

Disparate Law Enforcement Practices against Women of Color and Gender Variant Women: The More Things Change, the More They Stay the Same

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Abstract

Women of color and gender variant women are routinely beaten and killed by police use of excessive force. These victimizations do not make headline news as often as black male shootings. A historical analysis reveals that these women have always suffered brutality from police. Several theoretical explanations are given to contextualize police use of force on black women. The impact of violence on these women demands that corrective action is taken and necessitates the creation of policies to eliminate their suffering.

Keywords: gender variant women, disparate treatment, implicit bias, civil litigation, critical race theory, in custody deaths

Introduction

Over the past two decades, the issue of racial inequality has reemerged as part of the national narrative. News media as well as eyewitness accounts and video recordings of police violence against black men has been credited with bringing heightened attention to racism and the need for criminal justice reform. While the literature is replete with articles regarding the brutalization, fatal shootings, and chokeholds of black men by police, reported cases of violence that law enforcement officers committed against women of color and gender variant women are missing from the literature. The public perception appears to be that police violence only happens to black men. Sawyer (2019) suggests the experiences of women of color and gender variant women are lost in the national conversation regarding disparate law enforcement practices. As a result, police violence persists and goes unnoticed; however, simply because this violence does not receive equal attention, it does not mean it is not occurring. Feminist scholars argue that violence against women is often committed in private and away from recording devices. In fact, black women and women of color disproportionately report that their victimization by police occurred in the back seat of a patrol car, on the way to the police station, in alleys, and at the precinct in the context of domestic violence when officers turn cameras off to protect the privacy of victims. Since these incidents occur in private places, it increases the likelihood that there will not be a record of the incident (Ritchie, 2016). Because of the invisible nature of police violence against women of color and gender variant women, feminist scholars contend that it is one of the most neglected areas of criminological research.

When discussing the violent encounters from the perspective of black women, women of color, and transgendered women, Ritchie (2016) argues the lack of data on law enforcement violence against these women has exacerbated societal concerns as to why government and law enforcement authorities fail to document these encounters. Because of this, our manuscript is divided into four parts. Part One presents a brief history of disparate treatment of women color by law enforcement officers. Part Two discusses illegal searches, seizures, and other practices directed at women of color and gender variant women. Part Three offers theoretical explanations of police violence against women of color and gender variant women. Part Four provides policy recommendations.

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Part One: A Brief History of Disparate Treatment of Women of Color by Law Enforcement Officers

Studies that focus on the lives of black women reveal they have experienced more suffering than black men since it has been black women who have watched their families suffer at the hands of slave owners, slave patrols, and the police. Black women have been raped, sexually assaulted, whipped, and lynched by slave owners, and years later by police. Black women as well as gender variant women have become marginalized and experienced excessive force and death from their encounters with police. Ritchie (2017) contends that the black women's presence and audacity to verbalize their mistreatment through protest has caused police to see them as a threat to their powerbase. Consequently, they react towards them with excessive and deadly force. Ironically, women of color and gender-variant women are victimized when protesting the brutal treatment of their male counterparts. Despite this, they are invisible since no one sees their victimizations. Feminist scholars contend that they are lost in the narrative. However, what most people are unaware of is the fact that this is not a new occurrence, but rather, it has historical roots. Therefore, we examine the legacy of violence that black women have experienced from the police during the institution of slavery; Reconstruction; the *Civil Rights Movement* and *Jim Crow Laws*; and the *Black Lives Matter* and *Say Her Name Movements*.

The Institution of Slavery, Violence, and Reconstruction

Historians report that among the estimated 12.5 million Africans transported during the American slave trade, black women were brought over as early as the 16th century (Gates & Yacovone, 2013; Franklin & Higginbotham, 2017). To keep slaves in their place, night watchman and slave patrols were created to enforce curfews, check travel permits, and prevent organized revolts. The slave patrols used horrifying acts of rapes, beatings, shootings, and lynchings to prevent slaves from escaping (Anderson, 1995). Hadden (2001) suggested that slave patrols and the *Ku Klux Klan* (KKK) were used to terrorize and frighten slaves into subservience. The slave patrols were mainly hired to protect property and economic interests. Ironically, research scholars report that modern day policing has its origins in the early slave patrols (Kappeler, 2014; Turner et al., 2006).

While slaves were generally used for agricultural and domestic work, female slaves were forced to harvest crops, cook meals, nurse children, and satisfy slave owners sexual desires. Despite their value, slave women and their off springs were often auctioned and sold for a life of servitude and reproductive strengths. Moreover, sexual activities between slaves and their owners were an expected behavior between slave and master (Willingham, 2018). To maintain racial purity, laws prohibited sexual relations and intermarrying with descendants of the Negro race. The rapes of slaves were commonplace and not considered a crime since slaves were considered to be less than human (Holmes, 2016; Aptheker, 1951). In fact, if cases of sexual relations between white owners and slaves reached the courts, the slave was accused of seducing her owner.

After the *Civil War* abolished slavery, the federal government-imposed Reconstruction efforts in the American South to ease the transition of blacks to free people with the same entitlements as whites. Reconstruction was a time of considerable violence levied at the newly emancipated blacks. Chief among these efforts was the establishment of the black codes which were designed to preserve racial hierarchy by restricting blacks to plantation work or other forms of servitude. Under the codes, whites meted out harsh penalties for reasons such as when blacks were accused of engaging in vagrancy, failing to tip their hats to whites, refusing to get off the sidewalk to let whites pass, or any trumped-up charge. Any violation could mean dire consequences such as random shootings, house burnings, parts of their bodies burned, and hangings. Black females were not exempted from following the code (Henrietta et al., 2014).

Beyond the black codes, lynching was commonly used to teach blacks their place. Baker & Garcia (2019) documented 188 cases of black women and girls who were lynched from 1838 to 1969. They reported that lynching black females served as a reminder of their inferior status in white society. Similarly, Aptheker (1951) reported that black men, women, and children experienced many unspeakable incidences of violence during Reconstruction leading blacks in southern states to petition the US Congress for protection from local KKK, *White Leagues*, the *Knights of the White Camelia* and other vigilante groups of angry whites who beat, raped, whipped, shot, burned, or lynched blacks if they felt blacks had forgotten their place or dared to exercise any rights white folks enjoyed. Scholars contend that after Reconstruction ended, blacks saw little change in their economic and social status. This coupled with an increase in sadistic torture that whites committed to preserve white supremacy made blacks reassess whether they had made substantial progress.

Some argue this occurred because the federal government abandoned the idea of Reconstructing the American South and left the slaves at the mercy of slave-owners. Despite Baker and Garcia's research, historians notice few studies on black women's lynchings and attribute it to the prospect that researchers may uncover factual inaccuracies about the gender and race of victims, identify victims who may have died for a reason other than being lynched, and the inability to identify the woman as a Negro (Berg, 2011; Baker, 2012). Nevertheless, 80% of black women's lynchings occurred from the 1870s and mid-1950s to the 1960s (Baker & Garcia, 2019).

The Civil Rights Movement and Jim Crow Laws

Wilkerson (2010) reported that after slavery, blacks continued to be stigmatized for being black. Racial inequality and stigma continued throughout the *Twentieth Century* with the rise of Jim Crow laws and segregation. Jim Crow laws were an extension of the black codes and were common in southern states with the purpose of thwarting the promises of the *Emancipation Proclamation*, and the efforts of the *Civil Rights Movement*. During this period, black women continued to be raped, lynched, and sentenced to chain gangs. Baker & Garcia (2019) revealed that sixteen black women were murdered by white mobs during the civil rights period. Other reports revealed that black women were beaten by police as was the case with Ella Jones who before Rosa Parks also refused to relinquish her bus seat to a white man in Montgomery, Alabama. The *Civil Rights Movement* provided the first televised accounts of black women being hosed, beaten, and jailed by the police and documented the brutal sexual assaults and beatings of activist Fannie Lou Hamer and others by the police (McGuire, 2010).

Black Lives Matter and Say Her Name Movements

Many organizations and movements continue to speak out against police violence targeted at women of color and gender-variant women. The *Association of Black Women Historians* has issued a statement denouncing police violence against black women, and has listed several victims such as Aiyana Stanley-Jones who was fatally shot by a Detroit officer while asleep at her grandmother's house; Dajerria Becton was violently thrown to the pavement by a Texas officer at a pool party; Natasha McKenna was tased to death by a Virginia officer; Tanisha Anderson was killed after having a mental health episode as Cleveland police officers slammed her to the ground; and Rekia Boyd was slain when a Chicago police officer shot her in the back of the head (Duncan et al., 2015). The *Association* referred to these tragedies as anti-black female violence. As a result of these and other killings, the *Black Lives Matter Movement* emerged and has protested against police repression. Similarly, the *Say Her Name Movement* brings awareness to the reality that women of color and gender-variant women are also victims of police violence. It recognizes the names and narratives of victims since their stories do not receive the same level of public outcry as their male counterparts. Both organizations demand reforms are made to end disparate law enforcement practices, especially the use of excessive force that leads to untimely deaths and other health injuries. Although data indicate that women of color represent 13% of the U.S. population, they account for 20% of women killed by police, and approximately 30% of unarmed women who are killed (Brown & Ray, 2020). These statistics do not account for most women of color or gender-variant women who have been victimized or killed by police officers.

Part Two: Illegal Searches, Seizures, and other Practices Directed at Women of Color and Gender Variant Women

Legal experts argue that executing a search or seizure with a valid warrant makes it reasonable (del Carmen, 1991). However, under exigent circumstances, courts allow police officers to act without a warrant if probable cause exists since under emergency circumstances, officers do not have the time to procure a warrant. Nevertheless, when police shoot and kill suspects while attempting to take them into custody, we ask if their actions are protected. While states have their own laws regarding the use of force, police officers, via training, must understand that there are two types of force: justifiable and unjustifiable. Some legal scholars argue that the use of force or coercion is a daily practice used by police officers that ranges from giving a verbal command to using a weapon on a suspect. Furthermore, police are legally authorized to use force to enforce the law. However, problems arise when they abuse that authority by using excessive force (Gaines & Kappeler, 2008). When claims are brought against police, courts generally ask, whether the degree of force used was reasonable to accomplish a particular law enforcement objective such as affecting an arrest. More specifically, courts ask, would a reasonable person faced with a similar set of circumstances have responded the same as the officer?

Criminal justice experts and legal scholars contend the use of force results in *non-deadly force* and *deadly force*. *Non-deadly force* is the degree of force used that is not likely to result in serious bodily injury or a suspect's death. *Deadly force*, when used, would lead an objective officer to conclude that a suspect will likely face serious injury or death (Gaines & Miller, 2010; Kappeler, 2006; del Carmen, 1991).

To avoid complications, legal experts suggest that police officers follow the recommendation given by the *Independent Commission* probe into the infamous *Rodney King* beating of the 1990s. It suggested that police should use the minimum level of force necessary to control the subject (*Independent Commission*, 1991).

The U.S. *Supreme Court* has ruled on two landmark cases regarding the legality of the use of deadly force, *Tennessee v. Garner* and *Graham v. Conner*. In *Tennessee v. Garner*, the Court ruled that police could not use deadly force to stop a fleeing suspect unless the suspect posed a significant threat of death or serious injury to the life of the officer or others. The Court ruled that Garner's death was an unreasonable seizure within the meaning of the *Fourth Amendment* and consequently, it abolished the fleeing felon law in Tennessee. As a result, police departments nationwide revised their policies on the use of deadly force to meet the new standard created by the *Garner* ruling (Walker & Fridell, 1992). Scholars reported that because of *Garner*, the nation experienced a decline in the number of deadly police shootings (Tennenbaum, 1994).

Despite its clarification on police use of deadly force, the *Garner* decision left unanswered questions regarding the application of the use of force in general. In *Graham*, the Court addressed the issue by ruling that Graham's *Fourth Amendment* right was violated when officers used excessive force to arrest him. It held that police use of force must be objectively reasonable whether the officer's actions were reasonable given the circumstances confronting them regardless of intent. When determining what is reasonable, one should consider whether the suspect poses an immediate threat to the officer or others, the seriousness of the crime, whether the suspect is resisting and not complying with the officer's commands, and whether the suspect is trying to escape from custody (Kappeler, 2006).

Racial Profiling of Women of Color and Gender-Variant Women

Racial profiling remains a law enforcement practice in the United States. The *American Civil Liberties Union* (2021) reports that it occurs when police practice stopping, interrogating, and searching minorities based solely on race, ethnicity, national origin, or religion. Legal experts argue that it violates the *Equal Protection Clauses* of the Constitution which prohibits profiling without probable cause. As such, arbitrary police stops, and searches based on race alone are considered unreasonable. Moreover, studies find that stereotypes of minorities as aggressive, sex-crazed, nonconforming, and criminal often cause police to engage in racial profiling (Glaser, 2015; Ritchie, 2017; Hutchins, 2017). Those who justify racial profiling fail to recognize that many innocent minorities also experience daily harassment and arrest. A major criticism of these studies is that they highlight the experiences of black men, while ignoring that police also profile women of color and gender-variant women at alarming rates (Hutchins, 2017; Sawyer, 2019).

Anderson (2019) conducted a study on the perceptions that black men and women have regarding why they are stopped by police. He reported that 59% of black men were more likely compared with 31% of black women to say they were unfairly stopped by the police because of race. In a similar study, Sawyer (2019) used a sample of 90,000 respondents that measured the impact that race and gender have on police stops. The study revealed that race mattered more for black women when the stop resulted in an arrest. Moreover, racial disparities influenced black women experiencing similar levels of force used against white men during police stops. The study also reported that race and gender impacted the likelihood of being stopped by police while driving. Sawyer's study also found that black women were approximately 17% more likely to be involved in a police stop compared with their white counterparts, and were 34% more likely to be stopped compared with Latinas. Data revealed that 4.4% of black women surveyed reported they were arrested during a stop. However, for white and Latina women, the percentages were 1.5%, and 2.2%, respectively. Black women were three times more likely than white women, and twice as likely as Latina women to be arrested during police stops (Prison Policy Initiative, 2019). In discussing the use of force during stops, black women reported a higher rate compared with white and Latina women, but a level equal to white men. Of the women who experienced force during a stop, blacks accounted for 0.9%; whites comprised 0.3%; and Latinas constituted at 0.32% (Prison Policy Initiative, 2019).

Ritchie (2017) conducted a study on women of color and gender-variant women who had been racially profiled by the police, she recounts a narrative of a black gender-variant woman who walked to a local McDonalds and was accosted by police who arrested her. Officers searched her and used the nine condoms she possessed as evidence that she was involved in sex work. Women of color and gender-variant women are routinely profiled and arrested for alleged sex work, namely loitering for prostitution. Ritchie (2016) explains "associations between gender nonconformity and involvement in the sex trade are so prevalent that profiling of trans women has been dubbed "walking while trans (p. 196)." As such, trans variant women expect harassment from police. To that end, Ritchie referenced a national *Transgender Survey* composed of 30% black; 25% Latinx; 23% Native-American; and 20% Asian women who report that they are routinely stopped by police.

According to these transgendered women, the officers who stop them, know who they are, but use the pretext of sex work involvement as the reason to harass them.

Ritchie (2017) argues that encounters with police are commonplace for women of color and gender-variant women who are regarded by society as sexually deviant and deserving of what happens to them. To police responding to stereotypes of hypersexual minority women and sex workers, finding condoms in their possession confirms their intent to engage in sex work. Thus, justifying law enforcement intervention. Some of the searches they perform on these women such as body cavity searches are so intrusive that they should never be performed in public. When they occur, these women are not afforded any constitutional protection (Ritchie, 2017). The fact is that society needs to recognize that these women experience victimizations when confronted by police (Ritchie, 2017). The society and media portray these women as confrontational, sexually promiscuous, and as a threat. Consequently, stereotypes passed down since slavery are used by police to justify harassing women of color and gender-variant women.

Sexual Violence of Women of Color and Gender-Variant Women

Sexual violence is another form of brutality that is inflicted on women of color and gender variant women by police officers. Studies also reveal that these women are sexually abused by police, especially when officers perceive them as sex workers; substance abusers; homeless; or suffering from poor mental health (Sawyer, 2019). Willingham (2018) reported Daniel Holtzclaw, a patrol officer with the *Oklahoma City Police Department* was charged with thirty-six counts of first-degree rape, sexual battery, forcible oral sodomy, and indecent exposure with thirteen black girls and women. At trial, it was revealed that Holtzclaw profiled black women by running criminal background checks. He selected the victims, if he believed that no one would believe them.

The Holtzclaw case led the *Associated Press* to conduct a one-year national investigation into other sexual misconduct by U.S. law enforcement. It found that 1,000 police officers were terminated within a six-year period for committing rape, sodomy, and sexual assaults. Similarly, in 2016, the *Department of Justice* investigated the *Baltimore Police Department* (BPD) and discovered that police extorted sex from women in exchange for leniency. However, the cases were never internally investigated by the BPD. Ritchie (2017) revealed that *The Buffalo News* discovered 700 cases of sexual abuse by police officers that spanned over the past decade.

James et al. (2016) used a national transgender survey, and reported that 58% of respondents who interacted with police experienced mistreatment such as verbal abuse, repeated misgendering, physical assault, and sexual assault. Similarly, a *National Transgender Discrimination Survey* revealed 6% of respondents who interacted with police reported physical assault, and 2% claimed they were sexually assaulted. Moreover, 15% of respondents who interacted with police reported being physically assaulted, while 7% claimed they were sexually assaulted by police. Of those respondents who worked in the underground economy, 15% reported they experienced physical assault, while 8% claimed they were sexually assaulted (Grant et al., 2011). Similar to data on women of color and gender-variant women who have been victimized by police is virtually invisible, so too, are officially collected data on police who victimize these women. Critics argue that the incidents of recorded rapes, sexual assaults, and coerced sex initiated by police officers are limited at best and missing at worst (Ritchie, 2017). Consequently, the absence of data is believed by critics to make it easier for police departments to deny culpability. Thus, rendering the victimizations and victims invisible. The aforementioned studies suggest that police may hide sexual abuse committed against women of color and gender-variant women; therefore, if these women do not tell their stories, what happens in policing remains unknown.

Physical Violence: Excessive Use of Force against Women of Color and Gender-Variant Women

Researchers suggest that violence committed against women of color and gender variant women is minimized and routinely treated as insignificant by the justice system. Studies suggest that few media outlets report stories about black women gone missing or dead and even fewer report that women of color or gender variant women died from violent physical encounters with police (Jacobs, 2017; Ritchie, 2017; Richie, 1996). According to Fallis & Rindler (2021), while fewer women of color are killed by police than black men, the conviction rate for officers remains low. Since 2015, there have been two cases where police were charged with manslaughter, or murder in an on-duty shooting of a black female. In one case, the officer was acquitted. In contrast, the authors add that while there have been five cases since 2015 in which officers were charged with manslaughter or murder in an on-duty shooting of a white woman, three of the officers were convicted (Fallis & Rindler, 2021).

Due to the FBI undercounting fatal police shootings after the death of Michael Brown, the *Washington Post* began logging fatal police shootings by on-duty police officers and revealed that, of the number reported by police departments, more than 5,000 fatal shootings had occurred.

The *Washington Post* found that since 2015, approximately 250 women have been killed by on-duty police officers, 48 of the women were black. As of January 2021, the demographics of the victims remained unchanged. Moreover, it revealed that black women account for 13% of the female population in the United States, but represent 20% of women who are killed by the police, and almost 30% of those were unarmed (Fallis & Rindler, 2021). Other studies have documented violent and fatal police encounters with women of color and gender variant women while some were either pregnant or disabled (Willingham, 2018; ACLU, 2021; Ritchie, 2017; Burns, 2020). Ritchie (2017) reports that Malaika Brooks was seven months pregnant when she was shocked several times by a Taser during a traffic stop. Furthermore, Nicola Robinson, an eight-month pregnant woman was punched on her stomach by police for laughing at them for not being able to apprehend a fleeing suspect (Willingham, 2018). Similarly, gender variant women such as Lyleen Xtravaganza Cubilette-Polanco, an Afro-Latinx trans woman died in police custody after experiencing a seizure. Surveillance footage showed officers laughing outside her cell instead of administering the required 15-minute interval health checks for prisoners in solitary confinement (Burns, 2020). Duanna Johnson, a black trans woman was profiled and arrested for engaging in sex work. She was taken into custody and beaten on the head with metal handcuffs by an officer who had wrapped metal handcuffs around his knuckles (Ritchie, 2017).

Law enforcement officers are trained to discharge their duties in a constitutionally correct manner which includes taking suspects into custody using reasonableness either by voluntary compliance or force that is determined by the level of resistance from the suspect. However, when excessive force is inflicted on women of color and gender variant women without provocation and results in severe injuries and untimely deaths, the matter is worthy of both criminal and civil investigations. Given the significance of the problem, it is not surprising that police use of force has received scrutiny. The brutalization of women of color and gender variant women by police is not a new phenomenon but continues to occur without receiving the same level of public outcry from the general population and media as it does when men are victims.

In Custody Deaths: Use of Deadly Force on Women of Color and Gender-Variant Women

As arrests of women of color and gender variant women become more prevalent, it becomes important to understand their experiences within the justice system (*Prison Policy Initiative*, 2019). Experts argue that being arrested is almost two times deadlier for blacks compared to their white counterparts (Libresco, 2015). Black detainees also face significantly higher rates of homicide related arrests than whites that are more likely to be committed by police officers. The *Department of Justice* reported that nearly 3,000 arrest-related homicides occurred between 2003 and 2009. Ninety-nine percent were committed by law enforcement (Libresco, 2015).

Although Ritchie (2017) shined a spotlight on police violence against black women, it is unlikely this concern would have been elevated to national attention had it not been for the Holtzclaw case. There are other examples of violence that black women experience that are just as alarming. Cases of in custody deaths are particularly concerning. Anna Brown had been previously hospitalized and unable to walk, was refused treatment, and arrested at another hospital. An officer took her from her wheelchair, threw her to the floor, and placed her in the police car. At the station, the officer laid her next to her cell cot. After checking on her fifteen minutes later, she was dead. The medical examiner reported that blood clots had moved from her legs to her lungs. Some experts argue that as a detainee, the manner in which Anna was treated by police violated the *Eighth Amendment's* prohibition against cruel and unusual punishment (Noel & Perlow, 2014).

Another in custody death occurred in Detroit when Priscilla Slater was arrested. Two days later, she was found dead in a jail cell. Police records revealed she was found unconscious and unresponsive. Medical attempts to resuscitate her were unsuccessful. The family attorney stated, "there is no possible way that police taking care of her would not see someone who was in a serious medical need and obtain medical help. She didn't just get up and die in the jail. She was there thirty-six hours" (Haffenden, 2020, p. 2). In another case, Tiffany Eubanks who was homeless and suffered from a mental illness was reportedly walking in and out of traffic. Police answered a call to assist paramedics who were administering aid to Tiffany. Officers on the scene handcuffed and transported her to the hospital. Tiffany was unresponsive when she arrived at the hospital. She was taken inside and pronounced dead (*U.S. News and World Report*, 2020). Similarly, *Texas State Trooper*, Brian Encinia stopped Sandra Bland because she failed to signal a lane change. During the stop, a verbal altercation ensued, and the officer arrested and took Sandra into custody. Three days later, she was found dead in her cell. Police claimed Sandra committed suicide, but the circumstances surrounding her death led many people to question how a minor traffic violation ended in death. This in custody death, ignited global protests and outrage over the treatment that women of color experience from police. It also led to the passage of the *Sandra Bland Act of 2017* created to educate police about mental illness and de-escalation techniques (History.com Editors, 2020). Twenty-four hours later, in Homewood, Alabama, Kindra Chapman was arrested, and taken into custody.

She arrived at 6:14, was placed in a cell at 6:30. By 7:50, she was discovered dead (Schwiegershausen, 2015). A day later, Joyce Curnell was found dead in her cell at the *Charleston County Detention Center* (Schwiegershausen, 2015).

There are examples highlighting that gender variant women are also unsafe since many are killed while in police custody. Research by Forestiere (2020) suggests that black gender variant women are killed at a disproportionate rate due to “the intersections of racism, transphobia, sexism, biphobia and homophobia (p. 6).” It may be that these intersections cause police to kill gender variant women while in their custody. In 2013, another untimely death occurred when police were called to perform a mental health check on Kayla Moore a black transgendered woman who suffered from schizophrenia. She died in police custody as a result of officers holding her face down on a futon. This degree of excessive force was used while her hands and legs were cuffed. It was later revealed the death was owing to a case of mistaken identity and the actual suspect was a 20-year-old black male (Ritchie, 2017). Similarly, in 2017, Kiwi Herring, a married trans gendered woman had been involved in a domestic dispute with her spouse and had severely cut her neighbor with a knife. When officers arrived on the scene, Kiwi attacked one officer prompting the other officers to open fire striking her several times resulting in her demise (Lohr, 2017).

Part Three: Theoretical Explanations of Police Violence against Women of Color and Gender Variant Women

While examining the violence perpetrated against women of color and gender variant women by police officers, there are several dynamics that must be explained. First, the level of commitment, precision, and normalcy that police display when committing illegal behavior is concerning since they act with unrestrained impunity while engaging in unspeakable brutality against minority women. Research suggests that some police officers use their position of authority to extort sex from women. Scholars report that this behavior is more likely to occur in police departments that have institutionalized the practice of condoning women to exchange sexual favors with officers for a reprieve or favorable treatment (Kraska & Kappeler, 1995). Police have also subjected women of color and sexual variant women to physical beatings; sexual harassment; sexual assault; and murder as they act undeterred by the prospect that a fellow officer will intervene to help the victim because it is the legal, moral, and human action to take if not simply to remind the officer that this conduct is illegal. Second, the righteous indignation of women of color and gender variant women whose oppression and exploitation demands that they stand for justice needs to be contextualized, examined, and understood. Because police violence against these women is critically important and timely, we believe theoretical explanations such as *Critical Race Theory*; *Marxist Feminist Theory*; *Power Threat Theory*; and *Symbolic Interactionism* offer the framework necessary to understand these dynamics.

Critical Race Theory

Critical Race Theory (CRT) examines the role that American jurisprudence plays in upholding white supremacy, especially in areas such as gender, class, and sexual orientation (Crenshaw et al., 1995). Critical race theorists believe that white supremacy has been institutionalized to the extent that its cultural and structural embeddedness are unrecognizable to many in the country’s majority.

Critical race theorists contend that the law and other apparatuses of the justice system have been used as mechanisms to control and maintain class dominance and racial division (Lynch & Groves, 1989). Therefore, they reject that the law is colorblind and legal scholarship about race in America can never be neutral since racial power is exercised legally and ideologically and serves as the biggest supporter of racial constructs that sustain themselves as concrete realities. As Taylor (1998) explains, “CRT challenges the experiences of whites as the normative standard and grounds its conceptual framework in the distinctive experiences of people of color (p. 122).” The theory contends that racial oppression is better understood from those who have lived and experienced racial inequalities and exclusion. CRT questions whether a racist social structure can deliver equitably when upholding “the rule of law” to everyone. The theory challenges the way the law socially constructs and maintains dominance and subordinates minority groups. CRT embraces the use of perspectives given by oppressed people who experience racial oppression, injustices, and inequalities in society. Critical race scholars use storytelling as an effective tool for dismantling stereotypes. They accept oppressed people’s perceptions of justice, truth, fairness, and experiences and refer to them as the true knowers (Taylor, 1998). In the end, these scholars desire a framework that allows for an ethical commitment to human liberation.

Marxist Feminist Theory

Marxist Feminist Theory (MFT) postulates that the subordination of women in capitalist societies increases the likelihood that they will experience rape and violence (Barkan, 2006; Beirne & Messerschmidt, 1991). Marxist feminists contend that as private property evolved, men began to dominate the structure and its social institutions. Because of power differentials that emerged in patriarchal societies, women became the victims of various forms of inequalities and exploitation by men who were privileged by gender (Balkan, Berger, & Schmidt, 1980). Marxist feminists contend that power differentials are also found among men employed in the justice system such as police, lawyers, judges, and correctional officers. They argue that vestiges of the past can be seen in the current social arrangement. These agencies and actors are not neutral and therefore women and other minorities are subject to abuse. Consequently, women who encounter the justice system experience intimidation, coercion, and violence from misogynists who symbolize social control and the interests of the powerful. Moreover, Marxist feminists argue that in capitalist societies, women are commodities similar to money for men to possess, especially where they are positioned in the social structure, class relations, and the mode of production (Schwendinger & Schwendinger, 1983). These class relations are used to control and subordinate women (Einstadter & Henry, 1995, p. 264). Because of the structure in patriarchal societies, women experience sustained oppression in the home, public settings, as well as the workplace. Messerschmidt (1986) provides that capitalism permeates all aspects of social life by marginalizing women. However, women of color and gender variant women often experience a double marginality. For example, because many are excluded from economic advancement in the labor force, they are denied status mobility. They are also marginalized from the family, in that many may be single, or divorced, and those who are gender variant are often disconnected from their biological families and discriminated against when they seek housing and employment opportunities. Some scholars argue that the powerlessness that women face makes them targets of violent crimes (Chapman, 1990). Marxist feminists believe that change can only occur when the existing social order becomes one that is based on equal distributions of access to wealth and power including decision making within the justice system (Einstadter & Henry, 1995).

Power Threat Theory

Power Threat Theory (PTT) argues that when the majority population believes that minorities have evolved into a threat to their powerbase, it imposes punitive sanctions to thwart those efforts (Bonaparte, Anderson, & Branson, 2008). The theory holds that when minority populations increase to the point where whites have to compete instead of relying on white privilege, they will use punitive sanctions and other forms of social control to shift the balance of power back into their favor. Recently, these actions have become evident since demographers forecast that by the year 2042, whites will no longer be the majority in the United States. Consequently, this has manifested in an increase in hate crimes; hate group membership; as well as protests from domestic terrorists (Wilkerson, 2020). PTT postulates that in areas where minorities outnumber whites, they immediately pose a threat to the white powerbase. For example, the majority views protests and demonstrations by minorities as threatening to the status quo. As such, law enforcement officers use violent militarized methods to subdue protesters. Officers often use excessive and deadly force on protesters exercising their right to peacefully demonstrate. Scholars including critical race theorists suggest whites perceive minority protestors as threatening to their powerbase.

Therefore, many whites turn a blind eye to police brutality. PTT posits large numbers of minority voters represent power that whites fear will threaten their future dominance since a minority power base could demand equitable distributions of power and shift the balance of power. According to PTT, when the majority feels its powerbase is threatened, it will use punitive measures to incite fear. It may support racist politicians, ignore deadly force cases; uphold erroneous convictions; mete out capital punishment; and deny voting rights (Wilkinson, 2020).

Symbolic Interactionism

Symbolic Interactionism postulates that the interactions people have with others shape and influence their behavior. As such, people will live up or down to what others expect of them (Barkan, 2006). Symbolic interactionists argue behavior is influenced by others via a process of verbal and symbolic communication such as gestures, signs, words, or images that represent meaning. Through interacting with others, people interpret meaning into their self-image for better or worse (Cooley, 1964; Blumer, 1969; Siegel, 2006). The process of interacting with others is compelling since it influences how people view reality from the point of view of those they share an interest with such as a political group, clique, police, family, and race. Scholars argue that within the context of group dynamics, sometimes there is no objective reality, but rather, subjective interpretation often informs behavior (Blumer, 1969). Policing can be instructive in this regard since its culture provides officers with symbolic labels and teaches group expectations. Police are taught that there are only two groups: law breakers and law enforcers.

Critics argue that this belief system leads to the “*blue wall of silence*” that police are socialized into after joining the force. This is seen when officers accused of misconduct are protected by fellow officers who witnessed the illegal behavior. They are complicit in the cover-up (Gaines & Kappeler, 2008). The expectation of supporting a fellow officer includes not breaking one’s *silence* when a fellow officer is guilty of wrongdoing. Police also label some they serve as threatening to their powerbase and authority. Recently, groups such as young black men, women of color, *LGBTIQ groups*, and some whites have questioned the legitimacy of police authority. When police confront these groups, they respond with military tactics and weaponry as they mete out violence and brutality. This response is not shocking to officers because it meets the expectations that they have of each other when responding to the enemy.

Part Four: Policy Recommendations

Research that examined illegal searches and seizures, racial profiling, sexual and physical violence and in-custody deaths between police, women of color and gender variant women revealed that those exchanges often occur in private and away from witnesses and police departments. In these cases, the only witnesses are usually other officers who are present on the scene, but often, turn a “blind eye” to other police officers’ behavior because of the “code of silence.” Consequently, these crimes are not documented and never become part of the public record. Because police data are highly problematic, critical scholars use anecdotal and narrative approaches to acquire missing crime data. They argue that police authorities are unlikely to document violent behavior committed by fellow officers against black women and gender variant women because it could open departments to scrutiny requiring internal investigations that may result in criminal and civil liabilities. Unless effective policies are introduced and adopted on a national level, it is likely that more women of color and gender variant women will experience police use of excessive force and some may even become the victims of untimely deaths. Criminal justice experts argue that in order to prevent police violence, efforts should be made to address the root causes of the problem, as well as hold police criminally and civilly accountable. To that end, we provide policy recommendations that should reduce police violence against women of color and gender variant women. They include providing police officers with training in diversity, mental illness, and implicit bias; and relying on legal remedies to prevent the use of excessive and deadly force.

Providing Police Officers with Training in Diversity: Mental illness, and Implicit Bias

The way police interact with minorities and suspects with mental illnesses has come under scrutiny due to the encounters that have resulted in death (Gaines & Kappeler, 2008; Teplin, 2000). Research shows that racial profiling is entrenched in American policing to the extent that minorities are often viewed as “*enemies*” because they have nontraditional attributes compared with whites. Eberhardt et al. (2004) found that police officers were more likely to harbor implicit biases that influence their attitudes and actions when encountering black males, women of color, and trans-variant women. Oddly, these officers may not consider themselves racists. This makes it likely that they will commit violence against nonwhites (Spencer et al., 2016).

Mentally ill offenders enter the justice system at a higher rate than others. Therefore, it is probable that they will experience face-to-face encounters with police officers. Police contend they cannot reason with mentally ill suspects and nonlethal force is ineffective. As such, some encounters may escalate in acts of brutality and in custody deaths. This prospect has led experts to conclude that the mentally ill are disproportionately criminalized and arrested (Teplin, 2000; Alpert et al., 2004; Martin et al., 2012). Health experts warn that as poor mental health increases, more police will intervene in situations where community residents believe they are a disturbance or pose a danger to themselves or others. However, when officers believe their lives are in jeopardy, they can use deadly force to subdue a mentally ill person who refuses to comply to their request (Kerr et al., 2010). Corder (2006) contends people experiencing acute crisis may appear to ignore a police order, but they may not understand what police are asking. Police may misread the situation as a show of defiance or hostility and respond with fatal violence.

Psychiatrists view police deadly exchanges with mentally ill persons as avoidable if officers are trained to recognize mental illnesses and defuse potentially fatal encounter. Moreover, because officers are aware that calls for service to assist the mentally ill are especially dangerous, most police agencies have adopted the *Crisis Intervention Teams (CIT)* approach to minimize risk to officers as well as mentally ill persons (Kerr et al., 2010). Research finds that *CIT* has improved police response to managing encounters with mentally ill persons. Empirical evidence shows that when officers use *CIT*, they interact better with mentally ill persons, use of force is reduced, and injuries to police and citizens are lowered (Watson et al., 2008). Similarly, health experts argue that police should have procedures in place to manage mentally ill offenders, as well as have “no-decline” agreements with hospitals to ensure that they have a place to take the mentally ill (Teplin, 2000; Lamb et al., 2002).

Since many women with mental health issues have been killed while being arrested, we recommend police departments invest in *CIT* to better understand the sensitivity of persons suffering from mental illnesses. Research on how implicit biases impact police behavior is based on the cumulative perceptions that police construct of others (Greenwald et al., 2015; Glaser & Knowles, 2008). Stereotypes on race influence the perception of threat, that is to say, police see blacks as more threatening or dangerous. Therefore, they are more likely to use force without deliberation (Goff et al., 2008). Implicit biases exist outside one's conscious awareness and control since they are always present. Researchers report that implicit biases are commonly found in policing since the work brings them in contact with people they view as undesirables. This suggests that whether police officers are racists or homophobic is influenced by the implicit biases they acquire from policing and society (Devine, 1989). As such, police often view blacks as more aggressive compared to whites which impacts their decision to use excessive or deadly force.

To combat implicit biases, experts recommend that policymakers diversify law enforcement agencies and offer intervention training programs such as intergroup contact; counter-stereotypic exemplars; stereotype negation training; and multifaceted interventions. First, a meta-analysis of intergroup contact with non-negative contact with out-group members found a reduction in bias. Second, exposure to outgroup members who controvert group-based stereotypes can also reduce bias (Park & Glaser, 2011). Third, not using stereotypes in training by simply saying "no" to stereotypical sayings was found to reduce activation of stereotypes in future behavior. Last, counter-stereotype imaging, individuation, and increasing opportunities for intergroup contact helped to reduce implicit racial bias (Devine et al., 2012). While most police departments offer training in cultural competency, the addition of implicit bias training can help to reduce the effect of cultural biases and stereotypes that often influence police decisions.

Relying on Legal Remedies to Prevent the Use of Excessive and Deadly Force

Each year, thousands of lawsuits are filed against police and their respective departments alleging a violation of rights (Gaines & Kappeler, 2008; Signorelli, 2006). A popular form of legal redress is found in *Title 42 of the United States Code, Section 1983*. In a *Section 1983* claim, a victim of excessive force brings a lawsuit in federal court against a police officer alleging her constitutional rights were violated by an officer acting under color of law or in his capacity as an officer of the law. These lawsuits are preferred because they are filed in federal courts and only require that a lawyer: (1) convince a judge or jury that a police officer acted under color of law; and (2) violated a constitutional or federal right (Signorelli, 2006). In excessive force cases, when a law enforcement officer misuses their authority, they have acted under color of law and can be held liable in a civil rights lawsuit.

Any case that involves an officer's use of excessive or deadly force constitutes a violation of the *Fourth Amendment* when performed in a manner that violates the *reasonableness* standard created by the Court. In cases where suspects are shot and killed and it is determined that they were unarmed and did not pose a threat of death to the officer or others, these matters are likely ruled as a civil rights violation.

In *wrongful death* lawsuits, surviving family members of the deceased can file an action alleging the death of a family member was caused by unjustified police action. In such cases, the plaintiff initiates these suits when a police officer uses excessive force such as standing on the neck of a suspect until he dies; shoots and kills a suspect that he may have intended to arrest and take into custody; uses a chokehold resulting in death; or any police negligence that results in death. In order to prevail in a *wrongful death* claim, the plaintiff must demonstrate that the death was unjustified given what a reasonable person would have done given similar circumstances (del Carmen, 1991).

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