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# THE FIRST PRIDE WAS A RIOT: How Queer Activism Has Partnered with Police to Hurt the Community's Most Vulnerable

Molly "Delaney" Nevius\*

## I. INTRODUCTION

Each June, thousands of queer San Francisco residents celebrate queer power, community, and visibility. The Pride Parade, which began as a "Gay Freedom Day Parade" in 1970 to commemorate the one-year anniversary of the Stonewall Riots, has expanded into a weekend of celebrations.<sup>1</sup> Today, the Dyke March is twenty-three years running, the Trans March is twelve years old, and the Pride Parade draws hundreds of thousands of attendees.<sup>2</sup>

Though these days are generally celebratory, they have also historically been subject to targeted acts of violence.<sup>3</sup> This puts organizers in a difficult position, where they are often forced to partner with law enforcement officers, despite the fact that the first pride was a response to police brutality against queer people. Pride organizers have been marred by regular controversies concerning their desire to appease the police and military state,<sup>4</sup> and this came to a head in June of 2016.

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\*J.D. Candidate, 2018, University of California Hastings College of the Law. I would like to thank Professor Veena Dubal for her mentorship on this paper and beyond. I would also like to thank Kellen Dixie for her encouragement, patience, and love. Lastly, a thank you to all queer heroes, who have fought back, took a stand, and lived in power.

1. Jay Barmann, *A History of Gay Freedom Day, Dyke March, and Trans March*, SFIST (June 28, 2013), [http://sfist.com/2013/06/28/reminder\\_trans\\_march\\_today\\_dyke\\_mar.php](http://sfist.com/2013/06/28/reminder_trans_march_today_dyke_mar.php).

2. *Id.*

3. In 2014, a Sister of Perpetual Indulgence and her husband were attacked by a group who shouted homophobic slurs at them and assaulted them; in 2010 an attendee fired gunshots into a crowd at Market and Castro, killing Stephen A. Powell Jr. Evan Sernoffsky, *SF Pride: Pink Saturday Canceled Over Past Violence*, SFGATE (Feb. 18, 2015), <http://www.sfgate.com/news/article/SF-Pride-Pink-Saturday-canceled-over-past-6087471.php>.

4. In 2013, Chelsea Manning was nominated as Grand Marshal for the parade. Nominating a queer military whistleblower was seen as a progressive step for the Parade, and a sign of solidarity for the acts of terrorism the United States committed during the war in Iraq. However, shortly after Manning was named, Pride Board President Lisa Williams released a statement that revoked the honor and condemned Manning's actions. Williams said, ". . . Manning is facing the military justice system of this country. We will await the decision of that system. However, until that time, even the hint of support for actions which placed in harm's [sic] way the lives of our men and women in uniform—and countless

Two weeks removed from the Orlando, Florida, shooting in Pulse Nightclub<sup>5</sup>, organizers of the Pride parade were in a challenging position. Pride Weekend in San Francisco draws hundreds of thousands of attendees, and many were concerned about their safety in the aftermath of an attack that specifically targeted queer people. In response to these fears, security was intensified. For the first time in SF Pride history, entrants would be screened with metal detectors and bag searches before entering the Civic Center celebration area.<sup>6</sup> Law enforcement forbid shopping carts, e-cigarettes, and “any item deemed inappropriate or hazardous.”<sup>7</sup>

For these reasons, three major participants in the San Francisco Pride Parade (Black Lives Matter Bay Area, St. James Infirmary, TGI Justice Project) dropped out of the event.<sup>8</sup> As representatives of the organizations made clear, “The appropriate response to the Orlando tragedy is not more policing of communities of color, who are already the most vulnerable to abuse and are the most alienated by increased police presence. This does not make those communities safer.”<sup>9</sup> In a way, Pride organizers were in an impossible place: which part of the queer community is prioritized? The portion that feels safer with police, or the portion that feels the police actively makes their bodies feel unsafe? Ultimately, the security measures were enacted, and the Parade carried on without the honorees.

This response may have been particularly poignant in today's political state, where police violence has been scrutinized more carefully than ever before (though many attribute that to the proliferation of portable

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others, military and civilian alike—will not be tolerated by the leadership of San Francisco Pride.” Notably, this occurred the same year that SF Pride first allowed a military recruitment booth at Pride Weekend. Caitlin Carmody, *San Francisco Pride, Chelsea Manning, and Queer Assimilation*, FOUNDSF, [http://www.foundsf.org/index.php?title=San\\_Francisco\\_Pride,\\_Chelsea\\_Manning,\\_and\\_Queer\\_Assimilation](http://www.foundsf.org/index.php?title=San_Francisco_Pride,_Chelsea_Manning,_and_Queer_Assimilation) (last visited Mar. 31, 2017).

5. On June 12, 2017, a shooter killed 49 people, the majority of whom were Latinx, at Pulse nightclub in Orlando, Florida. Pulse Nightclub was historically a queer club. It was one of the deadliest shootings in the United States' history. Ariel Zambelich, *3 Hours in Orlando: Piecing Together An Attack And Its Aftermath*, NPR (June 26, 2016), <http://www.npr.org/2016/06/16/482322488/orlando-shooting-what-happened-update>.

6. Marke B., *Black Lives Matter, Others Pull Out of SF Pride Parade*, 48 HILLS (June 24, 2016), <http://48hills.org/2016/06/24/black-lives-matter-others-pull-sf-pride-parade/>.

7. *Id.*

8. *Id.*; Black Lives Matter Bay Area is a local chapter of the national organization working for the validity of Black life, while affirming the lives of Black queer and trans folks. *About the Black Lives Matter Network* <http://blacklivesmatter.com/about/> (last visited May 8, 2017). St. James Infirmary is a San Francisco healthcare and social services clinic that prioritizes the needs and goals of sex workers. *Mission, Philosophy, and Goals* [http://stjamesinfirmary.org/wordpress/?page\\_id=4](http://stjamesinfirmary.org/wordpress/?page_id=4) (last visited May 8, 2017). TGI Justice Project works with low income transgender women of color who are inside and outside of prisons to create a culture of resistance and community in response to imprisonment and police violence. *TGI Justice Mission*, <http://www.tgijp.org/mission-and-staff.html> (last visited May 8, 2017).

9. *Id.*

technology).<sup>10</sup> Queer people, particularly queer people of color (QPOC), face uniquely pervasive violence at the hands of the state due to heightened points of contact and homophobia and transphobia. However, discussions about police brutality often ignore the specific threat of state violence for QPOC.<sup>11</sup> In many ways, police perpetuate violence two-fold: First when they fail to protect queer people from interpersonal and community violence, and secondly when they enact further violence against QPOC—often when responding to calls for help.<sup>12</sup>

Throughout this piece, I will reveal a history of queer rights activism in San Francisco that has shifted from resistance to collaboration. First, I will outline why state violence is such a persistent issue for queer people and highlight some of the dangers with proposed “reform” campaigns. Then I will track the history of specific legal goals within the queer community in San Francisco from 1960 to the present. Next, I will address three potential legal goals (and their shortcomings) the queer community could pursue: a constitutional claim of police misconduct, hate crime legislation, and police reform tactics. Lastly, I will reiterate why the law alone can never alleviate marginalization at the hands of the state, and propose alternative community-oriented goals.

The collaboration between police and activism has further marginalized the most vulnerable queer populations, and has strengthened a criminal system that targets queer people of color. Subsequently, any proposed reform to alter laws or police forces should be approached with great skepticism and great caution.

#### A: WHY POLICE VIOLENCE IS A PROBLEM

Though police brutality towards QPOC is a small part of a much larger system of state sanctioned violence, a distinctive issue is the significantly higher points of contact for queer people. In fact, some argue that the policing of queer sexualities is the most visible point of contact between queer people and the criminal legal system.<sup>13</sup> The contact is especially high for queer youth, when approximately 300,000 gay and trans youth are arrested and/or detained each year.<sup>14</sup> Within that enormous amount, more

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10. Elliott C. McLaughlin, *We're Not Seeing More Police Shootings, Just More News Coverage*, CNN (Apr. 21, 2015), <http://www.cnn.com/2015/04/20/us/police-brutality-video-social-media-attitudes> (last visited Mar. 6, 2017).

11. *Stop Law Enforcement Violence*, INCITE! WOMEN, GENDER NON-CONFORMING, AND TRANS PEOPLE OF COLOR AGAINST VIOLENCE, <http://incite-national.org/page/stop-law-enforcement-violence> (last visited Mar. 6, 2017).

12. INCITE! STOP LAW ENFORCEMENT VIOLENCE, <http://incite-national.org/page/stop-law-enforcement-violence> (last visited Mar. 6, 2017).

13. JOEY L. MOGUL, ANDREA J. RITCHIE, & KAY WHITLOCK, *QUEER (IN)JUSTICE: THE CRIMINALIZATION OF LGBT PEOPLE IN THE UNITED STATES* 47 (2011).

14. Jerome Hunt & Aisha C. Moodie-Mills, *The Unfair Criminalization of Gay and Transgender Youth*, CENTER FOR AMERICAN PROGRESS (June 29, 2012), <https://www.americanprogress.org/issues/lgbt/reports/2012/06/29/11730/the-unfaircriminalization-of-gay-and->

than 60 percent are Black or Latinx.<sup>15</sup> Within a nation where trans youth only represent five percent to seven percent of the population, they compose thirteen percent to fifteen percent of those currently in the juvenile justice system.<sup>16</sup>

Police and other law enforcement agents are not objective enforcers of a bright-line law. They are quasi-lawmakers who are given discretionary deference at each turn.<sup>17</sup> This discretion became particularly problematic when “quality of life” policing was prioritized in the 1990s, based on the broken window theory.<sup>18</sup> Quality of life policing is premised on “maintaining social order through aggressive enforcement of quality of life regulations . . . prohibit[ing] a spectrum of activities in public spaces, including standing (loitering), sleeping, sitting, eating drinking, urinating, making noise, and approaching strangers.”<sup>19</sup> When police have a laundry list of potential violations, they have additional tools to stop, ticket, and arrest queer people.<sup>20</sup>

In addition to the increased discretion given to police, there has also been a shift in political focus for the queer community. The 1960s were a moment of intense resistance for queers and the police, where police violence was identified and people fought back explicitly.<sup>21</sup> However, this shifted in the 1990s to the present. Increasingly, an elite set of queer and trans organizations (that were predominately white-centered and upper class) sought to pursue hate crime legislation. A divide has ruptured between agendas: A visible and well-funded rights-based agenda that is friendly with police, versus a movement that recognizes police as major agents of homophobia and transphobia.<sup>22</sup> This divide appears regularly, and was visible under the spotlight of the 2016 Pride Parade.

#### B. DANGERS OF “REFORM”

Throughout this piece, I will problematize the concept of “police reform” as a solution to state-sanctioned violence. However, it initially is helpful to conceptualize why “reform” is frequently encouraged as a solution, and more prudently, why it rarely helps. Indeed, some have looked to the quest for prison reform as an example of where social movements can misstep.<sup>23</sup>

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transgender-youth/.

15. *Id.*

16. *Id.*

17. MOGUL et al., *supra* note 13, at 48.

18. *Id.*

19. *Id.*

20. *Id.* at 49.

21. Dean Spade, *History of Queers Against Police*, BARNARD CENTER FOR RESEARCH ON WOMEN (June 25, 2016), <http://bcrw.barnard.edu/blog/police-out-of-pride/>.

22. *Id.*

23. DEAN SPADE, *NORMAL LIFE: ADMINISTRATIVE VIOLENCE, CRITICAL TRANS POLITICAL, AND LIMITS OF THE LAW* 47 (2015).

Ostensibly, prison reform is meant to make the prison systems less violent, less crowded, and more generally humane.<sup>24</sup> However, these goals have been folded into the larger project of prison expansion and confinement.<sup>25</sup> For example, the National Prison Rape Elimination Act (NPREA) was passed in 2003.<sup>26</sup> NPREA was unanimously supported by both parties, and was passed with the intention of preventing sexual assault in prison through studies, funding, and resources for prisoners.<sup>27</sup> However, the NPREA has been used to further enforce penalties against prisoners for consensual sexual activities.<sup>28</sup>

As prison abolitionist Angela Davis has emphasized: there are no *better* prisons.<sup>29</sup> Discussions about the inherent problems within the prison system are important, but can stifle the breadth of those discussions.<sup>30</sup> As Davis identifies, “[F]rameworks that rely exclusively on reforms help to produce the stultifying idea that nothing lies beyond prison.”<sup>31</sup> Similarly, discussions about how to *better* police will inevitably be limited to solutions in training and the law. These are important steps, but will never wholly adequately address the systematic flaws with our nation’s policing.

The feminist domestic violence movement has also problematized collaboration with police. Mimi Kim, professor and founding member of *Incite! Women and Trans People of Color Against Violence*, highlighted issues within the Bay Area domestic violence movement and institutional systems.<sup>32</sup> Notably, critics of movement partnerships with law enforcement do not identify the national effects as the most dangerous consequence, but rather the institutional transformations.<sup>33</sup> Indeed, long term institutional changes like coalitions of litigators, state-wide legislation, and systematic collaboration are the product of a dangerous hybridization created at the local level.<sup>34</sup>

In her piece, Kim identified three specific forms of partnerships (both explicit and implicit) with state institutions: infiltration, litigation, and cooperation.<sup>35</sup> Infiltration, perhaps the most ambitious of the strategies, sought to access the depths of the District Attorney’s office by forming a

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24. SPADE, *supra* note 23, at 48.

25. *Id.*

26. *Prison Rape Elimination Act*, NATIONAL PREA RESOURCE CENTER, <https://www.prearesourcecenter.org/about/prison-rape-elimination-act-prea> (last visited Mar. 14, 2017).

27. *Id.*

28. SPADE, *supra* note 23, at 48.

29. ANGELA DAVIS, ARE PRISONS OBSOLETE? 20 (2003), [https://www.feministes-radicales.org/wp-content/uploads/2010/11/Angela-Davis-Are\\_Prisons\\_Obsolete.pdf](https://www.feministes-radicales.org/wp-content/uploads/2010/11/Angela-Davis-Are_Prisons_Obsolete.pdf).

30. *Id.*

31. *Id.* at 29.

32. See Mimi Kim, *Dancing the Carceral Creep: The Anti-Domestic Violence Movement and the Paradoxical Pursuit of Criminalization, 1973-1986*, INSTITUTE OF STUDIES OF SOCIETAL ISSUES (2015).

33. *Id.* at 20.

34. *Id.* at 20–21.

35. Kim, *supra* note 32, at 20.

“victim-witness program” in tandem with the D.A.<sup>36</sup> However, the infiltration eventually fostered into genuine partnership and trust.<sup>37</sup> Litigation, a theoretical solution to police violence, can create dangerous national procedures (such as mandatory arrest policies) and is often reliant on collaboration with the District’s Attorney’s office. This ensures that even when the organizational goals may not be explicitly linked with prosecution of crimes, their outcome is implicitly in tandem with the criminal punishment system.<sup>38</sup> As I will detail further in this piece, cooperation has its own set of issues to consider.

Ultimately, the two examples of prison reform and movement partnerships above are meant to highlight the danger in settling for reforms. Reform of the police and prisons bolster their strength by making them more efficient. As I will trace in the section below, the riots against San Francisco police officers gradually turned into mutual reform and assimilation efforts.

## II. HISTORY OF “LEGAL ASKS” IN SAN FRANCISCO

### A: 1960S: BAR REGULATIONS AND HOMOPHOBIA

Leading up to the 1960s, the queer community in San Francisco was precariously surviving. The *San Francisco Examiner* published a plea for police action in 1954, printing: “[T]here must be sustained action by the police and the district attorney to stop the influx of homosexuals. Too many taverns cater to them openly. Only police action can drive them out of the city.”<sup>39</sup> Indeed, San Francisco queer taverns were intimate, local spaces of solidarity and community.<sup>40</sup> The gay bar developed out of a combination of intersecting sexual cultures, social and political tension, and moral reform movements.<sup>41</sup> The gay bar was the space where queers learned to resist police harassment and to demand the right to public assembly.

To understand why bars were one of the focal points of queer liberation in the 1960s, one can look to the influence of the military population.<sup>42</sup> During World War II, there was an influx of military presence to San Francisco, and with it came a change of policing.<sup>43</sup> State agencies, specifically the military and the police, began working together to target gay bars.<sup>44</sup> This is one small moment in a long history of partnerships

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36. Kim, *supra* note 32, at 16.

37. *Id.* at 17.

38. *Id.*

39. See NAN ALAMILLA BOYD, *WIDE OPEN TOWN: A HISTORY OF QUEER SAN FRANCISCO TO 1965* 108 (2003).

40. *Id.* at 61.

41. *Id.*

42. *Id.* at 114.

43. *Id.*

44. BOYD, *supra* 39, at 114.

between local police and federal enforcement agencies.<sup>45</sup>

Between 1942 and 1951, military officials declared specific gay bars “off limits” for servicemen.<sup>46</sup> Then, they would investigate and suspended liquor licenses.<sup>47</sup> Though the queer community ultimately gained the “right to assemble” after the California Supreme Court heard a civil rights challenge to a liquor license revocation,<sup>48</sup> the police recognized that the presumption of innocence was surpassed if there was evidence of unlawful acts within a bar.<sup>49</sup> Thus, the Alcoholic Beverage Control Board used undercover agents, expanded the definition of “illegal acts” (to include behavior like: mannish attire for lesbians, limp wrists, high-pitched voices, and/or tight clothing), and partnered with the San Francisco Police Department (SFPD) to attack queer public space.<sup>50</sup>

In 1955, the acting police chief of the SFPD, George Healy, sent a six-page order to district captains that outlined the steps to keep “gathering places of homosexuals under constant pressure.”<sup>51</sup> Specific areas in San Francisco were targeted (such as parks, beaches, squares, and bars) and beat cops were ordered to partner with plainclothes investigators from the sex crimes detail.<sup>52</sup> Undercover officers would flirt with patrons of a gay bar, and then their fellow officers would arrest the patron as the two exited the bar together.<sup>53</sup>

In response to the largest raid on a gay bar in San Francisco,<sup>54</sup> gay bartenders and bar owners created the Tavern Guild of San Francisco (TGSF).<sup>55</sup> The group met weekly to build an organization that “collectively could fight the discriminatory acts against our community.”<sup>56</sup> Within the first year of its existence, the TGSF had taken several steps to address the police misconduct that was particularly targeted at gay bars. TGSF established a telephone networking system (a phone tree) that tracked SFPD and Alcoholic Beverage Control Board movement.<sup>57</sup> If a bar

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45. A particularly harmful partnership is between local police and Immigration and Customs Enforcement (ICE). ICE programs specifically acquire information from state and local police about noncitizens in their custody. This often expedites the process for deportation, where immigrants are held past their sentence so that ICE agents can pick them up and take them to immigration detention. Lena Graber, *The All-in-One Guide to Defeating ICE Hold Requests*, NATIONAL IMMIGRATION LAW CENTER 2 (2012).

46. BOYD, *supra* note 39, at 114.

47. *Id.* at 116.

48. *Id.* at 121; *Stoumen v. Reilly*, 234 P.2d 969, 971 (Cal. 1951).

49. BOYD, *supra* note 39, at 114.

50. *Id.* at 136–37.

51. *Id.* at 137.

52. *Id.* at 137.

53. *Id.* at 139.

54. The raid occurred at approximately 3:00 a.m. on August 14th 1961. It was the largest raid on a gay bar in San Francisco’s history, and has been considered the catalyst that compelled the question of LGBT rights to the forefront of San Francisco politics. *Id.* at 213.

55. *Id.* at 223.

56. *Id.*

57. BOYD, *supra* note 39, at 223–24.

was in danger, members would phone each other and spread the news as fast as possible.<sup>58</sup> Additionally, and perhaps more creatively, the TGSF set up a loan fund for unemployed members.<sup>59</sup> This was particularly impactful, because police and state harassment often forced businesses to close- leaving community members unemployed for long stretches.<sup>60</sup>

In its youth, TGSF was a model of what independent policing and financing could look like. Eventually, TGSF became a powerful political constituency in San Francisco.<sup>61</sup> Their activism showed San Francisco politicians two things: They have huge power in the queer community's vote, and they have money.<sup>62</sup> In a way, the history of TGSF tracks the history of the gay and lesbian movement from the 1960s to the 1980s: a marginalized group attacked until they are brought into the folds of assimilation through their deep pockets and political clubs.

It is clear, however, that despite budding acceptance and outreach from the SFPD, in the 1960s the queer community was still being harassed and still fighting back.

#### B. 1980S: PARTNERSHIPS WITH POLICING AND OUTREACH

Between 1966 and the 1980s, relations between the queer community and the police had not improved significantly. When Matthew Coles, lawyer and activist, moved to San Francisco in 1974, he described the relationship as “[F]or the most part, pretty hostile . . . it was well understood that if you called the police, the odds were as good that you would get arrested as the perpetrator would.”<sup>63</sup> Indeed, the queer community had such little faith that the police would be able to adequately protect them that they established a neighborhood screening system to protect one another. The “Butterfly Brigade,” which ultimately evolved into the Castro Street Safety Parol,<sup>64</sup> would position themselves at various entry points into the Castro District and look for vehicles coming into the neighborhood that looked like they were “trouble.”<sup>65</sup> The Butterfly Brigade would blow whistles if a car that looked like trouble pulled into the neighborhood, and people would flood out of the bars and make sure

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58. BOYD, *supra* note 39, at 244.

59. *Id.*

60. *Id.*

61. *Id.* at 226.

62. *Id.*

63. Interview with Professor Matt Coles, Lecturer in Law, UC Hastings College of the Law, in San Francisco, Calif. (Mar. 15, 2017).

64. Liz Highleyman, *Veteran Activist Hank Wilson Dies*, BAY AREA REPORTER (Nov. 13, 2008), <http://www.ebar.com/obituaries/index.php?sec=ob&article=419>.

65. “Thursday, Friday, and Saturday nights, we would position ourselves at various points in the Castro and look for vehicles coming into the neighborhood that looked like they were trouble, we called them PT’s potential troublemakers. Look for a car full of men in their late teens or early thirties who didn’t look gay and who were shouting at people.” Coles, *supra* note 63.

everything was okay.<sup>66</sup> This method, counting on the solidarity of the community, formed the basis for a whistle-alert system that lasted for years.<sup>67</sup> Indeed, although this particular community patrol was a necessary response to inaction from law enforcement, it also identifies a core tenet of social movements: those who are most affected by a form of violence should also be the ones proposing solutions.

Despite this independent community policing, the 1980s were a turning point for the queer community that marked a shift from active resistance to the police, towards collaboration. Les Morgan, a San Francisco resident who worked with the SFPD,<sup>68</sup> started a “Gay Outreach” program between the SFPD and the LGBT community.<sup>69</sup> One can identify two main reasons for the outreach program.

First, even prior to an active recruiting program from the SFPD, gay residents were enrolling in the police academy.<sup>70</sup> However, after graduates of the academy began their field training, queer recruits were being flunked out before they could officially become officers.<sup>71</sup> Les Morgan recruited Professor Matt Coles to help those who were allegedly being unfairly weeded out.<sup>72</sup> Coles represented a number of queer recruits in successful appeals, however he also conceded that the only people who were successful were people who still fit the mold of current officers.<sup>73</sup> Indeed, as Coles succinctly (and facetiously) put it: “the police department would be happy to accept the black lesbian as long as she was a straight Irish cop . . . the people who succeed had a very old fashioned police mentality.”<sup>74</sup>

Secondly, the 1980s LGBT community articulated a desire for gay cops to patrol gay neighborhoods.<sup>75</sup> Morgan posited that gay police recruits are better educated, score higher on police tests, and are better emotionally equipped to be police officers.<sup>76</sup> The “gay outreach” effort was propelled by Morgan passing out thousands of handbills in gay bars and restaurants that said “You Don’t Have to be Straight to Be a Good

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66. Coles, *supra* note 63.

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. Cathy Trost, *Gays Are Going Straight- to the Cops*, DETROIT FREE PRESS (Jan. 13, 1980), <https://www.newspapers.com/newspage/99278356/>.

The majority opinion is that gay cops are best equipped to defuse problems in those neighborhoods, as well as investigate crimes in the gay community. “Right now,” says Parks, when something happens involving someone from the straight community against someone from the gay community, the cops just seem to shrug and say, “Oh well, there’s another one” and completely ignore it. I think that gay cops would be more responsive and understanding.

Cop.”<sup>77</sup>

In addition to the recruitment effort, political clubs in San Francisco (like the Alice B. Toklas Club) took police officers in plain clothes on bar crawls in gay neighborhoods.<sup>78</sup> Theoretically, this was meant to promote better relations between the LGBT community and the police. However, even if one ignores the historically violent relationship between the police and bar communities, bar crawls will only give an incomplete idea of what a community is like.

Though Coles doesn't remember a community-wide demand for these outreach programs, he did confidently say that there were people who supported police-specific outreach initiatives. Additionally, he reiterated that the underlying calls were just to get a police force that would treat the queer community decently.<sup>79</sup>

Ultimately, beneath all of the outreach efforts was a simple political truth: gay San Francisco residents were increasingly accessing social, financial, and political capital- openly discriminating against them was no longer viable. Indeed, Coles mentioned that the police department has to get their budget approved through the Board of Supervisors- and if the Board Chair is openly gay, “it won't really do to have too obvious a problem.”<sup>80</sup>

The acknowledgement from police that blatant discrimination was politically damaging did not just manifest in bar crawls and outreach. In the 1980s, both the Sheriff's Department and the SFPD began putting contingents in the Pride Parade with official approval.<sup>81</sup> This symbolic gesture served as a conciliatory nod to the queer community, and as a sign of future cooperation between Pride Organizers and the State.

### C. PRESENT: PRIDEFUL POLICING

Tracking the progression of the gay Pride Parade in San Francisco shows a tempering of political demands, replaced with floats, stages, and sponsorships. While there are still contingents of the Pride Celebration weekend that many view as politically charged<sup>82</sup>, many feel frustrated with

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77. Trost, *supra* note 76.

78. Coles, *supra* note 63.

79. *Id.*

80. *Id.*

81. *Id.*

82. In 2015, the San Francisco Dyke March committee announced that the route had changed for the historical Dyke March. The route would no longer pass the Women's Building, or the lesbian bar formerly known as Amelia's, which distressed community members. In response, a splinter march was organized. The group marched past a lineup of police officers on motorcycles, moved barricades, and marched the original route. *Splinter Group Protests Displacement with 'Take Back the Dyke March'*, CAPP ST CRAP (June 28, 2015), <http://www.cappstreetcrap.com/splinter-group-protests-displacement-with-take-back-the-dyke-march/>.

the cooptation of queer identity for corporate approval.<sup>83</sup> For instance, the 2016 Pride theme was: Racial and Economic Justice.<sup>84</sup> Though the organizers made a point to prioritize the theme that arguably most accurately represents the needs of the queer community, sponsors of the event included Apple, Facebook, Salesforce, Uber, and Lyft.<sup>85</sup> It is particularly important to focus on those sponsors and contingents (despite some other distasteful sponsors like McDonalds and Bud Light) because the tech industry has been the driving force behind the displacement of so many queer, low-income people.<sup>86</sup>

Returning to the controversy of San Francisco Pride 2016, one could argue that the Pride organizers neglected the safety of the most vulnerable queer populations (trans/queer people of color) in order to appease the safety concerns of the most valued queer community members (white/affluent gay and lesbians who often view police as protective). This tension has been present in the queer community for many years, and has surfaced in a variety of forms. At Toronto Pride in 2016, Black Lives Matter (BLM) had a float in the Pride Parade.<sup>87</sup> In the middle of the parade, BLM members stopped their float, sat down, and refused to move until pride organizers agreed to a series of changes in the pride organizing process.<sup>88</sup> These demands included: prioritizing black trans women, a commitment for more black deaf and hearing ASL interpreters, and increased funding for black-related pride events.<sup>89</sup>

Though some framed this political protest as “bullying”<sup>90</sup> (particularly because BLM was a guest of honor at the Parade), it ought to be viewed as a return to Pride’s roots with the re-radicalization of the celebrations. Queer people of color have historically been excluded from organizing Pride, from regulating security at Pride, and from participating in a meaningful way. BLM’s protest at the Parade was a demand that highlighted an uncomfortable truth about the LGBT’s most popular event of the year: equality comes with a qualification of whiteness. Further, it is irresponsible to frame BLM’s actions as bullying when queer people of color are the ones who are most likely to have to endure the negative consequences of Pride celebrations. This act of political resistance was a

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83. Sam Levin, *Too Straight, White and Corporate: Why Some Queer People Are Skipping SF Pride*, THE GUARDIAN (June 15, 2016, 9:00 AM), <https://www.theguardian.com/us-news/2016/jun/25/san-francisco-gay-pride-corporate-orlando-shooting>.

84. *Id.*

85. *Principal Sponsors*, SAN FRANCISCO PRIDE, <http://www.sfpride.org/sponsor/> (last visited Mar. 31, 2017).

86. Levin, *supra* note 83.

87. James Kirchick, *Politics on Parade: How Black Lives Matter Halted a Gay Pride Parade in Toronto*, L.A. TIMES (July 6, 2016), <http://www.latimes.com/opinion/op-ed/la-oe-kirchick-gay-pride-black-lives-matter-20160705-snap-story.html>.

88. *Id.*

89. *Id.*

90. *Id.*

call-back to Pride's historical roots: a riot that was led by trans women of color and other queers, who did not rely on the law to save them.

### III. NEXT STEPS IN LEGAL PROTECTIONS

While many in the queer community have organized actions rooted in civil disobedience, like BLM in Toronto, legal advocacy is often proposed as a solution to systematic marginalization. In this section, I will address three potential legal goals the queer community could pursue, and identify the reasons those goals would only strengthen the power of the State.

#### A. SYSTEMATIC CLAIM OF POLICE MISCONDUCT

Though the relationship between queer people and the police has been fraught with violence, advocates can still make creative and impactful arguments to extend legal protections. Challenges to law enforcement have long since relied on federal courts to address allegations of widespread police misconduct, such as stop-and-frisk practices.<sup>91</sup> As it relates to violence against queer people, one could argue that there is potential claim for systematic police misconduct against queer people of color. This claim would likely be based on an alleged violation of a person's constitutional rights under the Fourth and Fourteenth Amendments. As a framework for this argument, it is helpful to look towards an important decision concerning police violence, *Floyd v. City of New York*.<sup>92</sup> The case lays a framework for systematic police misconduct that is targeted at a specific marginalized population, and is "useful precedent for those wishing to challenge police abuse of the power" and to prove a Fourteenth Amendment violation.<sup>93</sup> Despite the logistic limitations of legal protections, it is possible that in the future queer advocates will pursue these claims. Thus, it is helpful to analyze what claimants would need to show.

First, there must be sufficiently compelling data to show that a group is likely to be wronged by the police.<sup>94</sup> Though statistics alone will not satisfy an Equal Protection challenge under the Fourteenth Amendment, they can provide a basis for a stop-and-frisk challenge.<sup>95</sup> Additionally, with a Fourteenth Amendment challenge to law enforcement practices, plaintiffs must show proof of discriminatory intent, not merely disparate

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91. Michael D. White, Henry F. Fradella, Weston J. Morrow, Doug Mellom, *Federal Civil Litigation as an Instrument of Police Reform: A Natural Experiment Exploring the Effects of the Floyd ruling on Stop-and-Frisk Activities in New York City*, 14 OHIO ST. J. CRIM. L. 9, 37 (2016).

92. *Floyd v. City of New York*, 959 F.Supp 2d 540 (2013).

93. David Clark, "Stop and Frisk" Under *Floyd v. City of New York: The Difficulty of Proving a Fourteenth Amendment Violation*, 25 GEO. MASON U. CIV. RTS. L.J. 341, 349-50 (2015).

94. *Id.* at 348.

95. *Id.* at 347.

impact.<sup>96</sup>

In *Floyd*, the uncontested facts stated that between 2004 and 2012, the NYPD conducted over 4.4 million stop-and-frisks.<sup>97</sup> Between 2004 and 2009, the percentage of stops where the officer failed to state a specific crime rose from one percent to thirty-six percent.<sup>98</sup> Of the 4.4 million stops, fifty-two percent were black, thirty-one percent were Latino, and ten percent were white.<sup>99</sup>

On a purely statistical level, queer people of color have a compelling Fourteenth Amendment argument. Queer youth of color are particularly targeted by policing, as they compose thirteen percent to fifteen percent of those currently in the juvenile justice system despite representing only five percent to seven percent of the nation's overall youth population.<sup>100</sup> The National Coalition of Anti-Violence Programs found that law enforcement officers were the third largest category of perpetrators of anti-LGBT violence in 2008.<sup>101</sup>

Additionally, an intent requirement would be possible to prove, when one examines anecdotal experiences of police violence towards queer people. In 2009, two lesbians of color were arrested, beaten, and verbally abused by officers.<sup>102</sup> Police responses to domestic violence often provide painful insight into the intentional abuse from officers.<sup>103</sup>

However, there are strong arguments to be made that federal civil litigation would be an ineffective tool for police reform at all.<sup>104</sup> Ever since stop-and-frisk tactics were established as constitutionally permissible in *Terry v. Ohio*, legal advocates have questioned the seemingly unfettered discretion allotted to officers.<sup>105</sup> In fact, advocates have troubled the efficacy of stop-and-frisk policies in numerous cities and states, including: New York, New Jersey, Philadelphia, Detroit, Michigan, Chicago, New Orleans, and Pittsburgh.<sup>106</sup> After the stop-and-frisk policy in New York was held to be unconstitutional, criminal justice professors employed a natural experimental design to assess the impact of the litigation on the stop-and-frisks.<sup>107</sup> This analysis was done by looking at two specific years

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96. Clark, *supra* note 93, at 348.

97. *Id.* at 346.

98. *Id.*

99. *Id.*

100. Hunt & Moodie-Mills, *supra* note 14.

101. MOGUL et al., *supra* note 13, at 47.

102. *Id.* at 50 (stating one of the women was called a “bitch ass dyke” by the officers).

103. The National Coalition of Anti-Violence Programs reported that in 2007, sixteen percent of responses to LGBT DV involved some form of police misconduct, “ranging from refusal to take a police report to the use of homophobic or transphobic slurs.” That number increased by 800 percent in 2008. *Id.* at 135.

104. White et al., *supra* note 91, at 56.

105. *Id.* at 12–13.

106. *Id.* at 14.

107. White et al., *supra* note 91, at 15.

in the NYPD's tenure: 2011, when the stop-and-frisk program was at its height, and 2014, a year after the practice was held to be unconstitutional in federal court.<sup>108</sup> The data from the two years was pulled from UF-250 forms, which are the forms that officers are mandated to fill out if they use force or the individual stopped is frisked, searched, and/or arrested.<sup>109</sup>

The data showed that in 2014, the NYPD recorded just 45,788 stops, which was a ninety-three percent decrease from 2011.<sup>110</sup> Though officers arguably became more "effective" at locating weapons and contraband, the impact on people of color was the same.<sup>111</sup> There were nearly identical numbers in the racial make-up of those subjected to stop-and-frisks between 2011 and 2014: Black (51.1% to 53.1%), Black-Hispanic (7.1% to 6.1%), White-Hispanic (25.6% to 21.2%), White (9.0% to 11.9%), and other (7.2% to 7.7%).<sup>112</sup> Additionally, to consider the warnings of Angela Davis and Mimi Kim, what does "successful policing" mean if the stops are lessened but the arrests remain the same?

The authors of the study commend the progress that the NYPD has made, and cite to a section in the Police Academy student guide that lauds the importance of diversity as a signal of neutrality.<sup>113</sup> However, these hollow signposts of progress likely mean little to a community consistently abused by law enforcement. Stop-and-frisks are particularly relevant for queer people of color, as quality of life policing often relies on the low "reasonable suspicion" standard that officers use to justify their stop-and-frisks.<sup>114</sup> Indeed, the National Coalition of Anti-Violence Programs released an annual report detailing interactions between LGBTQ individuals and the police in 2014.<sup>115</sup> Within the report, fifty-seven percent of the individuals who experienced hostility and police misconduct reported that they were unjustly arrested by the police.<sup>116</sup> This data reflects a reality for many queer individuals, where they are often targeted and rarely acknowledged.

Additionally, it is incredibly difficult to prove a Fourteenth Amendment violation, which would be one of the most likely constitutional challenges brought against law enforcement. Plaintiffs would need to show more than a statistical impact, which often requires extraordinary amounts of information that is usually not available to most plaintiffs.<sup>117</sup> Scholars

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108. White et al., *supra* note 91, at 16.

109. *Id.* at 50–51.

110. *Id.* at 52.

111. *Id.* at 56–57.

112. *Id.* at 58.

113. *Id.* at 63.

114. *Id.* at 31.

115. OSMAN AHMED & CHAI JINDASURAT, THE NATIONAL COALITION OF ANTI-VIOLENCE PROGRAMS: LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER, AND HIV-AFFECTED HATE VIOLENCE IN 2014, 11 (2015).

116. *Id.* at 12.

117. Clark, *supra* note 93, at 349–50.

have observed that after *Floyd*, the burden of proof on plaintiffs is such that a Fourteenth Amendment violation is only redressable when the violation is so blatant that it is nearly the public policy to target minorities on an unequal basis.<sup>118</sup> The plaintiffs in *Floyd* had the support of high ranking government officials and whistle-blowing officers which was incredibly rare.<sup>119</sup> It would likely be difficult for queer people, especially trans women of color (who face a particularly brutal amount of violence at the hands of police), to gain support from government officials.

#### B. HATE CRIME SPECIFIC LEGISLATION

Another logical step to further protect queer people of color from police violence would be to enact specific hate crime legislation. This would show a clear consequence to transphobia and homophobia, and would serve as a symbolic marker that queer lives are meaningful.<sup>120</sup> However, some argue that legislation that criminalizes behavior explained with terms such as “bias” or “hate crime,” ignores broader oppression.<sup>121</sup> Indeed, the focus on individual bias assumes that violence is motivated entirely by prejudice, and neglects the historical patterns of state sanctioned violence and dominance.<sup>122</sup> By focusing on the individual bad actor (or, as some call it, the “perpetrator perspective”<sup>123</sup>) hate crime legislation advances the misrepresentation that violence in these situations is particularly egregious because we are all equal and that a few violent individuals have ignored that foundational understanding.<sup>124</sup> This is untrue; not only do queer people lack many of the same basic protections of the law and are discriminated against with great frequency, but this thinking focuses solely on punishment, which neglects the motivation behind the violence.<sup>125</sup>

It is not difficult to imagine many queer people facing an impossible decision: do they report specific acts of violence to the police, an arm of the state that consistently inflicts traumatic violence, or do they keep silent and hope to stay safe? Indeed, some hate crime laws can “morph in the hands of law enforcement officials into tools used to reinforce old patterns of injustice.”<sup>126</sup>

Additionally, lurking in the background of discussions about hate crime legislation is another difficult question: how can justice be served if those who commit the crimes are simply funneled into the criminal punishment

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118. Clark, *supra* note 93, 361.

119. *Id.*

120. SPADE, *supra* note 23, at 39.

121. MOGUL et al., *supra* note 13, at 121.

122. *Id.*

123. SPADE, *supra* note 23, at 42.

124. *Id.* at 44.

125. *Id.* at 40.

126. MOGUL et al., *supra* note 13, at 127.

system? Not only do hate crime laws focus only on individual wrongdoers, but they also serve to legitimize the criminal punishment system, which reproduces the same harmful systems of racism, homophobia, transphobia, ableism, and xenophobia.<sup>127</sup> The United States has the highest documented rate of imprisonment per capita of any country.<sup>128</sup> This epidemic is coupled with the unique vulnerability of queer people of color within prisons. Trans people face severe harassment, medical neglect, sexual assault, and other violence- often at the hands of correctional staff.<sup>129</sup>

The reliance on hate crime legislation to address violence against queer people has been criticized by activists, who note that the brave groundbreakers at Compton's Cafeteria and Stonewall would likely be frustrated by laws that provide millions of dollars to enhance policing and prosecution.<sup>130</sup> The current LGBT rights work has "aligned with a neoliberal 'law and order' approach," where resistance is undermined in favor of the law.<sup>131</sup>

A final (and fatal) flaw within advocacy for legislation that penalizes police officers for targeting queer individuals is enforcement. The primary responsibility for preventing violence would be placed upon officers and a criminal legal system that itself is responsible for much of the violence.<sup>132</sup> In 2000, the National Coalition of Anti-Violence Programs reported that fifty percent of bias-related violence reported by transgender women in San Francisco was committed by police and private security officers.<sup>133</sup>

Penalty enhancements, hate crime laws, and antidiscrimination laws all rely on the same methods of enforcement that feed violence against queer people. Though one could argue that these laws provide accountability and visibility for queer people, the most impactful change will be to remove control from the state.

### C. POLICE REFORM TACTICS

Homophobia and transphobia at the hands of responding officers is painfully common. This can range from the use of slurs, refusal to take a police report, and physical violence.<sup>134</sup> This violent abuse of authority combined with a disregard for the safety of queer community members inflicts daily violence that can prove to be deadly.<sup>135</sup>

Ultimately, a survey from the National Coalition of Anti-Violence

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127. SPADE, *supra* note 23, at 45.

128. *Id.*

129. *Id.* at 46.

130. *Id.*

131. *Id.*

132. MOGUL et al., *supra* note 13, at 129.

133. *Id.* at 47.

134. *Id.* at 135.

135. *Id.*

Programs indicated that police officers were perpetrators in forty-eight percent of the incidents of anti-transgender violence in 2000.<sup>136</sup> While there is little doubt that our current system of policing is broken, it is unclear what steps might be able to fix it.

As highlighted above, reform is not a viable option to cure the violence that police inflict on marginalized queers. However, it is often championed as a solution to gender violence and targeting. Unfortunately, police reform has acted as a temporary appeasement of political outrage, rather than an opportunity for systematic change.

For example, the city of New York was implicated in an earlier class action (before *Floyd*) against the New York Police Department (NYPD) in 1999.<sup>137</sup> After a civil suit was settled through an out-of-court consent decree in 2003, the NYPD agreed to: maintain a written anti-racial profiling policy, train officers on legal issues in stop-and-frisk and cultural diversity, require that officers record stop data on forms, conduct audits on the forms, and maintain an electronic database of stops.<sup>138</sup> Despite this long list of police reform tactics and training, a second class action, *Floyd*, was filed in 2008.<sup>139</sup> Though this does not prove that police reform is entirely hopeless, it does indicate that the reform options previously offered have not been remotely effective.

Another major issue with police reform is longevity.<sup>140</sup> For instance, when police chiefs are fired (which is often called for by activists after a history of perceived misconduct)<sup>141</sup> they are replaced by other management who often only provide temporary changes that last the life of an individual's career.<sup>142</sup> Additionally, though bottom up reforms are more ideal, the culture of the police force resists change, particularly change that involves stricter oversight.<sup>143</sup> Police officers are also historically reluctant to turn against other officers, which would likely result in added difficulty in proving these claims.<sup>144</sup>

In response to the publicity of recent murders of unarmed people of color by police officers, President Obama launched the "Task Force on 21st Century Policing" in 2015.<sup>145</sup> The Task Force hosts briefings with local

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136. MOGUL et al., *supra* note 13, at 136.

137. White et al., *supra* note 91, at 45.

138. *Id.*

139. *Id.* at 46.

140. Clark, *supra* note 93, at 366.

141. Emily Green, Bob Egelko, Jenna Lyons, & Erin Allday, *SFPD Chief Greg Suhr Resigns After Police Killing of Woman*, SFGATE (May 20, 2016, 11:14 AM), <http://www.sfgate.com/bayarea/article/Police-Chief-Greg-Suhr-resigns-after-killing-of-7758122.php>.

142. Clark, *supra* note 93, at 366.

143. *Id.*

144. *Id.*

145. Jerry Abramson, *Bringing Our Nation's Law Enforcement Officials Together for a Conversation on Community Policing*, The White House of President Barack Obama (Aug. 10, 2016, 11:30 AM), <https://obamawhitehouse.archives.gov/blog/2016/08/10/bringing-our->

law enforcement, and releases reports that list recommendations for reform.<sup>146</sup> It can be difficult to take many of these recommendations as a sign of serious change, as none of them address reducing weaponry for police departments, decreasing the size of police departments, nor reducing the partnerships between police and other violent state institutions such as ICE.<sup>147</sup> Optimistically, the Task Force offers an action item that is meant to focus on diversity and discrimination, recommending that:

Law enforcement agencies should implement training for officers that covers policies for interactions with the LGBTQ population, including issues such as determining gender identity for arrest placement, the Muslim, Arab, and South Asian communities, and immigrant or non-English speaking groups, as well as reinforcing policies for the prevention of sexual misconduct and harassment.<sup>148</sup>

This recommendation is problematic, as it assumes that the issue is merely that officers do not realize the correct way to wield their power, rather than problematizing the discretionary power allotted to officers in the first place. This “Action Item” assumes conflict and interactions with the carefully listed groups, and gives a coy wink that indicates the Task Force realizes there is room for improvement. However, notably absent from text is a promise to stop actively targeting these groups for interactions with police, a promise to stop quality of life policing, or a promise to allow people to inform officers of their gender identity. The language: “determining gender identity for arrest placement” manages to remove all control from the arrested person, and forces them to hope that their arresting officer has taken all the right classes regarding gender at the police academy.

Another recommended act of police reform is to adjust hiring policies.<sup>149</sup> The logic behind this idea attempts to reconcile the “blue wall of silence” mentality with institutional reform. The “blue wall of silence” is an unwritten code within police departments that precludes an officer from testifying that another officer engaged in misconduct.<sup>150</sup> Because it is so unlikely that police officers will report one another when brutality is suspected, many argue that police department recruiters need to actively seek out anti-racist community members. Indeed, President Obama’s Task Force on Policing in the 21st Century stated that in order to build a police

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nations-law-enforcement-officials-together-conversation-community.

146. *Id.*

147. OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING: FINAL REPORT OF THE PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING (2015), [https://cops.usdoj.gov/pdf/taskforce/taskforce\\_finalreport.pdf](https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf).

148. *Id.* at 58.

149. Coles, *supra* note 63.

150. Iesha S. Nunes, “*Hands Up, Don’t Shoot: Police Misconduct and the Need for Body Cameras*,” 67 FLA. L. REV. 1811, 1827 (2015).

force responsible to the community at large, departments must hire officers who “reflect the community they serve.”<sup>151</sup>

However, an inherent flaw in this logic is that many of the community members who have the most impactful ideas about the fractures in policing, are those who have been most egregiously abused at the hands of the state. Institutional reform will never arise naturally or with training at the police academy; it will only happen if “[P]eople who don’t go into police work now go into police work, and people who don’t go into prison work, go into prison work. It doesn’t work if you do it alone . . . you’re not going to be able to work any change into it.”<sup>152</sup> Furthermore, even when police departments like the SFPD are lauded for their diversity percentages in hiring, their minority candidates are most severely impacted by release from the force before they even start field training.<sup>153</sup>

As alluded to in the portion of this paper regarding policing in the 1980s, the most successful queer police officers are the ones who can most effectively screen their dissent and assimilate neatly into the force.<sup>154</sup> Consequently, a police force will never be able to “hire out” their discriminatory practices as a method of reform. Nor will change come from suing police departments or civilian complaints.<sup>155</sup> There cannot be a “better” police, if better objectively means safer, more diverse, and less discriminatory, without the understanding that policing as a concept needs to be fundamentally changed.

Lastly, criminal prosecution of police officers who violate human rights would inevitably be unreliable as it tasks prosecutors to punish their own associates and agents.<sup>156</sup> Like the flawed “bad actor” focus in hate crime legislation, focusing solely on specific officers that violate the rights of queer people would provide only temporary relief (in the form of punishment).

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151. OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, *supra* note 148, at 51.

152. “[T]hat’s the hardest kind of reform, that’s institutional reform. That’s not going to happen unless people who don’t go into police work now go into police work, and people who don’t go into prison work, go into prison work. It doesn’t work if you do it alone, if you’re the only one . . . you’re not going to be able to work any change into it.” Coles, *supra* note 63.

153. OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, COLLABORATIVE REFORM INITIATIVE: AN ASSESSMENT OF THE SAN FRANCISCO POLICE DEPARTMENT (2016), <https://ric-zai-inc.com/Publications/cops-w0817-pub.pdf>.

154. “[T]he police department would be happy to accept the black lesbian as long as she was a white straight Irish cop . . . the people who succeeded, who we got back in and succeeded and stayed as officers, had a very old fashioned police mentality. They succeeded to a limited extent . . . but the idea that you fundamentally change some of the assumptions that the force had about the people who were being policed, I think a lot of us thought that was less successful in the end than we had hoped it would be because of who selected themselves to be officers and then who succeeded in the program, when they were judged on very subjective criteria.” Coles, *supra* note 63.

155. *Id.*

156. Clark, *supra* note 93.

## IV. THE LAW IS NOT ENOUGH

Of course, the lingering issue from the conflicted Pride celebration in 2016 is: What could have been done? How can a marginalized community feel safe when they are attacked individually, socially, and by the state? It is easy to fold into the accessibility of legal solutions, however those are not the demands that are being made by the most vulnerable queer communities. It is also tempting to say the police should not even be policing Pride celebrations at all.

Indeed, the communities most affected by police and state violence are calling for the abolition of prisons, police, borders, and for full healthcare, food, housing, and education.<sup>157</sup> These goals are deemed to be too lofty or dangerous, and instead focus is shifted to the most “deserving” queer bodies that can strive for inclusion.<sup>158</sup> Activists and police abolitionists recognize the ambitiousness of a police-free society, and have consistently given community members small victories to aim for. These include: forcing police officers to carry their own liability insurance (which will result in financial penalties for doing harm), demanding that any cops with a history of violence or coercion will be fired and ineligible for re-hire, smaller police forces, advocating for cops to be removed from libraries and community centers, and more.<sup>159</sup> There are two lenses through which to examine potential solutions to police violence: immediate impactful changes, and long-term visions for the future.

In the immediate future, there are two steps that law enforcement agencies could take to make an immediately positive change in the way they police. First, they could cease quality of life policing. As previously detailed, quality of life policing works to increase points of contact for vulnerable queer populations who are often arrested for things like loitering, sleeping in public, or sex work.<sup>160</sup> Because this type of policing favors arrests in situations where a warning or citation could be issued, it leads to aggressive criminalization.<sup>161</sup> This policing often targets populations who “stand at the intersection of many identifiers,” particularly trans and gender nonconforming people of color.<sup>162</sup>

Stopping quality of life policing would reduce some of the huge discretion that officers are allotted.<sup>163</sup> It would also likely reduce the number of law enforcement officers on the streets, and reduce the

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157. SPADE, *supra* note 23, at 120.

158. *Id.* at 120–121.

159. Rachel Herzing, *Standing Up for our Communities: Why We Need a Police-Free Future*, TRUTHOUT (Mar. 7, 2017), <http://www.truth-out.org/opinion/item/39632-standing-up-for-our-communities-why-we-need-a-police-free-future>.

160. MOGUL et al., *supra* note 13, at 49.

161. “*Quality of Life*” Policing INCITE!, [http://www.incite-national.org/sites/default/files/incite\\_files/resource\\_docs/3316\\_toolkitrev-qualitylife.pdf](http://www.incite-national.org/sites/default/files/incite_files/resource_docs/3316_toolkitrev-qualitylife.pdf) (last visited Mar. 31, 2017).

162. INCITE!, *supra* note 161, at 18.

163. *Id.*

frequency or likelihood that queer and trans people of color would be interacting with officers.<sup>164</sup> Because arrest rates would likely drop, it would also reduce the number of people who are forced into the criminal punishment system.<sup>165</sup> Communities can create their own practices to maintain their neighborhoods, giving them autonomy over their shared space and agency over their standards.

A second immediate change would be to reduce the size and specialization of law enforcement agencies. At the close of the twentieth century, prisons, police departments, and related agencies of the state fought for dominance and growth.<sup>166</sup> Additionally, modern policing has evolved to create specific units for particularized areas of crime, such as homicide, gangs, or vice.<sup>167</sup> A particularly notorious unit is the Special Weapons and Tactics Team (SWAT).<sup>168</sup> SWAT units, though originally designed to respond to uniquely dangerous situations, are now the norm for police departments in mid-size cities.<sup>169</sup> SWAT teams are used in traffic stops, high-impact policing, and perhaps most nefariously, in training new officers.<sup>170</sup>

Reducing the size of departments and limiting specialized forces would likely reduce the number of police encounters, and would ideally reduce the potential for escalation in these encounters. Because limiting the size and specialization of departments would also reduce costs, money previously allotted to police departments could be funneled to the community directly. For example, advocates in Los Angeles are calling for just a five percent reduction in law enforcement spending. This money would be used for: 15,000 additional youth summer jobs, 350 additional peace-builders/intervention workers, and thirty youth centers.<sup>171</sup>

A long-term vision would be a world where police power is limited, nonviolent, and not structured to require codependency. A future free of policing is possible, but requires “care and support in crisis rather than suppression, denigration, and violence.”<sup>172</sup> It also requires investment in a community rather than investment in authority figures who face no real

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164. INCITE!, *supra* note 161, at 19.

165. *Id.*

166. Jordan T. Camp & Christina Heatherton, *Policing the Planet* 159 (2016), <http://aworldwithoutpolice.org/wp-content/uploads/2016/08/jordan-t-camp-policing-the-planet-why-the-policing-crisis-led-to-black-lives-matter.pdf>.

167. Rachel Herzing, *Big Dreams and Bold Steps Toward a Police-Free Future*, TRUTHOUT (Sept. 16, 2015), <http://www.truth-out.org/opinion/item/32813-big-dreams-and-bold-steps-toward-a-police-free-future>.

168. *Id.*

169. *Id.* (“Roughly 90 percent of all police departments in cities with populations over 50,000 have some form of a SWAT team.”).

170. *Id.*

171. L.A. FOR YOUTH, <http://www.laforyouth.org> (last visited Mar. 31, 2017).

172. Herzing, *supra* note 159.

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consequences.<sup>173</sup>

The queer community is embedded in a moment of deep tension regarding safety. This division is not new, nor is it readily visible from outside the community. Professor Matt Coles posited that before certain sub-groups of the LGBT community accessed capital and power, there was a common oppression that unified the entirety of the queer community.<sup>174</sup> However, once people gain “access to the levers of power,” their sense of rights and protection for those who are continually marginalized tends to pale.<sup>175</sup> Often, the access to power can permit the formerly oppressed to use the system in ways that disregard the basic individual rights that are critically important.<sup>176</sup>

This is one of the most important steps the queer community still needs to take, recognizing that queerness alone does not unite a group- especially when violence is particularly inflicted on specific factions. CeCe McDonald, an activist who was unjustly arrested for defending herself against a transphobic attack, said that queer communities will only become safer once we keep one another safe.<sup>177</sup> McDonald also poignantly noted that police “[C]hoose who they want to protect, they choose who they want to serve. And it’s not us.”<sup>178</sup> The police are not equipped to save us from violence, just like the law alone cannot protect us. The Pride Organizers could have started re-imagining what safety looks like with one initial step: listening to those who are most impacted by police presence.

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173. Herzing, *supra* note 159.

174. Coles, *supra* note 63.

175. *Id.*

176. *Id.*

177. CeCe McDonald, Reina Gossett, Dean Spade, *Police + Prisons Don't Keep Us Safe- We Keep Each Other Safe*, BARNARD CENTER FOR RESEARCH ON WOMEN (June 25, 2016), <http://bcrw.barnard.edu/blog/police-out-of-pride/>.

178. *Id.*