
History Of Racial Discrimination

Former Baltimore Ravens linebacker Ray Lewis recently posted a video on his Facebook page where he is “calling out” the Black Lives Matter movement for making black people feel victimized while, “every day we have black-on-black crime killing each other.” But Ray Lewis does not understand that this “black-on-black killing each other” is simply a variation on a common theme that had been percolating up through society since society began, and is not unique to BLM or any of the other groups that has faced similar occurrences. This paper will be broken down into five parts. Part I, I will discuss the main situation where overrepresentation occurs –Colonialism—where I will discuss how this common theme works in regards to Aboriginal peoples in Australia and New Zealand and then I will discuss Native American and Alaskan Native crime rates. Part II, I will discuss a case of European Vigilantism that has been ongoing for over thirty years. Part III, I will discuss overrepresentation in the Black American Community, as well as the theories of possible causes. Part IV will be a discussion of Max Webers’s state monopoly on violence theory and finally I will conclude with a common-sense reductionist solution,

Colonialism

Colonialism is a practice of domination; it involves the subjugation of one people to another. It is often difficult to distinguish colonialism from imperialism, but for the purposes of this paper, I will use the definition of Formal Colonialism—which is the classic physical expansion by one state and encroachment of that state onto another territory. The reasons for colonialism are economic and political, with the goals being attainment of wealth, territory and dominion. Therefore, marginalization is a direct result of colonialism. Before colonization began, Indigenous Peoples in the countries of the world had their own social structures. The societies were self-governing; they had structures that ensured the transmission of knowledge and culture, and had effective economic systems. Indigenous Peoples were seen as an exploitable group, or disposable resource, to be used as laborers to extract highly desired, extremely profitable resources—land. The most significant colonial processes when discussing over-representation of Indigenous Peoples in the criminal justice system are: depopulation ; legal control; the use of ideology through religion; education and media; urbanization; and paternalism. The Indigenous Peoples of Australia, Canada, and America were all subjected to invasion by "settlers" from European countries during the colonial period from roughly 1492 to today. The processes employed were strikingly similar in each country and produced remarkably similar results-the socioeconomic and political marginalization of the original Indigenous Peoples.

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Australian Aboriginal and Torres Strait Islander peoples

Indigenous Australians (Aboriginal and Torres Strait Islander people) make up 26 percent of Australia's prisoner population yet only constitute 2.5 percent of the Australian population. Aborigines are vastly overrepresented in both homicide victimization and offending—13 percent of the victims and 11 percent of offenders. Yet, it would be a mistake to simply delve straight into a discussion of the differing aspects of Australian Aborigines and crime without a crucial understanding of, as aborigine Paul Cole would describe it--Australia's 200-year history of Aboriginal oppression by Europeans. In short, Aborigine imprisonment cannot be understood without the wider power relations that have shaped the nature of the colonial response to indigenous communities, both historically and as a matter of modern reality in Australia.

Australian Colonization

Aboriginal peoples have been on the Australian continent for at least 50,000 years, and they have one of the world's oldest cultures. Although there is much debate on the number of Aboriginal Australians before Europeans arrived, estimates of their population in 1788 range between 300,000 to over one million--totaling more than 500 separate Aborigine nations. These Aborigine nations had only minimal contact with Europeans, mainly with Dutch explorers on the coasts and with Lieutenant James Cook who claimed the east coast for England in 1770. Upon his return to England, Cook's reports inspired the establishment of a penal colony in this newly "claimed" land. Britain launched the "First Fleet" of ships to establish a colony of young convicts in "some distant part of the globe," eventually settling at Sydney Cove on January 26, 1788. This new settlement was designed to ease overcrowding in British prisons, enlarge the Empire, declare Britain's claim to the territory against other colonial powers, and establish a British base in the global South. What the new settlement was designed for and what the new white settlement actually did are two very different things.

The effect these new colonists had on the original inhabitants of Australia cannot be overstated. The Aborigine population was decimated by European diseases, deliberate poisonings, violent conflict with colonists, settler acquisition of Aboriginal lands, and death from sexual abuse. The years between 1788 and 1928 defines the longest and still largely unrecognized war in Australian history, a war that lasted for 130 years and resulted in Aboriginal depopulation of well over 90%. Journalist and philanthropist, Edward Wilson, described the colonization of Australia as such:

In less than twenty years we have nearly swept them off the face of the earth. We have shot them down like dogs. In the guise of friendship we have issued corrosive sublimate in their damper and consigned whole tribes to the agonies of an excruciating death. We have made them drunkards, and infected them with diseases which have rotted the bones of their adults,

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and made such few children as are born amongst them a sorrow and a torture from the very instant of their birth. We have made them outcasts on their own land, and are rapidly consigning them to entire annihilation.

But the colonization of Australia did not simply happen when the First Fleet landed in Australia at the end of the 1700s; it was only the beginning.

Criminal Justice

Australian colonization has developed and progressed throughout the nineteenth and twentieth centuries, and the fact that Australia was a settled colony had two direct legal consequences for the Aborigines. First, Aborigines were legally deprived of any rights in relation to the land. Second, they were theoretically equal before the law to white settlers. The first occasion to test this later theory was *R. v. Murrell*, where an Aboriginal Black named Jack Congo Murrell, was indicted for the willful murder of another Aboriginal Black named Jabbingee. The defendant's lawyer made the argument that British law was not binding on the men:

The reason why subjects of Great Britain are bound by the laws of their own country is that they are protected by them; the natives are not protected by these laws; they are not admitted as witnesses in courts of justice, they cannot claim any civil rights, they cannot obtain recovery of, or compensation for, those lands which have been tom from them, and which they have probably held for centuries. They are not therefore bound by laws which afford them no protection.

The court ultimately rejected the defendant's argument because offenses committed against another in the colony were liable as a protection of his civil rights. Yet, on other occasions, the court was inconsistent with the principle that Aborigines were equal before the law. In an Aborigine murder trial of another Aborigine, the Chief Justice of the South Australian Supreme Court ruled that there had been no crime, on the grounds that, claiming no protection of the law, the Aborigines owed it no allegiance. However, since 1860, it has been generally accepted that the courts must treat Aborigines equally with other citizens.

Royal Commission into Aboriginal Deaths in Custody

The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) was a Royal Commission appointed by the Australian Government in October 1987 to study and report upon the underlying social, cultural and legal issues behind the deaths in custody of Aboriginal people and Torres Strait Islanders, in light of the ninety-nine Aborigine deaths "in custody" since 1980. The investigation was extremely thorough, but did not find that the deaths were the product of deliberate violence or brutality by police or prison officers. Still, the question of racism was

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fundamental to the Royal Commission. The Royal Commission found that racism was “institutionalised and systemic, and resides not just in individuals or in individual institutions, but in the relationship between the various institutions,” and that the police play a definitive role in reproducing this subordination. According to one of the commissioners of the report, Elliot Johnson, non-Aboriginal persons have great difficulty understanding institutionalized racism. The older method of protection and assimilation was obvious, however, institutionalized racism in the modern period, is subtler and not always easily identifiable. Elliot Johnson defines institutionalized racism in the following way:

An institution, having significant dealings with Aboriginal people, which has rules, practices, habits which systematically discriminate against or in some way disadvantage Aboriginal people, is clearly engaging in institutional discrimination or racism.

The Royal Commission acknowledged the importance of history, and the complexity of the interaction between Aborigines and the criminal justice system. One of the central findings of the Commission was that a multitude of factors, both historical and contemporary, interact to cause Aboriginal people to be seriously over-represented in custody and tragically to die there. Much of the Aborigines current circumstances, and the patterns of interactions between Aboriginal and non-Aboriginal society, are a direct consequence of their experience of colonialism and, indeed, of the recent past.

The Royal Commission ended its report by saying that the Aboriginal population was grossly over-represented in custody; “too many Aboriginal people are in custody too often.” It gave 339 recommendations that can be separated into three groups; 126 dealing with the underlying issues, 107 dealing with deaths in custody, and 106 dealing with over-representation in the Criminal Justice system. The Royal Commission offered two suggestions on how to alleviate the over-representation problem. The first approach was to reform the criminal justice system; the second was to address the problem of the more fundamental factors that bring Aboriginal people into contact with the criminal justice system—the underlying issues relating to over-representation.

The Australian Commonwealth and the Aboriginal community responded in very differently to the Royal Commission’s Report. The Commonwealth responded very positively—quickly accepting the Commission findings and agreeing to support almost all of the recommendations. The Commonwealth also accompanied the recommendations with additional funding—in the form of \$400 over five years, allocated to programs for drug and alcohol abuse, support for Aboriginal legal-services, land acquisition and development, business development, and employment programs.

But the Aboriginal community saw the Commonwealth’s response to the recommendation as a

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mere terse response, a simple brushing away of the problems, rather than truly addressing them. The Aborigines were also dissatisfied with the specific findings of the Commission concerning the Aborigine deaths and the Commonwealth's response; they believed the Royal Commissions findings failed to bring them justice. The Commission failed, many Aborigines believed, because it did not find many of the individual police or prison officers responsible for directly causing the deaths investigated; and the officers who were found responsible were not properly prosecuted. Many were left with a feeling that the Royal Commission simply 'white-washed' the wrongdoings and was a gross waste of resources.

Aboriginal Over-Representation Today

Today, notwithstanding, the Australian Commonwealth's assertions of authority and sovereignty, the criminal justice system is seen by many Aborigines as the justice system strictly of the colonial society. The police forces are comprised of predominantly white males and not reflective of a multicultural Australia. Some outsiders view it as being used to control and mold a colonized people. The relationship between police and Aborigines is highly variable, depending on place, time, recent events and the particular police officers involved. Generally, however, it could be described as a relationship that is fragile, tense and volatile. Many members of Aborigine communities continue to be distrustful and suspicious of police, and may often carry an expectation that police will treat them unjustly and violently. The relationship between Aborigines and police is lacking in trust to such an extent that even small misunderstandings may result in a crisis of confidence and trust in the police. But this lack of trust is not unwarranted--After a bloody colonial struggle characterized by dispossession and genocide, Aborigines find themselves stripped of land, livelihood, culture, dignity, and status, only getting drunk, swearing, and vagrancy and petty theft and joyriding remain to fill the void. The high levels of aborigine imprisonment have long been a concern in Australia. Indeed, indigenous persons in Australia have been described as one of the most imprisoned groups in the world.

Canada

Almost a quarter of Canada's homicide victims in 2014 were aboriginal, even though the country's indigenous people account for just five percent of the population. Canada has just over 1.4 million First Nations, Inuit and Metis people and they make up twenty-three percent of Canada's 516 homicide victims. Data show that Aboriginal people are overrepresented as both offenders and victims of crime. Aborigines were accused of homicide at a rate ten times higher than that of non-Aboriginal people. Perhaps most importantly, most incidents of violent victimization never came to the attention of the police in 2014, although most incidents of non-violent victimization did not come to the attention of the police either. In recent years, criminologists in Canada and have carried out a great deal of research on the problem of overrepresentation of aboriginal people in the criminal justice system.

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Theories

Canada is at a crossroads in its political history and in the history of its treatment of aboriginal people. Canada's aborigines have a level of victimization that has been described as "unacceptable by any standard." This unacceptable level of victimization has spurred a vast amount of research attempting to find explanations for the high rate of Aboriginal criminality and Aboriginal victimization. A consensus seems to be coalescing around versions of a cross-cultural or trauma theory of victimization that is rooted in the overall effects of colonization and racism. Smandych, Lincoln, and Wilson provide a study that summarizes the various theories for explaining Aboriginal criminal behavior. They look to both Canada and Australia to examine various explanations of Aboriginal over-representation such as racial bias, visibility, cultural factors, legal factors, extralegal factors, over-policing, and other explanations. Their goal, although doubtful as to the policy effect they may have, is to identify a "cross-cultural" theory of Aboriginal crime that would be broad enough to explain all aspects of Aboriginal criminal behavior. Although there is no clear-cut answer to this riddle, the research of Chartrand and McKay shows that factors such as alcohol abuse and poverty are increasingly being recognized as the symptoms of a broader explanation based on the impact of colonization.

Indigenous Americans: Native Americans and Alaskan Natives

Native American nations have a unique legal and political relationship with the United States. The United States recognizes the tribes' rights to self-governance and supports their tribal sovereignty. Native Americans face social problems that create a destructive environment that directly affects them. The lack of educational opportunities, high unemployment, permanent residency issues, homelessness, mental illness, substance abuse, and geographic isolation are realities that contribute to the proliferation of social problems experienced by Native Americans. Nationally, twenty-seven percent of Native American families live below the poverty level compared to 11.6 percent among white families.

Federally recognized tribes in the United States are considered domestic dependents and have the inherent authority to govern themselves within the borders of the country. Tribal members have United States citizenship rights but also maintain their own tribal governments, communities, and cultures. Some tribal nations rely on state and federal governments for law enforcement, but many tribes have their own government and justice systems. Indian reservations across the United States have grappled for years with chronic rates of crime higher than most of the nation's most violent cities. America's 310 Indian reservations have violent crime rates that are more than two and a half times higher than the national average. Native Americans, unlike other races were more likely to report that the offender was from a different race, and Strangers accounted for seventeen percent of Native American murders.

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American scholars recognize that marginalization is related to criminal issues and that colonialism is still having an impact on criminal justice in Native communities. Even so, there is miscommunication made between marginalization and colonialism by state decisionmakers—Federal prosecutors—and Indian tribes. In 2011 federal prosecutors declined to file charges in 52 percent of cases involving the most serious crimes committed on Indian reservations.

In Alaska in particular, has one of the highest violent crime rates in the United States, at 603.2 violent crimes per 100,000 compared to the national average of 386.9. This may be partly due to the fact that there are at least seventy-five Native American Alaskan villages that have no law enforcement. With no police and few courts of their own, most Alaska Native villages are forced to rely on Alaska State Troopers. But there is only about one trooper per every million acres, so getting to rural communities can often take days. Law Enforcement blame the delayed response time on the Alaskan Weather; Alaskan Natives see a more sinister motive—a low priority placed on the protection of local tribes.

European Vigilante Justice

Disproportionate incarceration is not a problem of a single ethnic group or one of a set of historical circumstances. It is a global problem that is fundamentally connected to social group identity. The prejudices, inequalities, and disparate impact policy problems are not uniquely the features and issues of any particular groups but are common to heterogeneous developed countries in which some groups are substantially less successful economically and socially than the majority population.

Irish Troubles

The Northern Ireland conflict, more familiarly called "The Troubles," is one of the longest and most entangled confrontations in recent history. For nearly four decades now it has embittered relations between and within the communities living there and spoiled relations between the Republic of Ireland and Great Britain, while also causing severe strains within the latter. For three decades it escalated, underscored by periodic bloody clashes followed by milder periods of tension, during which violence of all types—robberies, kidnappings, serious injuries and

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deaths—were all too common. "The Troubles" was the most recent installment of violence over three decades between nationalists (mainly self-identified as Irish and/or Roman Catholic) and unionists (mainly self-identified as British and/or Protestant) in Ireland. The conflict was the result of discrimination against the nationalist/Catholic minority by the unionist/Protestant majority and the question of Northern Ireland's status within the United Kingdom. The violence was characterized by the armed campaigns of Irish republican and Ulster loyalist paramilitary groups and British state security forces. According to David McKittrick's, *Lost Lives*, 3,720 people were killed as a result of the "Troubles," from 1966–2006.

Explanations/Future Prospects

John McGarry and Brendan O'Learly draw upon Consociational

Theory to help explain Northern Ireland's Thirty Year conflict with Great Britain. Consociational Theory is said to be one of the most influential theories in comparative political sciences; its main contention is that in divided societies, with historically antagonistic ethnically, religiously or linguistically divided peoples, are "effectively, prudently, and sometimes optimally," managed according to consociational principles. The consociational principle is an argument that consociational democracies respect four organizational principles.

1. Executive power-sharing (EPS). Each of the main communities share in executive power, in an executive chosen in accordance with the principles of representative government.
2. Autonomy or self-government. Each enjoys some distinct measure of autonomy, particularly self-government in matters of cultural concern.
3. Proportionality. Each is represented proportionally in key public institutions and is a proportional beneficiary of public resources and expenditures.
4. Veto-rights. Each is able to prevent changes that adversely affect their vital interests.

Irrespective of why "The Troubles" began, it has had a lasting effect on Northern Ireland people, even being compared to that of the Blitz on the people of London. Due to the stress resulting from bomb attacks, street disturbances, security checkpoints, and the constant military presence, the people of Northern Ireland have the pessimistic view that vigilantism and paramilitary attacks have become the norm and are set to continue. But Knox and Moghan posit that these pessimistic views are not laws of nature and do not have to continue. While it is necessary to continue focusing on the multi-faceted causes of violence and concentrating on policing and the criminal justice system, it is not sufficient to address community crime. The communities feel alienated and excluded from mainstream society, whether that is the result of economic disparities, bitter conflicts, and/or political opposition, until their confidence can be secured and the communities feel empowered again, the vigilantism and paramilitaries will

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continue to exercise its own form of justice and exert control.

Blacks in America

This section quite possibly could have been placed under the heading of Colonization. The circumstances and the realities African Slaves faced once in America are similar to that of the indigenous peoples around the world, but placing it under that heading would not have done justice this section deserves. Thus, Blacks in America are entitled to its own section.

The Old Debate

Although they are writhing with strong moral biases, one way or another, the ante-bellum pro-slavery--antislavery debates are a good place to begin a discussion about the overrepresentation of Blacks in the American Criminal Justice System. The pro-slavery camp put forward many arguments: the slave trade was necessary to the success and wealth of Britain ; if Britain did not engage in the trade then others would ; taking Africans from their homeland actually benefited them ; the enslaved people were unfit for other work ; the enslaved people were not ill-treated unless rebellious. Conditions on the slave ships were acceptable ; and slavery was accepted in the Bible.

The antislavery society countered the pro-slavery by providing evidence to disprove the arguments: There were alternatives to the trade ; if something is wrong, it is wrong whether others do it or not ; the slavery that existed in Africa was very different from the Transatlantic Slave Trade ; the African people were in no way inferior and should be treated as equals ; the trade was damaging to Africa ; the Africans suffered greatly from being removed from their homeland ; it was morally wrong and, as a Christian country, Britain should not be involved. The Pro-slavery camp won the battle and America embarked on the worse two hundred fifty years in its history, ninety years of racist Jim Crow laws, and sixty years of separate but equal.

Post WWII

American history is riddled with a countless number of local, state and federal policies that set up racial barriers negatively affecting black people today. Consider the Federal Housing Administration (FHA). On its face, the legislation Franklin D. Roosevelt signed to create the FHA, in 1934, was designed to help encourage home ownership among all Americans, as he sought to lift the nation from the depths of the Great Depression. For white families, the law accomplished this goal. Their home ownership rates rose significantly, meaning that many of them built wealth and a future for their children.

At the same time, the FHA used federal rules to push people of color further behind. The federal

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government instituted the insidious policy we now know as redlining, which prohibited banks from providing FHA backed loans in “black neighborhoods.” Federal housing authorities used a manual that literally drew red lines around Black communities on neighborhood maps, showing banks where they could not lend. Eventually, these policies solidified the structure of racial segregation in America and denied Black families the chance to build wealth for themselves and opportunity for their kids at a time when white families were climbing the economic ladder.

Black Families fell even further behind a decade later when the G.I. Bill provided generous benefits that enabled veterans to pay for college and purchase homes with low-cost mortgages. While white veterans used the G.I. Bill to great advantage, discriminatory practices systematized through government structures often prevented Black people whose valor helped defeat fascism overseas were being denied the American Dream by racist processes and practices at home.

Housing, transportation and development policies also separated Blacks from higher-paying jobs. Businesses were increasingly migrating from cities where most Blacks lived to suburban areas that were hard to reach because of a lack of public transportation.

Recently, many researchers and advocates have highlighted the lack of adequate funding for schools with large populations of Black children and the disproportionate placement of teachers with inadequate training and experience in their classrooms. Many Black children, with aspirations to become the first in their families to complete college, are forced to rely on the under-resourced community college system or take on tremendous debt to achieve this dream.

Decade after decade, children of color have confronted more barriers to opportunity: overly harsh school disciplinary policies that often trap them in juvenile justice systems, racial profiling by police and disproportionate arrests of people of color , more severe sentencing for the same offenses and the greater likelihood that young people of color will be tried as adults and incarcerated in adult prisons than whites for the same conduct.

Max Weber and the State Monopoly on Violence

Eric H Monkkoneen shows how a nation state works when it has a violent, diverse society, in *Murder in New York City*. A State does this, according to Monkkoneen, by successfully doing something that Max Weber laid out in his *Politics as Vocation*—the state successfully establishes a state monopoly on violence, in which the citizens willing give up there power for personal vengeance to the State. The State can only enforce this monopoly on violence if its citizens go though a process that Nobert Elias writes about in *The Civilizing Process*. Citizens pacify their personal behavior that was a pre-condition for the complex modern state. This slow spread of impulse control, according to Elias, was so mutually beneficial to all that it has become a

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significant social value. Now you have the nice suburbs where Mom and Dad respect and obey the police and crime is low, but you also have the inner city where a lot of young black men who have lived the over-policed, underserved inner-city experience their entire life and now have not given up their personal vengeance to the state. The author honestly cannot think of reason why more people have not taken the power of personal vengeance away from the State. It may be all they have to feel like a human being.

Conclusion

The reason for overrepresentation in the criminal justice system for certain groups in society is not because they are simply more inclined to break the law because they are lazy, evil, or immoral. Society has given us the answer. All we need to do is listen. Monkkoneen does not want policy makers, scientist, or professionals to be too reductionist, because the answer is, according to Monkkoneen, not that clear cut. But if you sit back, wait, run too many meta-analysis or cross-culture surveys you risk never finding the solution to help solve communities around the world's criminal overrepresentation issues.

To recap, Australian Aborigines, Canadian Aborigenes, Native Americans, Alaskan Natives, Black Americans, and the North Irish, the world is full of examples. Monkkoneen has already solved the world's biggest puzzle. The key is in the door; all he needs to do is turn it and the door will open. This paper is not proclaiming to be the panacea for overrepresentation in the criminal justice system. All it is attempted to do is let people see what they have already seen. I believe the problem is a fear of being seen as a Racist! I have written previously about how the worse thing you can say to a white person is call them Racist. Let me quote Colin Knox and Rachel Monaghan:

Communities... feel alienated and excluded from mainstream society, whether that is as a result of economic disparities and/or political opposition. That alienation is a legacy of bitter conflicts in [the situation that parties are in]. Until their confidence can be secured and these communities feel empowered, [crimes] will continue to exercise their own brutal form of justice and exert control.

I have a horrible feeling that Knox and Monaghan never would have written what they did about the Northern Irish and British if one of the two groups had been Brown. It seems as if the entire academic field is in a giant conundrum. On one side are the conservatives who think every one should follow the rules at all times, even when after years of playing by the rules and watching everyone else skirt the rules and get away with it, you still end up at the bottom, struggling mightily. On the other side are the liberals, who think the poor little minority is bring oppressed and needs their help, so they give it to them. When the oppressed minority still needs assistance because what they were given the wrong thing. Instead of analyzing the situation

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and coming up with a better solution—giving the person what they actually need—the liberal will simply keep attempting to give that person the wrong thing, over, and over, and over. Why are we so polarized to where we cannot even help solve problems that we as a society have the ability to solve?

People complain about overpolicing, not out of some innate repulsion towards the police, but because that person's life experiences tell them not to trust the police. They may at one time have trusted the police and would help them if the police asked. But when the police have the power and authority to use force against citizens, and have historically, systematically, routinely, and callously, abused it time and time again. How can the police expect certain communities to help?

I will end by answering Mr. Lewis's question he posed to BLM. Ray Lewis may be very skilled at tackling football players, but he is not skilled at understanding what Black Lives Matter (BLM) is seeking, they may not actually realize what they are searching for from the police. But wrapped up the demands of BLM is one simple thing—Trust. Trust not that they are going give them any special privileges, but trust that the police are not going to look at their black body in fear. Trust that the police are not going to harass them because they are black. Just simply Trust that the police are going to treat him or her the way the officer would like to be treated.

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