

VIRGINIA LAW REVIEW ONLINE

VOLUME 107

JUNE 2021

115–142

ESSAY

WHY BIPOC FAILS

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INTRODUCTION

Racial tensions have been endemic to the U.S. since its founding. In 2020, this racial conflict bubbled over into the streets as those supporting Black Lives Matter and opposing a long history of racist police violence congregated to demand justice.¹ Last year and still now, the global pandemic has placed additional stress on communities of color, which have been disproportionately affected by and infected with COVID-19.² While they were threatened with loss of life from disease, Black men and

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¹ Larry Buchanan, Quoc Trung Bui & Jugal K. Patel, Black Lives Matter May Be the Largest Movement in U.S. History, *N.Y. Times* (July 3, 2020), <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html> [<https://perma.cc/2Q5H-978V>].

² Daniel Wood, As Pandemic Deaths Add Up, Racial Disparities Persist—And in Some Cases Worsen, *NPR* (Sept. 23, 2020, 1:01 PM) (“People of color get sick and die of COVID-19 at rates higher than whites and higher than their share of the population.”), <https://www.npr.org/sections/health-shots/2020/09/23/914427907/as-pandemic-deaths-add-up-racial-disparities-persist-and-in-some-cases-worsen> [<https://perma.cc/TZT9-HHZ2>].

women continued to be killed at the hands of police and unchecked vigilantes.³ The question thus became whether to stay home to stay safe from a deadly virus or take to the streets to demand safety from state-sanctioned violence. The result was the largest mass protest in U.S. history, with thousands of Black and Brown people masked up fighting for their lives and thousands of allies standing and shouting beside them.⁴

This level of activism clearly demonstrates that change is both needed and long overdue. The response from the corporate world,⁵ sports teams and celebrity athletes,⁶ institutions of higher education,⁷ and people throughout the world⁸ has been largely supportive in terms of recognizing the need for a purposeful commitment to antiracism. One unanswered question asks whether these cries for change could also benefit from an update in the language and terminology that advocates, allies, and academics use when discussing issues of race and racism.⁹

At this moment of reckoning, we have the opportunity and responsibility to reexamine our language and the terms we use to name and claim racism and resistance. While we previously settled for small diversity gains, many now push for greater inclusion, equity, and

³ Jeffrey Fagan & Alexis D. Campbell, *Race and Reasonableness in Police Killings*, 100 *B.U. L. Rev.* 951, 957–58 (2020).

⁴ Buchanan, Bui & Patel, *supra* note 1.

⁵ Corporations that donated to antiracist causes include Home Depot, Ubisoft, Apple, Facebook, Intel, and Peloton. Isabel Togoh, *Corporate Donations Tracker: Here Are the Companies Giving Millions to Anti-Racism Efforts*, *Forbes* (June 1, 2020, 12:10 PM), <https://www.forbes.com/sites/isabeltogoh/2020/06/01/corporate-donations-tracker-here-are-the-companies-giving-millions-to-anti-racism-efforts/?sh=3160129d37dc> [<https://perma.cc/TL8R-FPXT>].

⁶ *Taking a Knee: Athletes Protest Against Racism Around the World—in Pictures*, *The Guardian* (Aug. 27, 2020, 4:35 PM) (“[A]thletes around the world have been kneeling in support of Black Lives Matter and wearing the phrase on jerseys and T-shirts while NBA players boycotted game five of their playoff series in protest of the police shooting against Jacob Blake”), <https://www.theguardian.com/sport/gallery/2020/aug/27/nba-strike-athletes-kneeling-black-lives-matter-protest> [<https://perma.cc/D8PH-ULBT>].

⁷ Joey Hadden, *How the Top 25 Colleges and Universities in the US Are Responding to the Black Lives Matter Protests*, *Bus. Insider* (June 25, 2020, 12:56 PM), <https://www.businessinsider.com/college-top-us-universities-respond-black-lives-matter-protests-2020-6> [<https://perma.cc/692G-PJR6>].

⁸ Jen Kirby, “Black Lives Matter” Has Become a Global Rallying Cry Against Racism and Police Brutality, *Vox* (June 12, 2020, 7:30 AM) (noting that “[t]he police killing of George Floyd has sparked a worldwide reckoning”), <https://www.vox.com/2020/6/12/21285244/black-lives-matter-global-protests-george-floyd-uk-belgium>.

⁹ This Essay introduces these concepts and questions. For more on usage of various terms, limitations of BIPOC, and application to the particular context of legal education, see Meera E. Deo, *Beyond BIPOC* (in progress 2021) (unpublished manuscript) (on file with author).

belonging as well as broader antiracist principles demanding action.¹⁰ In the context of higher education, for example, law schools have relied for decades on *educational diversity* as a rationale for affirmative action—a priority that ignores racism, equity, and representation.¹¹ Yet in 2020, five Black women leaders spearheaded the Law Deans Antiracist Clearinghouse Project to guide the many law schools issuing faculty resolutions committing themselves to becoming (more) *antiracist* as a signal of more meaningful progress in legal education.¹² A change in terminology does more than add to the lexicon; it also signals a change in priorities for those working towards racial justice. Should there be additional language updates that signal our updated priorities?

Since roughly May 2020, there has been interest within some circles in the new term “BIPOC”—referring to those who are Black, Indigenous, and People of Color.¹³ The term first appeared online in 2013 and expanded on social media when taken up mainly by educated elites who see themselves as progressive voices on issues of race or ethnicity, regardless of their own identity backgrounds.¹⁴ However, what has been missing entirely is a wider conversation about usage of the term—*why* it may be necessary to update language, *how* it can be a tool in anti-

¹⁰ See generally Meera E. Deo, *The End of Affirmative Action*, 100 N. Carolina L. Rev. (forthcoming 2021) (proposing an overhaul of affirmative action policies and suggesting broader inclusion of minority groups by differentiating the experiences of each group and the addition of diversity, equity, and inclusion to existing policies).

¹¹ Granted, institutions of higher learning have relied on educational diversity as a justification for affirmative action because no other compelling state interests have been deemed constitutional. Meera E. Deo, *The Promise of Grutter: Diverse Interactions at the University of Michigan Law School*, 17 Mich. J. Race & L. 63, 68–69 (2011).

¹² For more on this project, including the five suggested phases schools should engage with on the path to becoming antiracist, see Danielle M. Conway, Danielle Holley-Walker, Kimberly Mutcherson, Angela Onwuachi-Willig & Carla D. Pratt, *Law Deans Antiracist Clearinghouse Project*, Ass’n Am. Law Schs., <https://www.aals.org/antiracist-clearinghouse/> (last visited Mar. 5, 2021) [<https://perma.cc/X3Z5-JHQX>].

¹³ Sandra E. Garcia, *Where Did BIPOC Come From?*, N.Y. Times (June 17, 2020), <https://www.nytimes.com/article/what-is-bipoc.html> [<https://perma.cc/H978-PFGG>]. The exact origins and sudden popular usage of BIPOC remain unclear, though they are traced in more detail in *Beyond BIPOC*. Deo, *supra* note 9, at 18–20.

¹⁴ *Who Does the Acronym “BIPOC” Actually Serve?*, *The Takeaway* (June 25, 2020), <https://www.wnycstudios.org/podcasts/takeaway/segments/acronym-bipoc-race-language?tab=summary> [<https://perma.cc/K3UY-ZJQ5>]; *If podcast: Who Does The Acronym BIPOC Actually Serve?*, *The Takeaway* (June 25, 2020). Both race and ethnicity are fluid (rather than fixed) concepts that change over time and in varying contexts. See, e.g., Ian F. Haney López, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 Harv. C.R.–C.L.L. Rev. 1, 8, 10 (1994).

subordination efforts, and *whether* this particular term is the most effective at this particular time. New language should not take over without community engagement and deep reflection.

While language is key to anti-subordination, BIPOC damages those efforts rather than being helpful, especially among those searching for new language addressing contemporary issues of race and racism. New terms are useful and should be utilized in antiracism efforts; yet BIPOC itself does a disservice to communities of color and efforts to dismantle systems of racial privilege. Centering particular groups only in name ultimately furthers their marginalization because they remain excluded in fact though referenced in the term, erasing the power that comes from participation and inclusion. BIPOC begins with the premise that we should *always* center two particular racial groups—Black and Indigenous—within the people of color category, though these communities are *not always* at the center of the issue being discussed. While concentrating on these two groups may make sense in particular contexts, it cannot be true that *every* example of race and racism should center Black and Indigenous voices or experiences.

This Essay initiates a discussion about how we should critically examine which issues and data are most relevant to our arguments and advocacy efforts and how we should match our terms to the particular groups at the center of those priorities.¹⁵ This will mean aggregating groups at times and naming them separately at others; whether finding community through unity or standing separately to highlight distinctions, either of these options is better than BIPOC. Particular examples showcase the failures of BIPOC, both in theory and in practice, including ways in which it can be misleading, confusing, and contribute to the invisibility of the very groups that should be centered in particular contexts.

The Essay begins by outlining the relationship between language and anti-subordination, explaining why words matter as an act of resistance. Part II explores the benefits of unity between groups, resulting in pan-racial umbrella communities such as “people of color” and “women of color” that provide greater strength and solidarity to groups that may be distinct but can nevertheless stand together under one umbrella. Part III provides three initial rationales for why BIPOC is not the best term for our times, as well as a series of examples showing how BIPOC is a

¹⁵ The discussion on limitations of BIPOC continues in Deo, *supra* note 9, at 20-22.

misleading representation of communities of color in various contexts. Together, these add evidence to the claim that allies, advocates, and academics should not simply use whatever term is currently in vogue but instead critically examine the language we use and carefully match it to our data, priorities, and conclusions.

I. THE LANGUAGE OF ANTI-SUBORDINATION

Language has a direct connection to subordination, and therefore anti-subordination. “Anti[-]subordination theorists contend that guarantees of equal citizenship cannot be realized under conditions of pervasive social stratification,” as is the case currently and has been historically in the U.S.¹⁶ Change, they argue, depends in part on law “reform[ing] institutions and practices that enforce the secondary social status of historically oppressed groups.”¹⁷ Often, the law follows broad social trends demonstrating change, rather than being a leader in those efforts.¹⁸

Language, on the other hand, is often the leader, providing an opportunity to rethink and reconceptualize ingrained concepts to transcend original meanings using new terms coined by activists and others on the front lines of change. Clearly, language itself (like race) is both socially constructed and fluid—constantly changing, shifting, and evolving. When using language and especially when crafting new terms to think about race, racism, and resistance, it is therefore critically important that racial categories and terminology are grounded not only in history, but in contemporary context.¹⁹ Furthermore, changes in terminology can be confusing to outsiders (meaning anyone not referenced by the term) and are especially important for allies and others

¹⁶ Jack M. Balkin & Reva B. Siegel, *The American Civil Rights Tradition: Anticlassification or Antisubordination?*, 58 *U. Miami L. Rev.* 9, 9 (2003); see Adrien Katherine Wing, *Introduction to Critical Race Feminism: A Reader* 1, 7 (Adrien Katherine Wing ed., 2d ed. 2003); Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 *U. Chi. Legal F.* 139; Owen M. Fiss, *Groups and the Equal Protection Clause*, 5 *Phil. & Pub. Aff.* 107, 151 (1976).

¹⁷ Balkin & Siegel, *supra* note 16.

¹⁸ See Jack M. Balkin, *Constitutional Redemption: Political Faith in an Unjust World* 12–14 (2011); Jamillah Williams, Naomi Mezey & Lisa Singh, *#BlackLivesMatter—Getting from Contemporary Social Movements to Legal Change*, 12 *Calif. L. Rev. Online* 1 (2021).

¹⁹ See generally Jonathan Rosa & Nelson Flores, *Unsettling Race and Language: Toward a Raciolinguistic Perspective*, 46 *Language in Soc’y* 621 (2017); Jonathan Rosa, *Looking Like a Language, Sounding Like a Race: Raciolinguistic Ideologies and the Learning of Latinidad* (2019).

who are eager to support anti-subordination efforts without always knowing which terms or words are currently preferred.

Consider the reclaiming of *dyke* in the LGBTQ+ context—an opportunity for women oppressed and maligned for being lesbians to reinvent the term, using their claim on language to share pride in how they name and refer to themselves.²⁰ Similarly, recent interest in adopting *crip* as an identity moniker related specifically to disabled people seeks to destigmatize a term long used to denigrate those who have been “othered”²¹ and instead reformulate it as a powerful identity marker uniting people around shared experiences, including resistance to assimilation.²²

This reclaiming and resistance in language is similarly evident in the context of race. Some scholars have even called for a new academic focus, whether called *raciolinguistics* or *LangCrit*, to study the interplay of race, racism, and language.²³ Understanding that “racial identities can shift across contexts” means that we need new language to take account of those shifts over time.²⁴ More dramatically, scholars and others must recognize “the central role that language plays in processes of racialization,” and act accordingly—working to shape language as a form of anti-subordination.²⁵

There have been many such efforts over time. The shifts and changes and preferred terms of Negro, Colored, Black, and African American are less a signal of evolution and progress and more an opportunity to push back against stereotypes or expectations associated with various terms at

²⁰ Gregory Coles, *Emerging Voices: The Exorcism of Language: Reclaimed Derogatory Terms and their Limits*, 78 C. Eng. 424, 424–25 (2016).

²¹ For more on boundaries between groups, including distinctions between “us” vs. “them,” see Fredrik Barth, *Introduction to Ethnic Groups and Boundaries* 9, 15–16 (Fredrik Barth ed. 1969).

²² See Carrie Sandahl, *Queering the Crip or Crippling the Queer? Intersections of Queer and Crip Identities in Solo Autobiographical Performance*, 9 GLQ 25, 26–27 (2003); Robert McRuer, *Crip Theory: Cultural Signs of Queerness and Disability* 40–41 (2006); Jasmine E. Harris, *Reckoning with Race and Disability*, 130 Yale L.J.F. (forthcoming 2021).

²³ H. Samy Alim, *Introducing Raciolinguistics: Racing Language and Linguaging Race in Hyperracial Times*, in *Raciolinguistics: How Language Shapes Our Ideas about Race* 1, 5 (H. Samy Alim, John R. Rickford & Arnetta F. Ball eds., 2016); Alison Crump, *Introducing LangCrit: Critical Language and Race Theory*, 11 *Critical Inquiry in Language Stud.* 207, 207 (2014).

²⁴ Alex Shashkevich, *Stanford Experts Highlight Link Between Language and Race in New Book*, *Stan. News* (Dec. 27, 2016), <https://news.stanford.edu/2016/12/27/link-language-race-new-book/> [<https://perma.cc/YDP7-PJBW>].

²⁵ *Id.*

various times—since language, like race, is fluid.²⁶ Like the reinvention of the terms *dyke* and *crip*, Black youth reclaiming the N-word is a prime example of a racial group that took language used to oppress them and turned it into a powerful way to reference “solidarity, censure, and a proactive stance that seeks to bring about positive change.”²⁷

The naming of *intersectionality* also ushered in transformative change in the context of the combination of race and other identity characteristics.²⁸ Whether we call it “multiple consciousness, cosynthesis, holism, interconnectivity, [or] multidimensionality,” the revolutionary idea that intersecting identity characteristics define and limit us in various contexts remains essential to anti-subordination.²⁹ The concept of *intersectionality* draws from the work of Kimberlé Crenshaw and other legal scholars referring to those with multiple devalued identity characteristics.³⁰ These Critical Race Theorists argue that those operating at the “intersection of recognized sites of oppression” along multiple domains suffer negative effects based on each as well as all of these identity markers.³¹

Going a step further, we can specifically consider *raceXgender* identity, which encompasses people whose race intersects with their gender to create not additive (race plus gender) but compounded effects based on identification with two marginalized groups.³² There are various intersectional combinations even in the race context that could be salient

²⁶ See Ben L. Martin, From Negro to Black to African American: The Power of Names and Naming, 106 Pol. Sci. Q. 83, 83 (1991).

²⁷ Jacquelyn Rahman, The N Word: Its History and Use in the African American Community, 40 J. Eng. Linguistics 137, 137 (2012).

²⁸ See Crenshaw, *supra* note 16, at 140 (coining the term).

²⁹ Wing, *supra* note 16, at 1, 7.

³⁰ See Crenshaw, *supra* note 16; Kimberlé Crenshaw, Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color, 43 Stan. L. Rev. 1241, 1244 (1991). See generally Wing, *supra* note 16; Patricia Hill Collins, Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment 23 (2d ed. 2000); Evelyn Nakano Glenn, Unequal Freedom: How Race and Gender Shaped American Citizenship and Labor 6–7 (2002).

³¹ Richard Delgado & Jean Stefancic, Critical Race Theory: An Introduction 58–63 (3d ed. 2017).

³² Previous scholarship has highlighted how “utilizing the *raceXgender* nomenclature emphasizes the multifactorial effects of race ‘times’ gender for women of color.” Meera E. Deo, Unequal Profession: Race and Gender in Legal Academia 8 (2019); Meera E. Deo, The Culture of “*raceXgender*” Bias in Legal Academia, *in* Power, Legal Education, and Law School Cultures 240, 241 (Meera E. Deo, Mindie Lazarus-Black & Elizabeth Mertz eds., 2019).

or even essential depending on the arguments being made or issues at hand—including *raceXsexual orientation*, *raceXclass*, and *raceXage*.³³ These linguistic changes signify the movement to antiracism.

The push for *antiracism* itself reflects an update in both language and priorities, signaling a shift from protecting diversity to promoting broader action-oriented change. In previous years, advocates were steadfastly focused on promoting racial diversity to advance racial justice. To that end, institutions of higher learning argued in court that admitting a racially diverse student body furthered students' academic and professional outcomes.³⁴ Those making "the business case for diversity" in the corporate world recognized and touted the connection between a company's financial performance and its level of diversity along various metrics.³⁵ The military even asserted that diversity among the troops and leaders of its various branches is a necessary ingredient for national security.³⁶

In the past decade, interests in diversity have broadened to accentuate inclusion, equity, and belonging.³⁷ Using the well-litigated and high profile context of higher education, previous emphasis was on admitting students from different backgrounds in an effort to increase racial diversity on campus for the ostensible purpose of improving the quality of education for all students—which truly reflected an interest in admitting students of color to improve the educational experiences of

³³ Sandahl, *supra* note 22.

³⁴ *Grutter v. Bollinger*, 539 U.S. 306, 328 (2003); *Gratz v. Bollinger*, 539 U.S. 244, 267 (2003); *Fisher v. Univ. of Tex. at Austin (Fisher I)*, 570 U.S. 297, 310 (2013); *Fisher v. Univ. of Tex. at Austin (Fisher II)*, 136 S. Ct. 2198, 2208 (2016); Deo, *supra* note 10, at 68–72. The defendants in *Bakke* also argued there were other reasons to support affirmative action—including to increase minority representation among doctors, reduce societal discrimination, and increase service to disadvantaged communities—though none of these were sanctioned by the Court. Meera E. Deo, *Affirmative Action Assumptions*, 52 UC Davis L. Rev. 2407, 2412–15 (2019).

³⁵ Sundiatu Dixon-Fyle, Vivian Hunt, Kevin Dolan & Sara Prince, McKinsey & Co., *Diversity Wins: How Inclusion Matters* 13 (2020), <https://www.mckinsey.com/~/media/McKinsey/Featured%20Insights/Diversity%20and%20Inclusion/Diversity%20wins%20How%20inclusion%20matters/Diversity-wins-How-inclusion-matters-vF.pdf> [<https://perma.cc/L7RA-3DT9>].

³⁶ Deo, *supra* note 10, at 65 n.4 (citing and quoting *Grutter*, 539 U.S. at 331) ("high-ranking retired officers and civilian leaders of the United States military assert that, '[b]ased on [their] decades of experience,' a 'highly qualified, racially diverse officer corps . . . is essential to the military's ability to fulfill its principle [*sic*] mission to provide national security.'").

³⁷ Elizabeth Bodamer, *Belonging in Law School* (2021) (Ph.D. dissertation, Indiana University) (on file with author).

whites.³⁸ More recently, scholars and advocates have shifted their perspective to consider not only who is admitted but also the quality of the interactions and experiences of students of color once on campus.³⁹ This consideration not only of diversity but also of *inclusion*—“a cultural and environmental feeling of belonging” related to members feeling “valued, respected, accepted and encouraged to fully participate”—thus highlights an interest beyond diversity.⁴⁰ Similarly, recent efforts to promote equity and belonging signal the importance of moving beyond diversity to consider broader anti-subordination and even antiracist principles.⁴¹

While the commitment to diversity and the rationales behind it remain intact, and that commitment has expanded to include greater inclusion, equity, and belonging, there has also been a shift toward pursuing the more anti-subordination and justice-oriented concept of *antiracism*. As scholar and author Ibram X. Kendi shares in his trailblazing book, *How to Be an Antiracist*, “[T]here is no neutrality in the racism struggle.... One either allows racial inequities to persevere, as a racist, or confronts racial inequities, as an antiracist.”⁴² In this way, Kendi ties personal preferences to *praxis*, a central tenet of Critical Race Theory emphasizing that racial justice ideas must transcend the page to inspire “theory-informed action.”⁴³ Thus, Kendi asserts that “being an antiracist requires persistent self-awareness, constant self-criticism, and regular self-examination.”⁴⁴ Language itself is critical to the antiracist endeavor, including promoting or resisting “a whole vocabulary of old and new words—like ‘cultural wars’ and ‘stereotype’ and ‘implicit bias’.”⁴⁵

³⁸ See Meera E. Deo, Faculty Insights on Educational Diversity, 83 Fordham L. Rev. 3115, 3117 (2015); Deo, *supra* note 10, at 3.

³⁹ See, e.g., Meera E. Deo & Chad Christensen, Ind. Univ. Ctr. for Postsecondary Research, 2020 Annual Survey Results: Diversity & Exclusion 6 (2020), <https://lssse.indiana.edu/wp-content/uploads/2020/09/Diversity-and-Exclusion-Final-9.29.20.pdf> [<https://perma.cc/3P3A-FK26>].

⁴⁰ Ella Washington & Camille Patrick, 3 Requirements for a Diverse and Inclusive Culture, GALLUP (Sept. 17, 2018), <https://www.gallup.com/workplace/242138/requirements-diverse-inclusive-culture.aspx> [<https://perma.cc/A82S-U2MV>].

⁴¹ Deo, *supra* note 10.

⁴² Ibram X. Kendi, *How to Be an Antiracist* 9 (2019).

⁴³ Chandra L. Ford & Collins O. Airhihenbuwa, Critical Race Theory, Race Equity, and Public Health: Toward Antiracism Praxis, 100 Am. J. Pub. Health S30, S31 (2010).

⁴⁴ Kendi, *supra* note 42, at 23.

⁴⁵ *Id.* at 46–47. See also Michele Goodwin, Complicit Bias: Sexual Harassment and the Communities that Sustain It, Huffington Post (Dec. 11, 2017, 2:18AM) (using a new term “complicit bias” to describe community complicity in sustaining institutional bias and

Language, both old and new, can also be used to group together disparate groups who nevertheless share common experiences, as discussed below for people of color and other groups. Yet with a goal of anti-subordination in mind, we must push against groupings made purely for convenience's sake, those that diminish or erase minority perspectives, or others that may seem initially useful or even progressive but in actuality serve to subtly reinforce entrenched norms and retrench existing hierarchies.

II. WHEN UNITY LEADS TO ERASURE

Often language assumes unity—it creates the ability to bring people together, especially those who have shared identity characteristics. Creating terms to identify a class of heretofore disparate groups serves to bring them together under a new more inclusive umbrella. But what goes missing when groups band together?

Historically, the purpose of these umbrella groups has been to unite people with shared experiences for mutual political and social benefits.⁴⁶ People from distinct backgrounds recognized that there was strength in numbers, and so sought out others who shared some (though not all) of their identity characteristics in order to work toward collective change.⁴⁷ Two of these groups are briefly introduced here to provide context for BIPOC.⁴⁸

One example is the term *people of color*, which bands together those who are Black, Latinx, Asian American, Native American, Arab American, and other non-whites.⁴⁹ *Pan-ethnic* groups that nevertheless

harassment in the workplace), https://www.huffpost.com/entry/complicit-bias-sexual-harassment-and-communities-that_b_5a2e238de4b0d7c3f262244f [<https://perma.cc/LLB5-Q7DJ>].

⁴⁶ Constance Grady, Why the Term “BIPOC” Is So Complicated, Explained by Linguists, *Vox* (June 30, 2020, 9:10 AM) (“In the 1960s and ’70s, . . . groups like the Black Panther Party for Self Defense and the Brown Berets came together in solidarity as people of color, which was a new instantiation of the idea of people *having* color.”) (internal quotations omitted), <https://www.vox.com/2020/6/30/21300294/bipoc-what-does-it-mean-critical-race-linguistics-jonathan-rosa-deandra-miles-hercules>.

⁴⁷ Efrén Pérez, (Mis)Calculations, Psychological Mechanisms, and the Future Politics of People of Color, 6 *J. Race, Ethnicity & Pol.* 33, 36–37 (2021); Efrén O. Pérez, *Diversity’s Child: People of Color and the Politics of Identity* (manuscript, 3–5) (forthcoming July 2021).

⁴⁸ The origin, evolution, benefits, and limitations of the terms “people of color” and “women of color” are covered in greater detail in Deo, *supra* note 9.

⁴⁹ Pérez, *supra* note 47 (manuscript at 1–4). The term “Latinx” itself has come under scrutiny in this ongoing conversation about preferred language for communities, advocates, and allies.

have disparate ethnic groupings, also have the capacity to incorporate intersectional identity drawing from race (e.g., Asian American) and ethnicity (e.g., Korean American).⁵⁰

Finding unity within raceXgender references the larger grouping of *women of color*, a community comprised of women who are also people of color.⁵¹ By highlighting intersectional raceXgender, the women of color grouping centers the experience of those who tend to be marginalized within both communities of people of color (where men of color have more privilege and power) and women (where white women have more privilege and power).⁵²

Recently joining the conversation about race and terminology is *BIPOC*, an acronym for Black, Indigenous, and People of Color.⁵³ BIPOC was popularized on social media, with some educated elites adopting it and others rejecting its inherent exclusivity, especially without much community engagement.⁵⁴ Unlike other terms that grew in usage after months or years of community reflection, BIPOC seemingly erupted on the scene and was taken up by academics and the media in summer 2020 as people flocked to the streets to demand an end to police violence targeting the Black community.⁵⁵ While it is essentially a synonym for people of color, advocates use it to intentionally foreground “Black” and “Indigenous,” arguing that these groups are both foundational to understanding the racial history of the U.S. and often not given the

Jonathan Rosa, *Looking Like a Language, Sounding Like a Race: Raciolinguistic Ideologies and the Learning of Latinidad* (2019); Luis Noe-Bustamante, Lauren Mora & Mark Hugo Lopez, *About One-in-Four U.S. Hispanics Have Heard of Latinx, but Just 3% Use It*, Pew Research Center (Aug. 11, 2020), <https://www.pewresearch.org/hispanic/2020/08/11/about-one-in-four-u-s-hispanics-have-heard-of-latinx-but-just-3-use-it> [https://perma.cc/24FX-D9LP] (explaining the origins and uses of the term “Latinx”).

⁵⁰ See Yen Le Espiritu, *Asian American Panethnicity* 19–20 (1992).

⁵¹ Wing, *supra* note 29, at 7.

⁵² See Michele Wallace, *A Black Feminist’s Search for Sisterhood*, in *All the Women Are White, All the Black Are Men, But Some of Us Are Brave: Black Women’s Studies* 7, 10 (Gloria T. Hull, Patricia Bell Scott, & Barbara Smith eds., 1982); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 *Stan. L. Rev.* 581, 585 (1990); but see Catharine A. MacKinnon, *From Practice to Theory, or What Is a White Woman Anyway?*, 4 *Yale J. L. & Feminism* 13, 18 (1991).

⁵³ Garcia, *supra* note 13; The BIPOC Project, <https://www.thebipocproject.org/> [https://perma.cc/GS4R-YQWY] (last visited March 19, 2021) (showing the efforts by activists to center the voices of the Black and Indigenous communities by turning to the term “BIPOC”); Grady, *supra* note 46.

⁵⁴ Garcia, *supra* note 13.

⁵⁵ *Id.*

recognition they are due within the larger people of color umbrella.⁵⁶ The term purposefully creates hierarchies between people of color groups, consciously highlighting the two “to acknowledge that not all people of color face equal levels of injustice.”⁵⁷ Thus advocates use BIPOC to further a political purpose: to highlight the experience or agenda of Black and Indigenous people as essential, even though they are part of the overall people of color community. However, it is unclear whether changing the label actually creates a commitment to those groups or simply signals change without meaningful progress.

One common phenomenon between each of these terms—people of color, women of color, and BIPOC—is that by striving for collective unity, distinct groups become less visible. For instance, certain groups within the people of color category are routinely marginalized within the umbrella based on their low visibility or representation, including Filipinos and Puerto Ricans (who also tend to be marginalized within their respective pan-ethnic Asian American and Latinx groups).⁵⁸ Additionally, male privilege results in the priorities and voices of women of color sometimes being excluded from the larger people of color community (just as they tend not to be prioritized within the larger women’s movement that focuses primarily on white women).⁵⁹ Women from particular groups within the women of color community can similarly be marginalized or not prioritized, including queer women and Native American women, whose experiences tend to be overlooked within the larger women of color whole.⁶⁰

BIPOC is purposeful and unapologetic about this exclusion. Because BIPOC purposefully and by definition centers two particular groups (Black and Indigenous), all of the other non-white groups within the fold are marginalized by design, grouped together in the leftover people of color section of BIPOC. Yet Black and Indigenous people are not at the

⁵⁶ The BIPOC Project, *supra* note 53; Chevaz Clarke, BIPOC: What Does It Mean and Where Does It Come From?, CBS News (July 2, 2020, 10:04 AM), <https://www.cbsnews.com/news/bipoc-meaning-where-does-it-come-from-2020-04-02> [<https://perma.cc/P2NW-5ZW7>].

⁵⁷ Clarke, *supra* note 56.

⁵⁸ See generally Anthony Christian Ocampo, *The Latinos of Asia: How Filipino Americans Break the Rules of Race* (2016) (exploring how Filipinos understand their racial identity).

⁵⁹ Wing, *supra* note 16, at 7; Harris, *supra* note 52, at 585.

⁶⁰ See, e.g., Victoria Sutton, Guest Post: Native American Exclusion as a Form of Paper Genocide, LSSSE (July 17, 2020), <https://lssse.indiana.edu/blog/guest-post-native-american-exclusion-as-a-form-of-paper-genocide> [<https://perma.cc/SWH3-NUBQ>].

center of every contemporary racial issue. Furthermore, centering these groups in name when they may be excluded from the data or the issue at hand relegates their importance to the periphery of power, signaling disinterest in their actual inclusion.

III. THE FAILURES OF BIPOC

The BIPOC term purposefully highlights two groups within the people of color community—Black and Indigenous.⁶¹ Grouping these two together at the exclusion of others is absolutely appropriate in the rare instances where both groups are at the center of the discussion and the data. Generally, however, doing so not only is incorrect but does damage to *both* the highlighted communities and those that are pushed to the periphery. This Part first provides some theoretical reasons why the BIPOC term does a disservice to various communities of color and then applies theory to practice by examining a variety of contexts in which BIPOC is clearly not the best term for the case.

A. Why BIPOC Fails, in Theory

Those who have been using BIPOC do so in order to show their value and appreciation for Black and Indigenous people even beyond other groups in the people of color community.⁶² These two populations, that have suffered horrifying atrocities and been brushed aside throughout U.S. history, are purposefully pulled to the front. Yet highlighting them in name in every instance referencing race or racism does not necessarily mean their priorities or interests are being represented; sometimes, these two groups are not even relevant to the matter at hand. There are a number of questions to consider before using BIPOC, the answers to which reveal that prioritizing use of the term in all contexts related to communities of color does more harm than good when pursuing antiracist efforts more generally.⁶³

⁶¹ Garcia, *supra* note 13.

⁶² The BIPOC Project, *supra* note 53.

⁶³ The nascent term is also confusing as many, even progressive voices on race/racism, do not know what it means. As a term that has been used largely by educated elites, others have been clueless about it; apparently, many thought it referenced bisexual people of color. NPR Codeswitch, *Is It Time To Say R.I.P. to ‘POC’?* (Sept. 30, 2020, 12:22AM), <https://www.npr.org/2020/09/29/918418825/is-it-time-to-say-r-i-p-to-p-o-c> [<https://perma.cc/8XYN-K78N>].

1. Is BIPOC purely symbolic?

Foregrounding the Black and Indigenous communities within people of color is symbolically significant as it indicates the importance of two groups that have long been sidelined in the United States. However, moving two groups to the front and naming them specifically does not have substantial meaning; foregrounding these groups in name only is what Critical Race Theorist Derrick Bell would call a purely symbolic gesture that may pacify calls for change without making any meaningful progress—and thereby ultimately support the status quo of racial inequities even between communities of color.⁶⁴ Today, we might call this *virtue signaling*—using words or actions not for the purpose of moving the needle toward greater progress, but instead primarily to highlight one’s own moral superiority in taking a stance.⁶⁵

Data collection on Native Americans is one common and unfortunate example. If there is little or no data on the Native American population for any given project ostensibly about people of color generally and scholars nevertheless report on “the BIPOC experience,” they are actually naming Indigenous communities as central to a project while simultaneously excluding them altogether from the substance.⁶⁶ This symbolic inclusion thus suggests that Native populations are central to whatever inquiry is before us but does not insist or even notice whether anyone actually includes them, let alone center their experiences, perspectives, interests, or priorities. Highlighting groups in name only is thus a greater disservice even than excluding them in fact and in name, because it suggests an upheaval of the status quo while actually serving to support it. Centuries of oppression have been sustained on just this form of “progress” that suggests change in name while maintaining ongoing inequities. There is truth to the accusation that unity can lead to erasure,

⁶⁴ See Derrick Bell, *Faces at the Bottom of the Well: the Permanence of Racism* 19 (1992) (arguing that symbolic progress simply provides oppressed groups with the illusion of change without ceding real power, thus further entrenching racial hierarchies).

⁶⁵ Cambridge Dictionary notes that virtue signaling “is the popular modern habit of indicating that one has virtue merely by expressing disgust or favour for certain political ideas or cultural happenings.” Cambridge English Dictionary, *Virtual Signaling Definition*, [<https://perma.cc/F2SX-YWVX>]. This definition from *Urban Dictionary* is even more direct: “To take a conspicuous but essentially useless action ostensibly to support a good cause but actually to show off how much more moral you are than everybody else.” Urban Dictionary, *Virtual Signalling Definition*, [<https://www.urbandictionary.com/define.php?term=Virtue%20Signalling>] [<https://perma.cc/85A6-GQWT>]; see also Deo, *supra* note 9, at 20.

⁶⁶ Sutton, *supra* note 60.

as discussed earlier, but foregrounding a group in name only is pure virtue signaling, which is even more destructive for long-term equity goals.

2. Should every inquiry center Black and Indigenous communities?

What little information exists about the origins and development of BIPOC suggests that the two groups are highlighted for two main reasons. Proponents of BIPOC stress that Black and Indigenous communities are underscored because they have a foundational relationship to race and racism in the United States; in addition, they argue that not all communities of color have suffered equally, so those who have endured the most should be put first.⁶⁷

These rationales rely on two problematic assumptions that, when investigated even briefly, reveal a shaky foundation. First, it is unfounded and counterproductive to assert that the harms of one group are paramount while others are relatively less important; doing so engages in the “Oppression Olympics,” which is “an evocative term to describe intergroup competition and victimhood.”⁶⁸ Ranked suffering as a reason to support the BIPOC term relies on comparing the relative oppression of all racial/ethnic groups in the U.S. and concluding that Black and Native peoples should be prioritized in name because they have suffered greater harm than all others. Those who use BIPOC embrace Oppression Olympics by crowing the winners and naming them first because they have suffered the most. This is dangerous for individual groups—both those whose oppression is erased and those who are the supposed winners—as well as destructive for antiracism efforts generally.

Second, even if all advocates agreed that Black and Indigenous people have historically suffered worse and more significant harms than any other racial/ethnic group, that may not justify centering them now by name when referencing all people of color today. There are clear instances of racism that have little or no direct impact on Black or Indigenous communities. At those times, the experiences of people from those communities should not be centered, just as those who are most affected should not be sidelined.⁶⁹ Using the BIPOC term to reference past harms, especially those endured by Black and Indigenous peoples, could be

⁶⁷ See Garcia, *supra* note 13; The BIPOC Project, *supra* note 53; Clarke, *supra* note 56.

⁶⁸ Ange-Marie Hancock, *Solidarity Politics for Millennials: A Guide to Ending the Oppression Olympics* 4 (2011).

⁶⁹ Half a dozen clear examples of race and racism that are not centered on Black and Indigenous communities are presented *infra* in Part III.B.

useful; but assuming a need to prioritize in every current conversation about race, these two groups that have suffered unspeakable historic harms and continue to face oppression today—as do other groups—is misguided. The purposeful sidelining of Latinx, Asian American, Arab American, and other communities of color does not signal progress toward racial justice. Instead, marginalization of these groups promotes *racial triangulation*, the purposeful hierarchical placement of Asian Americans (and perhaps others) between Black and white with the effect of dividing communities of color and diluting their collective power.⁷⁰ Rather than feed into that structure, attention to intersectional characteristics and especially recognizing similarities between disparate groups and drawing strength and solidarity from them may promote antiracism, help ameliorate past wrongs, and “ultimately help[] us overcome the Oppression Olympics.”⁷¹

3. Does a historical focus promote contemporary antiracism?

There is no doubt that the foundations of race and racism in the U.S. draw directly from the enslavement of Black people and the attempted genocide of Indigenous peoples. At the same time, race and racism are constantly evolving, with *racial projects* shifting over time and *racial formation* always in flux.⁷² Centuries of oppression against people of color have revealed various contexts in which even the law has been used to subjugate communities of color in order to preserve power in the hands of the white male elite.⁷³ Prioritizing historical discrimination, even chapters as atrocious as slavery and genocide, may not fit with every current racial project or application. At times when there are parallels, these should be noted and highlighted. Drawing a connection to historical atrocities may even reveal the ways in which certain efforts are truly contemporary avatars of age-old racism or discrimination.

Yet different groups today also face different pressures. Although contemporary acts of oppression may not rise to the level of past horrors, they are independently horrific and not necessarily derivative of past atrocities. Just as more covert bias has replaced overt oppression in many

⁷⁰ Claire Jean Kim, *The Racial Triangulation of Asian Americans*, 27 *Politics and Society* 105, 107 (1999).

⁷¹ *Id.*; Hancock, *supra* note 68, at 4.

⁷² Michael Omi & Howard Winant, *Racial Formation in the United States* (3rd ed. 2015).

⁷³ The history of legal support for white privilege is explored in greater depth in Deo, *supra* note 9, manuscript at 6-9 (in progress).

acts of contemporary discrimination, racism remains in spite of its shifting form.⁷⁴ Current oppression may not tie directly to slavery or genocide, but manifests in the form of violent hate crimes and xenophobic dehumanizing immigration policies. History will always provide significant context for contemporary racism, but it should not define (in name or otherwise) current racial challenges or acts of racial resistance.

B. When BIPOC Misses the Mark, in Practice

In addition to the broad strokes outlined above illustrating the theoretical limitations of BIPOC, the term also distorts the realities of communities of color in practice. In various instances, using the term BIPOC as a synonym for people of color is not just incomplete or imperfect, but also substantively, empirically, and historically incorrect as well as detrimental. This Part introduces a series of contemporary racial contexts where the name BIPOC, if used, would do more harm than good.⁷⁵ Under these examples, the term itself does not fit the data/community/conclusion under discussion. In these instances, it is better to use the term people of color, or in other cases to draw attention to the community of women of color, or in still other situations to name the particular race or even raceXgender groups most affected rather than foist them inappropriately under a BIPOC umbrella. Clear examples of how BIPOC can be misleading, confusing, or otherwise damaging are explored next.

1. Managing COVID-19

Discussing the effects of COVID-19 “on BIPOC communities” pretends that we have statistics on Native Americans, when in truth it centers the group in name while ignoring their omission from the data. Communities of color as a whole, and Black and Brown communities in particular, have been unduly impacted by the effects of COVID-19.⁷⁶ The

⁷⁴ Omi & Winant, *supra* note 72, at 39–46.

⁷⁵ The contexts included in this Section are clear examples drawing from contemporary racial issues in the U.S. where the BIPOC term is not the most useful; future work should apply this thesis to more complex situations that are less clear-cut to determine whether the argument holds. See, e.g., Deo, *supra* note 9.

⁷⁶ Harald Schmidt, Lawrence O. Gostin & Michelle A. Williams, *Is It Lawful and Ethical to Prioritize Racial Minorities for COVID-19 Vaccines?*, 324 JAMA 2023, 2023 (2020) (“[T]he mortality rate relative to population size is 3.4-fold higher among Black individuals . . ., 3.3-fold higher among Indigenous and Latino communities . . ., 2.9-fold higher among

intersection of race and class is especially salient here as people of color communities with fewer economic resources have had a disproportionate share of infections, hospitalizations, and deaths.⁷⁷ While those in the Black and Latinx communities have suffered grievous harm, the pandemic may be wreaking even greater devastation on Native American populations, although we do not have reliable data to confirm this conclusion.⁷⁸ Current research suggests that “Native Americans and Alaskan Natives are four times more likely to be hospitalized from COVID-19.”⁷⁹ In the past few months, the media has highlighted how some Native American communities have successfully vaccinated virtually all members,⁸⁰ while others struggle to reach the undecided.⁸¹ There is significant misinformation and missing information.

Researchers do know that COVID-19 “has taken a disproportionate toll on many Indigenous communities in the United States,” yet the “full impact” of the disease on Native Americans remains unclear based on “racial misclassification and the exclusion of Indigenous communities from data sets and analyses used to make health policy decisions.”⁸²

Pacific Islander individuals . . . , and 1.3 higher among Asian [American] populations”); Harmeet Kaur, *The Coronavirus Pandemic Is Hitting Black and Brown Americans Especially Hard on All Fronts*, CNN (May 8, 2020, 8:43 PM), <https://www.cnn.com/2020/05/08/us/coronavirus-pandemic-race-impact-trnd/index.html> [https://perma.cc/ZZN4-NLVA].

⁷⁷ Schmidt, Gostin & Williams, *supra* note 76, at 2023 (discussing priority vaccines for communities of color because COVID-19 “has disproportionately affected racial minorities in the United States resulting in higher rates of infection, hospitalization, and death”).

⁷⁸ Lizzie Wade, *COVID-19 Data on Native Americans is ‘A National Disgrace.’ This Scientist Is Fighting to Be Counted*, Science (Sept. 24, 2020, 12:20PM), <https://www.sciencemag.org/news/2020/09/covid-19-data-native-americans-national-disgrace-scientist-fighting-be-counted> [https://perma.cc/AXL2-YVQN].

⁷⁹ Sarah Blake Morgan, *Native Americans Embrace Vaccine, Virus Containment Measures*, AP News (February 17, 2021), <https://apnews.com/article/native-americans-coronavirus-vaccine-9b3101d306442fbc5198333017b4737d>.

⁸⁰ See Nora Mabie, *Tribes’ Vaccination Effort Proving To Be a Big Success by Emphasizing Elders and Community*, Great Falls Tribune (March 23, 2021, 6:00AM), <https://www.greatfallstribune.com/story/news/2021/03/23/montana-native-american-tribes-see-successful-covid-19-vaccine-rollout/4801837001/> [https://perma.cc/KX8E-S94U], (“The Blackfeet Nation has successfully vaccinated more than 95% of its eligible population.”); Harmeet Kaur, *Tribal Health Providers Have Figured Out the Key to Covid-19 Vaccine Success. Here’s Their Secret*, CNN (February 26, 2021, 8:16AM), <https://www.cnn.com/2021/02/09/us/tribal-health-providers-covid-vaccine-trnd/index.html> [https://perma.cc/JP94-KX4N].

⁸¹ Jack Healy, *Plenty of Vaccines, but Not Enough Arms: A Warning Sign in Cherokee Nation*, N.Y. Times (March 16, 2021), <https://www.nytimes.com/2021/03/16/us/vaccines-covid-choke-native-americans.html> [https://perma.cc/EB2A-6F8F].

⁸² Wade, *supra* note 78.

Using BIPOC would not only be incorrect but also intentionally misleading, as the language implies that Native Americans are central to the data, when in fact they are missing. Ideally, public officials would collect that data and report it along with data on other racial/ethnic groups, but in the absence of data on Native Americans, it is clearly better to acknowledge that the group is not included rather than pretend they are by foregrounding them in name only. The data and information we do have suggest that culture, tradition, following the example of elders, and linguistic reasons are driving vaccine uptake; none of these seem critical for efforts to gain vaccine trust in the Black community, negating the need to group these communities together.⁸³

Another group disproportionately affected by the coronavirus is Filipino nurses—not nurses as a whole, not people of color generally, not even Filipinos as a group, but Filipino nurses specifically.⁸⁴ As of September 2020, thirty-two percent of the registered nurses (RNs) who had died of COVID-19 were Filipino, although Filipinos comprise just four percent of RNs in the U.S.⁸⁵ Centering Black and Indigenous populations in this conversation—when even a majority (fifty-four percent) of RNs of color who have died of COVID-19 are Filipino—does a disservice to Filipinos by rendering them invisible, lumping them into “other people of color,” while highlighting Black and Indigenous people who are neither the most relevant nor the most impacted in this scenario.⁸⁶

Pretending that these unique intersectional and historically-based experiences affect Black and Indigenous people in a deeper way than other people of color is disingenuous. COVID-19 has affected Black people differently than it has the Indigenous people—though both communities have suffered terrible consequences due to various structural constraints and limitations. However, grouping them together as BIPOC implies that the Black experience is similar to the Indigenous one, when

⁸³ Caroline Radnofsky, Matteo Moschella & Corky Siemaszko, *Native Americans Use Culture and Community to Gain Tribes’ Trust in Covid Vaccine*, NBC News (Feb. 3, 2021, 6:32PM), <https://www.nbcnews.com/news/us-news/native-americans-use-culture-community-gain-tribes-trust-covid-vaccine-n1256647> [<https://perma.cc/M2TX-LQWA>]; Kaur, *supra* note 80.

⁸⁴ National Nurses United, *Sins of Omission 12* (2020), https://www.nationalnursesunited.org/sites/default/files/nnu/graphics/documents/0920_Covid19_SinsOfOmission_Data_Report.pdf [<https://perma.cc/YZ3W-MLXV>]. There is likely a raceXgender effect here too, with greater numbers of Filipinas dying of COVID-19 than even their male counterparts.

⁸⁵ *Id.* at 5.

⁸⁶ *Id.*

in fact they are quite different; it also ignores the ways in which Filipinos and others carry a disproportionate share of the burden of deaths among nurses. Instead, journalists, advocates, and others should specify the individual groups involved and impacted in order to honestly report on the experiences of those affected by the pandemic within communities of color.

2. *Health Disparities*

Before COVID-19, decades of research have documented health disparities between whites and non-whites, especially focused on negative health outcomes for Black patients.⁸⁷ In comparison, there is little research documenting health effects of Native Americans who are engaged in similar healthcare settings and experiences as non-Native groups—again rendering the BIPOC term inappropriate in this context.⁸⁸ Furthermore, this year under COVID-19, researchers have documented specific negative health outcomes for Black and Latina pregnant women in certain populations.⁸⁹ The documented populations with increased COVID-19 exposure are limited to two particular raceXgender groups: Black women and Latinas. It would be incorrect to call this a problem affecting the healthcare of Black people generally or the Latinx community as a whole, as men are not pregnant and thus not affected. Similarly, research does not suggest that Asian American women or others beyond the two groups studied have endured similar negative health effects—meaning that even women of color would not be as precise a term, let alone people of color. As with health disparities generally, the little data available on Native Americans means that centering them by name using BIPOC would actually do a disservice to the community, representing purely symbolic inclusion through virtue

⁸⁷ John F. Dovidio and Samuel L. Gaertner, *Aversive Racism*, in *Advances in Experimental Social Psychology* 2 (M.P. Zanna ed., 2004); Louis A. Penner, et al., *The Experience of Discrimination and Black-White Health Disparities in Medical Care*, 35 *J. Black Psych.* 180, 181 (2009).

⁸⁸ Mary Smith, *Native Americans: A Crisis in Health Equity*, American Bar Association, https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/the-state-of-healthcare-in-the-united-states/native-american-crisis-in-health-equity [https://perma.cc/UJ2S-BF23].

⁸⁹ Leila Goldstein, *Latina and Black Pregnant Women Show High Rates of COVID-19 in Southwest Ohio*, WOSU Public Media (Jul. 14, 2020), <https://radio.wosu.org/post/latina-and-black-pregnant-women-show-high-rates-covid-19-southwest-ohio#stream/0> [https://perma.cc/D3FM-T8EU].

signaling without actual knowledge of effects on the Indigenous community.

3. Contemporary Hate Crimes

Beyond health effects, COVID-19 and political responses to the coronavirus caused increases in hate crimes against particular populations throughout the U.S. in 2020 and 2021.⁹⁰ Specifically targeted—through acid attacks, beatings, racial slurs, and workplace discrimination—were people who are Chinese, Chinese American, or those who were mistaken by their assailants as having Chinese ancestry.⁹¹ The recent killing of Asian American women specifically foregrounds violence based specifically on raceXgender identity, not about people of color, women of color, and definitely not Black and Indigenous people.⁹² Many news articles made a direct connection between high profile politicians calling COVID-19 the “Chinese virus,” “Kung flu,” or other racialized terms and heightened animosity against Asian Americans, especially from whites.⁹³ These attacks are not stand-alone acts of violence but are tied to a long history of Chinese exclusion and the hyper-sexualization of Asian and Asian American women.⁹⁴ They also draw from the racial triangulation

⁹⁰ Stop AAPI Hate released a report in August 2020 showing increases in hate crimes against Asian Americans and Pacific Islanders since March 19, 2020. Stop AAPI Hate, Stop AAPI Hate National Report 3.19.20 – 2.28.21, <https://secureservercdn.net/104.238.69.231/a1w.90d.myftpupload.com/wp-content/uploads/2021/03/210312-Stop-AAPI-Hate-National-Report-.pdf> [<https://perma.cc/W3TJ-FAAU>]; Kimmy Yam, Anti-Asian Hate Crimes Increased by Nearly 150% in 2020, Mostly in N.Y. and L.A., New Report Says, NBC News (March 9, 2021, 3:37PM), <https://www.nbcnews.com/news/asian-america/anti-asian-hate-crimes-increased-nearly-150-2020-mostly-n-n1260264> [<https://perma.cc/738D-D9ML>]; Seashia Vang, US Government Should Better Combat Anti-Asian Racism, More than 1,000 COVID-19 Related Incidents Reported, Human Rights Watch Dispatches (Apr. 17, 2020, 10:00AM), <https://www.hrw.org/news/2020/04/17/us-government-should-better-combat-anti-asian-racism#> [<https://perma.cc/TF9C-BUDV>].

⁹¹ Stop AAPI Hate reports that 40% of survivors had Chinese ancestry, the largest ethnic group affected. As these attacks depend on external identification, the “Asian” label based on phenotype was likely used as a proxy for “Chinese” and resulted in victimization. Stop AAPI Hate, *supra* note 90 at 1; Vang, *supra* note 90.

⁹² Yam, *supra* note 90 (revealing that “while [hate] crimes in 2020 decreased overall by 7 percent, those targeting Asian people rose by nearly 150 percent”).

⁹³ Vang, *supra* note 90; Hannah Miao, Lawmakers Call for Change in Covid Rhetoric Amid Rise in Violence Against Asian Americans, CNBC (March 18, 2021, 5:36PM), <https://www.cnbc.com/2021/03/18/lawmakers-call-for-change-in-covid-rhetoric-amid-violence-against-asian-americans.html> [<https://perma.cc/9886-4S9S>].

⁹⁴ Harmeet Kaur, Fetishized, Sexualized and Marginalized, Asian Women Are Uniquely Vulnerable to Violence, CNN (March 17, 2021, 8:22PM), <https://www.cnn.com/2021/>

inherent in perceptions of Asian Americans as the “model minority” but nevertheless perpetually foreign.⁹⁵

Black and Indigenous people did not experience a rise in hate crimes against them in 2020 because they were not targeted for spreading the coronavirus in the U.S.⁹⁶ Speaking about this increase in hate crimes against Asian Americans as a BIPOC issue would be incorrect. It would be devastating as well as inaccurate to center Black and Indigenous communities in this conversation, which is not about them or their suffering. Furthermore, using the BIPOC term in this instance would do a disservice to the very Asian Americans who are most affected by these attacks by erasing them from the narrative—relegating them to one of the many invisible remnant people of color groups within BIPOC rather than singling them out as the primary targets of these crimes. Instead, these crimes tie directly to the perception of Asian Americans as forever foreign, un-American, outsiders.⁹⁷

Similarly, increases in hate crimes against Arab Americans and South Asian Americans in the immediate aftermath of the terrorist attacks of September 11 should not now be remembered as a broad BIPOC problem; clearly, particular groups within the umbrella of people of color were targeted and none are highlighted by using the BIPOC moniker.⁹⁸ The increase in hate crimes from two decades ago affected neither the Black nor the Indigenous communities in the way in which it terrorized South Asian, Arab American, and Muslim groups.⁹⁹ Utilizing BIPOC

03/17/us/asian-women-misogyny-spa-shootings-trnd/index.html [https://perma.cc/MH2B-XMK5].

⁹⁵ Kim, *supra* note 70, at 107–08.

⁹⁶ In fact, hate crimes *decreased* for most groups in 2020. Yam, *supra* note 90.

⁹⁷ Angelo N. Ancheta, *Race, Rights, and the Asian American Experience* 16 (1998).

⁹⁸ See Bryan D. Byers & James A. Jones, *The Impact of the Terrorist Attacks of 9/11 on Anti-Islamic Hate Crime*, 5 *J. of Ethnicity in Crim. Just.* 43, 43 (2007) (“A statistically significant increase in anti-Islamic hate crime occurred after 9/11”); *Post 9-11 Backlash*, SAALT, <https://saalt.org/policy-change/post-9-11-backlash> [https://perma.cc/L9SR-XWFB] (“Since September 11th, [2001,] South Asian, Sikh, Muslim, and Arab Americans have been the targets of numerous hate crimes, as well as employment discrimination, bullying, harassment, and profiling.”).

⁹⁹ Cynthia Lee, *Hate Crimes and the War on Terror* (2008) (“In the days, weeks, and months immediately following the 9/11 attacks, Arab-Americans, South Asian-Americans, Muslim-Americans, and Sikh-Americans were the targets of widespread hate violence”); Elly Belle, *Yes, 9/11 Did Cause an Increase in Islamophobia*, *Refinery 29* (Sept. 11, 2020, 2:39PM), <https://www.refinery29.com/en-us/2020/09/10019797/islamophobia-after-911-september-11-hate-crimes> [https://perma.cc/C8F5-DWFW] (noting hate crimes against Muslims jumped from 28 in 2000 to 481 in 2001).

terminology when discussing these hate crimes would further marginalize the very victims most impacted by those acts of violence by purposefully centering two groups (Black and Indigenous people) whose experiences are not actually central to the hate incidents or ongoing harms.

4. Police Violence

Black men are more likely than any other raceXgender group to experience violence at the hands of the police.¹⁰⁰ They are “more than twice as likely to be killed by police than are persons of other racial or ethnic groups”¹⁰¹ As such, police violence is not a BIPOC problem.

While there are a number of issues involving Native Americans and law enforcement—involving tribal sovereignty, jurisdictional concerns, discretionary measures, and enforcement—the experiences of Indigenous people interacting with police are not the same as or even similar to those of Black men.¹⁰² Black women also are targets of police violence, as we know from the state-sanctioned killings of Breonna Taylor, Sandra Bland, Attatiana Jefferson, and dozens of others.¹⁰³ Yet the crisis that is police violence against Black men is not only racial but involves raceXgender biases, stereotypes, and life ending outcomes. No other group has suffered as much targeting of state-sanctioned violence as Black men.¹⁰⁴ Rather than group them with Black women and Indigenous men and women—as would be the case if we centered them through BIPOC terminology—advocates supporting Black Lives Matter and other efforts for police reform should continue to raise awareness that this should be a concern

¹⁰⁰ Jeffrey Fagan & Alexis D. Campbell, *Race and Reasonableness in Police Killings*, 100 *Boston U. L. Rev.* 951, 1007-08 (2020).

¹⁰¹ *Id.* at 951.

¹⁰² See Addie C. Rolnick, *Recentering Tribal Criminal Jurisdiction*, 63 *UCLA L. Rev.* 1638, 1647 n.29 (2016) (discussing various “grey areas” between criminal law and tribal jurisdiction “neither Congress nor the Supreme Court has directly addressed”); Jeffery T. Ulmer & Mindy S. Bradley, *Criminal Justice in Indian Country: A Theoretical and Empirical Agenda*, 2 *Ann. Rev. Criminology* 337, 337 (2019) (discussing “the complexities of criminal jurisdiction in Indian Country”).

¹⁰³ Brianna Scott, *Author: Black Women’s Experiences with Police Brutality Must Be ‘Invisible No More’*, NPR (July 16, 2020, 5:37PM), <https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/07/16/892015743/author-black-womens-experiences-with-police-brutality-must-be-invisible-no-more> [<https://perma.cc/UN3P-5ND7>]

¹⁰⁴ Tia Sherée Gaynor, Seong C. Kang, & Brian N. Williams, *Segregated Spaces and Separated Races: The Relationship Between State-Sanctioned Violence, Place, and Black Identity*, 7 *The Russell Sage Found. J. of the Soc. Sci.* 50 (2021).

for all people though it affects, first and foremost, Black men.¹⁰⁵ Using BIPOC here, as elsewhere, would be both incorrect and inappropriate. Continuing to center Black Lives Matter, which recognizes the challenges facing both Black men and Black women in police interactions, is critical to the effort. Changing the narrative to BIPOC Lives Matter would clearly be counterproductive as well as improper in dealings with this and other state-sanctioned violence.

5. *Mass Incarceration*

Over the past two decades, advocates have drawn significant attention to the mass incarceration and resulting disenfranchisement of Black men—not men of color, not people of color, not even Black women to the same degree.¹⁰⁶ “Black men are six times as likely to be incarcerated as white men,” a disparity larger than any other raceXgender group.¹⁰⁷

As with police violence, it would be disingenuous to talk about mass incarceration as an issue affecting those in the BIPOC community. Doing so would center one group (Black people) appropriately and another group (Indigenous people) inappropriately, since the little data we have on Indigenous incarceration rates suggest that while over-incarceration is a problem, the causes and context involving the Indigenous population are very different from those facing Black men.¹⁰⁸ Latino men, who are twice as likely to be incarcerated as white men, are facing a crisis as well though it is different from what their Black male counterparts endure.¹⁰⁹ Instead, because the raceXgender group targeted by criminal justice policies is Black men, that is the community that should specifically be named by allies, advocates, and academics who seek to draw attention to the problem.

¹⁰⁵ Williams, Mezey & Singh, *supra* note 18.

¹⁰⁶ See Michelle Alexander, *The New Jim Crow* 19 (2020).

¹⁰⁷ The Sentencing Project, *Criminal Justice Facts* (2020), <https://www.sentencingproject.org/criminal-justice-facts> [<https://perma.cc/4Y2H-4VZY>].

¹⁰⁸ Roxanne Daniel, *Since You Asked: What Data Exists about Native American People in the Criminal Justice System?*, Prison Policy Initiative (Apr. 22, 2020) (“While Census data reveals that Native populations are overrepresented in the criminal justice system, other information that could shed more light on the issue is sparse”), available at: <https://www.prisonpolicy.org/blog/2020/04/22/native> [<https://perma.cc/S57V-HGUB>].

¹⁰⁹ The Sentencing Project, *supra* note 107.

6. *Current Immigration Policies*

The immigration context as a whole is one that cannot draw in a straightforward fashion from BIPOC terminology and still do justice to the groups most affected. A majority of recent immigrants to the U.S. are from Asia and Latin America, neither of which are foregrounded in BIPOC language. Why then would advocates for immigration reform or racial justice in the immigration context talk about the experiences of people from the BIPOC community? Instead, Latinx and Asian Americans should be highlighted in most discussions related to historical or contemporary U.S. immigration policy.¹¹⁰

There are of course specific contexts even within the immigration arena where it is even more critical that we carefully name the groups affected and center their experiences over all others. Family separation—the policy whereby children were separated from parents applying for asylum or seeking immigration at the U.S.-Mexico border—is a prime example.¹¹¹ Of the 545 children who were taken from their families as early as July 2017 and whose parents cannot now be found, over two-thirds are from Central America; many are currently living with sponsors or extended family members in the U.S., most of whom are likely Latinx as well.¹¹² Clearly this is an issue that directly affects the Latinx community (a group with significant intra-racial diversity even with regard to ethnicity, language, culture, and other characteristics) over all others, even other immigrants; family separation is not an issue or experience that should center Black or Indigenous Americans over the community that is currently suffering the greatest harm and has the most to gain from a current reckoning and potential reformation.¹¹³

¹¹⁰ While migration from the African continent to the U.S. has increased significantly in the past few decades, it is a comparatively small fraction of overall immigration; Black immigrants represent about 3% of the U.S. foreign-born population. See Randy Capps, Kristen McCabe & Michael Fix, *Diverse Streams: African Migration to the United States*, 2 Migration Policy Institute (2012), <https://www.migrationpolicy.org/pubs/CBI-AfricanMigration.pdf> [<https://perma.cc/DRA9-FLF4>].

¹¹¹ Teo Armus & Maria Sacchetti, *The Parents of 545 Children Separated at the Border Still Haven't Been Found. The Pandemic Isn't Helping*, Wash. Post (Oct. 21, 2020, 6:28PM), <https://www.washingtonpost.com/nation/2020/10/21/family-separation-parents-border-covid> [<https://perma.cc/3NNU-AQJW>].

¹¹² Some of these children may also have Indigenous roots, though in a very different context, history, and environment than Native Americans.

¹¹³ BIPOC would also be misleading in the immigration context when referencing how U.S. foreign policy prevented people from many predominantly Muslim nations from lawfully entering the country between 2017 and 2021. Shoba Sivaprasad Wadhia, *National Security*,

CONCLUSION

In 2020, we witnessed a racial reckoning in the wake of thousands in the streets protesting police violence against the Black community. It remains to be seen whether there will be a resulting reformation, and, if so, whether it will manifest as small but meaningful steps in line with past anti-subordination principles or a long overdue restructuring of the racial hierarchy on the path toward antiracism. Any reformation must pay careful attention to the language we use—including changes in terms involving race, racism, and resistance. There must be opportunities for communities—people of color collectively and separately—to navigate new terms and advocate for how they themselves prefer to be identified.¹¹⁴ How we name things is a powerful marker of our priorities and preferences. For instance, while efforts to advance diversity remain, they are now increasingly supplemented with meaningful attention to promote antiracist action. Those who previously pushed for people from diverse backgrounds to have a seat at the table are now demanding their voices be heard and included in decision making.¹¹⁵

Yet we must safeguard against modifications in language that take hold without advancing real progress. Change may not mean evolution or forward progress. New terms are not always better, especially without grassroots efforts or meaningful reflection among community members. When considering language that groups people from different backgrounds together, the term BIPOC is not better than those previously in use. Using the name people of color gives non-whites from all backgrounds an opportunity to band together when considering issues involving them all, and especially differences between them as a group as compared to whites. Similarly, allies, advocates, and academics who seek to incorporate the critical intersection of raceXgender in particular instances should continue to utilize the term women of color. When individual groups should be highlighted in particular contexts, those should be named specifically instead of using people of color, women of color, or BIPOC.

Using the term BIPOC, however, creates a hierarchy within people of color preferring two groups that, while foundational to U.S. race relations,

Immigration and the Muslim Bans, 75 Wash. & Lee L. Rev. 1475 (2018); Proclamation No. 10141, 86 Fed. Reg. 7005 (Jan 20, 2021).

¹¹⁴ This Essay lays a foundation for how advocates, academics, and allies should use racial language; it does not prescribe how individuals identify themselves.

¹¹⁵ Deo, *supra* note 10.

may not be foundational to every contemporary project or discussion involving race. Furthermore, although the term centers Black and Indigenous people in name, these groups may nevertheless remain at the periphery of power and inclusion—for instance, as continuously occurs when Native Americans are excluded from the data on empirical projects that then seek to reach sweeping generalized conclusions. Virtue signaling—making changes only in name and for the express purpose of highlighting one’s morality—does not indicate progress.

Instead of blindly using the term BIPOC, allies, academics, and advocates should think critically about the issue they seek to promote, consider the data or arguments they have to support their efforts or conclusions, and utilize the term that best fits their needs. Sometimes this will be people of color, when considering how the experiences of people of color as a whole differ from those of whites. Other instances call for the use of women of color, especially when highlighting differences by raceXgender and drawing attention to the experiences of women (as distinct from men of color) from a variety of non-white backgrounds (as distinct from white women).

This Essay has demonstrated instances where BIPOC clearly fails. It can be misleading, overly simplistic, and even incorrect when centering the experiences of Black and Indigenous communities over others within the people of color umbrella. This belittles those who are virtually erased, ignores the realities of the issue under review, and harms the communities it purports to highlight by centering them in name only. It is critical that academics, advocates, and allies utilize language that is better than BIPOC, as is evident after applying the thesis to the clear examples outlined earlier where particular groups, besides Black and Indigenous, must be foregrounded.

The next step in future work is to apply the main thesis presented here—that individual groups should be named and highlighted depending on the context, data, or argument, rather than using the BIPOC term for every racialized situation—to more complex and complicated circumstances. It is easy to see how BIPOC should not be used when discussing immigration policy or hate crimes against Asian Americans during the coronavirus pandemic, but what about the more challenging context of legal education, considering how students from different backgrounds perceive issues of diversity, or how raceXgender

background affects law faculty experiences?¹¹⁶ Analyzing this thesis through these and other more nuanced examples will illustrate its broader reach and application.

In both simple and complex cases, grouping disparate peoples together can serve to increase power and political clout; yet it can also erase those who are minorities within the groups. To avoid that risk in particular circumstances, it is sometimes best to disaggregate data and separate groups. The most effective use of language is when allies, advocates, and academics use the names of the groups actually included and centered in the arguments themselves, paying close attention to the context and the communities involved and utilizing matching terms. Although BIPOC fails, there are other paths forward that will lead to more meaningful change.

¹¹⁶ The thesis that using the BIPOC term does not work in particular situations is applied to the more complicated context of legal education in Deo, *supra* note 9.