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The Lynching of George Floyd: Black Theology, Protest, and Racial Justice

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THE LYNCHING OF GEORGE FLOYD: BLACK THEOLOGY, PROTEST, AND RACIAL JUSTICE

Marguerite Hattoumi Spencer[†]

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[Lynching] is not the creature of an hour, the sudden outburst of uncontrolled fury, or the unspeakable brutality of an insane mob. It represents the cool, calculating deliberation of intelligent people who openly avow that there is an “unwritten law” that justifies them in putting human beings to death without complaint under oath, without trial by jury, without opportunity to make defense, and without right of appeal.¹

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¹ Ida B. Wells, *Lynch Law in America*, in MILDRED I. THOMPSON, IDA B. WELLS-BARNETT: AN EXPLORATORY STUDY OF AN AMERICAN BLACK WOMAN 235 (1990).

Ida B. Wells

The violence of lynching is a blot on our nation's history that continues to threaten the rule of law in analogous ways today. The May 25, 2020, death of George Floyd, a Black man, under the knee-hold of a Minneapolis police officer attests to this.² As we interrogate this fiercely racist act of police brutality, and the many preceding it,³ various lenses can be employed to derive new meanings. James H. Cone, one of the fathers of Black Theology, provides us with an interpretation that we might overlook: the Black Jesus who dies on the cross to overcome the violence experienced by Blacks. As he wrote in his last work, *The Cross and the Lynching Tree*, "to understand what the cross means in America, we need to take a look at the lynching tree in this nation's history."⁴

While Black Lives Matter plays a vital role in battling police brutality, the larger movement has been marred by acts of violence,⁵ sometimes by protestors who are rightfully angry over entrenched racism and classism, sometimes by law enforcement agencies, and sometimes by anarchists. Cone can provide guidance to this ongoing struggle by balancing the Rev. Dr. Martin Luther King, Jr. and his Beloved Community, with Malcolm X and Black Power. Cone stressed that Black and White people have experienced the most violent *and* loving encounters, yet still remain brothers and sisters.⁶ As such, "[a]ll the hatred we have expressed toward

² This Journal capitalizes "Blacks" and "Whites." However, capitalization is at issue in some print media. See, e.g., Nancy Coleman, *Why We're Capitalizing Black*, N.Y. TIMES (July 5, 2020), <https://www.nytimes.com/2020/07/05/insider/capitalized-black.html> [<https://perma.cc/Y2YJ-7E7Q>] (outlining why the New York Times chose to capitalize only "Black/Blacks" and not "white/whites").

³ Eric Garner, July 17, 2014, New York City, N.Y.; Michael Brown, Aug. 9, 2014, Ferguson, MO; Tamir Rice, Nov. 22, 2014, Cleveland, OH; Walter Scott, Apr. 04, 2015, Charleston, N.C.; Alton Sterling, July 05, 2016, Baton Rouge, LA; Philando Castile, July 06, 2016, St. Paul, MN; Stephen Clark, Mar. 18, 2018, Sacramento, CA; Breonna Taylor, Mar. 13, 2020, Louisville, KY; Adam Toledo, Mar. 29, 2021, Chicago, IL; and Daunte Wright, Apr. 11, 2021, Brooklyn Center, MN. For details of the killings, see *George Floyd: Timeline of Black Deaths and Protests*, BBC NEWS (Apr. 22, 2021), <https://www.bbc.com/news/world-us-canada-52905408> [<https://perma.cc/XH9W-59TF>]; Kiara Alfonseca, *What We Know About the Fatal Police Shooting of 13-Year-Old Adam Toledo*, ABC NEWS (Apr. 16, 2021), <https://abcnews.go.com/US/fatal-police-shooting-13-year-adam-toledo/story?id=77115626> [<https://perma.cc/98KS-XHBW>].

⁴ JAMES H. CONE, *THE CROSS AND THE LYNCHING TREE* 160 (2011) [hereinafter *CROSS AND LYNCHING TREE*].

⁵ See, e.g., Catholic News Service, *Christ Statue Vandalized at Florida Church Among Latest Attacks on Statues*, NAT'L CATH. REP. (July 21, 2020), <https://www.ncronline.org/news/parish/christ-statue-vandalized-florida-church-among-latest-attacks-statues> [<https://perma.cc/9HFX-8VRF>] (chronicling destruction of Catholic Church property during protests).

⁶ *CROSS AND THE LYNCHING TREE*, *supra* note 4 at 165.

one another cannot destroy the profound mutual love and solidarity that flow deeply between us.”⁷

While oppression has existed since before our founding, King and Malcolm X fought for racial and economic justice in the face of the Jim Crow laws of their time. American historian C. Vann Woodward’s 1955 book, *The Strange Career of Jim Crow*, recollected and described such oppression, which King later drew upon.⁸ In the book, Woodward claimed that Jim Crow laws were not inevitable in light of “forgotten alternatives” that never materialized.⁹ King, in his March 25, 1965, speech following the Selma to Birmingham March, agreed with Woodward that during the Reconstruction era, “the southern aristocracy took the world and gave the poor white man Jim Crow . . . and when his wrinkled stomach cried out for the food that his empty pockets could not provide, (*Yes, sir*) he ate Jim Crow, a psychological bird that told him that no matter how bad off he was, at least he was a white man, better than the black man.”¹⁰ Woodward later recollected that King dubbed his book the *historical* bible of the Civil Rights Movement, though the veracity of this label is at issue. Similarly, in her 2010 book, *The New Jim Crow: Mass Incarceration In the Age of Colorblindness*, Michelle Alexander argued that Black males have been segregated within a new racial caste system, built upon the old de jure one, and known as the school-to-prison pipeline.¹¹ For her contribution, Cornel West called Alexander’s book the *secular* bible for a new social movement.¹² One could argue that Cone’s life work, in turn, provided us with the *theological* bible for the same enduring cause.

In this Article, I invite you to join me in transposing Cone’s Black theology into a register that engages the systemic and institutional racism behind George Floyd’s lynching and its aftermath. In Part I, I explore the development of James Cone’s Black theology as he brings King and

⁷ *Id.*

⁸ COMER VANN WOODWARD, *THE STRANGE CAREER OF JIM CROW* (1955). After the Supreme Court’s decision in *Brown v. Board of Education*, in spring 1954, Woodward gave the Richards Lectures at the University of Virginia that were collected in this book. With Woodward in the audience at Montgomery, Alabama, King named Woodward and drew upon *The Strange Career of Jim Crow* in his *Address at the Conclusion of the Selma to Montgomery: A CALL TO CONSCIENCE THE LANDMARK SPEECHES OF DR. MARTIN LUTHER KING, JR.* 122 (Clayborne Carson, ed., 2001). However, King did not dub this book “the bible.” This event is only recollected by Woodward in his book, *THINKING BACK: THE PERILS OF WRITING HISTORY* (1986), 82–83. *See also* Sheldon Hackney, *C. Vann Woodward, Dissenter*, 10 *JOHN HOPKINS U. PRESS*, no. 1, 2009, at 31–34.

⁹ WOODWARD, *supra* note 8, at 13.

¹⁰ Martin Luther King, Jr., *Address at the Conclusion of the Selma to Montgomery March* (Mar. 25, 1965).

¹¹ MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 12 (2010).

¹² *Id.* at ix.

Malcom X together to mediate his own anger over the racialized ordering of our society. In Part II, I link Cone's interpretation of the lynching of the Black Christ to police brutality and the death of George Floyd. In Part III, I relate Cone's development from rage to resurrection to the ongoing movement sustained by Black Lives Matter but defaced by violence. Finally, in Part IV, I interrogate the rule of law in our post-Floyd nation. Drawing upon the international law of human rights and a strategy called "targeted universalism,"¹³ I propose that we can move toward a reconciliatory eradication of systemic racism and a hope-filled "resurrection" of our democracy.

I. MARTIN, MALCOM, AND CONE'S BLACK THEOLOGY

Then they came to Jerusalem. And [Jesus] entered the temple and began to drive out those who were selling and . . . buying . . . he overturned the tables of the money changers and the seats of those who sold doves . . . And when the chief priests and the scribes heard it, they kept looking for a way to kill him; for they were afraid of him . . .

. . .¹⁴
The price of freedom is death.¹⁵

But the end is reconciliation; the end is redemption; the end is the creation of the beloved community.¹⁶

According to Cone, one of the fathers of Black theology, the Christian task is to rebel against all masters, destroying their pretensions to authority and ridiculing their symbols of power.¹⁷ Like King, he is critical of the state, without taking up the sword. Like Malcolm, he issues a powerful call to resist the demonic and oppressive political structures that control our society.¹⁸ Both transformative, Cone stands alongside King and Malcolm,

¹³ See generally john a. powell, Stephen Menendian & Wendy Ake, *Targeted Universalism: Policy & Practice*, OTHERING & BELONGING INST. (May 8, 2019), <https://belonging.berkeley.edu/targeteduniversalism> [<https://perma.cc/GMG6-TH4K>]. Throughout this Article, john a. powell's name is not capitalized because he does not capitalize his name.

¹⁴ *Mark* 11:15, 18 (New Revised Standard Version).

¹⁵ JAMES H. CONE, *THE RISKS OF FAITH: THE EMERGENCE OF BLACK THEOLOGY* 39 (1999) [hereinafter *RISKS OF FAITH*]. See also, Malcolm X, Remarks, *The Price of Freedom is Death*, available at: https://www.youtube.com/watch?v=AQjup0DGW_Y [<https://perma.cc/83BP-NX44>].

¹⁶ Martin Luther King, Jr., *Non-violence and Racial Justice*, in *THE ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING, JR.* 8 (James Washington ed., 1991).

¹⁷ *RISKS OF FAITH*, *supra* note 15, at 39.

¹⁸ WALTER E. PILGRIM, *UNEASY NEIGHBOR: CHURCH AND STATE IN THE NEW TESTAMENT*, 168 (1999).

fighting for an end to racial and economic injustice.¹⁹ Using Cone's Black Theology, we are better able to review, critique, and change the laws that resulted in the death of George Floyd.

A. *Martin Luther King, Jr.*

Even though convicted, we will not retaliate with hate, but will still stand with love in our hearts, and stand resisting injustice, with the same determination with which we started out We ask people everywhere to pray that God will guide us, pray that justice will be done, and that righteousness will stand For as we said all along, this is a spiritual movement.²⁰

Martin Luther King, Jr. was a product of the Black Church tradition and its Biblical theology of love, justice, liberation, hope, and redemptive suffering.²¹ King believed that the mutual liberation of Blacks and Whites would lead to the creation of a "Beloved Community," which would require "a qualitative change in our souls as well as a quantitative change in our lives."²² The Beloved Community would not tolerate racism, bigotry, discrimination, poverty, hunger, and homelessness.²³ Instead, love and trust would triumph over fear and hatred.²⁴ Brotherhood and sisterhood would triumph over division.²⁵

Cone believed that the Black Church must be prophetic in bringing about the Beloved Community, remaining in tension with, while acting as the conscience of, the state.²⁶ Cone chastised the Black Church for upholding the status quo,²⁷ and the White Church for claiming that civil rights leaders were exploiting "the race problem" to "overthrow the American government."²⁸ Indeed, some argued that much of the power of

¹⁹ *Id.* at 192.

²⁰ King, Jr., *supra* note 16, at 84.

²¹ JAMES H. CONE, A BLACK THEOLOGY OF LIBERATION: 20TH ANNIVERSARY 192-94 (1993) [hereinafter BLACK THEOLOGY].

²² Martin Luther King, Jr., Address at the Invitational Conference on Social Change and the Role of Behavioral Science (May 4, 1966) (excerpts available at *Nonviolence: The Only Road to Freedom*, TEACHING AM. HIST., <https://teachingamericanhistory.org/library/document/nonviolence-the-only-road-to-freedom/> [https://perma.cc/HC5H-XRN2]).

²³ See *The King Philosophy - Nonviolence365*, THE KING CTR., <https://thekingcenter.org/about-tkc/the-king-philosophy/> [https://perma.cc/JG4K-A5XU].

²⁴ *Id.*

²⁵ *Id.*

²⁶ Lewis V. Baldwin, *On the Relation of the Christian to the State: The Development of a Kingian Ethic*, in THE LEGACY OF MARTIN LUTHER KING, JR.: THE BOUNDARIES OF LAW, POLITICS, AND RELIGION, 77, 102 (Lewis Baldwin et al. ed.2002).

²⁷ *Id.* at 84-85.

²⁸ *Id.* at 92.

King's legacy "rests in the fact that he successfully challenged a conservative religious establishment that had long failed to properly distinguish between obedience to God and loyalty to the state."²⁹

Seeking justice, King also challenged the political establishment of his day. He called for a "dialectical" attitude toward government that is critical whenever it exceeds its bounds.³⁰ Although government is necessary, reverence for it should extend only as far as the purpose for which that unit was created. Because politics and the government sanction the oppression of Blacks, Christians are justified in resisting the state.³¹

While King did not deny the obligation to obey the laws of the state, he did insist that this obligation is subordinate to the obligation to disobey the laws that conscience, provoked by serious circumstances, deem unjust.³² He did not intend to overthrow constituted authority.³³ Rather, he intended to work within the democratic system to expose and eradicate racial injustice.³⁴ Drawing upon Judeo-Christian ethics, King wrote:

I would agree with St. Augustine that "an unjust law is no law at all." . . . All segregation statutes are unjust because segregation distorts the soul and damages the personality. It gives the segregator a false sense of superiority, and the segregated a false sense of inferiority So segregation is not only politically, economically and sociologically unsound, but it is morally wrong and sinful.³⁵

King's goal was to show that Jim Crow laws were unconstitutional by breaking them, while appealing to superior federal law and Supreme Court decisions for change. In essence, he used civil disobedience to call for democratic self-examination.³⁶

In a 1963 interview with African American psychologist, educator, and social activist, Kenneth B. Clark,³⁷ King described nonviolent direct

²⁹ *Id.* at 101.

³⁰ *Id.* at 79.

³¹ *Id.*

³² JAMES A. COLAIACO, MARTIN LUTHER KING, JR.: APOSTLE OF MILITANT NONVIOLENCE 85 (1993).

³³ *Id.*

³⁴ *Id.* at 86.

³⁵ Martin Luther King, Jr., *Letter from Birmingham City Jail*, in THE ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING, JR. 297 (James Washington ed., 1991).

³⁶ COLAIACO, *supra* note 32, at 85.

³⁷ Clark is famous for his "doll study" that was crucial to the desegregation of public schools. See Leila McNeill, *How a Psychologist's Work on Race Identity Helped Overturn School Segregation in 1950s America*, SMITHSONIAN MAG. (Oct. 26, 2017), <https://www.smithsonianmag.com/science-nature/psychologist-work-racial-identity-helped-overturn-school-segregation-180966934/> [<https://perma.cc/H2G6-6AJH>].

action as a method of rectifying an unjust social situation.³⁸ It involves practical teaching that nullifies the use of violence or calls for non-violence at every point.³⁹ He considered it “the most potent weapon available to oppressed people in their struggle for freedom and human dignity.”⁴⁰ It disarms the opponent and exposes his moral defenses, weakening his morale and working on his conscience.⁴¹ Direct action brings oppression into the open, so it can be dealt with. King argued:

Like a boil that can never be cured as long as it is covered up but must be opened with all its pus-flowing ugliness to the natural medicines of air and light, injustice must likewise be exposed, with all of the tension its exposing creates, to the light of human conscience and the air of national opinion before it can be cured.⁴²

Critics of King asserted that the mission of the Christian Church did not involve challenging government and transforming the laws and moral codes of the society.⁴³ King responded that civil disobedience is not new to God’s Kingdom. Jesus was an extremist in love and the world’s most dedicated nonconformist.⁴⁴ The early Christians were also prepared and willing to face hungry lions and the excruciating pain of chopping blocks, before submitting to certain unjust laws of the Roman Empire.⁴⁵ As King wrote from his Birmingham cell:

Let us be as maladjusted as Abraham Lincoln who had the vision to see that this nation could not exist half slave and half free. Let us be as maladjusted as Jesus of Nazareth, who could look into the eyes of the men and women of his generation and cry out, “love your enemies. . . .”⁴⁶

King and other protestors never aimed to defeat the White man. Rather, they sought to win his friendship and understanding. “We must come to see that the end we seek is a society at peace with itself, a society that can live with its conscience,” wrote King.⁴⁷ “[T]hat will be a day not of the White

³⁸ KENNETH B. CLARK, *THE NEGRO PROTEST: JAMES BALDWIN, MALCOLM X, AND MARTIN LUTHER KING TALK WITH KENNETH B. CLARK* 39 (1963).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² King, Jr., *supra* note 35, at 295.

⁴³ Lewis V. Baldwin, *On the Relation of the Christian to the State: The Development of a Kingian Ethic*, in *THE LEGACY OF MARTIN LUTHER KING, JR.: THE BOUNDARIES OF LAW, POLITICS, AND RELIGION* 91 (Lewis V. Baldwin ed., 2002).

⁴⁴ *Id.* at 86.

⁴⁵ King, Jr., *supra* note 35, at 294.

⁴⁶ Martin Luther King, Jr., *The American Dream*, in *THE ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING, JR.* 216 (James Washington ed., 1991).

⁴⁷ Martin Luther King, Jr., *Our God Is Marching On*, in *THE ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING, JR.* 230 (James Washington ed., 1991).

man, not of the Black man. That will be the day of man as man.”⁴⁸

Emphasizing the foundational documents of the nation, King challenged the status quo and summoned men to rise above the narrow confines of race and class.⁴⁹ He was a “public theologian” who called Whites to be true to what they said in their political and religious documents of freedom and democracy.⁵⁰ It is impossible to ignore King and the claims he made about religion and justice.⁵¹ King believed that God was going to call America to account for its violence and its ghettos.⁵² By combining the biblical tradition of liberation and justice in the Exodus story and in the words of the prophets with Jesus’ cross, King was able to embody in 1968 the ideas of love, justice, and hope.⁵³ As a Baptist preacher, he led a radical nonviolent civil rights movement that “broke the backbone of legal segregation in the South and challenged all Americans “to create the beloved community in which all persons are equal.”

While Cone embraced King’s resolve, he also found King strangely silent about the meaning of Blackness in a world of White supremacy, designing his public thinking largely to persuade Whites, usually White Christians, to take seriously the “humanity of Negroes.”⁵⁴ To understand Blackness in America, Cone turned to Black Power and America’s most trenchant race critic, Malcolm X.⁵⁵ While King accepted White logic, Malcolm flatly rejected it.⁵⁶

B. *Black Power and Malcolm X*

I don’t profess to have a political, economic, or social solution to a problem as complicated as the one which our people face in the States, but I am one of those who is willing to try *any means necessary* to bring an end to the injustices our people suffer.⁵⁷

While King and most participating Black Churches promoted integration with Whites, Black Nationalists, led by Malcolm X, repudiated

⁴⁸ *Id.*

⁴⁹ Frederick Downing, *Martin Luther King, Jr. as Public Theologian*, 44 THEOLOGY TODAY 15, 17, 24 (1987).

⁵⁰ JAMES H. CONE, MARTIN, MALCOLM AND BLACK THEOLOGY, in ETHICAL ISSUES IN THE STRUGGLES FOR JUSTICE (1998).

⁵¹ THE RISKS OF FAITH, *supra* note 15, at xvi, xix.

⁵² James H. Cone, *Calling the Oppressors to Account for Four Centuries of Terror*, 31 CURRENTS IN THEOLOGY & MISSION 182 (2004).

⁵³ *Id.* at 181.

⁵⁴ RISKS OF FAITH, *supra* note 15, at xix.

⁵⁵ *Id.* at xiii-xx.

⁵⁶ *Id.*

⁵⁷ Robert M. Kahn, *The Political Ideology of Malcolm X*, J. RELIGIOUS THOUGHT 38, 31-33 (1981-82).

White culture and religion, often calling for a return to Africa or a separate state within the Western Hemisphere.⁵⁸ Malcolm X provided a challenging critique of King's philosophy. In place of integration, nonviolence, and turning the other cheek, Malcolm advocated for Black unity, self-defense, and self-love. Although the Black Church was behind King's interpretation of justice through the first half of the 1960s, after the Watts Riot in August 1965, some Black clergy, particularly in the North, moved slowly toward Malcolm and Black Power.⁵⁹

Black Power was first used in the spring of 1966 by activist Stokely Carmichael as the integration theme began to lose ground to the Black nationalist philosophy of Malcolm X.⁶⁰ This philosophy called for complete emancipation of Blacks from White oppression in ways Black people deem necessary—up to and including rebellion against the “top to bottom” racism of our nation.⁶¹ Black Power also challenged the Black community to define itself according to the politics, economic, and social interests of Black people.⁶² Cone wrote that Blacks are forever reminded of their powerlessness “when White policemen . . . kill defenseless Blacks and government officials praise them for their bravery and courage.”⁶³ Cone reassured us that Black Power is neither hate nor Black racism.⁶⁴ Instead, it transcends hate and racism by affirming what is common among *all* humans. Black Power is the “power of being” and the “courage to be” in the midst of “nonbeing” and the “Whiteness of nothingness.”⁶⁵

In his autobiography, Malcolm described a conversion experience when he became a member of the U.S. based Nation of Islam.⁶⁶ “I had sunk to the very bottom of the American White man's society when—soon now,

⁵⁸ *Id.* at 24.

⁵⁹ BLACK THEOLOGY, *supra* note 21, at 197–99. Sometimes called the Watts Rebellion, the cause can be traced back to the migration of around 500,000 Blacks to California to escape racial discrimination who found themselves in a similar situation of segregated communities of concentrated poverty. See Casey Nichols, *Watts Riot (August 1965)*, BLACK PAST (Oct. 23, 2007), <https://www.blackpast.org/african-american-history/watts-rebellion-august-1965/> [https://perma.cc/Q39N-FLHZ]. The riot lasted from August 11 to August 15, 1965, resulting in 34 deaths, over 1,000 injuries, and 4,000 arrests. *Id.* There was \$40 million in property damage. *Id.* It was the largest riot during the 1960s. *Id.*

⁶⁰ JAMES H. CONE, FOR MY PEOPLE: BLACK THEOLOGY AND THE BLACK CHURCH, WHERE HAVE WE BEEN AND WHERE ARE WE GOING? 10 (1984) [hereinafter FOR MY PEOPLE].

⁶¹ BLACK THEOLOGY, *supra* note 21, at 5–6.

⁶² Marguerite Spencer, *Environmental Racism and Black Theology: James H. Cone Instructs Us on Whiteness*, 5 U. ST. THOMAS L.J. 288, 301 (2008).

⁶³ James H. Cone, *Black Power, Black Theology and the Study of Theological Ethics*, THEOLOGICAL EDUC. 211 (Spring 1970) [hereinafter *Theological Ethics*].

⁶⁴ *Id.* at 210.

⁶⁵ *Id.*

⁶⁶ MALCOLM X, THE AUTOBIOGRAPHY OF MALCOLM X: AS TOLD TO ALEX HALEY 14 (1965).

in prison—I found Allah and the religion of Islam.”⁶⁷ At that moment, he solemnly decided to “tell[] the White man about himself—or die.”⁶⁸ To Malcolm, world history is the history of what he terms the White devil’s work. As Malcolm sees it, “[w]hen you call him devil you’re calling him by his name, and he’s got another name—Satan . . . another name—Pharaoh, another name—Caesar; another name— . . . America.”⁶⁹ Malcolm opposed the Civil Rights Movement along with integration and nonviolence.⁷⁰ Instead, he argued that Blacks could not appeal to the moral conscience of America because “Uncle Sam has no conscience If he had a conscience, he’d straighten this thing out.”⁷¹

Malcolm also equated the White race with Christianity early on as an accomplice to the enslavement and oppression of Blacks which leads to self-degradation.⁷² Malcolm prophesied the end of the wicked world of colonialism and Christianity through Allah.⁷³ He also preached a separatist political ideology in which Blacks—God’s creatures touched with divinity—would go back to Africa or settle in a separate Black territory with reparations from the White community.⁷⁴

In repudiating nonviolence as a strategy for solving racism, Malcolm did not embrace indiscriminate or *offensive* violence. Rather, he advocated *defensive* violence as found in both the Qur’an and the Bible, as well as in nature’s self-preservation.⁷⁵ In the months prior to his suspension from the Nation of Islam, Malcolm even suggested that the Black community might consider employing a systematic program of violence as a revolutionary tool to achieve its goals.⁷⁶

Malcolm criticized civil rights leaders like King, for loving, emulating, and showing loyalty toward the White man.⁷⁷ He asserted that in those areas where the government is either unable or unwilling to protect the lives and property of our people, “our people are within our rights to protect themselves by *whatever means necessary*.”⁷⁸

After his complete break with the Nation of Islam, Malcolm spoke

⁶⁷ *Id.* at 243.

⁶⁸ *Id.* at 280.

⁶⁹ Kahn, *supra* note 57, at 26.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.* at 20.

⁷³ *Id.* at 18, 21–22.

⁷⁴ *Id.* at 21, 24.

⁷⁵ *Id.* at 27.

⁷⁶ Malcolm X, *Message to the Grassroots*, in MALCOLM X SPEAKS: SELECTED SPEECHES AND STATEMENTS 21–22 (George Breitman ed., 1989).

⁷⁷ Kahn, *supra* note 57, at 27–30.

⁷⁸ Malcolm X, *The Founding Rally of the OAAU*, in BY ANY MEANS NECESSARY 41 (George Breitman ed., 1970) (emphasis added).

less of religion, and more about social doctrine, current events, and politics.⁷⁹ He wanted to build an organization that could help to cure the Black man from the mental, spiritual, economic, and political sickness which had kept him “under the White man’s heel.”⁸⁰ Once educated in politics, the masses would know what politicians were supposed to do for them; and once involved in politics, they could work to end their exploitation.⁸¹

Malcolm’s conversion to orthodox Islam in 1964 drastically transformed his political ideology into one of universal brotherhood.⁸² During his pilgrimage to Mecca, he saw brotherhood in every person regardless of their identity.⁸³ As a result of these revelations, he stopped preaching that White men were devils. In his autobiography, Malcolm wrote, “[P]erhaps if White Americans could accept the Oneness of God, they perhaps, too could accept *in reality* the Oneness of Man.”⁸⁴ Because no government laws ever can *force* brotherhood, he claimed, “[t]he only true world solution today is governments guided by true religion—of the spirit.”⁸⁵

Malcolm believed that God was giving the world’s “so-called Christian” White society its last opportunity to repent and atone for the crimes of exploiting and enslaving the world’s non-White people.⁸⁶ It was just as when God gave Pharaoh a chance to repent and brought justice to the oppressed.⁸⁷ A desegregated cup of coffee and drinking fountain does not amount to atonement. It is the American political, economic, and social *atmosphere* that nourishes racism of which both races are obligated to correct.⁸⁸ He concluded that, “[i]n our mutual sincerity we might be able to show a road to the salvation of America’s very soul. It can only be salvaged if human rights and dignity, in full, are extended to Black men.”⁸⁹ He grew to accept the White man, while still remaining critical of his political and economic powers. Malcolm also acknowledged that America is in a position to bring about a bloodless revolution. If the state were to give Black

⁷⁹ MALCOLM X, *supra* note 66, at 403; *see also* WILLIAM W. SALES, JR., FROM CIVIL RIGHTS TO BLACK LIBERATION: MALCOLM X AND THE ORGANIZATION OF AFRO-AMERICAN UNITY 61 (1994).

⁸⁰ MALCOLM X, *supra* note 66, at 455.

⁸¹ Malcolm X, *Harlem and the Political Machines*, in *BY ANY MEANS NECESSARY* 70 (George Breitman ed., 1992).

⁸² Kahn, *supra* note 57, at 31.

⁸³ MALCOLM X, *supra* note 66, at 437.

⁸⁴ *Id.* at 349.

⁸⁵ *Id.* at 486.

⁸⁶ *Id.* at 487.

⁸⁷ *Id.*

⁸⁸ *Id.* at 489.

⁸⁹ *Id.* at 496.

Americans what the Constitution says they are supposed to have—particularly the ballot—it would change the entire political structure of the country.⁹⁰ Although Malcolm, known as “the angriest man alive,” criticized the Civil Rights Movement for its lack of anger, the more King witnessed the contradictions of poverty in America’s cities and the war in Vietnam, the angrier he became as well.⁹¹ As Malcolm distanced himself from Black Power, King inched closer, though never abandoning a commitment to nonviolence. King acknowledged that if nonviolent protest failed, people were going to engage in more violent activity, but he would never stop teaching and preaching nonviolent protest.

In developing his Black theology, Cone hovered between Black Power and nonviolence. Like many Blacks during the height of Black Power, Cone drew heavily upon Malcolm, who taught him not to play by the oppressors’ game.⁹² He rejected the common portrayal of a violent Malcolm, claiming that he merely liberated the minds of many Blacks, destroying their self-hate, empowering them to love their Blackness and stand up to claim their dignity.⁹³ But Cone also grew to appreciate and draw upon King. He argued that we need to emphasize both nonviolence and self-defense toward the state, the former in public demonstrations and the latter as a human right.⁹⁴ Cone insisted on the importance of bringing Christianity and Blackness together. In fusing the cultural and political insights of both King and Malcolm, he discovered a way of articulating his position on theology and race.⁹⁵

C. *Cone and Black Theology*

Contemporary Black theology emerged in response to the rise of Black Power, defining the religious meaning of the commitment to Black liberation. The publication of Albert Cleage’s *The Black Messiah*,⁹⁶ Cone’s *Black Theology and Black Power*,⁹⁷ and James Forman’s revolutionary

⁹⁰ Malcolm X, *The Black Revolution*, in MALCOLM X SPEAKS: SELECTED SPEECHES AND STATEMENTS 71 (George Breitman ed., 1989).

⁹¹ MALCOLM X, *supra* note 66, at 306–07.

⁹² JAMES H. CONE, MARTIN & MALCOLM & AMERICA: A DREAM OR A NIGHTMARE 268 (1991) [hereinafter MARTIN & MALCOLM & AMERICA].

⁹³ JAMES H. CONE, SPEAKING THE TRUTH: ECUMENISM, LIBERATION, AND BLACK THEOLOGY 70–71 (1986) [hereinafter SPEAKING THE TRUTH].

⁹⁴ MARTIN & MALCOLM & AMERICA, *supra* note 92, at 303.

⁹⁵ RISKS OF FAITH, *supra* note 15, at xxi.

⁹⁶ ALBERT B. CLEAGE, JR., THE BLACK MESSIAH (1968).

⁹⁷ JAMES H. CONE, BLACK THEOLOGY AND BLACK POWER (1969) [hereinafter BLACK POWER].

“Black Manifesto”⁹⁸ in the late 1960s formally introduced Black theology and signaled mounting Black anger toward White religion.⁹⁹ But Cone insisted that Black theology also emerged out of the Civil Rights Movement from which it derived its thirst for justice and liberation, drawing strength from the life and thought of King.¹⁰⁰

Black theology applies the freeing power of the Christian gospel—once emancipated from its “Whiteness”—to Black people oppressed by Whites. *Liberation* is the heart of the gospel, and *Blackness* is the primary mode of God’s presence.¹⁰¹ Cone argued that if White theology and churches were true to the story of Christ, powerful White groups would not monopolize positions of power in the most opportunity-rich faith and civil institutions.¹⁰² Black Power is not the antithesis of Christianity, but it is Christ’s central message in twentieth-century America.¹⁰³ It seeks conflict, not understanding, and calls on Blacks to take the dominant role in determining the Black-White relationship in society.¹⁰⁴

According to Cone, if Christ is not Black, then he is of little significance. Christ is not part Black and part White—he took sides in complete opposition to the values of White culture. While literal color is irrelevant, there is still concreteness to the continued presence of the Black Christ, who proclaimed release to the captives.¹⁰⁵ Christ is not above race as Whites would like to believe. Rather, he is Black “with all of the features which are so detestable to White society.”¹⁰⁶ If the Church is a continuation of the Incarnation (God becoming man), Cone claimed, then the emancipation of Blacks can only be realized by Christ and his Church becoming Black.¹⁰⁷ To remain faithful to his Word in Christ, “his present manifestation must be the very essence of Blackness.”¹⁰⁸

The form of oppression that Cone attacks is White racism in America. He described it as “a part of the spirit of the age, the ethos of the culture, so embedded in the religious, social, economic, and political

⁹⁸ James Forman, *Black Manifesto Delivered to the White Christian Churches and the Jewish Synagogues in the United States of America and All Other Racist Institutions* (Apr. 26, 1969), reprinted in BORIS I. BITTKER, *THE CASE FOR BLACK REPARATIONS* 159–75 (1973).

⁹⁹ MARTIN & MALCOM & AMERICA, *supra* note 92, at 38.

¹⁰⁰ RISKS OF FAITH, *supra* note 15, at 89.

¹⁰¹ BLACK THEOLOGY, *supra* note 21, at 31–32.

¹⁰² DWIGHT N. HOPKINS, *HEART AND HEAD: BLACK THEOLOGY—PAST, PRESENT AND FUTURE* 156 (2002).

¹⁰³ BLACK THEOLOGY, *supra* note 21, at 1.

¹⁰⁴ *Id.* at 6.

¹⁰⁵ See *id.* at 120–23; see also JAMES H. CONE, *GOD OF THE OPPRESSED* 126 (Orbis Books ed., 1997) (1975) [hereinafter *GOD OF THE OPPRESSED*].

¹⁰⁶ BLACK POWER, *supra* note 97, at 68; see also CLEAGE, JR., *supra* note 96 (adopting a highly literal view of Jesus’ Blackness).

¹⁰⁷ BLACK POWER, *supra* note 97, at 69.

¹⁰⁸ *Id.*

structure that White society is incapable of knowing its destructive nature.”¹⁰⁹ Cone did not believe, however, that Whites are more sinful by nature than other people, but that they do hold power, and powerful groups have very little capacity to restrain themselves from evil acts against the powerless.¹¹⁰

We cannot get rid of White racism by forgetting the past and simply urging Blacks and Whites to develop good will toward each other. Cone was adamant that “[a]ny theology that does not fight White supremacy with all its intellectual strength cancels its Christian identity” and blemishes its conscience.¹¹¹

Cone asked how long must Black people wait for God to call our oppressors to account and “get justice in America?”¹¹² Not until we end all forms of human oppression, strive for a comprehensive national economic policy that places the interests of people above profits, commit to a society that allows for the health and positive development of our children, strive for justice in the legal system, end police brutality and state terrorism in our communities, strive for a clean and healthy environment for our people, enforce civil rights and affirmative action, compensate for centuries of institutional racism, and work toward full employment.¹¹³ And not until lynching stops.

II. THE CROSS AND THE LYNCHING OF GEORGE FLOYD

A. *Cone’s Theology of the Cross*

Cone’s work climaxed in the theology of the cross, which begins with the suffering and death of Jesus. The religious authorities of Jesus’ time were threatened by the reign of God’s justice ushered in by Christ. Concurrently, the state authorities were threatened by the unruly crowds that flocked to him. Together they executed Jesus.¹¹⁴ Cone claimed that Black Christians in America have found Jesus’ suffering and death like their own, driven by supremacist authorities who enslaved, segregated, and killed them. They saw that God was with them, hanging on the crossed branches

¹⁰⁹ RISKS OF FAITH, *supra* note 15, at 41.

¹¹⁰ *Id.* at xxvi.

¹¹¹ James H. Cone, *Black Liberation Theology and Black Catholics: A Critical Conversation*, 61 THEOLOGICAL STUDIES 731, 737 (2000).

¹¹² James H. Cone, *Calling the Oppressors to Account for Four Centuries of Terror*, 31 CURRENTS IN THEOLOGY & MISSION 179, 185 (2004).

¹¹³ Manning Marable, *Black Leadership, Faith, and the Struggle for Freedom*, in BLACK FAITH AND PUBLIC TALK: CRITICAL ESSAYS ON JAMES H. CONE’S BLACK THEOLOGY AND BLACK POWER 85–87 (Dwight N. Hopkins ed., 1999).

¹¹⁴ CROSS AND LYNCHING TREE, *supra* note 4, at 156.

of the lynching tree.¹¹⁵ According to Black historian Lerone Bennett, Black people knew that their fight for freedom was worth being crucified for.¹¹⁶

Because Jesus was a member of the oppressed class and crucified among the least of his time, Black Christians identify with him in a concrete way.¹¹⁷ They can see the Black Jesus dying in “a land lighted by the burning crosses of the Ku Klux Klan,” challenging the imagination.¹¹⁸ Alongside Cone, Womanist (Black women) theologian Jacquelyn Grant believes that the experiences of Black women as the “oppressed of the oppressed” means that Jesus was not only Black but a Black Woman.¹¹⁹

In fact, Black women were and still are lynched. We are reminded of the violent death of Breonna Taylor as we read Cone’s summary of lynched women:

Although women constitute only 2 percent of Blacks actually killed by lynching, it would be a mistake to assume that violence against women was not widespread and brutal . . . They were tortured, beaten and scarred, mutilated and hanged, burned and shot, tarred and feathered, scabbed and dragged, whipped and raped by angry White mobs.¹²⁰

Cone argued that amidst this violence, Blacks also saw a tyrannical White Christ incarnated in White Christian lynchers who justified slavery and segregation using the Bible.¹²¹ This was manifested in the way Jesus was depicted in art, with no likeness to Blacks at all. Cone himself argued that “[t]he White Christ gave Blacks slavery, segregation, and lynching.”¹²² There is actually some indication that White Christians encouraged lynching.¹²³ Ida B. Wells called White Christians hypocritical for proclaiming that lynching was God’s will and, or at a minimum, remaining silent about it.¹²⁴ With the theology of the cross in hand, it is important at this point that we learn more about lynching.

¹¹⁵ *Id.* at 22.

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 23.

¹¹⁸ *Id.* at 108.

¹¹⁹ *Id.* at 121. *See also*, JACQUELIN GRANT, WHITE WOMEN’S CHRIST AND BLACK WOMEN’S JESUS (1989).

¹²⁰ CROSS AND LYNCHING TREE, *supra* note 4, at 122. “In the physical and spiritual struggle for survival and dignity . . . many women, like Addie Hunton of the National Association of Colored Women (NACW), placed rape in that category—especially sexual violation in one’s home by White Christian men who regarded Black women as whores incapable of being violated.” *Id.* *See also* CRYSTAL N. FEIMSTER, SOUTHERN HORRORS: WOMEN AND THE POLITICS OF RAPE AND LYNCHING (2009).

¹²¹ CROSS AND LYNCHING TREE, *supra* note 4, at 112.

¹²² *Id.* at 119.

¹²³ *See id.* at 112 (citing WALTER WHITE, ROPE AND FAGGOT: A BIOGRAPHY OF JUDGE LYNCH 40 (U. of Notre Dame Press ed., 2002) (1929)).

¹²⁴ *Id.* at 131.

B. *Lynching Data*

Defining and quantifying data on lynching varies across studies. The third edition of the Equal Justice Initiative (EJI) on lynching in America described it as a violent and public act of torture tolerated by local, state, and federal officials that traumatized Black people throughout the country.¹²⁵ The EJI focuses on “terrorist” lynchings, which preclude those acts that followed a criminal trial or were subsequently prosecuted as hate crimes. The EJI defined terrorist lynchings as having one or more of these components:

- (1) resulted from a wildly distorted fear of interracial sex;
- (2) were a response to casual social transgressions;
- (3) were based on allegations of serious violent crime;
- (4) were public spectacle lynchings;
- (5) escalated into large-scale violence targeting the entire African American community; and
- (6) included sharecroppers, ministers, and community leaders who resisted mistreatment, which were most common between 1915 and 1940.¹²⁶

The EJI found that in twelve Southern states at the end of the Reconstruction era (1877-1959), there were 4,084 racial terror lynchings.¹²⁷ During this same period, there were more than 300 racial terror lynchings in other states: Illinois, Indiana, Kansas, Maryland, Missouri, Ohio, Oklahoma, and West Virginia.¹²⁸

A 2019 study that cross-checked data with three major sources and moved beyond the southeastern states found 4,467 total victims of lynching from 1883 to 1941.¹²⁹ Of these victims, 4,027 were men, 99 were women, and 341 were of unknown gender (although likely male); 3,265 were Black.¹³⁰ Although practiced across the United States, it was varied by

¹²⁵ EQUAL JUSTICE INITIATIVE, *LYNCING IN AMERICA: CONFRONTING THE LEGACY OF RACIAL TERROR* 3 (3d ed. 2017).

¹²⁶ *Id.* at 5.

¹²⁷ *Id.* at 4.

¹²⁸ *Id.* The EJI located the most lynchings in the following counties: Jefferson County, Alabama; Orange, Columbia, and Polk counties in Florida; Fulton, Early, and Brooks counties in Georgia; Caddo, Ouachita, Bossier, Iberia, and Tangipahoa parishes in Louisiana; Hinds County, Mississippi; Shelby County, Tennessee; and Anderson County, Texas. *Id.*

¹²⁹ Charles Seguin & David Rigby, *National Crimes: A New National Data Set of Lynchings in the United States, 1883 to 1941*, 5 *SOCIUS* 1, 2 (2019). The three major sources were the 1995 Tolnay and Beck study, which focused only on the Southeast, the Tuskegee Institute study, and the *Chicago Tribune* study. *Id.*

¹³⁰ *Id.* at 2. In addition, there were 1,082 White, 71 Mexican or of Mexican descent, 38 American Indian, 10 Chinese, and 1 Japanese victim. *Id.* The “White” category is likely an overestimate and includes European immigrants. *Id.* at 2, n.6. Although immigrants, like

region.¹³¹ Variability also existed at the county level; for example, less than 18% of counties (553) accounted for 80% of lynching victims; 41% percent of counties (648) in slave states recorded no lynching, while multiple Black victims were lynched in midwestern cities like Duluth and Chicago.¹³² Also interesting in today's context, lynching was less common in counties where local law enforcement was more proactive in suppressing lynch mobs.¹³³

Data, however, does not capture the cold and prideful display of White supremacy that drove this violence. One account of a 1915 lynching in Summerville, Tennessee, described how hundreds of Whites flocked to it with their cameras clicking, including women and children. Professional photographers sold postcards of the lynched "negro" with their portable printing press, and a number of schools delayed their work until the students could return.¹³⁴ Nor can data capture the horrific effect lynchings had on all of the victims:

It was a shameful and painful way to die. The fear of lynching was so deep and widespread that most Blacks were too scared even to talk publicly about it. When they heard of a person being lynched in their vicinity, they often ran home, pulled down the shades, and turned out lights—hoping the terror moment would pass without taking the lives of their relatives and friends.¹³⁵

Italians, are best considered White, they were accorded a different status than native-born. *Id.* This count also includes victims where the race was not recorded or mentioned in news accounts. *Id.* These victims were likely White, as the papers tended to mention race when they did not mention a name (e.g., "unknown negro"), and they would sometimes omit the race for Whites. *Id.*

¹³¹ *See id.* at 5. Three different regimes existed: "A Wild West regime, characterized mostly by the lynching of Whites in areas with weak state penetration; a slavery regime, found in former slave states, characterized mostly by the lynching of Blacks; and a third minor regime, characterized by the lynching of Mexican nationals mostly along the Texas-Mexico border." *Id.* at 1.

¹³² *Id.* at 7. Also, among slave-state counties, the total number of victims ranges from 0 to 37 (in Bossier Parish, Louisiana). *Id.* Overall, less than 18% of counties (553) accounted for 80% of lynching victims, and less than 7% of counties accounted for half of all lynching victims. *Id.* The study found several variables. *See id.* Lynching was more common in counties that planted and increased their when cotton prices fell. *Id.*

¹³³ *See id.*

¹³⁴ *See* Paul Mullins, *Visualizing Racism: The Trauma of Lynching Photography*, *ARCHAEOLOGY & MATERIAL CULTURE* (Apr. 14, 2018), <https://paulmullins.wordpress.com/2018/04/14/visualizing-racism-the-trauma-of-lynching-photography/> [<https://perma.cc/Q63A-3CF4>]. The victim was Thomas Brooks, who had been accused of murdering a wealthy White planter and his plantation manager. *Id.* Before he could stand trial, a mob seized him from police and hung him from a nearby railroad bridge. *Id.*

¹³⁵ *CROSS AND THE LYNCHING TREE*, *supra* note 4, at 15.

Cone insisted that lynching, as a dual reality of White supremacy and pain, continues to plague Black communities to this day. It is no surprise that it was not until 2005 that the U.S. Senate formally apologized for its failure to pass an anti-lynching bill.¹³⁶ Cone surmised that if racial healing is ever to come to our society, “it will mean remembering and retelling our story of racial injustice and honoring the voices and the actions of those who stood against it.”¹³⁷ This is what we do next.

C. The Lynchings of Emmett Till and George Floyd

Unfortunately, the pain of past lynchings is still felt today.¹³⁸ On August 24, 1955, fourteen-year-old Emmett Till was lynched. His murder demanded attention and sparked a movement. Till purportedly whistled at a White woman and said “bye baby” to her on his way out of a store.¹³⁹ Till was “picked up four days later around 2:00 a.m., beaten beyond recognition, shot in the head, and thrown in the Tallahatchie River weighed down with a heavy gin fan.”¹⁴⁰ Cone described that lynching as “a shocking reminder of the enduring power of White supremacy,”¹⁴¹ and “a horror sketched in Black memory forever.”¹⁴²

In his memoir, John Lewis, former Georgia congressman and veteran civil rights activist, recalled how Till’s lynching shook him to his core; he was fifteen at the time. Lewis wrote, “He could have been me. *That* could have been me, beaten, tortured, dead at the bottom of a river.”¹⁴³ Lewis recalled further that the atrocity galvanized the country and led to Freedom Riders sitting in, not just for themselves, but for Till.¹⁴⁴ King also described how after the lynching, the “negro” masses were moved to “rock the nation” and demand their “freedom now.”¹⁴⁵

But perhaps the most plaintive response came from Till’s mother, Mamie Till Bradley, who refused to let her son’s lynching be forgotten. Insisting on an open casket exposing his battered and bloated corpse, she

¹³⁶ *Id.* at 164.

¹³⁷ *Id.* (citing GARY S. SELBY, MARTIN LUTHER KING AND THE RHETORIC OF FREEDOM: THE EXODUS NARRATIVE IN AMERICA’S STRUGGLE FOR CIVIL RIGHTS xi (2008)).

¹³⁸ See *supra* discussion at note 3.

¹³⁹ CROSS AND THE LYNCHING TREE, *supra* note 4, at 65.

¹⁴⁰ *Id.* at 65–66.

¹⁴¹ *Id.* at 65.

¹⁴² *Id.* at 67.

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 66.

¹⁴⁵ *Id.* (citing 5 MARTIN LUTHER KING, JR. & PHILIP A. RANDOLPH, THE PAPERS OF MARTIN LUTHER KING, JR., VOLUME V: THRESHOLD OF A NEW DECADE, JANUARY 1959–DECEMBER 1960 (Clayborne Carson et al. eds., 2005)); Amzie Moore (citing HOWELL RAINES, MY SOUL IS RESTED: THE STORY OF THE CIVIL RIGHTS MOVEMENT IN THE DEEP SOUTH 235 (Penguin Books ed., 1983)).

spoke publicly to her son, “Darling, you have not died in vain.”¹⁴⁶ Over a three-day period, 500,000 people viewed his body.¹⁴⁷ In a *Jet* magazine interview, Bradley stated that her son could “make it safe for other boys. Unless an example is made of the lynchers of Emmett, it won’t be safe for a Negro to walk the streets anywhere in America.”¹⁴⁸

Yet, sixty-five years later, George Floyd, a forty-six-year-old Black man, was lynched. The Minneapolis Police Department received a 911 call on May 25, 2020, from a small grocery store in South Minneapolis reporting that a customer had tried to pass a counterfeit twenty-dollar bill, a minor crime.¹⁴⁹ In response, police officers took several actions that were later shown to have violated Department policies.¹⁵⁰ More precisely, Floyd died nine minutes and twenty-nine seconds after an officer pinned him down with his knee in a positional asphyxiation stance.¹⁵¹ During which Floyd cried out, “I can’t breathe,” at least seventeen times.¹⁵² The officer was later

¹⁴⁶ CROSS AND THE LYNCHING TREE, *supra* note 4, at 67.

¹⁴⁷ DeNeen L. Brown, *Emmett Till’s Mother Opened His Casket and Started the Civil Rights Movement*, WASH. POST (July 12, 2018), <https://www.washingtonpost.com/news/retropolis/wp/2018/07/12/emmett-tills-mother-opened-his-casket-and-sparked-the-civil-rights-movement/> [<https://perma.cc/7S2N-SFLR>].

¹⁴⁸ CROSS AND THE LYNCHING TREE, *supra* note 4, at 66–67.

¹⁴⁹ Faith Karimi, *Minneapolis Police Release 911 Call that Led to Encounter with George Floyd*, CNN (May 29, 2020), <https://www.cnn.com/2020/05/28/us/minneapolis-george-floyd-911-calls/index.html> [<https://perma.cc/8D4K-M9XF>].

¹⁵⁰ Brad Parks, *George Floyd’s Death as ‘Murder’ and the Accused Officer ‘Knew What He Was Doing,’ Minneapolis Police Chief Says*, CNN (June 24, 2020), <https://www.cnn.com/2020/06/24/us/minneapolis-police-chief-comment-george-floyd-trnd/index.html> [<https://perma.cc/C58K-ERBG>].

¹⁵¹ Eric Levenson, *Former Officer Knelt on George Floyd for 9 Minutes and 29 Seconds – Not the Infamous 8:46*, CNN (Mar. 30, 2021), <https://www.cnn.com/2021/03/29/us/george-floyd-timing-929-846/index.html> [<https://perma.cc/2X7S-4ZGC>]; *see also* Hollie Silverman, *Floyd Was “Non-Responsive” for Nearly 3 Minutes Before Officer Took Knee Off His Neck, Complaint Says*, CNN (May 29, 2020), https://edition.cnn.com/us/live-news/george-floyd-protest-updates-05-28-20/h_d6de512e51a8858a57f93ffa732c2695 [<https://perma.cc/3HAD-K76J>].

¹⁵² Omar Jimenez, *New Police Body Camera Footage Reveals George Floyd’s Last Words Were ‘I Can’t Breathe’*, CNN (July 15, 2020), <https://www.cnn.com/2020/07/15/us/george-floyd-body-cam-footage/index.html> [<https://perma.cc/YAC9-US6W>]. “I can’t breathe” became a rallying cry for protesters, especially as it was not the first time police have choked a Black person to death. *3 Officers Fired, 1 Resigns After Texts Show Them Joking About Elijah McClain’s Death*, L.A. TIMES (July 3, 2020), <https://www.latimes.com/world-nation/story/2020-07-03/elijah-mcclain-chokehold-aurora-police-death-fired-resign> [<https://perma.cc/8QKA-W9GT>] (describing a case in which police stopped Elijah McClain on August 28, 2019 as he walked down the street in a ski mask for “being suspicious” in August 28, 2019); Katie Wedell, Cara Kelly, Camille McManus & Christine Fernando, *George Floyd Is Not Alone. ‘I Can’t Breathe’ Uttered by Dozens In Fatal Police Holds Across U.S.*, USA TODAY (June 25, 2020), <https://www.usatoday.com/in-depth/news/investigations/2020/06/13/george-floyd-not-alone-dozens-said-cant-breathe-police-holds/3137373001/> [<https://perma.cc/4T9Q-BMA9>].

charged with second-degree murder, third-degree murder, and second-degree manslaughter, and his three fellow officers with aiding and abetting second-degree murder.¹⁵³ The EJI would likely classify Floyd's murder as a terrorist lynching, meeting two of its five criteria: it was a response to an alleged casual social transgression, and it escalated into large-scale violence targeting the entire African American community.¹⁵⁴

According to a statement made by Minneapolis Police Chief Medaria Arrandondo, as required by a 2013 police misconduct settlement, all officers are currently trained in preventing positional asphyxiation in suspects being restrained in the prone, or face down, position.¹⁵⁵ In the case behind the settlement, twenty-eight-year-old David Cornelius Smith was murdered in the same way as Floyd after police received a call that he was throwing a ball around aggressively at a YMCA, of which he was a member.¹⁵⁶ Arrandondo also stated that the Department went beyond the settlement requirements by changing its policies.¹⁵⁷ Since 2014, officers are explicitly required to move an arrestee from a prone position to a recovery position when the maximal restraint technique is used, as well as to continuously monitor the arrestee's physical condition.¹⁵⁸ Both of these requirements were ignored by the arresting officers in this case.

The aftermath of Floyd's killing is complex and ongoing. In addition to the minor nature of Floyd's alleged criminal behavior, the public responses also fit within the EJI's definition of a terrorist lynching in terms of the large-scale, relentless escalation of events that followed it, albeit not exclusively targeting the Black community.¹⁵⁹ More broadly, but not comprehensively, the aftermath included: constructive protests, largely

¹⁵³ Evan Hill, Ainaara Tiefenthaler, Christiaan Triebert, Drew Jordan, Haley Willis & Robin Stein, *How George Floyd Was Killed in Police Custody*, N.Y. TIMES (May 31, 2020), <https://www.nytimes.com/2020/05/31/us/george-floyd-investigation.html> [<https://perma.cc/LX5C-C9CL>]. Those charged with aiding and abetting were Thomas Lane, J. Alexander Kueng, and Tou Thao. The officer charged with second degree murder, third-degree murder, and second-degree manslaughter was Derek Chauvin. *Id.* See also Tim Arango & Nicholas Bogel-Burroughs, *What is Derek Chauvin Charged With*, N.Y. TIMES (Mar. 10, 2021), <https://www.nytimes.com/2021/03/08/us/derek-chauvin-charges.html> [<https://perma.cc/X9PZ-TC9F>]. Derek Chauvin was later convicted of all three charges on April 20, 2021.

¹⁵⁴ See EQUAL JUSTICE INITIATIVE, *supra* note 125, at 3 (listing the five factors).

¹⁵⁵ See Randy Furst, *May 25: Minneapolis Pays \$3 Million In Police Misconduct Case*, STAR TRIB. (June 1, 2013), <https://www.startribune.com/may-25-minneapolis-pays-3-million-in-police-misconduct-case/208912661/> [<https://perma.cc/5CCP-PRNH>].

¹⁵⁶ See *id.*

¹⁵⁷ See *Minneapolis Police Chief Says Floyd's Death was 'Murder'*, SC TIMES (June 23, 2020), <https://www.sctimes.com/story/news/local/2020/06/23/minneapolis-police-chief-says-floyds-death-murder/3246283001/> [<https://perma.cc/EB6N-9TJ4>].

¹⁵⁸ See Parks, *supra* note 150.

¹⁵⁹ See EQUAL JUSTICE INITIATIVE, *supra* note 125, at 5.

spearheaded by Black Lives Matter; violence targeting protestors, mainly by law enforcement agencies; destructive acts of looting and arson, some by protestors and others by outside agitators; and harm to law enforcement agents and government property. What is featured below is an abbreviated account of the intersection of these elements as they relate to James Cone's Black theology of the cross and the lynching tree.

III. RESPONSES TO LYNCHING: CONE ESCORTS US FROM RAGE TO RESURRECTION

As Cone might, I will begin this Section with violent rage and end it with hope-filled resurrection. Please note that the actions and events I choose to raise are fragmented and likely to be stale when you read this. But the movement to date signals that ending police brutality and remedying systemic racism will remain multi-pronged and ongoing. Three elements that I choose to largely omit are the media wars,¹⁶⁰ the politicization of the pre- and post-Floyd events, particularly as it butted up against the 2020 presidential election,¹⁶¹ and what some pejoratively call the “cancel culture.”¹⁶² While these omissions may seem problematic, doing so allows us to focus on experiences, not on these broader contexts. In the end, although we move towards hope, we must acknowledge that there is *never* only one way to respond or one right solution to embrace.

A. *Cone on Rage, Rebellion, Revolution, and Violence*

In Cone's first major work from 1989, *Black Theology and Black Power*, the *rage* of Malcolm X echoes throughout. Cone declared that Black

¹⁶⁰ One discouraging example of the “media” wars was the lack of coverage in the U.S. mainstream media of a shocking social media photo of an Ohio man with a knee hold on the neck of a two-year-old, with the caption, “Blm now mf (Black Lives Matter now, motherf***er)” and subsequent criminal charges filed against him. It was reported on Fox News and on multiple media outlets abroad, including The New Zealand Herald, the nation's leading newspaper. See Danielle Wallace, *Ohio Man In Custody After Kneeling On Crying White Child's Neck, Praising Black Lives Matter*, FOX NEWS (July 23, 2020), <https://www.foxnews.com/us/viral-photo-kneeling-white-baby-neck-black-lives-matter-arrest> [<https://perma.cc/67JV-RH77>]; *Man Kneeling On Baby: Police Jail Suspect*, NZ HERALD (July 22, 2020), https://www.nzherald.co.nz/world/news/article.cfm?c_id=2&objectid=12350383 [<https://perma.cc/7V7U-3UG6>].

¹⁶¹ See, e.g., John Wildermuth, *How George Floyd's Death, Anti-Racism Protests Are Changing 2020 Politics*, S.F. Chron. (June 8, 2020), <https://www.sfchronicle.com/politics/article/How-George-Floyd-s-death-antiracism-protests-15325688.php> [<https://perma.cc/24HY-5PV2>].

¹⁶² See, e.g., Ross Douthat, *10 Theses About the Cancel Culture*, N.Y. TIMES (July 14, 2020), <https://www.nytimes.com/2020/07/14/opinion/cancel-culture-.html> [<https://perma.cc/Q2HJ-UCE9>].

Power seeks conflict, not understanding, and called on Blacks to take the dominant role in determining the Black-White relationship in society.¹⁶³ Cone admits at the outset that he writes “with a definite attitude, the attitude of an angry Black man, disgusted with the oppression of Black people in America.”¹⁶⁴ “Too many people have died, and too many are on the edge of death.”¹⁶⁵ When *rage* is the appropriate response, failing to recognize it or avoiding it is to set boundaries upon truth itself. As a result, Whites may find their encounter with Black Power a terrible experience.¹⁶⁶ Cone likened this rage to the righteous anger of the biblical prophets who called for a justice that defied the norm.¹⁶⁷

Anger and rage should lead to *rebellion*. Cone claimed that Blacks are no different than other people: they fight back and grab for the last thread of hope.¹⁶⁸ The only response to White racism embedded in the social, economic, and political structures of White society is to conquer it.¹⁶⁹ Black theology confronts White society as the racist antichrist and communicates to the oppressor that nothing will be spared in the march to freedom. In a striking analogy, Cone likened Black Power to Albert Camus’ understanding of the rebel who says “No” to intolerable conditions, and “Yes” to what is worthwhile in him.¹⁷⁰ When Blacks rebel at the risk of death, they force White society to look at them and take their being into account.¹⁷¹

Cone claimed further that Black theology is also a theology of *revolution*.¹⁷² It attempts to infuse theology with Black consciousness and bring it into a radical encounter with the problems of the oppressed Blacks in America and throughout the world.¹⁷³ Revolution is not a change of heart. It is a radical Black assault on the structure of White racism with the full intention of destroying its power. Although Christ may have called for turning the other cheek, we cannot solve questions of the twenty-first century by looking at what Jesus did in the first century.

Cone noted that Whites consistently tell Blacks how to respond “as Christians”—insisting on nonviolence. They appreciate Martin Luther King, Jr. because his approach was the least threatening to their racist power structure.¹⁷⁴ Whites quickly condemn Black Power and the Black violence

¹⁶³ FOR MY PEOPLE, *supra* note 60, at 6.

¹⁶⁴ *Id.* at 2.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 61.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* at 28.

¹⁶⁹ *Id.* at 41.

¹⁷⁰ *Id.* at 6.

¹⁷¹ *Id.* at 8.

¹⁷² *See id.* at 37.

¹⁷³ *See id.*

¹⁷⁴ *Id.* at 56.

found in the ghetto “without saying a word about White power and its 350 years of constant violence against Blacks.”¹⁷⁵ They simply overlook that violence already exists. As a result, one does not need to decide between violence and nonviolence but between the lesser and greater evil.¹⁷⁶

Few Black Power advocates would suggest love as the appropriate response to White oppression. Most might feel like Malcolm in that they cannot love those whose chief purpose is to humiliate.¹⁷⁷ As he stated, “[t]he new Black man refuses to speak of love without justice and power.”¹⁷⁸ But Cone insists that love is active, not passive. It is *revolutionary* because it seeks to meet the needs of the neighbor and to maintain his dignity as a person. Love, he argued, may even mean joining a violent rebellion.¹⁷⁹ It is better, argued Cone, for Blacks to “treasure their hostility,” bringing it fully into consciousness as an irreducible quality of their identity.¹⁸⁰ Blacks must use Blackness as the sole criteria of dialogue.¹⁸¹ This, argued Cone, involves a total break with the White past, “the overturning of relationships, the transformation of life and then a reconstruction.”¹⁸² It is incumbent on Blacks to become “revolutionaries for Blackness.”¹⁸³

As we saw with Malcolm X, rage, rebellion, and revolution may imply *violence*, which raises the question of whether it is justified. Cone replied that this is a White question. He asked, “Whose violence? Richard Nixon’s or his victims? The Mississippi State Police or the students at Jackson State? What of the violence perpetrated against Black people who were enslaved, lynched, and ghettoized in the name of freedom and democracy?”¹⁸⁴ What about Breonna Taylor? What about George Floyd? “The problem of violence is not the problem of a few Black revolutionaries,” but a social structure riddled with racism and hatred.¹⁸⁵ As such, the distinction between violence and nonviolence is an illusory problem.¹⁸⁶ It is really a question of justified and unjustified use of force, which only the oppressed can judge.¹⁸⁷

¹⁷⁵ *Id.* at 75.

¹⁷⁶ *Id.* at 143.

¹⁷⁷ *Id.* at 41.

¹⁷⁸ *Id.* at 35.

¹⁷⁹ *Id.* at 113.

¹⁸⁰ *Id.* at 144.

¹⁸¹ *Id.* at 148.

¹⁸² GOD OF THE OPPRESSED, *supra* note 105, at 179.

¹⁸³ THE RISKS OF FAITH, *supra* note 15, at 29.

¹⁸⁴ JAMES H. CONE, BLACK THEOLOGY ON REVOLUTION, VIOLENCE, AND RECONCILIATION, *reprinted in* NATIVE AMERICAN RELIGION AND BLACK PROTESTANTISM 131 (Martin Marty ed., 1999).

¹⁸⁵ GOD OF THE OPPRESSED, *supra* note 105, at 200.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

Cone did not ask Blacks to listen to Whites who urge their victims to be nonviolent, nor did he counsel Blacks to be violent toward Whites, returning violence for violence. However, Cone made a distinction between *vengeance* and *self-defense*.¹⁸⁸ Vengeance entails inflicting punishment for the purpose of revenge, whereas self-defense is a response to being physically attacked—to having one’s right to exist with dignity assaulted. To those who incorrectly labeled Malcolm as a promoter of violence, Cone would reply that he is merely advocating intelligence—just as an intelligent president might decide to go to war to protect our liberties.¹⁸⁹ In the end, Cone argued that both self-defense and nonviolence need to be emphasized—the former in public demonstrations and the latter as a human right.¹⁹⁰

B. The George Floyd Demonstrations: Vengeance or Self-Defense?

We can first draw upon Cone to determine whether the lawlessness that has ensued after the lynching of Floyd is vengeance or self-defense.

1. Riots, Looting, Arson, and Gun Violence

For our purposes here, rioting will be classified as “an occasion when a large number of people behave in a noisy, violent, and uncontrolled way in public, often as a protest.”¹⁹¹ Thomas J. Sugrue, a historian at New York University, identifies three waves of rioting in the United States: The Red Summer of 1919, World War II, and the 1960s—today would likely be the fourth wave.¹⁹²

At the time of the Red Summer riots, our nation experienced dozens of violent racial clashes in at least twenty-five locations, including small towns like Elaine, Arkansas, and large cities like Chicago, which was also strained by the Great Migration of African Americans from the South.¹⁹³ It is reported that the police “turned a blind eye” and were sometimes complicit in White mob riots that led to around 300 deaths.¹⁹⁴ African Americans responded by “building up” the National Association for the Advancement of Colored People (NAACP) and, in the North, by voting.¹⁹⁵

¹⁸⁸ SPEAKING THE TRUTH, *supra* note 93, at 70.

¹⁸⁹ *Id.* at 70–71.

¹⁹⁰ MARTIN & MALCOM & AMERICA, *supra* note 92, at 303.

¹⁹¹ *Riot*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/us/dictionary/english/riot> [<https://perma.cc/J9NS-P7G5>].

¹⁹² Thomas J. Sugrue, *2020 Is Not 1968: To Understand Protests, You Must Look Further Back*, NAT’L GEOGRAPHIC (June 11, 2020), <https://www.nationalgeographic.com/history/2020/06/2020-not-1968/#close> [<https://perma.cc/JPE8-T8HX>].

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

The second wave of protests and violence occurred from the Depression through World War II.¹⁹⁶ With the Great Migration again surging and African Americans securing employment, Whites, fearful of Black militancy, attacked Black workers in cities such as Detroit, around which time over 240 race riots ensued.¹⁹⁷ African Americans protested both peacefully and violently.¹⁹⁸

Peaceful sit-ins were also staged in what became a precursor to the Civil Rights Movement as the third wave of rioting occurred.¹⁹⁹ Knowing as much as we do about that movement in the 1960s, we can focus instead on the riots and violence of the fourth and current wave.

The riots that followed Floyd's lynching were similarly extensive. As a reference point, The New York Times provided a summary of events through June 6, 2020, that we can use as representative.²⁰⁰ In just a few weeks, tens of thousands of people of all races, in at least 140 cities across the United States, marched and stood ground, both outraged and sorrowful.²⁰¹ Unfortunately, nights of violent shootings, arson, looting, and vandalism would follow.²⁰² Both civilians and law enforcement agents, from police, to the National Guard, to sworn civilian federal law enforcement officers (there were no active-duty military personnel involved), had experienced injuries and fatalities.²⁰³

The day after Floyd's lynching, protests in Minneapolis began after the video of his death was shared on social media.²⁰⁴ Minneapolis Police Chief Arradondo immediately fired all four officers and called for an F.B.I. investigation, particularly because the officers' account of the incident did not match the video.²⁰⁵ By night, hundreds of protestors and agitators were marching, vandalizing, targeting police vehicles, and burning the Third Precinct, which was abandoned by the Department.²⁰⁶ Numerous businesses

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ Derrick Bryson Taylor, *George Floyd Protests: A Timeline*, N.Y. TIMES (July 10, 2020), <https://www.nytimes.com/article/george-floyd-protests-timeline.html> [<https://perma.cc/3FA7-2R4D>].

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ For example, as of June 6, a Louisville, Kentucky restaurant owner was killed after police officers and National Guard troops let off shots toward protesters; a Black protester in Austin, Texas was shot in the head by police officers and was in critical condition; and police officers were shot and wounded in St. Louis and Las Vegas, and struck by cars in New York City and Buffalo, New York. *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

were vandalized, burned, and looted.²⁰⁷ Businesses in neighboring St. Paul suffered the same fate.²⁰⁸ In less than two weeks, Minneapolis experienced at least \$55 million in property damage and looting.²⁰⁹ In all, at least 220 buildings were set ablaze, largely near the Third Precinct and in St. Paul's Midway neighborhood.²¹⁰

As the days progressed, police officers used tear gas and rubber bullets to calm the riots, after which Governor Walz called in the Minnesota National Guard.²¹¹ He was recorded as saying, "Let's be very clear. The situation in Minneapolis, is no longer, in any way, about the murder of George Floyd. It is about attacking civil society, instilling fear and disrupting our great cities."²¹² After four nights, Minneapolis Mayor Jacob set a curfew.²¹³ During that time, the four officers were charged and later recharged.²¹⁴

On May 29, President Trump warned Minneapolis that "when the looting starts, the shooting starts," and blamed the city's leadership.²¹⁵ As protesters gathered, the Secret Service temporarily locked down the White House, prompting the President to move to the underground bunker.²¹⁶ Subsequently, he indicated that "[i]f a city or a state refuses to take the actions that are necessary to defend the life and property of their residents," then he would deploy federal officers to "quickly solve the problem for them."²¹⁷ Many state and local governments, both in Minnesota and nationally, used force to quell protests resulting in some severe injuries.²¹⁸ As a result, those protesting excessive force in the case of George Floyd, in turn, sued law enforcement for unreasonable and excessive use of force.²¹⁹

²⁰⁷ *Id.*

²⁰⁸ See Dee DePass, *After Riots, St. Paul's Midway Works to Turn Blight to Bright*, STAR TRIB. (Jan. 16, 2021), <https://www.startribune.com/pockets-of-university-avenue-in-st-paul-turn-from-blight-to-bright/600011447/> [https://perma.cc/H9EE-4WBT].

²⁰⁹ Vincent Barone, *Minneapolis Sees \$55M in Building Damage, Looting During George Floyd Protests*, N.Y. POST (June 4, 2020), <https://nypost.com/2020/06/04/minneapolis-sees-55m-in-building-damage-looting-during-protests/> [https://perma.cc/9UZT-538A].

²¹⁰ *Id.*

²¹¹ Taylor, *supra* note 200.

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ 42 U.S.C. § 1983 (2020). See, e.g., Meerah Powell, *Protesters Sue Portland, Alleging Excessive Police Force*, OR. PUBLIC RADIO (Oct. 8, 2019), <https://www.opb.org/news/article/portland-protestors-police-force-lawsuit-patriot-prayer-protest/> [https://perma.cc/29DJ-4N77]; Andy Mannix, *Minneapolis Police Shot Driver with Projectile, Knocked Her Out at Wheel, Lawsuit Says*, STAR TRIB. (Mar. 17, 2021),

Many question whether outside agitators contributed to or caused the violence and looting observed after the death of George Floyd rather than protesters. Some identifiable groups, both on the right and left, have been known to support and/or encourage violence and carrying weapons. For instance, the Alt Right²²⁰ and “boogaloo” group,²²¹ which are tied to White Supremacy, violence, and crime, were suspected. The New Black Panthers and Antifa,²²² on the left, were also suspected as both groups have encouraged violence and armed protest in the past.²²³

Unfortunately, rioting and looting were not the only forms of lawlessness. Gun violence, largely within communities of color, increased exponentially in major cities across the country. While not directly related to the protests, in Minneapolis alone, 113 people were shot between May 25 and June 26, 2020.²²⁴ Police Chiefs claimed that police response time was longer because resources had to be allocated to protests, and the political climate made officers reticent.²²⁵ This resulted in a disproportionate number of murder victims being part of minority communities.²²⁶

<https://www.startribune.com/minneapolis-police-shot-driver-with-projectile-knocked-her-out-at-wheel-lawsuit-says/600035485/> [https://perma.cc/VK8K-K4ZY].

²²⁰ The “Alt Right” is the newest segment of the White supremacist movement. *New Hate and Old: The Changing Face of American White Supremacy*, ANTI-DEFAMATION LEAGUE, <https://www.adl.org/new-hate-and-old> [https://perma.cc/3Q8K-L8ZX]. The alt right is influenced by “neo-Nazism and fascism, identitarianism, renegade conservatives and right-wing conspiracy theorists.” *Id.* The alt right first emerged in 2008, but was energized by President Trump’s election, after which it increased its online presence and engaged in real-world activism. *Id.*

²²¹ Some White supremacists have even embraced the “boogaloo” concept, a shorthand name for a variety of extremist fringe movements and subcultures that are organized for a future of mass violence and civil war but frame the movement as a race war or a White revolution, not a civil war. *The Boogaloo Movement*, ANTI-DEFAMATION LEAGUE, <https://www.adl.org/boogaloo> [https://perma.cc/6BJK-XNR9]. Those called accelerationist White supremacists use “boogaloo” to signal the violent collapse of modern society and the ushering in of a new, White-dominated world. *Id.*

²²² *Antifa: Definition and Background*, ANTI-DEFAMATION LEAGUE, <https://www.adl.org/resources/backgrounders/who-are-Antifa> [https://perma.cc/FJ2Q-YM8K].

²²³ *Id.*

²²⁴ Holly Bailey, *Violence Rises in Minneapolis, as Debate Over Role of Police Rages*, WASH. POST (June 26, 2020), https://www.washingtonpost.com/national/violence-rises-in-minneapolis-as-debate-over-role-of-police-rages/2020/06/26/12fd6020-b7c6-11ea-aca5-ebb63d27e1ff_story.html [https://perma.cc/5EQQ-TU87]. It is noteworthy that before his death, George Floyd spoke out against gun violence in the African American community in a video on Twitter. Yaron Steinbuch, *George Floyd Calls for an End to Gun Violence in Resurfaced Video*, N. Y. POST (May 28, 2020), <https://nypost.com/2020/05/28/george-floyd-called-on-younger-generation-to-end-gun-violence/> [https://perma.cc/P7YM-W68G].

²²⁵ Ashley Southall, *Shootings Have Soared: Is the N.Y.P.D Pulling Back?*, N. Y. TIMES (July 16, 2020), <https://www.nytimes.com/2020/07/16/nyregion/nyc-shootings-nypd.html> [https://perma.cc/82L7-TZ2G].

²²⁶ *Id.*

While this violence will undoubtedly continue, a transition can be made here by asking what Cone's Black theology of hope and resurrection can bring to the discussion following Floyd's lynching.

C. Cone's Hope for Reconciliation and Resurrection

Cone worked through his *rage* in search of productive hope. His discussion of violence was tempered by the goal of *reconciliation*, but only on the terms Blacks dictate.²²⁷ Reconciliation means that Blacks must struggle against all who try to make them slaves and participate in changing oppressive political, economic, and social structures.²²⁸ To be reconciled with Whites means to fight against the power to enslave; it means reducing masters to the human level and making them accountable to Blacks.²²⁹ Liberation must be expressed in uncompromising language and actions, for only then can the conditions be created for reconciliation.²³⁰

But Cone went further by embracing the power and newness of the *resurrection* of the crucified Black Jesus. Violence, whether at the hands of the lyncher or in the response of the lynched, is never redemptive. Suffering can be redemptive, however. Cone wrote,

Though the pain of Jesus' cross was real, there was also joy and beauty in his cross. This is the great theological paradox that makes the cross impossible to embrace unless one is standing in solidarity with those who are powerless. God's loving solidarity can transform ugliness--whether Jesus on the cross or a lynched Black victim--into beauty, into God's liberating presence.²³¹

If still alive, Cone may have advised us to remain hopeful that the ugliness of the lynching of George Floyd, and that the unending cycle of violence that has followed can be transformed into a more united movement. A more united movement that embraces both King's Beloved Community and Malcolm X's Black Power, moderated by his culminating principle: universal brotherhood. While this challenge seems altruistic, Cone reminded us that life is only possible when we leave an opening toward the transcendent--the Thou is in each of us, particularly among the marginalized.

The lynched Black Christ could not be defeated by the self-serving power structures of his times. Instead, he upended and realigned them

²²⁷ See GOD OF THE OPPRESSED, *supra* note 105, at 199 (stating "White oppressors must be excluded from this black ethical dialogue . . . [o]ur intention is not to make the oppressors the slaves but to transform humanity . . .").

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ CROSS AND THE LYNCHING TREE, *supra* note 4, at 162.

because he could not be kept down.²³² Similarly, our world after George Floyd's lynching seems hopelessly divisive and frozen. Yet like all struggles, we are bound together, not only by this tragedy, but by a faith that our nation can rebuild itself. We can tear down self-perpetuating systemic racism and resurrect a nation freed from its past sins. Cone assured us that "[n]o gulf between [B]lacks and [W]hites is too great to overcome, for our beauty is more enduring than our brutality."²³³ America needs the courage to confront the great sin and legacy of White supremacy and lynching.

Revisiting the story of Ida B. Wells may give us courage and inspiration to undertake our own risks of faith. Born a slave in 1862, Wells spoke out against all lynchings in a multi-faceted, confrontational strategy. While editor of a Black newspaper in Memphis called *The Free Speech*, three Black men, including her friend, were lynched in the city.²³⁴ In response, Wells wrote a series of "blistering editorials, followed by comprehensive investigations, and a stream of pamphlets and speeches delivered around the country."²³⁵ Wells was also the first to collect lynching data.²³⁶

In fact, more broadly, women were the "spine" of the Civil Rights Movement, sustaining it through trying times. As Cone noted, if Rosa Parks had not sat down, King would not have stood up.²³⁷ Andy King, a contemporary of Parks who helped draft both the Civil Rights Act of 1964²³⁸ and the Voting Rights Act of 1965,²³⁹ noted that women went, "door to door, speaking with their neighbors, meeting in voter-registration together, organizing through their churches, that gave the vital momentum and energy to the movement, that made it a mass movement."²⁴⁰ Hard work like this needs to be done today, in an equally peaceful manner. We turn now to Black Lives Matter, a growing hope.

D. *Peaceful Protests and Black Lives Matter*

Ordinary people with extraordinary vision can redeem the
soul of America by getting in what I call good trouble,

²³² *Id.* at 156-57, 159.

²³³ *Id.* at 166.

²³⁴ Her friend was Thomas Moss and his companions were Calvin McDowell and Will Stewart. Becky Little, *When Ida B. Wells Took on Lynching, Threats Forced Her to Leave Memphis*, HISTORY (Feb. 27, 2019), <https://www.history.com/news/ida-b-wells-lynching-memphis-chicago> [https://perma.cc/W8GD-MPRT].

²³⁵ CROSS AND THE LYNCHING TREE, *supra* note 4, at 126.

²³⁶ CAROLYN L. KARCHER, A REFUGEE FROM HIS RACE: ALBION W. TOURGEE AND HIS FIGHT AGAINST WHITE SUPREMACY 196 (2016).

²³⁷ CROSS AND THE LYNCHING TREE, *supra* note 4, at 143.

²³⁸ 42 U.S.C. § 2000e (1964).

²³⁹ 52 U.S.C. § 10101 (1964).

²⁴⁰ CROSS AND THE LYNCHING TREE, *supra* note 4, at 142.

necessary trouble. Voting and participating in the democratic process are key.²⁴¹

When Terrence Floyd visited the site of his brother's lynching, he told those gathered around that he was troubled by what had been happening since then. He stated, "If I'm not over here wilding out, if I'm not over here blowing up stuff, if I'm not over here messing up my community, then what are y'all doing? What are y'all doing? Do this peacefully, please."²⁴² Similarly, Demetria Hester, in Portland, Oregon, stated, "How is [hurling bottles and burning flags] helping? The protest right now is about Black Lives Matter. Burning a flag is not about Black Lives Matter."²⁴³ The nature of the broader and more peaceful movement for racial justice supports their concerns.

According to a New York Times article, on June 6, 2020, half a million people joined in protests on what they assess as the peak day after Floyd's lynching.²⁴⁴ Granting that some may be inaccurate and that precise turnout is subject to many disputes, several polls suggest that about 15 million to 26 million people in the United States in small towns and large cities have demonstrated against his and others' deaths.²⁴⁵ One reason for the volume may be social media. For example, nearly half of the protestors polled by Civis Analytics had viewed a video of police violence towards those marching or to the Black community more broadly.²⁴⁶ According to one poll, the movement has also attracted younger and wealthier protesters than in the past, half of whom said it was their first time.²⁴⁷ The protests were also more racially diverse, with some protests being 54% Whites, 21%

²⁴¹ John Lewis, *Together, You Can Redeem the Soul of Our Nation*, N.Y. TIMES (July 30, 2020), <https://www.nytimes.com/2020/07/30/opinion/john-lewis-civil-rights-america.html> [https://perma.cc/T9HR-27VV]. Representative Lewis requested this essay be published on the day of his funeral. Jamie Ross, *John Lewis Wrote a Breathtaking Essay to be Published on the Day of His Funeral*, DAILY BEAST (July 30, 2020), <https://www.thedailybeast.com/john-lewis-wrote-a-breathtaking-essay-to-be-published-on-the-day-of-his-funeral> [https://perma.cc/43Z2-WPU2].

²⁴² Taylor, *supra* note 200.

²⁴³ Mike Baker, *As Federal Agents Retreat in Portland, Protesters Return to the Original Foe: Local Police*, N.Y. TIMES (Aug. 2, 2020), <https://www.nytimes.com/2020/08/02/us/portland-protests.html> [https://perma.cc/7U4K-RSF2].

²⁴⁴ Larry Buchanan, Quoc Trung Bui & Jugal K. Patel, *Largest Movement in New York History*, N.Y. TIMES (July 3, 2020), <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html> [https://perma.cc/W2LS-WCLN].

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Id.*

Blacks, 11% Latinx, 7% Asian/Pacific Islanders, and 8% Multiracial/others.²⁴⁸

Alicia Garza, an activist whose writings spurred the hashtag #BlackLivesMatter, believes that the phrase “Black Lives Matter” itself is powerful because it states both the problem and the solution.²⁴⁹ Its forcefulness causes discomfort at times because it asks people of all sectors across the world whether they believe Black lives do matter, and whether they are willing to assess where we are and where we need to be.²⁵⁰

In addition to peacefully protesting, Black Lives Matter uses more provocative, yet peaceful, tactics to shift public discourse and fuel change.²⁵¹ Most often, the dominant public expects protestors to use persuasion, education, and incremental demands, as King supported, but some within the Movement view these approaches as ineffective.²⁵² By rejecting “appropriate decorum” like Malcolm, Black Lives Matter protestors have successfully cultivated their power to force the dominant culture to confront their narratives of racism.²⁵³ The more spectacular the protest, the reasoning goes, the more likely it will lead to lasting, systemic changes.²⁵⁴ This brings us to an examination of the outcomes of the protests and where to locate Cone within them.

E. Moving Forward – Rage or Reconciliation and Resurrection?

The primary question is whether the outcomes of the post-lynching activities move beyond rage, rebellion, and revolution toward true reconciliation and resurrection. We have made some redemptive progress, but as noted above, there must be more hope amidst the ugliness, rather

²⁴⁸ Dana R. Fischer, *The Diversity of the Recent Black Lives Matter Protests Is a Good Sign for Racial Equity*, BROOKINGS INST. (July 8, 2020), <https://www.brookings.edu/blog/how-we-rise/2020/07/08/the-diversity-of-the-recent-black-lives-matter-protests-is-a-good-sign-for-racial-equity/> [https://perma.cc/4UEP-9BUD].

²⁴⁹ Rachel Hartigan, *She Co-Founded Black Lives Matter. Here’s Why She’s So Hopeful for the Future*, NAT’L GEOGRAPHIC (July 8, 2020), <https://www.nationalgeographic.com/history/2020/07/alicia-garza-co-founded-black-lives-matter-why-future-hopeful/> [https://perma.cc/5W7M-AP72]. Garza also heads up the politics and policy organization, Black Futures Lab. *Id.*

²⁵⁰ *Id.*

²⁵¹ Nimalan Yoganathan, *Black Lives Matter Movement Uses Creative Tactics to Confront Systemic Racism*, THE CONVERSATION (July 30, 2020), <https://theconversation.com/black-lives-matter-movement-uses-creative-tactics-to-confront-systemic-racism-143273> [https://perma.cc/SGD9-PRTT].

²⁵² Hartigan, *supra* note 249.

²⁵³ Yoganathan, *supra* note 251. One tactic is to daringly and unflinchingly stare into the eyes of law enforcement agents, in what is termed a “look back” or “counter-gaze.” *Id.* It is a powerful demand to be seen and an equally powerful refusal to submit to police because eye contact has historically been lethally threatening to Black people. *Id.*

²⁵⁴ *Id.*

than an unending cycle of violence. There must also be a more united movement that embraces both King and Malcolm. As expected, we continue to see polarization between leaders in terms of what constitutes lasting, balanced reform. The next Section begins with this polarization and then zeroes in on one aspect of reform most directly related to Floyd's murder, police brutality.

1. *Responses to Violence and Rhetoric Within the African American Community*

While divisiveness persists on both the political and personal levels, it is important to note that disagreements exist within the Black community itself. I respectfully apologize for what is undoubtedly an essentialization of these tensions from an outsider's perspective, but one form revolves around the reaction of Black leaders to the violence enmeshed in many of the protests. We can use Atlanta and Chicago as examples. While Atlanta experienced many nights of violence,²⁵⁵ on May 29, 2020, Mayor Keisha Lance Bottoms made a statement that echoed that of former Representative John Lewis, encouraging people to register and vote for change rather than rioting.²⁵⁶

Former President Obama echoed her sentiments, “[L]et’s not excuse violence, or rationalize it, or participate in it. If we want our criminal justice system, and American society at large, to operate on a higher ethical code, then we have to model that code ourselves.”²⁵⁷ While protests and civil disobedience draw attention to racial injustice, “aspirations have to be translated into specific laws and institutional practices” and emphasized the importance of electing the right officials at all levels of government.²⁵⁸

Two months later, on August 10, 2020, a non-fatal South Side police shooting subsequent to a 911 call (during which the Black suspect allegedly shot at police) led to looting along the upscale downtown Magnificent Mile.²⁵⁹ Chicago Mayor Lori Lightfoot also expressed concerns.

²⁵⁵ For one account of the violence, see Alexis Stevens, Raisa Habersham, Ernie Suggs, Eric Sturgis, Ben Brasch, Alyssa Pointer & Christian Boone, *Protest Turns Into Hours of Chaos, Violence in Atlanta*, ATLANTA J. CONST. (June 4, 2020), <https://www.ajc.com/news/crime-law/atlanta-responds-george-floyd-killing-apd-chief-calls-out-cops-involved/JQWwQosjV3KszlbEengCAL/> [https://perma.cc/8R5R-42VB].

²⁵⁶ Chris Cillizza, *How Atlanta's Mayor Became the Face and Voice of Her Party Amid Protest and Chaos*, CNN (June 2, 2020), <https://www.cnn.com/2020/06/02/politics/keishalance-bottoms-atlanta-mayor/index.html> [https://perma.cc/8WDS-7DY7].

²⁵⁷ *In Essay, Obama Condemns Violence, Calls for Change Amid George Floyd Protests*, CBS AUSTIN (June 1, 2020), <https://cbsaustin.com/news/local/in-essay-obama-condemns-violence-calls-for-change-amid-george-floyd-protests> [https://perma.cc/8HN2-EQE3].

²⁵⁸ *Id.*

²⁵⁹ For a fuller account, see Mark Guarino, Tim Elfrink & Teo Armus, *Looters Smash Business Windows Along Chicago's Magnificent Mile After Police-Involved Shooting*,

Noting that social media had a role in leading people downtown, she made this statement: “To our residents, I want to make sure we’re doing everything we can to restore your homes and businesses. And to those who engage in that criminal behavior, let’s be clear: we are coming for you.”²⁶⁰ The tension is most visible in the statement made by Black Lives Matter Chicago. While city officials decried “criminals,” the organization supported “protesters” who needed “an outlet for the people to exert control over the policing of their community.”²⁶¹

Cone would likely have agreed with both positions, but only to some extent, standing by Malcolm X and righteous anger, but in the end, committing to King by repudiating unrelated violence in favor of reconciliation. Otherwise, the suffering will remain unredeemed, and the joy of the resurrection unrealized.

Bernice King outlines three actions she believes her father would advise to foster hope. They are particularly important amidst the shadows of today.²⁶² The first action is to be “creatively maladjusted” to regard what is normalized, like police brutality, as injustice.²⁶³ Black Lives Matter can foster this goal. The second action is “to serve as a force of light.”²⁶⁴ Rejecting violence and looting can transform the darkness in this way.²⁶⁵ The third action is to realize that we inhabit what King called a “world house - a diverse, multicultural, dynamic house in which each nation represents a room.”²⁶⁶ Bernice describes its fate this way:

For our house to survive, we cannot look away when one of the rooms is in flames. And certainly we should not exacerbate the fire, or the whole house will eventually burn down. If we remain in the grasp of nationalism, patriarchy, class conflict, racism, and religious bigotry, we will continue to be dehumanized—and destroyed—by poverty, genocide,

WASH. POST (Aug. 10, 2020), <https://www.washingtonpost.com/nation/2020/08/10/chicago-looters-riot-magnificent-mile/> [https://perma.cc/AM8X-E8Y5].

²⁶⁰ Emma Colton, *Chicago Residents Push Back Against Black Lives Matter Rally Supporting Those Arrested During Unrest*, WASH. EXAMINER (Aug. 13, 2020), <https://www.washingtonexaminer.com/news/chicago-residents-push-back-on-black-lives-matter-rally-supporting-those-arrested-during-unrest> [https://perma.cc/HJX5-GRZH].

²⁶¹ *Black Lives Matter on Chicago Looting: Black Lives ‘More Important Than Downtown Corporations’*, NBC 5 CHI. (Aug. 11, 2020), <https://www.nbcchicago.com/news/local/Black-lives-matter-on-chicago-looting-Black-lives-more-important-than-downtown-corporations/2320685/> [https://perma.cc/7MCQ-ZQJ6].

²⁶² Bernice A. King, *Martin Luther King Jr.’s Daughter Embraces His Hope for the Future*, THE ATLANTIC (Jan. 2018), <https://www.theatlantic.com/magazine/archive/2018/02/bernice-king-martin-luther-king-jr-legacy/552584/> [https://perma.cc/M3WC-AJSY].

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ *Id.*

slavery, and war. But the realization that we are all connected will make us more engaged in every area of human life, including our community.²⁶⁷

It is evident that Representative John Lewis aptly represented King when he wrote:

While my time here has now come to an end, I want you to know that in the last days and hours of my life you inspired me. You filled me with hope about the next chapter of the great American story when you used your power to make a difference in our society . . . Around the country and the world you set aside race, class, age, language and nationality to demand respect for human dignity . . . Though I may not be here with you, I urge you to answer the highest calling of your heart and stand up for what you truly believe. In my life I have done all I can to demonstrate that the way of peace, the way of love and nonviolence is the more excellent way. Now it is your turn to let freedom ring.²⁶⁸

Malcolm X would also remind us that our governments as well must embrace the universal brotherhood that he discovered later in life. As noted above, he claimed that “[t]he only true world solution today is governments guided by true religion—of the spirit.”²⁶⁹

2. *Law Enforcement and More Radical Reforms*

While effecting change through the voting process has been emphasized in some of the reconciliatory wisdom above, the more immediate efforts of reforming law enforcement have been effective, though not without some contention within the Black community. The amount of change brought about in such a short period of time after George Floyd’s death was significant. Perhaps this was because Floyd’s suffocation was so brutal.

Providing just a few examples, in Minneapolis, the City Council voted unanimously in June 2020 to dismantle the police department, but the efforts resulted only in a 4.5% cut in the department’s 2021 budget and left the number of officers intact.²⁷⁰ Activists noted, however, that this was a narrative-shifting victory, with the cuts to be reinvested in public-safety

²⁶⁷ *Id.*

²⁶⁸ John Lewis, *supra* note 241. Lewis requested this essay be published on the day of his funeral.

²⁶⁹ MALCOLM X, *supra* note 66, at 486.

²⁷⁰ Tim Dickinson, *What Happened to Promises to Dismantle the Minneapolis Police?*, ROLLING STONE (Dec. 14, 2020), <https://www.rollingstone.com/politics/politics-news/what-happened-disband-minneapolis-police-1102763/> [<https://perma.cc/6YGM-9S9S>].

measures, including funding for mental health training for the city's emergency call centers, the creation of mental health crisis teams that will respond to some 911 calls, and a boost in funding for violence-prevention programs outside of the police department.²⁷¹ However, pushback ensued. Nekima Levy Armstrong, the former president of the Minneapolis chapter of the NAACP, stated that the city showed “complete disregard for the voices and perspectives of many members of the African American community,” even though it “is the one most heavily impacted by both police violence and community violence.”²⁷² Some business leaders were also wary of defunding.²⁷³

Another reform took place in the neighboring city of St. Paul, where the School Board severed ties with police by removing school resource officers (SROs) from their schools, a move that occurred in other districts as well.²⁷⁴ Ignite the Youth, a diverse group of students, petitioned a nearby school district to ban SROs because they criminalize Black and Brown youth and fail to “contribute to the wellbeing and safety of the student body.”²⁷⁵ Of course, there were some in the Black community who were opposed to these changes as well. Tyron Terrill, the President of the African American Leadership Council claimed that if there was violence in the schools, the St. Paul School Board would have “blood” on their hands.²⁷⁶

Meanwhile, cities and states across the country, including California, have also passed laws banning police chokeholds, rubber bullets, and chemical irritants, such as tear gas.²⁷⁷ In Seattle, Denver, and other municipalities, body cameras must now be turned on.²⁷⁸ Progress has been

²⁷¹ *Id.*

²⁷² Maya Rao, *Some Minneapolis Black Leaders Speak Out Against City Council's Moves to Defund Police*, STAR TRIB. (July 2, 2020), <https://www.startribune.com/some-minneapolis-black-leaders-speak-out-against-city-council-s-moves-to-defund-police/571594012/> [https://perma.cc/L8PA-SZS3].

²⁷³ Burl Gilyard, *Minneapolis Downtown Council: 'Defund the Police Rhetoric' Killing Deals*, TWIN CITIES BUS. MAG. (July 29, 2020), <https://tcbmag.com/minneapolis-downtown-council-defund-the-police-rhetoric-killing-deals/> [https://perma.cc/RJK3-DRET].

²⁷⁴ Mara H. Gottfried, *African-American Leader: St. Paul Board Members Who Voted to Remove SROs will Have 'Blood' On Hands if There's School Violence*, PIONEER PRESS (June 29, 2020), <https://www.twincities.com/2020/06/29/african-american-leader-st-paul-board-members-who-voted-to-remove-sros-will-have-blood-on-hands-if-theres-school-violence/> [https://perma.cc/U3Z8-4E3].

²⁷⁵ Kristine Goodrich, *Petition Seeks to Remove Officers From Schools*, Free Press (Sept. 5, 2020), https://www.mankatofreepress.com/news/local_news/petition-seeks-to-remove-resource-officers-from-schools/article_af952d2a-eee2-11ea-86f5-bf87f3cd7f14.html [https://perma.cc/WCG5-TCD9].

²⁷⁶ Gottfried, *supra*, note 274.

²⁷⁷ Orion Rummier, *The Major Police Reforms Enacted Since George Floyd's Death*, AXIOS (Oct. 1, 2020), <https://www.axios.com/police-reform-george-floyd-protest-2150b2dd-a6dc-4a0c-a1fb-62c2e999a03a.html> [https://perma.cc/6ASN-6WMD].

²⁷⁸ *Id.*

made to increase transparency as well, e.g., in New York, the State Assembly repealed its shield law that kept police disciplinary records secret,²⁷⁹ and the New York City disbanded its plainclothes anti-crime unit.²⁸⁰ Similarly, the Louisville Metro Council passed a law, named in honor of Breonna Taylor, to limit the use of “no knock” search warrants,²⁸¹ and Iowa also placed restrictions on hiring police officers who were fired for misconduct in other states.²⁸² Creating alternative options for security and safety are also being considered,²⁸³ including a “Breathe Act” drafted by the Electoral Justice Project, the Movement for Black Lives.²⁸⁴

Former Black Panther Jones provides this advice to the younger generation of protesters: “Stick with it”²⁸⁵ He believes that “Black Lives Matter has adopted some of the same policies the Black Panther Party put forth as far as police community review boards, observers and calling for the dismantling of the police,” Jones said. “But their methods might need more “teeth” or strategies for community building beyond the protests.”²⁸⁶ It is also important to note that the Black Panthers were not just about defending Blacks with arms, they also created more than sixty programs to aid the community.²⁸⁷

Professor McAdam, an emeritus professor at Stanford University who studies social movements, provides us with a summation of the Floyd movement. “It looks, for all the world, like these protests are achieving what very few do: setting in motion a period of significant, sustained, and widespread social, political change. We appear to be experiencing a social

²⁷⁹ Ashley Southall, *N.Y.P.D. Releases Secret Misconduct Records After Repeal of Shield Law*, N.Y. TIMES (Mar. 8, 2020), <https://www.nytimes.com/2021/03/08/nyregion/nypd-discipline-records.html> [https://perma.cc/8K74-HBSH].

²⁸⁰ Rummier, *supra* note 277.

²⁸¹ See Barbara Campbell, *No Knock Warrants Banned in Louisville in Law Named For Breonna Taylor*, NAT'L PUB. RADIO (June 11, 2020), <https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/06/11/875466130/no-knock-warrants-banned-in-louisville-in-law-named-for-breonna-taylor> [https://perma.cc/Y9R8-8CQ7]. Taylor was shot and killed in her home by Louisville police after they used a no-knock warrant to enter her apartment.

²⁸² Tim Craig & Aaron Williams, *A New Generation Challenges the Heartland*, WASH. POST (July 11, 2020), <https://www.washingtonpost.com/nation/2020/07/11/midwest-changing-demographics-black-lives-matter-protests/?arc404=true> [https://perma.cc/278G-NX9L].

²⁸³ Tima Jenkins-Bell, *Black Panthers See Echoes in Today's Protest Movement, With Focus on Cell Phones, Not Guns*, SAN FRANCISCO PUBLIC PRESS (June 23, 2020), <https://sfpublicpress.org/black-panthers-see-echoes-in-todays-protest-movement-with-focus-on-cell-phones-not-guns/> [https://perma.cc/GBR3-PZ8R].

²⁸⁴ THE BREATHE ACT, <https://breatheact.org/> [https://perma.cc/R3CN-W5VQ].

²⁸⁵ Jenkins-Bell, *supra* note 283.

²⁸⁶ *Id.*

²⁸⁷ *Id.*

change tipping point—that is as rare in society as it is potentially consequential.”²⁸⁸

IV. RESURRECTING THE RULE OF LAW- INTERNATIONAL HUMAN RIGHTS AND TARGETED UNIVERSALISM

[T]he Charter of the United Nations, the Universal Declaration of Human Rights, the Constitution of the United States and the Bill of Rights are the principles in which we believe and that these documents if put into practice represent the essence of mankind’s hopes and good intentions.²⁸⁹

At this point, we might ask ourselves, how can this moment of widespread social and political change be sustained peacefully? Can the rule of law prevail? If so, what will it look like in our post-Floyd nation? To answer these questions, we can turn to international human rights,²⁹⁰ and a strategy called “targeted universalism.”²⁹¹ With these tools, we can link both King’s call for a beloved community and Malcolm’s emphasis on Blackness and Being as we fight systemic racism through what Cone would call a hope-filled “resurrection.”

A. *The Rule of Law*

Is what we are experiencing as a nation compromising the rule of law or transforming it? We can begin by agreeing that police brutality and lynching are signs of the lack of the rule of law. Some may also agree that violence amidst the protests of Floyd’s murder is a sign of this deficit as well.

But what is the rule of law, and how well is our nation in effecting it? The World Justice Project (WJP) identifies it as a system that upholds four universal principles.²⁹² First, the government, its officials and agents, as well as individuals and private entities, must be accountable under the law,²⁹³ which is difficult for us to claim amidst the ongoing racial hostilities, but

²⁸⁸ Buchanan, *supra* note 244.

²⁸⁹ Malcolm X, Speech at the Founding Rally of the Organization of Afro-American Unity/OAAU (June 28, 1964) (transcript available at: <https://newafrikan77.wordpress.com/2016/06/28/june-28th-1964-malcolm-xs-speech-at-the-founding-rally-of-the-organization-of-afro-american-unityoaaui/#:~:text=Malcolm%20X%E2%80%99s%20Speech%20at%20the%20Founding%20Rally%20of,%20Islam%2C%20the%20OAAU%20was%20a%20secular%20institution%E2%80%A6> [https://perma.cc/98WC-ZQJJ]).

²⁹⁰ G.A. Res. 217 (III) A, *Universal Declaration of Human Rights* (Dec. 10, 1948).

²⁹¹ See generally Powell, *supra* note 13.

²⁹² *What is the Rule of Law?*, WORLD JUST. PROJECT, <https://worldjusticeproject.org/about-us/overview/what-rule-law> [https://perma.cc/4B7U-PYDX].

²⁹³ *Id.*

possible for us to say with the law enforcement agency reforms sparked by George Floyd's lynching. Second, laws must be clear, publicized, stable, and just; applied evenly; and protect fundamental rights, including the security of persons and property.²⁹⁴ Here again, our nation comes up short, with people of color perhaps most at risk by gross economic and spatial disparities. Yet, ending police brutality surely increases their security, as both persons and communities. Third, under the rule of law, the process by which the laws are enacted, administered, and enforced must be accessible, fair, and efficient, which is a difficult charge in our nation with the underrepresentation of the marginalized throughout our legislative history. Yet, increasing law enforcement's transparency will certainly improve the system's fairness.²⁹⁵ And lastly, justice must be delivered timely by competent, ethical, and independent representatives and neutrals who are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve.²⁹⁶ This may be our biggest challenge and the thrust of Civil Rights Movements throughout American history.²⁹⁷ Under the rule of law, we should be safe, resolve disputes fairly, and prosper—a far cry from the unrest and uncertainty of the times. However, traditionally marginalized African Americans have raised up their voices and spearheaded the recent federal, state, and local government changes that are beginning to transform oppression into opportunity.²⁹⁸ As if addressing the systemic racism of our nation, the founder of the WJP, William H. Neukom, asserts that “[t]he rule of law is the foundation for communities of opportunity and equity—it is the predicate for the eradication of poverty, violence, corruption, pandemics, and other threats to civil society.”²⁹⁹

The rule of law can also be conceptualized in both a thin and thick sense. A thin conception of the rule of law refers to the formal and instrumental systems of law necessary for any society to function effectively.³⁰⁰ As such, laws must be “general, public, prospective, clear, consistent, capable of being followed, stable, impartially applied and enforced . . . and reasonably acceptable to a majority of the populace or people affected (or at least the key groups affected) by the laws.”³⁰¹ However, as King noted about the Jim Crow laws of his day, the mere presence of these elements does not mean that laws are good, just, or worthy of

²⁹⁴ *Id.*

²⁹⁵ *Id.*

²⁹⁶ *Id.*

²⁹⁷ World Just. Project, RULE OF LAW INDEX 4 (2014).

²⁹⁸ *Id.* at 6.

²⁹⁹ *Id.* at 1.

³⁰⁰ Randall Peerenboom, *Human Rights and Rule of Law: What's the Relationship?*, 36 GEO. J. INT'L L. 809, 827 (2005).

³⁰¹ *Id.*

adherence. “Even in countries known for rule of law, [it] has existed side by side with great injustice, including: slavery, racism, apartheid, patriarchy, colonialism, capitalist exploitation and callous disregard for the suffering of others.”³⁰² Given this, we cannot help but recall the grotesque image of Floyd with a callous knee at his neck. If, however, human rights can be reconceptualized and political morality transformed, then the rule of law can be characterized as thick. Political morality in the past (and currently for some) was grounded in eternal, divine, or natural law.³⁰³ Today, it can be grounded in economic arrangements (e.g., free market capitalism) and forms of government (e.g., liberal democracy) that stand beside and support true iterations of human rights.³⁰⁴ A turn to international law might be a more universal space in which to consider this transformation.

1. *International Law and Human Rights*

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world . . . the General Assembly proclaims this Universal Declaration of Human rights as a common standard of achievement for all peoples and all nations . . .

³⁰⁵

If we focus on human rights for a moment, we can agree that our nation’s free-market capitalism and two-party, winner-takes-all political system, leads our government to support some human rights over others, and even a dearth of them. The U.N. Declaration of Human Rights, of which the U.S. is a signatory, condemns barbarous acts that disregard our humanity, among others.³⁰⁶ Like the Charter of the U.N., it values fundamental human rights for all members of the human family, the dignity and worth of the human person, the equal rights of men and women, and better standards of life in larger freedom. Malcolm and King might champion Article 5, which denounces cruel, inhumane or degrading treatment, and, Article 6, which supports the right to recognition everywhere as a person before the law. These human rights should be protected by the rule of law so that persons are not compelled to rebel against tyranny and oppression. To secure these rights, the U.N. calls for teaching and education, along with progressive reforms.³⁰⁷

³⁰² *Id.* at 828.

³⁰³ See THOMAS AQUINAS, *SUMMA THEOLOGICA* (Fathers of the English Dominican Province, trans. 1274).

³⁰⁴ Peerenboom, *supra* note 300, at 828.

³⁰⁵ G.A. Res. 217, *supra* note 290.

³⁰⁶ *Id.*

³⁰⁷ *Id.*

Despite our nation's commitment to the Declaration of the two international covenants that support it, the U.S. has committed to only the Covenant on Civil and Political Rights.³⁰⁸ But, unlike most first-world nations, it has not ratified the Covenant on Economic, Social, and Cultural Rights, though it became a signatory in 1977. Perhaps our nation is unwilling to uphold the ideal that “*freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights.*”³⁰⁹ We only need point to the trauma of police brutality, the persistence of systemic racism, and the construction of the ghetto by the government, lenders, real estate agents, and homeowners, to understand this deficit. But what can be done progressively, under the rule of law, as the U.N. stresses, to attend to the urgency of the moment? I suggest we consider targeted universalism as a way forward.

2. *Targeted Universalism*³¹⁰

We urgently need aligned and coherent strategies that create belonging and promote bridging. Targeted universalism provides an approach for orchestrating these efforts . . . Out-groups are moved from societal neglect to the center of societal care at the same time that more powerful or favored groups' needs are addressed.³¹¹

Largely developed by John A. Powell, Director of the Othering & Belonging Institute of the Haas Institute for a Fair and Inclusive Society at UC Berkeley, targeted universalism addresses the specific needs of marginalized communities, while at the same time promoting universal human rights through goals such as adequate nutrition, shelter for those in need, and affordable health care for all.³¹² More than closing gaps, this approach reveals barriers to achieving these ubiquitous needs that are unique to differently situated groups.³¹³ Targeted universalism seeks effective, progressive, and sustainable policies that can address issues of

³⁰⁸ G.A. Res. 2200A (XXI) International Covenant on Civil and Political Rights (Dec. 16, 1966).

³⁰⁹ G.A. Res. 2200A (XXII) International Covenant on Economic, Social and Cultural Rights (Dec. 16, 1966) (emphasis added).

³¹⁰ For a short tutorial, see Othering & Belonging Institute, *Targeted Universalism*, YOUTUBE (Feb. 15, 2017), <https://www.youtube.com/watch?v=wgGcftWpwUQ> [https://perma.cc/CLL4-L7TF].

³¹¹ Powell, *supra* note 13, at 6; see also John A. Powell, Stephen Menendian & Jason Reece, *The Importance of Targeted Universalism*, POVERTY & RACE, Mar.-Apr. 2009.

³¹² Powell, *supra* note 13, at 21-22.

³¹³ *Id.* at 16.

equity, including those related to systemic racism, and prove beneficial to society as a whole.³¹⁴

Universal policies as a whole are viewed as guaranteeing “a uniform floor of rights or benefits for all persons or, at least . . . a broad group not defined according to identity axes.”³¹⁵ While universal policy solutions have wide appeal, they do not always reach the marginalized, like low-income communities of color. For example, to garner the support of Southern states, the Social Security Act of 1935 initially excluded domestic and agricultural workers who were predominantly Black.³¹⁶ As a result, around sixty-five percent of African Americans at the time were ineligible for its benefits.³¹⁷ Similarly, on a more contemporary scale, if the minimum wage were to increase today, it may not equally benefit low-income persons who do not have the means to secure a job in the first place. They may lack language acuity, work experience, connections, soft-skills, transportation, and local job opportunities in their segregated, opportunity-deprived neighborhoods. Resources that could benefit those most in need can actually exacerbate inequalities by benefiting those who are better off more.³¹⁸

On the other hand, if a policy allocates benefits and protections based solely on group membership or status, it may not contribute to the overall well-being of society, e.g., the Supplemental Nutrition Assistance Program (SNAP) (commonly known as food stamps), or affirmative action based on historically disadvantaged groups. At the same time, targeted approaches are often criticized for unfairly favoring the vulnerable over the public and exacerbating stereotypes of marginalized groups as undeserving.

However, targeted universalism offers a middle way by which universal goals can be reached through explicitly aimed policies. According to the Othering and Belonging Institute, this approach “targets the various needs of each group while reminding us that we are all part of the same social fabric.”³¹⁹ This outcome can be achieved in five steps. First, setting a

³¹⁴ *Id.* at 7.

³¹⁵ *Id.* at 7-8.

³¹⁶ Brad Plumer, *A Second Look at Social Security's Racist Origins*, WASH. POST (June 3, 2013), <https://www.washingtonpost.com/news/wonk/wp/2013/06/03/a-second-look-at-social-securitys-racist-origins/> [https://perma.cc/2YJA-AEYU]. For a contrary interpretation see Larry DeWitt, *The Decision to Exclude Agricultural and Domestic Workers from the 1935 Social Security Act*, 70 SOC. SEC. BULL. 4 (2010).

³¹⁷ *Id.*

³¹⁸ powell, *supra* note 13, at 10.

³¹⁹ See john a. powell, *Targeted Universalism: Equity 2.0*, HAAS INST. FOR A FAIR AND INCLUSIVE SOC'Y (Oct. 25, 2016), <https://belonging.berkeley.edu/sites/default/files/20161025-kidscount-v2.pdf>. [https://perma.cc/6CL5-HD29].

universal goal, e.g., decreased high school drop-out rates.³²⁰ Second, gauging how the overall population meets this universal goal.³²¹ Third, measuring various population segments, e.g., low-income communities of color, relative to this universal goal.³²² And finally, devising and implementing targeted strategies so that the needs of each *and* every group can achieve this universal goal.³²³

By targeting the needs of each group, this approach goes beyond concerns over disparities alone by aiming towards the highest goals for all of society.³²⁴ As the Other & Belonging targeted universalism primer asserts:

There is a hunger for fresh approaches and urgent demand for novel policy methods that can break through our political gridlock, address the problems of our time and create new avenues for thriving individuals and communities. Targeted universalism is an approach that supports the needs of the particular while reminding us that we are all part of the same social fabric.³²⁵

This unitive goal could not come at a better time than now, during this period of unrest and rebellion. It signals a burgeoning political morality necessary for the rule of law and captures the urge of the U.N. Declaration of Human Rights to proceed progressively.

Targeted universalism is currently being employed by various bodies, such as the Minnesota Department of Health,³²⁶ Living Cities,³²⁷ and the National Juvenile Justice Center,³²⁸ around diverse issues such as civic engagement,³²⁹ job-related pedestrian plans,³³⁰ and school district budget cuts

³²⁰ powell, *supra* note 13, at 20.

³²¹ *Id.*

³²² *Id.*

³²³ *Id.* at 24.

³²⁴ *Id.* at 4.

³²⁵ *Id.*

³²⁶ *Targeted Universalism*, MINN. DEP'T. OF HEALTH, <https://www.health.state.mn.us/communities/practice/resources/equitylibrary/haas-targeteduniversalism.html> [<https://perma.cc/FR28-UEVY>].

³²⁷ *Who We Are*, LIVING CITIES, <https://www.livingcities.org/about> [<https://perma.cc/VD96-RVRU>].

³²⁸ Courtney McSwain, *Anti-Racism Resource: Targeted Universalism - An Approach for Youth Justice?*, NAT'L JUV. JUST. NETWORK (Nov. 25, 2019), <http://www.njjn.org/article/anti-racism-resource-targeted-universalism-an-approach-for-youth-justice> [<https://perma.cc/TZ2Z-4BXM>].

³²⁹ Wendy Willis, *Take a Seat at Oregon's Kitchen Table: Adapting Targeted Universalism for Broad and Deep Civic Engagement*, BRIDGE ALL. (Jan. 28, 2020), https://www.bridgealliance.us/take_a_seat_at_oregon_s_kitchen_table_adapting_targeted_universalism_for_broad_and_deep_civic_engagement [<https://perma.cc/GSY7-L6VN>].

³³⁰ Yoshira Cardenas Licca, *Facing School Budget Cuts? Targeted Universalism Can Help*, BELLWETHER ED. PARTNERS (Aug. 18, 2020), <https://aheadoftheheard.org/tag/targeted-universalism/> [<https://perma.cc/MR4Q-22CF>].

amidst the pandemic.³³¹ However, policies based on targeted universalism are often subject to criticism and legal challenge. Two examples suffice.

In 2014, the Obama Administration launched the public/private initiative, “My Brother’s Keeper” (MBK), that engages local communities in multi-faceted efforts to address persistent inequalities among, and improve the educational and economic opportunities among young men of color.³³² One educational iteration in Oakland, California, is the African American Male Achievement (AAMA) program,³³³ which features “regularly scheduled classes exclusively for Black, male students and taught by Black, male teachers who focus on social-emotional training, African-American history, culturally relevant pedagogy,” and enrichment, along with academic and social supports and enrichment activities academic supports.³³⁴ Quasi-experimental evidence from AY 2005-06 through AY 2016-17 shows that the program significantly reduced the drop-out rate of Black males, particularly in the ninth grade, with an overall reduction of nineteen percent.³³⁵ There was also a small spillover reduction among Black females.³³⁶ Evidence also shows that the high-school graduation rate for Black males increased by at least 3.2 percentage points.³³⁷ It is notable that this educational approach is in keeping with U.N. Declaration of Human Rights suggested modes of change.

However, MBK’s targeted focus on Black males has been controversial. Critics across the political perspective have argued that it is discriminatory because it singles out Black males for attention while

³³¹ *Id.*

³³² In 2015, the My Brother’s Keeper Alliance (MBK Alliance) was launched, inspired by My Brother’s Keeper, to scale and sustain this mission. In late 2017, MBK Alliance became an initiative of the Obama Foundation. See *We are Our Brothers’ Keepers*, MBK ALL., <https://www.obama.org/mbka/> [<https://perma.cc/L32P-TT2J>].

³³³ See *Welcome!*, OAKLAND UNIFIED SCHOOL DIST., <https://www.ousd.org/Page/495> [<https://perma.cc/MJU5-77ZB>].

³³⁴ Thomas Dee & Emily Penner, *My Brother’s Keeper? The Impact of Targeted Educational Supports* 1, 3 (Stanford Ctr. for Educ. Pol’y Analysis Working Paper No. 19-07, 2019). The centerpiece of the AAMA program is the Manhood Development Program (MDP). The MDP is a class that meets every day during regularly scheduled school hour, that seeks to provide participating students with sustained engagement in a caring community (i.e., changing students’ experience of the schooling system) rather than episodic instruction in an after-school or pull-out program. *Id.* at 3.

³³⁵ *Id.* at 1, 16.

³³⁶ *Id.* at 2. The analysis relied on files from the nine regular, comprehensive schools in the Oakland Unified School District (OUSD) serving students in grades 9 through 12. Analysts excluded OUSD’s alternative high schools (e.g., “continuation” schools serving students at high risk of dropping out). They also excluded one, smaller high school (Met West High School), which has an alternative curriculum and inconsistent data on its AAMA programming. *Id.* at 11.

³³⁷ *Id.* at 15.

deprioritizing other demographic subgroups with equity-related needs.³³⁸ To some opponents, it also appears unfair given our nation's prevailing ethos that resources should be distributed equally. But even if targeted approaches are carefully rationalized, "demagogic politicians can use the unequal distribution to claim that government . . . is taking sides."³³⁹

In response, supporters have defended the conceptual framework of MBK by appealing to "targeted universalism."³⁴⁰ They note that universal policies can exacerbate inequity and that specifically targeted programs often lack political support.³⁴¹ The solution is to clearly articulate the state's universal goal of improving education for all students³⁴² with targeted approaches such as these for achieving in it. Moreover, the program's success among Black students could be used with other subgroups as well.³⁴³ As such, in a racially pluralistic society, targeted designs such as MBK can also meet the universal goal of advancing all members of society.³⁴⁴

A more timely example of targeted universalism can be found in an Oregon policy that allocates federal funds designated to address the impact of the COVID-19 pandemic.³⁴⁵ Under The CARES Act, which established the \$150 billion Coronavirus Relief Fund,³⁴⁶ federal payments are available to state, local, and Tribal governments to navigate the impact of the Coronavirus outbreak.³⁴⁷ The Act requires:

Payments be exclusively used to cover expenses that – (1) are necessary expenditures incurred due to the public health emergency COVID-19; (2) were not accounted for in the State or government budget most recently approved as of March 27, 2020 (the date of enactment of the CARES

³³⁸ *Id.* at 1.

³³⁹ powell, *supra* note 13, at 5.

³⁴⁰ Dee & Penner, *supra* note 334, at 1.

³⁴¹ *Id.*

³⁴² The California Constitution Article IX, § 1 recognizes that "[a] general diffusion of knowledge and intelligence [is] essential to the preservation of the rights and liberties of the people." The state has assumed specific responsibility for a statewide public education system open on equal terms to all. *Butt v. California*, 842 P.2d 1240, 1247 (Cal. 1992).

³⁴³ Dee & Penner, *supra* note 334, at 1.

³⁴⁴ *Id.*

³⁴⁵ John Eligon, *A Covid-19 Relief Fund was Only for Black Residents. Then Came the Lawsuits*, N.Y. TIMES (Jan. 3, 2021), <https://www.nytimes.com/2021/01/03/us/oregon-cares-fund-lawsuit.html> [<https://perma.cc/3YBM-6N4D>]; Dirk VanderHart, *New fund for Black Oregonians Faces Mounting Legal Pressure*, ORE. PUB. BROAD. (Nov. 25, 2020), <https://www.opb.org/article/2020/11/25/oregon-cares-fund-coronavirus-pandemic-black-owned-businesses/> [<https://perma.cc/ML9J-2UBW>].

³⁴⁶ *The Cares Act Provides Assistance for State, Local, and Tribal Governments*, U.S. DEP'T OF TREAS., <https://home.treasury.gov/policy-issues/cares/state-and-local-governments> [<https://perma.cc/5EXH-WMTJ>].

³⁴⁷ *Coronavirus (COVID-19)*, U.S. DEP'T. OF HEALTH AND HUM. SERVS., <https://www.hhs.gov/coronavirus/index.html> [<https://perma.cc/P9BJ-95ZQ>].

Act); and (3) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.³⁴⁸

Given that data suggest that Blacks are disproportionately dying from COVID-19, and Black business leaders expressed concern over stay-at-home orders and business restrictions, as well as their lack of valuable homes to tap for capital, Oregon civic leaders proposed a targeted solution that lawmakers approved in July 2020. The Oregon Cares program earmarked \$62 million of its \$1.4 billion in federal COVID-19 relief money “to provide grants to Black residents, business owners and community organizations enduring pandemic-related hardships.”³⁴⁹ Lawmakers explicitly acknowledged that Black residents are at a unique disadvantage during the pandemic because of ongoing discrimination.³⁵⁰ Of course, the Oregon Cares program is supported by Black Lives Matter and other activists as a meaningful remedy in the face of systemic racism.³⁵¹

However, two lawsuits have been filed to prevent this targeted universalism program from going forward. One was filed by a Mexican-American, and the other by two White business owners, but both claim that the fund for Black residents discriminated against them.³⁵² White conservative activist Edward Blum is underwriting the lawsuits through his organization, Project on Fair Representation.³⁵³ He is quoted as stating, “It is like, in the employment arena, going to apply for a job and seeing a sign on the employment office that reads, ‘No Asians need apply.’ Your race and your ethnicity should not be used to help you or harm you in your life’s endeavors.”³⁵⁴ One of the plaintiffs, Walter Leja, claims that he is on the verge of laying off employees from his small business if he does not receive relief money, and concurs with Blum’s claim that the Oregon distribution plan is discriminatory.³⁵⁵ Acknowledging that he cannot say whether historic discrimination has compromised Black business owners, Leja believes that there are many other businesses that need access to the funds.³⁵⁶ As he stated, “It’s not a white or Black thing. It’s an everybody thing.”³⁵⁷ In essence, he favors an even distribution of relief money when targeted universalism calls for one based on groups being differently situated.

Even the Oregon Legislature’s attorneys worry that the fund could be unconstitutional unless the state can show detailed evidence of past

³⁴⁸ U.S. DEP’T OF TREAS., *supra* note 346.

³⁴⁹ Eligon, *supra* note 345; VanderHart, *supra* note 345.

³⁵⁰ Eligon, *supra* note 345; VanderHart, *supra* note 345.

³⁵¹ Eligon, *supra* note 345; VanderHart, *supra* note 345.

³⁵² Eligon, *supra* note 345; VanderHart, *supra* note 345.

³⁵³ Eligon, *supra* note 345.

³⁵⁴ *Id.*

³⁵⁵ *Id.*

³⁵⁶ *Id.*

³⁵⁷ *Id.*

discrimination against Black families and businesses.³⁵⁸ In a written opinion, they stated that “[w]e are not aware of any evidentiary findings by the legislature or the Emergency Board in support of the . . . grant program Without any such findings, the program would almost certainly be unconstitutional under the Fourteenth Amendment.”³⁵⁹ Some legal scholars have expressed similar concerns.³⁶⁰

Yet, in a brief submitted to the Oregon Legislature, the firm representing The Contingent, a nonprofit playing a lead role in administering the fund, made an argument that echoes those of the Othering & Belonging Institute.³⁶¹

Without targeted legislation, COVID-19 will exacerbate past disparate impacts of discrimination—which gives rise to both the imperative and legal justification for the State to take race-conscious action for Black people, Black-owned businesses, and Black community-based organizations These Oregonians are suffering disproportionate economic harms from COVID-19 and yet, in disproportionate numbers, are not being aided by existing and ostensibly race-neutral relief efforts Centuries of systemic and institutional discrimination—perpetuated and exacerbated by current systems—have caused economic disparities and exacerbated the Black community’s vulnerability The Oregon Cares Fund would ensure that the distribution of CARES funds does not perpetuate discrimination-related racial disparities.³⁶²

Additionally, Governor Kate Brown and Oregon Attorney General Ellen Rosenblum released a statement in November defending the funding allocation.³⁶³ They stated that data shows that the disproportionate harms

³⁵⁸ VanderHart, *supra* note 345.

³⁵⁹ *Id.* (quotations omitted).

³⁶⁰ *Id.* See, e.g., Brian Fitzpatrick, a Vanderbilt University law professor who has written about the Constitution’s Equal Protection Clause and University of Oregon law professor Ofer Raban claims that the legal bar the state needs to clear is high. Brian T. Fitzpatrick & Theodore M. Shaw, *The Equal Protection Clause*, NAT’L CONST. CTR., <https://constitutioncenter.org/interactive-constitution/interpretation/amendment-xiv/clauses/702> [<https://perma.cc/39WV-Y7HA>].

³⁶¹ *The Oregon Cares Fund: A Fund For Black Relief And Resiliency*, SCHWABE, WILLIAMSON & WYATT, <https://olis.oregonlegislature.gov/liz/2019I1/Downloads/CommitteeMeetingDocument/224710> [<https://perma.cc/V5S5-L7R4>].

³⁶² *Id.*

³⁶³ Jamie Goldberg, *Gov. Brown and State Attorney General Defend Relief Fund for Black Oregonians*, THE OREGONIAN (Nov. 12, 2020), <https://www.oregonlive.com/coronavirus/2020/11/gov-kate-brown-attorney-general-ellen->

Black Oregonians are experiencing from COVID-19 are the result of long-standing systemic inequities, and that Black-owned businesses are less likely to have received federal aid and are closing at a faster pace than other businesses.³⁶⁴ Applying targeted universalism rationale, they wrote, “As a state, we have a duty to aid those in need . . . [and] deliver critical resources to Oregonians amid a devastating pandemic. On behalf of *all* Oregonians, we intend to actively defend this important program (emphasis added).”³⁶⁵

We are reminded here how both Malcolm and Cone called for Blacks to self-define according to the politics, economic, and social interests of Black people.³⁶⁶ Acknowledging that systemic racism is a brutal fact, they both emphasize that this brave assertion is neither hateful nor racist.³⁶⁷ Instead, like targeted universalism, it affirms what is common among *all* humans—the power of being amidst nonbeing.³⁶⁸

Nkenge Harmon Johnson, the President and Chief Executive of the Urban League of Portland, notes that “As a state, as a country, it is unusual for us to provide adequate resources to Black people [and] [f]or some folks, it’s shocking, it’s distasteful.”³⁶⁹ Similarly, Akasha Lawrence Spence, a state representative, insists that “subtle measures were not enough for the current crisis.”³⁷⁰ She believes that targeting Black Oregonians for relief funds is a step that can force people to grasp the effects of racism.³⁷¹ In her words,

This fund says that we understand that for no other reason than the color of your skin, you have been restricted and prohibited from accessing the tools to economically mobilize. For that reason, we’re not going to create any veiled language. We as the Black community are tired of that.³⁷²

Education, progression, and the development of a political morality are all signs of a resurrected rule of law.

V. CONCLUSION

rosenblum-defend-states-relief-fund-for-black-oregonians.html [https://perma.cc/U2KT-6ELG].

³⁶⁴ *Id.*

³⁶⁵ *Id.*

³⁶⁶ Marguerite Spencer, *Environmental Racism and Black Theology: James H. Cone Instructs Us on Whiteness*, 5 U. ST. THOMAS L.J. 288, 301 (2008).

³⁶⁷ *Id.*

³⁶⁸ *Theological Ethics*, *supra* note 63, at 210.

³⁶⁹ Eligon, *supra* note 345.

³⁷⁰ *Id.*

³⁷¹ *Id.*

³⁷² *Id.*

The journey we have shared together here has no real beginning and no real end. Oppression has always existed, but Cone leads us to the foot of the cross where the Black Christ is crucified at the hands of his own community and the ruling powers that sustained it. He then hastens us to the Minneapolis pavement to witness the lynching of George Floyd, also at the hands of the self-perpetuating sovereigns of systemic racism and inequality.

Cone shares with us his theology, drawing on both Martin Luther King Jr. and Malcolm X, in a succession of crescendos and decrescendos, from rage to resurrection, with the call to leave hatred and vengeance at the wayside. Suffering, he rings out, can be redemptive, or else it remains just that, with our fallen entombed.

While God is Cone's conductor, ours can be of our own making. Some of us choose anarchy, some choose looting, and some choose the gun, pitting Whites against Blacks in a cycle of destruction. Others of us choose agency, protests, and love, weaving a multi-colored fabric of possibility and unity. Among mocking crowds and brutality will rise Equality and Joy!

But for our time, the resounding refrain is Black Lives Matter, with the hope that it can be accompanied by "All Lives Matter" when systemic racism and inequalities are replaced by robust human rights and the Beloved Community.

The Christian gospel is a story with at least four authors. There is no one path, no one right voice, no one right solution, even within a community. At this moment, we can let Cone's message waft through the air. The crucifix and the lynching tree—both through asphyxiation—can bring about resurrection and hope, empowering us to abandon fire and the baton. Let us focus, reimagine and take action! George Floyd and his companions breathe it so.