: “relatively short periods of time during which there is a substantially heightened

³⁵⁴ Baumgartner and Jones, 1047.

³⁵⁵ Baumgartner and Jones, 1045.

³⁵⁶ Baumgartner and Jones, 1051.

³⁵⁷ Capoccia, 3.

probability that agents' choices will affect the outcome of interest."³⁵⁸ Here, "agents' choices"³⁵⁹ are a necessary component for critical junctures to occur. Delving deeper into their work, they proceed to drive a finer point on their definition and their emphasis on agency:

Even in moments of social and political fluidity, the decisions of some actors are often more influential than those of others in steering institutional development: rather than a focus on cumulative small events, a focus on decision-making by powerful actors is likely to be more useful in the analysis of critical junctures.³⁶⁰

In this particular case, the most "powerful actors"³⁶¹ are the ones that have the capacity to initiate these short periods of quick change. Equally as important though is the range of "alternative options"³⁶² these "powerful actors"³⁶³ have at their disposal in their current political climate. Isaiah Berlin calls this framework contingency analysis. For Berlin, contingency analysis is "the study of what happened in the context of *what could have happened*."³⁶⁴ Contingency, in the context of critical junctures, informs the researcher that even though actors are limited by "prior conditions," they do have "real choices."³⁶⁵ The combination of agency and contingency analysis provides a realistic approach regarding what was possible at the point of a critical juncture. However, it seems that in raising the point regarding the limitations of actors due to "prior conditions,"³⁶⁶ historical analysis must play a key role in comprehensively assessing critical junctures.

Historical analysis and the sequence of events preceding a critical juncture provide important insights regarding the genesis of critical junctures. Sidney Verba sees institutions as

³⁵⁸ Giovanni Capoccia and R. Daniel Kelemen, "The Study of Critical Junctures: Theory, Narrative, and Counterfactuals in Historical Institutionalism," *World Politics* 59, no. 3 (April 2007): 348.

³⁵⁹ Capoccia and Kelemen, "The Study of Critical Junctures," 348.

³⁶⁰ Capoccia, 3.

³⁶¹ Capoccia, 3.

³⁶² Capoccia, 4.

³⁶³ Capoccia, 3.

³⁶⁴ Isaiah Berlin, "Historical Inevitability" in *The Philosophy of History*, ed. Patrick Gardiner, London: Oxford University Press, 1974, 176.

³⁶⁵ Capoccia, 4.

³⁶⁶ Capoccia, 4.

having a “tendency to persist.”³⁶⁷ Therefore, critical junctures, or the upending of “persist[ing]”³⁶⁸ institutions, seem to be political phenomena worth studying. Verba sees the purpose of this sequential, historical analysis as providing “a framework within which causal statements can be made about development patterns that extend over a long period of time.”³⁶⁹ As the other scholars in this review have claimed, institutions that “extend over a long period of time”³⁷⁰ fall within the category of path dependence. For Verba, though, this extended path is not necessarily uniform. In fact, “a sequential model makes the dependent variable of the first proposition the independent variable of the next.”³⁷¹ In other words, using the variables specific to this research, monument removal would eventually begin to affect the composition of Heritage Laws once a critical juncture had been traversed, ushering in a new period of path dependence. Verba goes on to frame institutional change as “sequences of crises.”³⁷² The nature of a crisis—that it “requires some governmental innovation and institutionalization if elites are not seriously to risk a loss of their position or if the society is to survive—”³⁷³ speaks to the reality that crises signify a need for rapid change and may prompt a critical juncture. Much of the treatment Verba provides on institutional change seems contingent on necessary antecedent conditions, particularly crisis. Crisis can speak to another crucial aspect of institutions that certainly has the capacity to impact their “creat[ion], destr[uction], or alter[ation]:”³⁷⁴ their strength.

Weak institutions have a much greater potential to upend a period of path dependence than strong institutions. Capoccia defines institutional strength as “the level of enforcement and

³⁶⁷ Verba, “Sequences and Development,” 301.

³⁶⁸ Verba, 301.

³⁶⁹ Verba, 285.

³⁷⁰ Verba, 285.

³⁷¹ Verba, 288.

³⁷² Verba, 297.

³⁷³ Verba, 302.

³⁷⁴ Baumgartner and Jones, 1045.

the patterns of stability of formal rules.”³⁷⁵ However, the presence of lack of strength exists for certain reasons. Levitsky and Murillo see the institutions that last as ones where,

actors develop expectations of stability and consequently invest in skills, technologies and organizations that are appropriate to those institutions... raising the cost of institutional replacement.³⁷⁶

When studying weak institutions, the cost of going back to the drawing board is much lower.

Actors are more incentivized to pursue institutional “breakdown and replacement”³⁷⁷ rather than preventative maintenance measures or even institutional expansion. Therefore, when weak institutions are present, “short bursts of rapid change,”³⁷⁸ or critical junctures, are more likely. In a comparative analysis of two seemingly similar institutional arrangements, the presence of a weak institution in one of the units of comparison might adequately account for different outcomes.

Upon review of the literature, it seems that two approaches are most appropriate in conceptualizing critical junctures in the context of Confederate monument removal in states with Heritage Laws: (1) the role of agency and contingency and (2) the impact of weak institutions. This rapid onslaught of Confederate monument removal in states with Heritage Laws, especially North Carolina, has occurred in the context of “powerful actors,”³⁷⁹ crucial antecedent conditions, and weak enforcement mechanisms or low “level[s] of enforcement.”³⁸⁰ A comparative case study will explain the contextual factors present in North Carolina and South Carolina, offer relevant cases of local governments and state leaders grappling with the question of monument removal, and support the thesis that there is a negative relationship between the

³⁷⁵ Capoccia, 11.

³⁷⁶ Levitsky and Murillo, “Variations in Institutional Strength,” 123.

³⁷⁷ Levitsky and Murillo, 128.

³⁷⁸ Baumgartner and Jones, 1044.

³⁷⁹ Capoccia, 3.

³⁸⁰ Capoccia, 11.

strength of Heritage Laws and the number of Confederate monuments that are removed or relocated. The following section will provide further explanation of the comparative case study methodology that will be employed in this study.

III. Methodology

The methodology of this research project will be a comparative case study, questioning whether the experience of one “extreme”³⁸¹ case—North Carolina—constituted a critical juncture. In the “extreme-case method,” a particular case has an “extreme value on an independent (X_1) or dependent (Y) variable of interest.”³⁸² For the purposes of this research, the independent variable—Heritage Law presence—is true for both North and South Carolina. The dependent variable—monument removal—is quite different while looking at 2020 and the states in question. North Carolina had 18 monuments removed or relocated while South Carolina had none.³⁸³ Due to this degree of disparity in the dependent variable, using “extreme-case method”³⁸⁴ will be conducive to the inquiry for an important reason.

The “extreme-case method” is helpful in that measuring “extremeness” is an exercise in understanding the “prototypic or paradigmatic [nature] of some phenomena of interest.”³⁸⁵ To put it another way, “concepts are often defined by their extremes.”³⁸⁶ Therefore, when conceptualizing critical junctures, the tendency is to focus on instances of “rapid change” that clearly show a distinctiveness from a “period of extreme stability.”³⁸⁷ North Carolina’s 2020 experience seems to offer this distinction. Nearly three-quarters of the Confederate monuments

³⁸¹ Gerring, 11.

³⁸² Gerring, 11.

³⁸³ “SPLC Whose Heritage? Reports over 100 Confederate Symbols Removed Since George Floyd’s Murder.”

³⁸⁴ Gerring, 11.

³⁸⁵ Gerring, 11.

³⁸⁶ Gerring, 11.

³⁸⁷ Baumgartner and Jones, 1044-1045.

that were removed or relocated in North Carolina since 1868 came down in 2020.³⁸⁸ Given that the “extreme-case method” is “exploratory” in nature, the “possible causes” of monument removal and the “possible effects” of strong or weak Heritage Laws will be pursued in an “open-ended” manner that leaves itself open to “evolv[ing] hypothes[es].”³⁸⁹

Based on the hypothesis—that there is a negative relationship between the strength of Heritage Laws and the number of Confederate monuments that are removed or relocated—this project will use data from the Southern Poverty Law Center’s database of public symbols of the Confederacy.³⁹⁰ Additionally, news articles providing narratives of specific monument removals, process challenges, and the government leadership decision-making process will be “describe[d] and analyze[d]” in manner that is “comprehensive” and accounts for “context.”³⁹¹ The following comparative case study will explain this extreme outcome for North Carolina and decide whether that outcome constituted a critical juncture.

IV. 2020 and Confederate Monument Removal in the Carolinas: How did Heritage Laws Hold Up?

North and South Carolina both have a history of Confederate monument protection. In terms of enshrining this protection in law, South Carolina passed their Heritage Law in 2000³⁹² and North Carolina passed their law in 2015.³⁹³ Their laws, although similar in nature, have marked differences that contributed to different outcomes between the two. This disparate outcome occurred when the country as a whole underwent a period of rapid monument removal, not just with Civil War monuments but also with any monument that venerated a slave-holder,

³⁸⁸ “Whose Heritage? Public Symbols of the Confederacy.”

³⁸⁹ Gerring, 12.

³⁹⁰ “Whose Heritage? Public Symbols of the Confederacy.”

³⁹¹ White, *Political Analysis: Technique and Practice*, 116.

³⁹² Bray, 41.

³⁹³ Bray, 36.

endorsed a racist worldview, or was party to the subjugation of indigenous people. Additionally, the context of 2020—especially highlighting the social unrest and BLM protests following George Floyd’s murder—tested the strength of these Heritage Laws as state leaders had to consider whether monument removal in certain areas was in the interest of immediate public safety.

This point—that monument removal during 2020 was not exclusive to Civil War monuments and that public safety concerns could override their protection—can begin to highlight the nuances of these laws and help characterize one as strong and another as weak. In the case of North Carolina, their law protects “object[s] of remembrance located on public property.”³⁹⁴ It further defines these “object[s] of remembrance”³⁹⁵ as,

monument[s], memorial[s], plaque[s], statue[s], marker[s], or display[s] of a permanent character that commemorate an event, a person, or military service that is part of North Carolina’s history. [They] may not be removed, relocated, or altered in any way without the approval of the North Carolina Historical Commission.³⁹⁶

The leadership of this commission is “designated by the Governor...[and] serve[s] as chairman at the pleasure of the Governor.”³⁹⁷ This institutional scheme allows for greater unilateral action compared to institutional designs that require consensus-building and the buy-in of multiple public officials (e.g., legislative-driven processes). The law further protects North Carolina monuments by stipulating that they “may not be permanently removed,”³⁹⁸ only “relocated to sites of similar prominence, honor, visibility, availability, and access that are within the boundaries of the[ir] [home] jurisdiction.”³⁹⁹ Interestingly, North Carolina’s Heritage Law was

³⁹⁴ Cultural History Artifact Management and Patriotism Act of 2015, Sess. Law 2015-170, 2015 N.C. Sess. Laws 435.

³⁹⁵ Cultural History Artifact Management and Patriotism Act of 2015.

³⁹⁶ Cultural History Artifact Management and Patriotism Act of 2015.

³⁹⁷ N.C. GEN. STAT. § 143B-64.

³⁹⁸ Bray, 37.

³⁹⁹ N.C. GEN. STAT. ANN. § 100-2.1(b).

passed “just two weeks after South Carolina removed the Confederate battle flag from its state capitol.”⁴⁰⁰ This fact illustrates that removing Confederate memorials prompts others to seek protective measures, like Heritage Laws. In this case, South Carolina’s Confederate battle flag removal prompted their neighboring state—North Carolina—to pursue Heritage Law protections.

The fact that South Carolina removed the Confederate battle flag from state capitol grounds in 2015 does not mean that the state has a history of these sorts of symbolic acts of removal. In fact, their Heritage Law, passed in 2000, goes so far as to require two-thirds of the state legislature to grant a waiver to state law for monument removal or modification.⁴⁰¹

Specifically, it safeguards,

monuments or memorials [from the] Revolutionary War, War of 1812, Mexican War, War Between the States, Spanish-American War, World War I, World War II, Korean War, Vietnam War, Persian Gulf War, [and] Native American [or] African-American History.⁴⁰²

The law even goes further to say that monuments cannot be “relocated, removed, disturbed, or altered”⁴⁰³ outside of the legislative waiver process. Additionally, “public bod[ies] responsible for the...protection, preservation, and care”⁴⁰⁴ of these monuments (e.g., the United Daughters of the Confederacy, not just local governments) are protected in the exercise of their duties under the law. Whether Confederate monuments were removed or preserved in 2020 rests upon these kinds of nuances in the law.

There are some notable differences between the laws. Unlike North Carolina, where monument removal authority rests in the executive branch (vis-à-vis the state Historical Commission), South Carolina’s removal power is solely vested in the state legislature. Another

⁴⁰⁰ Bray, 36.

⁴⁰¹ S.C. CODE ANN. § 10-1-165(B).

⁴⁰² S.C. CODE ANN. § 10-1-165(A).

⁴⁰³ S.C. CODE ANN. § 10-1-165(A).

⁴⁰⁴ S.C. CODE ANN. § 10-1-165(A).

difference worth highlighting is the parameters of protection. North Carolina’s law protects any monument that “commemorate[s] an event, a person, or military service that is part of North Carolina’s history.”⁴⁰⁵ In contrast, South Carolina’s law is restrictive to particular military campaigns as well as “Native American [or] African-American History.”⁴⁰⁶ Despite the aforementioned protective parameters, it seems the strength of these laws is located in the nature of their approval authority. In the case of North Carolina, one individual, the governor, can quickly change the disposition of the review commission they appoint to deal with the matter of monument removal or invoke public safety as a cause for removal. The governor can also rapidly change the historical cadence of monument removal in North Carolina based on how the law was constructed and how they, as the “powerful actor,”⁴⁰⁷ are thinking. In the case of South Carolina, the power to “remove or alter”⁴⁰⁸ monuments rests in the hands of two-thirds of the state legislature which can grant a waiver to local governments. There is no review commission, just the legislative body which must overcome a steep vote threshold. The following cases will explain how the integrity of these states’ Heritage Laws impacted the number of Confederate monuments that came down in the Carolinas in 2020.

North Carolina: The Raleigh Case

Less than one month following George Floyd’s murder in Minneapolis, BLM protestors in Raleigh “climbed and successfully toppled two statues from the Confederate monument outside of the North Carolina Capitol building.”⁴⁰⁹ Even though the protest was eventually quelled by police, “several officers were injured.”⁴¹⁰ The following day, Governor Roy Cooper

⁴⁰⁵ Cultural History Artifact Management and Patriotism Act of 2015.

⁴⁰⁶ S.C. CODE ANN. § 10-1-165(A).

⁴⁰⁷ Capoccia, 3.

⁴⁰⁸ S.C. CODE ANN. § 10-1-165(A).

⁴⁰⁹ Chapin, “Demonstrators topple 2 statues from Confederate monument outside NC Capitol building.”

⁴¹⁰ Chapin, “Demonstrators topple 2 statues from Confederate monument outside NC Capitol building.”

ordered the remainder of the two damaged monuments and another “removed from the state Capitol grounds to protect public safety.”⁴¹¹ Interestingly, two years prior, North Carolina had exercised the formal provisions of their Heritage Act and these same three monuments were kept in place per a decision by the North Carolina Historical Commission.⁴¹² However, the summer of 2020 was a much different time. 500,000 people rallied in the streets across the United States in those early weeks of June, many supporting BLM’s cause.⁴¹³ Therefore, when a 125-year-old, 75-foot tall Confederate monument on state capitol grounds came down at the governor’s order, waiting on the Historical Commission did not seem to be an option. What seemed to matter to Governor Cooper was “*what could have happened*” rather than “what happened.”⁴¹⁴

The agency Governor Cooper exercised, the contingent nature of the tumultuous events in Raleigh in June of 2020, and the weak nature of North Carolina’s Heritage Law allowed for not just three Confederate monuments in the state capital to come down; fifteen more monuments were removed or relocated in cities and counties across North Carolina in the months that followed.⁴¹⁵ 2020 was a critical moment in this respect. With regard to agency, “moments of social and political fluidity [highlight how] decisions of some actors are often more influential than those of others in steering institutional development.”⁴¹⁶ In this particular case, the governor was especially influential in shaping the institution of Confederate monument protection in the context of a law that allowed for immense executive-branch authority. The moment also had an important element of contingency as Governor Cooper had to weigh public safety concerns.

⁴¹¹ Bridges and Shaffer, “To cheers and music, workers dismantling 75-foot Confederate monument at NC Capitol.”

⁴¹² Merrit Kennedy, “3 North Carolina Confederate Monuments Will Stay in Place, Commission Decides,” *NPR*, August 22, 2018, <https://www.npr.org/2018/08/22/640923318/3-north-carolina-confederate-monuments-will-stay-in-place-commission-decides>.

⁴¹³ Buchanan, Bui, and Patel, “Black Lives Matter May Be the Largest Movement in U.S. History.”

⁴¹⁴ Berlin, “Historical Inevitability” in *The Philosophy of History*, 176.

⁴¹⁵ “SPLC Whose Heritage? Reports over 100 Confederate Symbols Removed Since George Floyd’s Murder.”

⁴¹⁶ Capoccia, 3.

Following the injury of law enforcement officers at the site of these monuments, Cooper said “if the legislature had repealed their 2015 law that puts up legal roadblocks to removal, we could have avoided the dangerous incidents of last night.”⁴¹⁷ More violence and more injury is the contingency Cooper faced as he made the executive decision to remove the statues in the interest of public safety. That is what “*could have happened*.”⁴¹⁸ In the next case study, South Carolina’s Heritage Law is exercised. However, the result is much different than it was in this critical moment for North Carolina.

South Carolina: The Orangeburg Courthouse Statue and Outlying Loopholes

In late June 2020, Orangeburg, South Carolina voted unanimously “to remove a 30-foot monument erected to honor the city’s fallen Confederate soldiers.”⁴¹⁹ The decision by the city council came following local protests about the monument, largely ignited by the nationwide BLM protests. Due to the nature of South Carolina’s Heritage Act, Orangeburg’s resolution must go before the state legislature in order for the state law to be waived. This waiver would only be granted following a two-thirds vote of the entire General Assembly. Along with the vote on the courthouse statue, Orangeburg also voted “to rename John C. Calhoun Drive.”⁴²⁰ Calhoun was a former, pre-Civil War Vice President and U.S. Senator from South Carolina who “urged the South to shun both parties, remain united, and protect itself by manipulating the balance of power.”⁴²¹ Despite memorials like road names having the same protections as monuments under South Carolina’s Heritage Law, the Calhoun case illuminated a significant loophole in the law.

⁴¹⁷ Bridges and Shaffer, “To cheers and music, workers dismantling 75-foot Confederate monument at NC Capitol.”

⁴¹⁸ Berlin, 176.

⁴¹⁹ Harve Jacobs and Patrick Phillips, “Orangeburg City Council votes to remove Confederate statue, rename road,” *WCSC*, June 30, 2020, <https://www.live5news.com/2020/06/30/group-holds-protest-demand-removal-confederate-statue-orangeburg/>.

⁴²⁰ Jacobs and Phillips, “Orangeburg City Council votes to remove Confederate statue, rename road.”

⁴²¹ Harry L. Watson, “Democrats and Whigs: The Second American Party System,” In *The Oxford Handbook of American Political History*, 68, 2020.

Another monument removal decision occurred in June of 2020 but had a different outcome than the Orangeburg case. On June 24th, “crowds gathered...in Charleston...as crews began...remov[ing] [a 115-foot tall] statue of former Vice President John C. Calhoun.”⁴²² The city voted unanimously the day prior to remove the statue of Calhoun which was erected in 1896.⁴²³ Why was this done so easily and without legal challenge based on the state’s strong Heritage Law which requires that overwhelming majority of the legislature? The answer lies in the language of the law. Unlike North Carolina which protects monuments “that commemorate an event, a person, or military service [connected to the state’s] history,”⁴²⁴ South Carolina restricts its monument protection to specific military campaigns and ethnic history.⁴²⁵ Although Calhoun has historically been associated with the Confederate cause based on his racist views, he “died in 1850, 11 years before the start of the Civil War.”⁴²⁶ This timing excludes memorials in his honor from Heritage Law protection. Another character of historical prominence dates back even further than Calhoun.

In Columbia, South Carolina, Mayor Steve Benjamin ordered a statue of Christopher Columbus “removed because of fears of vandalism.”⁴²⁷ Since Christopher Columbus, like Calhoun, could not technically be associated with the military campaigns or ethnic history of South Carolina cited in their Heritage Law, his memorial was excluded from protection. This was a second case in June of 2020 where South Carolina’s Heritage Law seemed to be skirted by

⁴²² Nuyen, “Crews Begin Removing John C. Calhoun Statue in South Carolina,” NPR/WAMU, June 24, 2020, <https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/06/24/882681085/crews-begin-removal-of-john-c-calhoun-statue-in-south-carolina>.

⁴²³ Stephen Hobbs, Gregory Yee, Jerrel Floyd, Mikaela Porter, Fleming Smith and Rickey Ciapha Dennis, “John C. Calhoun statue taken down from its perch above Charleston’s Marion Square,” *The Post and Courier*, June 23, 2020. https://www.postandcourier.com/news/john-c-calhoun-statue-taken-down-from-its-perch-above-charlestons-marion-square/article_7c428b5c-b58a-11ea-8fcc-6b5a374635da.html.

⁴²⁴ Cultural History Artifact Management and Patriotism Act of 2015.

⁴²⁵ S.C. CODE ANN. § 10-1-165(A).”

⁴²⁶ Nuyen, “Crews Begin Removing John C. Calhoun Statue in South Carolina.”

⁴²⁷ Marchant, “Christopher Columbus statue in Columbia removed, mayor cites fear of Vandalism.”

a technicality. However, even though BLM activists associate Calhoun and Columbus with a “history of racism and injustice”⁴²⁸ and these particular monument removals seemed synonymous with the rapid cadence of Confederate monument removal across the country, they should be excluded from measurement for the purposes of this research.

Heritage Laws in both North and South Carolina, although allowing for the protection of many historical monuments, were intended to specifically protect Confederate monuments. In the case of South Carolina, their 2000 Heritage Law was passed as “part of a legislative compromise that removed the Confederate battle flag from atop the state capitol building.”⁴²⁹ The intent therefore was to balance the Confederate battle flag’s removal with widespread institutionalized protection of Confederate monuments across the state. North Carolina passed their Heritage Law in 2015, immediately following South Carolina’s final removal of the Confederate battle flag from state capitol grounds.⁴³⁰ In this case, the intent in North Carolina was a preemptive protective measure against attempted Confederate monument removal. The letter of both laws includes protection for other historical periods, but the intent seems clear based on the historical context of their passage and explains why cases like Calhoun and Columbus should be excluded from measurement in this research.

V. Conclusion

At the onset of this research project, the hypothesis was that there is a negative relationship between the strength of Heritage Laws and the number of Confederate monuments that are removed or relocated. Additionally, (1) the role of agency and contingency and (2) the impact of weak institutions would be the guiding factors in explaining why monuments came

⁴²⁸ Marchant, “Christopher Columbus statue in Columbia removed, mayor cites fear of Vandalism.”

⁴²⁹ Bray, 41.

⁴³⁰ Bray, 36.

down in the presence of Heritage Laws that intend to preserve them. The North Carolina and South Carolina cases illuminated multiple institutional factors that supplemented explanation for the disparate number of monuments removed by the states in 2020, and especially in the wake of George Floyd's murder which prompted a quick cadence for Confederate monument removal across the United States.

In North Carolina, as of October 15th, 2020, 18 monuments to the Confederacy had been removed or relocated.⁴³¹ When taking into account the Raleigh case of June 2020, it became apparent that the agency exercised by Governor Cooper, the contingent nature of social unrest that he faced, and an institutional arrangement that allowed for unilateral executive action, all contributed to the rapid removal of three monuments in the state's capital. Although North Carolina's Heritage Law provides for an executive-appointed Historical Commission that reviews monument removal/relocation requests, the governor was able to invoke public safety concerns as a cause for action. Law enforcement officers had already been injured and it seemed that keeping the monuments up would only ignite further violence. The conclusion in this case is that Heritage Laws that allow for unilateral action should be characterized as weak because their protections can be so easily overridden. The contingent nature of social unrest in the context of a weak Heritage Law that allowed for this kind of unilateral action produced a greater number of Confederate monument removals in North Carolina.

In South Carolina, there were no Confederate monuments removed or relocated in 2020 as of October 15th.⁴³² When weighing this absence against the hypothesis, it seems that both agency and contingency as well as the impact of weak institutions were not contributing factors. In fact, the opposite seems to be true, especially when evaluating the institutional integrity of

⁴³¹ "SPLC Whose Heritage? Reports over 100 Confederate Symbols Removed Since George Floyd's Murder."

⁴³² "SPLC Whose Heritage? Reports over 100 Confederate Symbols Removed Since George Floyd's Murder."

their Heritage Law. Unlike North Carolina’s law which allows for unilateral action, South Carolina’s law requires a high bar of legislative approval. In order to meet two-thirds approval of both houses of South Carolina’s General Assembly, a municipality wanting to remove a Confederate monument must enlist the support of many legislative members. Based on the current disposition of the General Assembly, that would require the support of 84 out of 124 House members⁴³³ and 31 out of 46 Senators.⁴³⁴ Enlisting this degree of support also bolsters the claim that agency exacted by a “powerful actor”⁴³⁵ is not as much of a factor when considering the necessity of multilateral action for Confederate monument removal in South Carolina. The conclusion in this case is that the character of South Carolina’s Heritage Law is strong due to this immense legislative obstacle. Therefore, strong Heritage Laws result in lower numbers of Confederate monuments being removed. This conclusion is especially meaningful given the social unrest of 2020 related to the BLM movement, which South Carolina experienced alongside the rest of the country.⁴³⁶ Future research might consider whether social unrest compromises the integrity of institutions, specifically Heritage Laws. However, in the case of South Carolina, institutionalized Confederate monument protection was unimpeded by the social unrest of 2020 further excluding contingency as a contributing factor in this case.

Laying these findings against the backdrop of critical juncture theory produces some interesting insights. The nature of critical junctures, particularly when it comes to the issue of Confederate monument removal, seems to rely upon the agency exacted by powerful actors. These actors are sometimes able to justify their actions by explaining the contingent nature of a

⁴³³ “South Carolina House of Representatives,” <https://www.scstatehouse.gov/house.php>.

⁴³⁴ “South Carolina Senate,” <https://www.scstatehouse.gov/senate.php>.

⁴³⁵ Capoccia, 3.

⁴³⁶ One June 2020 BLM protest in Clemson, SC had “about 3,000” participants. Conor Hughes, “Clemson athletes lead on-campus protest of about 3,000 in a demonstration of unity,” *Greenville News*, June 13, 2020, <https://www.greenvilleonline.com/story/news/2020/06/13/clemson-university-football-players-lead-demonstration-change-building-names-confederate/3182532001/>.

flashpoint (e.g., public safety concerns). Additionally, institutions that have not developed or have not been constructed in a way that constrains the power of singular actors do not have that “endur[ing]”⁴³⁷ quality necessary to produce stability. The genesis of institutional stability is crucial to understanding the health of the “organizations, rules, and policies”⁴³⁸ that shape political life. Therefore, an obligation of political development and institutional research is a treatment of critical junctures. They will provide a more robust diagnostic ability to researchers when institutions fail or seem to need repair due to the outcomes, or lack of outcomes, they are producing.

Deciding whether 2020 constituted a critical juncture for North Carolina—a state where 18 Confederate monuments were removed in a matter of months—requires an appraisal of the conditions that allowed for such a rapid change. This research has shown that agency, contingency, and weak institutions—all building blocks of a critical juncture—in North Carolina produced an outcome that upended a “period of extreme stability.”⁴³⁹ In this case, the stability of North Carolina’s Confederate monument protection can be quantified. Nearly three-quarters of the Confederate monuments that were removed or relocated in North Carolina since 1868 came down in 2020.⁴⁴⁰ Characterizing Confederate monument protection in North Carolina in 2020 as “extreme[ly] stab[le]”⁴⁴¹ does not seem like a fair characterization. What seems like a more apt characterization is a “short burst of rapid change—”⁴⁴² a critical juncture.

⁴³⁷ Hurwitz, 452.

⁴³⁸ Capoccia, 1.

⁴³⁹ Baumgartner and Jones, 1044-1045.

⁴⁴⁰ “Whose Heritage? Public Symbols of the Confederacy.”

⁴⁴¹ Baumgartner and Jones, 1044-1045.

⁴⁴² Baumgartner and Jones, 1044-1045.

Conclusion

This project took on the qualities of BLM that make it a distinctive American civil rights movement. The second decade of America's 21st-century certainly had BLM front and center as protests erupted across the country following instances of blacks dying at the hands of the police. However, social unrest particular to race relations and especially its intersection with policing is certainly not a novel American experience. What has made BLM different is the number of institutions it has cut across as the movement targets, what Reinhold Niebuhr called, their "root of evil."⁴⁴³ BLM's target is systemic racism. In Chapter I, N'dea Yancey-Bragg referred to systemic racism as "systems and structures that have procedures and processes that disadvantage African Americans."⁴⁴⁴ Although critics of BLM's efforts would claim that systemic racism does not mean anything,⁴⁴⁵ examples in these chapters have shown that systemic racism has a face and can be targeted in a specific, critical way.

Over the course of this research, the ideology of BLM as well as two examples surveying matters of concern for the movement have been taken into account. Chapter I took on the thesis that the distinguishing aspect of BLM is that its ideology critiques liberalism's color-blind ethic in a way that previous movements have not fully articulated. BLM's liberal critique is illuminated in the literature of Critical Race Theory (CRT). This chapter goes on to open the literature of liberalism and CRT's critique of liberalism. In addition to this debate between CRT and liberalism, the chapter considers what makes BLM different from the 1950s/60s American Civil Rights movement. The chapter concludes that the ideology of BLM is inextricably linked

⁴⁴³ Reinhold Niebuhr, "The Effort to Derive Evil from Specific Historical Sources," In *The Nature and Destiny of Man – Volume I*, Louisville: Westminster John Knox Press, 1996, 96.

⁴⁴⁴ Yancey-Bragg, "What is Systemic Racism?"

⁴⁴⁵ Charles Creitz, "Thomas Sowell says concept of systemic racism 'has no meaning,' warns US could reach 'point of no return.'"

to CRT's critique of liberalism. The American Civil Rights movement of the 1950s and 60s sought a revival of America's founding principles through non-violent social action in order to leverage the white majority into a realm of empathy toward black subjugation. On the other hand, BLM seeks to account for the institutional and systemic racism that has survived the supposed legal victories for black individuals as a result of the American Civil Rights movement. CRT claims that this should be conceptualized as a critique of the liberalism that sparked America's founding: the promise of natural freedom and equality, the desire for individual recognition, and the belief in a reason that could be universally shared. These ideals are not enjoyed by all and BLM spotlights that disparity. The assumption of the American Civil Rights movement—that black oppression could be removed through sympathy and proper reason—is not assumed by BLM. Rather, BLM wants to take on the promises of liberalism in a much more fundamental way by redefining its promise.

The second chapter presented the thesis that police lethal use of force procedures are regularly found to be confusing as both institutional actors and the general public process police bodycam footage release. Institutional instability—that being confusing procedures that lack standard application when it specifically comes to police use of force procedures—generates consensus among the public that something needs to be done. Public consensus—that is, agreement outside the bounds of institutions, typically involving protests—has seemed to produce institutional consensus, in particular the decision to promptly release bodycam footage from a fatal encounter. Generally, the thesis of this chapter was that instances of confusing use of force procedures within the policing institution increase public consensus. The chapter took a look at literature on police use of force, instability, and consensus. Through studies of three cases of police lethal use of force in Utah, the local BLM protests that followed, and the timeline

regarding release of bodycam footage, the chapter concluded that there is meaningful interplay between institutional process breakdown, the social movements that follow, and the institutional consensus that comes about in the shadow of public concern. In all three of these cases, there was confusion among both the public and the district attorney regarding why less-than-lethal measures like TASERs were deployed simultaneously with lethal force. This tendency for lethal and less-than-lethal methods to be used simultaneously represents an institutional process breakdown. Although some of the training recommendations presented by the district attorney in these cases have been implemented by police departments, the changes regarding matters of law have received less attention. It is clear from the state chokehold ban, passed in Utah in June of 2020, that a great degree of public consensus is needed to move the needle on levels of state-wide institutional consensus. However, public consensus, even on a small scale, matters in terms of producing institutional change. Specifically, the presence of protests following a confusing instance of lethal police use of force had a positive impact on the timely release of bodycam footage. This same public consensus, however, did not account for much change when it came to more impactful institutional consensus, such as officers being criminally charged, or police reform measures being passed at the state-level. For this kind of institutional change to trigger, levels of public consensus must be immense as is evident in the protests following George Floyd's murder (i.e., the state chokehold ban did not happen until after Floyd's murder) and the subsequent police reform measures that occurred at state and local levels.

Finally, the third chapter provided the thesis that Heritage Law strength—that is, the structure of laws institutionalizing the protection of historical monuments in law—was a significant determinant for the cadence of Confederate monument removal. The chapter utilized Confederate monument history and critical juncture theory literature to set the stage for a

discussion of two cases study states: North Carolina (NC) and South Carolina (SC), their institutional arrangements regarding Heritage Laws, and their experience with removal/relocation following George Floyd's murder. Generally speaking, NC has an executive-driven Heritage Law while SC has a legislative-driven one. The paper established a weak versus strong Heritage Law dichotomy wherein executive-driven Heritage Laws were characterized as weak and legislative-driven Heritage Laws were characterized as strong. The chapter concluded with some stark outcomes between the two case study states. In NC, as of October 15th, 2020 18 monuments to the Confederacy had been removed or relocated.⁴⁴⁶ The conclusion in the NC case was that the contingent nature of social unrest in the context of a weak Heritage Law allowed for unilateral action by the governor and produced a greater number of Confederate monument removals. In the SC case, there were no Confederate monuments removed or relocated in 2020 as of October 15, 2020.⁴⁴⁷ When weighing this absence against the hypothesis, it seems that both agency and contingency as well as the impact of weak institutions were not contributing factors. In fact, the opposite seemed to be true, especially when evaluating the institutional integrity of their Heritage Law. Unlike NC's law which allows for unilateral action, SC's law requires a high bar of legislative approval. The conclusion in this case was that the character of SC's Heritage Law is strong due to this immense legislative obstacle. Therefore, strong Heritage Laws result in lower numbers of Confederate monuments beings removed. Laying these findings against the backdrop of critical juncture theory produced some interesting insights. The nature of critical junctures, particularly when it came to the issue of Confederate monument removal, seemed to rely upon the agency exacted by powerful actors. These actors were sometimes able to justify their actions by explaining the contingent nature of a flashpoint (e.g., public safety concerns).

⁴⁴⁶ "SPLC Whose Heritage? Reports over 100 Confederate Symbols Removed Since George Floyd's Murder."

⁴⁴⁷ "SPLC Whose Heritage? Reports over 100 Confederate Symbols Removed Since George Floyd's Murder."

Deciding whether 2020 constituted a critical juncture for NC—a state where 18 Confederate monuments were removed in a matter of months—required a look at the conditions that allowed for such a rapid change.⁴⁴⁸ Agency, contingency, and weak institutions are all building blocks of critical junctures. In this case, the stability of NC’s Confederate monument protection could be quantified. Nearly three-quarters of the Confederate monuments that were removed or relocated in NC since 1868 came down in 2020.⁴⁴⁹ Due to this outcome, it seemed fair to characterize NC’s experience in 2020 with Confederate monument removal as a critical juncture.

The important takeaways from this research are threefold. First, as evident in Chapter I, BLM is a novel kind of civil rights movement in American history. Second, the ideology of BLM rests upon the premises of critical theory and, more specifically, CRT. Third, BLM’s tactics exemplify an effort to redefine rather than revive America’s history and founding. With regard to each chapter, it may be helpful to specify promising avenues for future researchers on this particular topic. In Chapter I, future research would benefit from a closer investigation of the debate over CRT in the classroom. In addition, legal battles over free speech would help bolster the thesis that BLM, and its CRT ideology, is directly attacking the assumptions of liberalism regarding universal reason. In Chapter II, researchers interested in the topic would benefit from additional case studies of lethal police use of force incidents involving blacks where lethal and non-lethal measures are deployed simultaneously. Furthermore, since the release of bodycam footage is dependent upon the political actors holding local office, case studies that investigate states other than Utah would be helpful. Researchers with a more quantitative approach may find the relationship between state-wide institutional reform (e.g., chokehold and neck restraint bans) and the presence of large protests, in the jurisdictions in which they occurred, interesting.

⁴⁴⁸ “SPLC Whose Heritage? Reports over 100 Confederate Symbols Removed Since George Floyd’s Murder.”

⁴⁴⁹ “Whose Heritage? Public Symbols of the Confederacy.”

Finally, in Chapter III, future research would do well to take a deeper look at historical monuments other than those memorializing figures of the Confederacy. So much of what distinguishes BLM, with regard to monument removal, is that its critique is not specific to the American Civil War era. In fact, it targets both American founders and famous figures of European colonialism such as Christopher Columbus. As a whole, this research endeavor has been fruitful in its attempt to learn more about this decade-long American social movement which became so prominent in those tumultuous months following George Floyd's murder in the summer of 2020. BLM is unique in that it seeks to gain ground and fill in gaps left by the American Civil Rights movement of the 1950s and 60s. It does not seek to revive the words of the America's *Declaration of Independence*—that “all men are created equal.”⁴⁵⁰ Rather, it calls into question that claim in the practice of American liberalism. In efforts such as protests seeking police accountability and the push to remove monuments venerating the Confederacy and European colonialism, BLM seeks to redefine and reimagine the institutions that have systemically disadvantaged and disenfranchised blacks in America.

⁴⁵⁰ United States, John Dunlap, Peter Force, David Ridgely, and Printed Ephemera Collection, In Congress, July 4, a declaration by the representatives of the United States of America, in General Congress assembled. *In Congress, July 4, a declaration by the representatives of the United States of America, in General Congress assembled.*

Bibliography

“About.” Black Lives Matter. <https://blacklivesmatter.com/about/>

Adelson, Jeff. “City must leave Confederate monuments in place while case is appealed, 5th U.S. Circuit Court rules.” *The New Orleans Advocate*, March 28, 2016.
https://www.nola.com/news/politics/article_90696b55-08bd-5c70-b8e1-5b320609504e.html

Baumgartner, Frank R. and Bryan D. Jones. “Agenda Dynamics and Policy Subsystems.” *The Journal of Politics* 53, no. 4 (November 1991): 1044-1074.

Berlin, Isaiah. *Four Essays on Liberty*. Oxford: Oxford University Press. 1969.

Berlin, Isaiah. “Historical Inevitability.” In *The Philosophy of History*, ed. Patrick Gardiner. London: Oxford University Press, 1974. 161–186.

Bochel, Hugh and Andrew Defty. “MPs' Attitudes to Welfare: A New Consensus?” *Journal of Social Policy* 36, no. 1 (January 2007). 1–17.

Boyd, Rhea. “A Discussion on Black Lives, Protest, and Democracy.” Harvard University Kennedy School of Government Ash Center. YouTube Livestream. June 11, 2020.
<https://youtu.be/Cj-gnbzplo0>

Bray, Zachary. “Monuments of Folly: How Local Governments Can Challenge Confederate ‘Statue Statutes.’” *Temple Law Review* 91, no. 1 (Fall 2018): 1–54.

Bridges, Virginia and Josh Shaffer. “To cheers and music, workers dismantling 75-foot Confederate monument at NC Capitol.” *The News & Observer*. June 21, 2020.
<https://www.newsobserver.com/news/politics-government/article243693472.html>.

Buchanan, Larry, Quoc Trung Bui, and Jugal K. Patel. “Black Lives Matter May Be the Largest Movement in U.S. History.” *The New York Times*. July 3, 2020.
<https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html>

Capoccia, Giovanni. “Critical Junctures.” *The Oxford Handbook of Historical Institutionalism* (March 2016): 1-20.

Capoccia, Giovanni and R. Daniel Kelemen. “The Study of Critical Junctures: Theory, Narrative, and Counterfactuals in Historical Institutionalism.” *World Politics* 59, no. 3 (April 2007): 341-369.

Chapin, Josh. “Demonstrators topple 2 statues from Confederate monument outside NC Capitol building.” *ABC 11*. June 20, 2020. <https://abc11.com/6256848/>.

- Chavez, Nicole, Ryan Young and Angela Barajas. "An all-Black group is arming itself and demanding change. They are the NFAC." *CNN*. October 25, 2020.
<https://www.cnn.com/2020/10/25/us/nfac-black-armed-group/index.html>
- "Civil War Monuments by Date." Documenting the American South. University Library, The University of North Carolina at Chapel Hill.
https://docsouth.unc.edu/commland/results/?sort=dedication_date&subject=5.
- Cohn, Nate and Kevin Quealy. "How Public Opinion Has Moved on Black Lives Matter." *The New York Times*. June 10, 2020.
<https://www.nytimes.com/interactive/2020/06/10/upshot/black-lives-matter-attitudes.html>
- Creitz, Charles. "Thomas Sowell says concept of systemic racism 'has no meaning,' warns US could reach 'point of no return.'" *Fox News*. July 12, 2020.
<https://www.foxnews.com/media/thomas-sowell-systemic-racism-has-no-meaning>
- Cultural History Artifact Management and Patriotism Act of 2015, Sess. Law 2015-170, 2015 N.C. Sess. Laws 435.
- Da Silva, Chantal. "Elijah James Smith: Police Video Shows Utah Intruder Shot Dead By Officer In Family Garage." *Newsweek*. April 18, 2018.
<https://www.newsweek.com/elijah-james-smith-police-video-shows-utah-intruder-shot-dead-officer-family-890548>
- Dawson, Michael C. "The Black Public Sphere and Black Civil Society." In *The Oxford Handbook of African American Citizenship, 1865-Present*, 379-380. 2012.
- de Stefan, Lindsey. "'No Man is Above the Law and No Man is Below It': How Qualified Immunity Reform Could Create Accountability and Curb Widespread Police Misconduct." *Seton Hall Law Review* 47, no. 2 (2017): 543-568.
- Delgado, Richard and Jean Stefanic. *Critical Race Theory: An Introduction*. New York: New York University Press, 2017.
- Delgado, Richard. "First Amendment Formalism Is Giving Way to First Amendment Legal Realism." *Harvard Civil Rights-Civil Liberties Law Review* 29, no. (1994): 169-174.
- Demaske, Chris. "Critical Race Theory." First Amendment Encyclopedia. Middle Tennessee State University, 2009. <https://www.mtsu.edu/first-amendment/article/1254/critical-race-theory>
- Dowding, Keith M. and Richard Kimber. "The Meaning and Use of 'Political Stability.'" *European Journal of Political Research* 11 (1983): 229-243.
- Estate of Patrick Harmon Sr. vs. Salt Lake City and Officer Clinton Fox. 3rd District Court Utah.

Filed July 1, 2019. Dismissed July 10, 2020. <https://www.courthousenews.com/wp-content/uploads/2019/07/Police-Killing.pdf>

Falleti, Tulia G, Orfeo Fioretos, and Adam Sheingate. “Historical Institutionalism in Political Science.” *The Oxford Handbook of Historical Institutionalism* (March 2016): 1-28.

Fanon, Frantz. “The Negro and Recognition.” In *Black Skin, White Masks*, translated by Charles Lam Markmann, 2709-2902. New York: Grove Press, 1967.

Finlayson, James Gordon. “Political, Moral, and Critical Theory: On the Practical Philosophy of the Frankfurt School.” In *The Oxford Handbook of Continental Philosophy*, 630. 2007.

Francis, Megan. “*A Discussion on Black Lives, Protest, and Democracy.*” Harvard University Kennedy School of Government Ash Center. YouTube Livestream. June 11, 2020. <https://youtu.be/Cj-gnbzplo0>

Frandsen, Tiffany. “Family members, activists call for answers.” *The (UT) Salt Lake City Tribune*. September 30, 2017. <https://www.sltrib.com/news/2017/09/30/protesters-call-for-release-of-police-bodycam-footage-in-fatal-shooting-of-salt-lake-city-bicyclist/>

Freeden, Michael and Marc Stears. “Liberalism.” In *The Oxford Handbook of Political Ideologies*, 329-347. 2013.

Fryer, Roland G. Jr. “An Empirical Analysis of Racial Differences in Police Use of Force.” *Journal of Political Economy* 127, no. 3 (2019): 1210–1261.

Fukuyama, Francis. *The End of History and the Last Man*. New York: The Free Press, 1992.

Gerring, John. “Case Selection for Case-Study Analysis: Qualitative and Quantitative Techniques.” *The Oxford Handbook of Political Methodology* (August 2008). 1–48.

Gill, Sim. “Letter to Sheriff Rosie Rivera and Chief Mike Brown. Re: *SLCPD Officer Fox’s Use of Deadly Force.*” Salt Lake County District Attorney’s Office. October 4, 2017. [https://slco.org/uploadedFiles/depot/fDistrictAttorney/press_release/L-Rivera,%20Brown%20\(SLCPD%20OICI\)%2017-1004.pdf](https://slco.org/uploadedFiles/depot/fDistrictAttorney/press_release/L-Rivera,%20Brown%20(SLCPD%20OICI)%2017-1004.pdf)

Gill, Sim. “Letter to Sheriff Rosie Rivera and Chief Mike Brown. Re: *Use of Deadly Force by Officer Nicholas Green.*” Salt Lake County District Attorney’s Office. September 20, 2018. <https://slco.org/uploadedFiles/depot/fDistrictAttorney/WVPD%20OICI%204.8.18%20Signed%20Letter.pdf>

Gill, Sim. “Letter to Sheriff Rosie Rivera and Chief Mike Wallentine. Re: *Use of Deadly Force by Officer Brian White.*” Salt Lake County District Attorney’s Office. April 25, 2019. <https://slco.org/uploadedFiles/depot/fDistrictAttorney/diamonte%20OICI%20signed%20Letter.pdf>

- Gill, Sim. "Policy Reform Ideas for Law Enforcement Use of Deadly Force." Salt Lake County District Attorney. July 2020.
<https://ewscripps.brightspotcdn.com/d0/8e/7287e64a4bfb5bf86f31a295567/slco-da-proposal-officer-use-of-deadly-force-july-13-2020-1.pdf>
- Gowan, Annie. "As statues of Founding Fathers topple, debate rages over where protesters should draw the line." *The Washington Post*. July 7, 2020.
https://www.washingtonpost.com/national/as-statues-of-founding-fathers-topple-debate-rages-over-where-protesters-should-draw-the-line/2020/07/07/5de7c956-bfb7-11ea-b4f6-cb39cd8940fb_story.html
- Gruner, Hans Peter. "Inequality and Social Consensus." *Theory and Decision* 67 (2009): 239–265.
- Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982).
- Hayward, Clarissa Rile. "Disruption: What Is It Good For?" *The Journal of Politics* 82, no. 2 (April 2020): 448-459.
- Hegel, G.W.F. *The Phenomenology of Spirit*, translated by Peter Fuss and John Dobbins. Notre Dame: University of Notre Dame Press, 2019.
- Hobbes, Thomas. *Leviathan*. London: Electric Book, 2017.
- Hobbs, Stephen, Gregory Yee, Jerrel Floyd, Mikaela Porter, Fleming Smith and Rickey Ciapha Dennis. "John C. Calhoun statue taken down from its perch above Charleston's Marion Square." *The Post and Courier*. June 23, 2020.
https://www.postandcourier.com/news/john-c-calhoun-statue-taken-down-from-its-perch-above-charlestons-marion-square/article_7c428b5c-b58a-11ea-8fcc-6b5a374635da.html.
- Hughes, Conor. "Clemson athletes lead on-campus protest of about 3,000 in a demonstration of unity." *Greenville News*. June 13, 2020.
<https://www.greenvilleonline.com/story/news/2020/06/13/clemson-university-football-players-lead-demonstration-change-building-names-confederate/3182532001/>.
- Hughes, Trevor. "'No justice, no streets;' Still grieving, Minneapolis residents wonder how city will move forward after Derek Chauvin trial." *USA Today*. April 4, 2021.
<https://www.usatoday.com/story/news/nation/2021/04/04/derek-chauvin-trial-minneapolis-reckons-george-floyds-death/4848181001/>
- Hurwitz, L. "Contemporary Approaches to Political Stability." *Comparative Politics* 5, no. 3 (April 1973): 449–463.
- Jacobs, Harve and Patrick Phillips. "Orangeburg City Council votes to remove Confederate

- statue, rename road.” *WCSC*. June 30, 2020.
<https://www.live5news.com/2020/06/30/group-holds-protest-demand-removal-confederate-statue-orangeburg/>.
- Jones, Bryan D., True, James L and Frank R. Baumgartner. “Does Incrementalism Stem From Political Consensus or Institutional Gridlock?” *American Journal of Political Science* 41, no. 4 (October 1997). 1319–1339.
- Kaur, Harmeet and Janine Mack. “The cities, states and countries finally putting an end to police neck restraints.” *CNN*. June 16, 2020. <https://www.cnn.com/2020/06/10/world/police-policies-neck-restraints-trnd/index.html>
- Kennedy, Merrit. “3 North Carolina Confederate Monuments Will Stay in Place, Commission Decides.” *NPR*, August 22, 2018. <https://www.npr.org/2018/08/22/640923318/3-north-carolina-confederate-monuments-will-stay-in-place-commission-decides>.
- Kindy, Kimberly, Kevin Schaul, and Ted Mellnik. “Half of the nation’s largest police departments have banned or limited neck restraints since June.” *The Washington Post*. September 6, 2021. <https://www.washingtonpost.com/graphics/2020/national/police-use-of-force-chokehold-carotid-ban/>
- King, Martin Luther Jr. “‘I Have A Dream’ Speech.” *NPR*. August 28, 1963.
<https://www.npr.org/2010/01/18/122701268/i-have-a-dream-speech-in-its-entirety>
- King, Martin Luther Jr. “Letter from Birmingham Jail.” *The Atlantic Monthly* 212, no. 2 (August 1963): 77-88. https://www.csuchico.edu/iege/_assets/documents/susi-letter-from-birmingham-jail.pdf
- Kojève, Alexandre. “Chapter 2 – Summary of the First Six Chapters of *The Phenomenology of Spirit*.” In *Introduction to the Reading of Hegel: Lectures on the Phenomenology of Spirit*, edited by Allan Bloom, 31-70. Ithaca: Cornell University Press, 1969.
- Ladd, Sarah. “Police: 3 Black militia members injured in negligent gun discharge, may result in charges.” *Louisville Courier Journal*. July 26, 2020. <https://www.courier-journal.com/story/news/local/2020/07/26/nfac-shooting-louisville-being-investigated-negligent-shooting/5514492002/>
- Landrieu, Mitch. “Removal of Confederate Monuments in New Orleans.” Speech, New Orleans, LA, May 19, 2017. *The New York Times*,
<https://www.nytimes.com/2017/05/23/opinion/mitch-landrieus-speech-transcript.html>.
- Lebron, Christopher J. *The Making of Black Lives Matter*. New York: Oxford University Press, 2017.
- Levin, Kevin M. “Confederate Monuments Will Come Down in New Orleans.” *The Atlantic*.

- December 17, 2015. <https://www.theatlantic.com/politics/archive/2015/12/new-orleans-remove-confederate-monuments/421059/>.
- Levitsky, Steven and Victoria Murillo. "Variations in Institutional Strength." *Annual Review of Political Science* 12 (2009): 115–133.
- Lincoln, Abraham. "Letter to H. Pierce and Others." Monticello Digital Classroom. April 6, 1859. <https://classroom.monticello.org/media-item/abraham-lincoln-to-henry-l-pierce/>
- Lincoln, Abraham. "Peoria Speech." National Park Service. October 16, 1854. <https://www.nps.gov/liho/learn/historyculture/peoriaspeech.htm>
- Lincoln, Abraham. "Speech at Chicago, Illinois." Teaching American History. July 10, 1858. <https://teachingamericanhistory.org/library/document/speech-at-chicago-illinois/>
- Locke, John. *Second Treatise of Government*, edited by C. B. Macpherson. Indianapolis: Hackett Publishing Company, 1980.
- Lopez, German. "The battle over Confederate statues, explained." *Vox*. August 23, 2017. <https://www.vox.com/identities/2017/8/16/16151252/confederate-statues-white-supremacists>
- Marchant, Bristow. "Christopher Columbus statue in Columbia removed, mayor cites fear of vandalism." *The State*, June 12, 2020. <https://www.thestate.com/news/local/article243485776.html>.
- Mahoney, James. *Legacies of Liberalism*. Baltimore: Johns Hopkins University Press, 2002.
- "Marin City man remembered at memorial rally." *Marin Independent Journal*. June 14, 2020. <https://www.marinij.com/2020/06/14/marin-city-man-remembered-at-memorial-rally/>
- Marcuse, Herbert. "Repressive Tolerance." In *A Critique of Pure Tolerance*, by Robert Paul Wolff, Barrington Moore, Jr., and Herbert Marcuse, 81-123. Boston: Beacon Press, 1970.
- McBride, Keally. "Frantz Fanon, *The Wretched of the Earth*." In *The Oxford Handbook of Classics in Contemporary Political Theory*, 5. 2017.
- Mill, John Stuart. *On Liberty*. Kitchner: Batoche Books, 2001.
- Miller, Jessica and Tiffany Caldwell. "'This wasn't right': Protestors call for release of bodycam footage, Utah officer's firing after a 20 year-old black man was shot and killed by police." *The (UT) Salt Lake City Tribune*. April 14, 2018. <https://www.sltrib.com/news/2018/04/15/this-wasnt-right-protesters-call-for-release-of-bodycam-footage-utah-officers-firing-after-a-20-year-old-black-man-was-shot-and-killed-by-police/>

- Mills, Charles W. *Black Rights/White Wrongs: The Critique of Racial Liberalism*. New York: Oxford University Press, 2017.
- Morin, Rich and Renee Stepler. “The Racial Confidence Gap in Police Performance.” Pew Research Center. September 29, 2016. <https://www.pewresearch.org/social-trends/2016/09/29/the-racial-confidence-gap-in-police-performance/>
- N.C. GEN. STAT. § 143B-64.
- N.C. GEN. STAT. ANN. § 100-2.1(b).
- Nico, Lisa. “Hundred attend Black Lives Matter rally in Salt Lake.” *KUTV*. October 9, 2017. <https://kutv.com/news/local/hundreds-attend-black-lives-matter-rally-in-salt-lake>
- Niebuhr, Reinhold. *The Nature and Destiny of Man*. Louisville: Westminster John Knox Press, 1996.
- Nuyen, Suzanne. “Crews Begin Removing John C. Calhoun Statue in South Carolina.” *NPR/WAMU*, June 24, 2020. <https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/06/24/882681085/crews-begin-removal-of-john-c-calhoun-statue-in-south-carolina>.
- Pearson v. Callahan, 555 U.S. 223, 232 (2009).
- Polanyi, Karl. *The Great Transformation: The Origins of Our Time*. Boston: Beacon Press, 1944.
- “Police Shootings Database.” *The Washington Post*. January 1, 2015. Last updated July 21, 2020. <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/>
- “Population Distribution by Race/Ethnicity.” Kaiser Family Foundation. 2018. <https://www.kff.org/other/state-indicator/distribution-by-raceethnicity/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>
- “Recent protests for racial justice and police accountability.” Count Love. May–July 2020. <https://countlove.org/>
- Riddle, W. Davis. “How Devolved Is Too Devolved?: A Comparative Analysis Examining the Allocation of Power Between State and Local Government Through the Lens of the Confederate Monument Controversy.” *Georgia Law Review* 53, no. 367 (2018): 367-406.
- Rogers, Bethany and Taylor Stevens. “Utah lawmakers ban knee-on-neck chokeholds.” *The (UT) Salt Lake Tribune*. June 18, 2020. <https://www.sltrib.com/news/politics/2020/06/18/knee-on-neck-chokehold/>

S.C. CODE ANN. § 10-1-165.

Sharpton, Al. “George Floyd’s Memorial Service Eulogy.” June 4, 2017.

<https://www.rev.com/blog/transcripts/reverend-al-sharpton-eulogy-transcript-at-george-floyd-memorial-service>

Sherfinski, David. “Ben Carson: ‘Of course all lives matter — and all lives includes black lives.’” *The Washington Times*. October 15, 2015.

<https://www.washingtontimes.com/news/2015/oct/15/ben-carson-course-all-lives-matter-and-all-lives-i/>

Simmons, John A. “John Locke’s *Two Treatises of Government*.” In *The Oxford Handbook of British Philosophy in the Seventeenth Century*, 542-562. 2013.

“South Carolina House of Representatives.” <https://www.scstatehouse.gov/house.php>.

“South Carolina Senate.” <https://www.scstatehouse.gov/senate.php>.

“SPLC Whose Heritage? Dataset Updates.” September 15, 2020. Southern Poverty Law Center. <https://www.splcenter.org/presscenter/splc-whose-heritage-dataset-updates-september-15-2020>.

“SPLC Whose Heritage? Reports over 100 Confederate Symbols Removed Since George Floyd’s Murder.” October 15, 2020. Southern Poverty Law Center. <https://www.splcenter.org/presscenter/splcs-whose-heritage-reports-over-100-confederate-symbols-removed-george-floyds-murder>.

“*State Comparison Tool*.” Mapping Police Violence. 2017–2019. <https://mappingpoliceviolence.org/states>

State of Minnesota vs. Derek Michael Chauvin. “Criminal Complaint.” District Court 4th Judicial District. May 29, 2020. <https://www.hennepinattorney.org/-/media/Attorney/Derek-Chauvin-Criminal-Complaint.pdf?la=en&hash=1E453C8A0834E00805D32DA7132616A1D28F7AD5>

State of Minnesota vs. Derek Michael Chauvin. “Verdict - Count 1.” District Court 4th Judicial District. April 20, 2021. <https://www.mncourts.gov/mncourtsgov/media/High-Profile-Cases/27-CR-20-12646/Verdict104212021.pdf>

Steinbrecher, Lauren. “Salt Lake County DA suggests changes to Utah’s laws for police use of force.” *Fox 13 – Salt Lake City*. July 14, 2020. <https://www.fox13now.com/news/local-news/salt-lake-county-da-suggests-changes-to-utah-laws-for-police-use-of-force>

Tate, Julie, Jennifer Jenkins, Steven Rich, John Muyskens, Kennedy Elliot, Ted Mellnik, and Aaron Williams. “How the Washington Post is examining police shootings in the United States.” *The Washington Post*. July 7, 2016.

- https://www.washingtonpost.com/national/how-the-washington-post-is-examining-police-shootings-in-the-united-states/2016/07/07/d9c52238-43ad-11e6-8856-f26de2537a9d_story.html
- Trump, Donald J. “*Executive Order on Safe Policing for Safe Communities.*” The White House. June 16, 2020. <https://www.whitehouse.gov/presidential-actions/executive-order-safe-policing-safe-communities/>
- Underkuffler, Laura S. “Defining Corruption.” In *Corruption, Global Security, and World Order*, edited by Robert I. Rotberg, 27–42. (Baltimore: Brookings Institution Press, 2009).
- United States, John Dunlap, Peter Force, David Ridgely, and Printed Ephemera Collection. In *Congress, July 4, a declaration by the representatives of the United States of America, in General Congress assembled*. [Philadelphia: Printed by John Dunlap, 1776] Image. <https://www.loc.gov/item/2003576546/>.
- “Utah protestors take over police station lobby to fight for Teamster murdered by cops.” *Fight Back News*. May 4, 2018. <http://www.fightbacknews.org/2018/5/4/utah-protesters-take-over-police-station-lobby-fight-teamster-murdered-cops>
- Verba, Sidney. “Sequences and Development.” In *Crises and Sequences in Political Development (SPD-7)*. Princeton: Princeton University Press, 2015. 283-316.
- Vigdor, Neil. “North Carolina City Approves Reparations for Black Residents.” *The New York Times*. July 16, 2020. <https://www.nytimes.com/2020/07/16/us/reparations-asheville-nc.html>
- Waddington, David. “Riots.” *The Oxford Handbook of Social Movements* (July 2015). 1–17.
- Warren, Elizabeth. “*Remark sat National Press Club.*” Speech, Washington, DC, August 21, 2018. Office of Senator Elizabeth Warren. <https://www.warren.senate.gov/imo/media/doc/2018.08.21%20Speech%20on%20Corruption.pdf>
- Watson, Harry L. “Democrats and Whigs: The Second American Party System.” In *The Oxford Handbook of American Political History*, 62-75. 2020.
- White, Louise G. *Political Analysis: Technique and Practice*. 4th ed. (Fort Worth: Harcourt Brace College Publishers, 1999).
- “Whose Heritage? Public Symbols of the Confederacy.” Southern Poverty Law Center. February 1, 2019. <https://www.splcenter.org/20190201/whose-heritage-public-symbols-confederacy>.
- Williams, Jessica. “Bill filed in Legislature to prevent takedowns of Confederate monuments.”

The New Orleans Advocate, March 8, 2016.
https://www.nola.com/news/politics/article_02649411-34b6-5e58-bb41-df55c3223626.html.

Winberry, John T. “‘Lest We Forget:’ The Confederate Monument and the Southern Townscape.” *Southeastern Geographer* 55, no. 1 (Spring 2015): 19-31.

Winslow, Ben. “Utah’s governor signs chokehold ban bill.” *Fox 13 – Salt Lake City*. June 25, 2020. <https://www.fox13now.com/news/local-news/utahs-governor-signs-chokehold-ban-bill>

Winslow, Ben. “Federal appeals court reinstates lawsuit over SLC police shooting.” *Fox 13 – Salt Lake City*. November 11, 2011. <https://www.fox13now.com/news/local-news/federal-appeals-court-reinstates-lawsuit-over-slc-police-shooting>

Yancey-Bragg, N’dea. “What is Systemic Racism? Here’s what it means and how you can help dismantle it.” *USA Today*. June 15, 2020.
<https://www.usatoday.com/story/news/nation/2020/06/15/systemic-racism-what-does-mean/5343549002/>

Curriculum Vitae

Michael Palmere has worked at multiple levels of government including the U.S. military, elections administration, and the Department of Veterans Affairs. He graduated from Stetson University in DeLand, Florida with a B.A. in Political Science. Following his time at Stetson, he served in the active-duty Army with the historic 1st Cavalry Division. There, he led Soldiers during a combat deployment to Iraq and was awarded the Bronze Star Medal. After leaving the Army, Michael started two companies and served in elections administration in preparation for the 2016 U.S. Presidential Election. Currently, he resides outside Asheville, North Carolina and serves at the Department of Veterans Affairs. He will complete his M.A. in Government at Johns Hopkins University in the fall of 2021.