

PARDON ME PLEASE: CYNTOIA BROWN AND THE JUSTICE SYSTEM'S CONTEMPT FOR THE RIGHTS OF BLACK PEOPLE

*Danielle Wingfield-Smith**

The outcry that precipitated Cyntoia Brown's pending release on August 7, 2019 is a resonating reverberation of the voices of counter-resistance, which continue to echo in the halls of American injustice. From the social media platforms for social justice to the chambers of the Supreme Court, the pleas for pardon are nothing new. Pardon me for driving, pardon me for walking home from the store, pardon me for walking in the street with friends, pardon me for playing with toys—all while Black.¹ While you're at it, excuse me for wanting the right to equal education. As a matter of fact, excuse me for breathing.

Sixteen-year-old Cyntoia Brown, a victim of child trafficking, was tried as an adult and sentenced to life in prison for the murder of a man who bought her for sex. She was to spend 51 years in prison before becoming eligible for parole.² Despite the fact that Cyntoia lost 15 years of her life in prison, in January 2019 Black America celebrated the announcement that the outgoing governor of Tennessee, Bill Haslam, granted her

* Of Counsel, Child Advocate Law Firm, Charlottesville, VA. J.D., University of Richmond School of Law; Ph.D., University of Virginia.

1. See Josh Hafner, *Police killings of black men in the U.S. and what happened to the officers*, USA TODAY (Mar. 30, 2018), <https://www.usatoday.com/story/news/nation-now/2018/03/29/police-killings-black-men-us-and-what-happened-officers/469467002/>. High profile police brutality cases where officers killed Black men and boys, precluding them from pardon, are numerous and has garnered national attention and prompted protests around the country. An officer shot and killed Philando Castile in Falcon Heights, Minnesota on July 6, 2016 after being pulled over for a broken tail light; an officer shot and killed Walter Scott in North Charleston, South Carolina on April 4, 2015 after being pulled over for a broken tail light; an officer shot and killed 12-year-old Tamir Rice in Cleveland, Ohio on November 22, 2014 outside of a recreational center for having a toy gun. See also *State v. Zimmerman*, No. 12-CF-A (Fla. Cir. Ct. July 13, 2013); George Yancy, *Walking While Black in the 'White Gaze'*; N.Y. TIMES (Sept. 1, 2013), <https://opinionator.blogs.nytimes.com/2013/09/01/walking-while-black-in-the-white-gaze/> ("As black, Trayvon was already known and rendered invisible. His childhood and humanity were already criminalized as part of a white racist narrative about black male bodies. Trayvon needed no introduction: 'Look, the black; the criminal!'""). In this high-profile case a 17-year-old boy, Trayvon Martin, was shot and killed after walking home from a convenience store prompting a national conversation about the history of race and the law, stand your ground laws, and what it is like to be Black and male in America.
2. See *State v. Brown*, No. M200700427CCAR3CD, 2009 WL 1038275 (Tenn. Crim. App. Apr. 20, 2009).

clemency under public pressure on the basis of what he called a “tragic” case.³ Though a true cause for celebration, her case begs the question: why has the life and liberty of Black people, including the lives of Black youth, continuously been so grievously devalued by the justice system? Is it possible that the system sees the lives of Black people as more valuable when they are housed within privatized penal systems than as productive members of society?

The “resistance” of the masses pleads for social justice reforms regarding climate change and deliverance from oligarchy,⁴ while still unwittingly keeping covenant with the American way. The American way is a capitalistic system that places one social group under another for the purpose of securing the prosperity of a select few.⁵ The justice system serves the capitalist nature of society in a number of ways, but primarily by feeding the profits of the prison industrial complex. This system benefits by funneling billions in tax dollars into its coffers under the guise of keeping America safe.⁶ As with slavery, the housing of Black people by the means of unjust sentencing is truly egregious and abhorrent. That being true, Black people like Cyntoia still find themselves enmeshed within the fabric of a society that is purposefully designed to enslave the bodies and even the *Souls of Black Folk*.⁷ Micro-factions, amid global systems of oppression, proliferate and continue to manifest in innumerable forms in an effort to resist the humanity of Black people and fuel the hopes of dreams of the majority. But, as seen in the case of Cyntoia, the counter-

-
3. See Samantha Schmidt, *Cyntoia Brown, sentenced to life for murder as teen, is granted clemency*, WASH. POST (Jan. 7, 2019), https://www.washingtonpost.com/local/social-issues/cyntoia-brown-a-16-year-old-sentenced-to-life-for-murder-granted-clemency/2019/01/07/8f4ac71e-12a2-11e9-803c-4ef28312c8b9_story.html?noredirect=on.
 4. Protests, one of the many forms of resistance, are taking place all over the country over to climate change and other social justice issues. See *Prison Strike 2018*, INCARCERATED WORKERS ORGANIZING COMMITTEE, <https://incarceratedworkers.org/campaigns/prison-strike-2018> (last visited May 3, 2019); *People of Color Are on the Front Lines of the Climate Crisis*, GREEN AM., <https://www.greenamerica.org/climate-justice-all/people-color-are-front-lines-climate-crisis> (last visited May 3, 2019).
 5. See MANNING MARABLE, *HOW CAPITALISM UNDERDEVELOPED BLACK AMERICA* (2015) (arguing “how and why racism and capitalism continue, predicting that freedom for Black Americans cannot be achieved in a capitalistic society and offers a way forward”).
 6. Peter Wagner & Bernadette Rabuy, *Following the Money of Mass Incarceration*, PRISON POLY INITIATIVE (Jan. 25, 2017), <https://www.prisonpolicy.org/reports/money.html> (reporting mass incarceration costs state and federal governments and American families \$182 billion annually, which is \$100 billion more than reported by the Bureau of Justice Statistics). See also *Corrections Spending per Capita*, HAMILTON PROJECT (Oct. 21, 2016), http://www.hamiltonproject.org/charts/corrections_spending_per_capita; *Mass Incarceration Costs \$182 Billion Every Year, Without Adding Much to Public Safety*, EQUAL JUST. INITIATIVE (Feb. 6, 2017), <https://eji.org/news/mass-incarceration-costs-182-billion-annually>.
 7. W.E.B. DU BOIS, *THE SOULS OF BLACK FOLK* 12 (1903), <https://www.gutenberg.org/files/408/408-h/408-h.htm> (“To be a poor man is hard, but to be a poor race in a land of dollars is the very bottom of hardships. He felt the weight of his ignorance, —not simply of letters, but of life, of business, of the humanities; the accumulated sloth and shirking and awkwardness of decades and centuries shackled his hands and feet.”).

resistance for social justice, composed of activists, lawyers, politicians and the voices of on-the-ground leaders, is still alive and well.

As the voices of the counter-resistance are amplified with the help of social media, I assert that now may be a good time to take a retrospective look at the hard fought battles of the past. In light of cases like Cyntoia's, society is at risk of focusing on pseudo-impactful events, which appear as evidence of real social change. Therefore, it is critical that leaders in today's social justice movements come to understand strategies revealed in the historical record surrounding social justice issues that relate to Blacks. The 1954 *Brown v. Board of Education*⁸ decision to integrate schools serves as an example of a victory that ultimately changed the landscape of a divided nation. The fight was for equal access to education. It was a hard-fought win that came not only from the jurisprudence of civil rights attorneys, but also from marching in the streets, preaching in pulpits, the calling persistently for morality from allies, and lawyers serving as courtroom warriors who summoned genius strategies that would topple unjust decrees. Still, the machine would not turn. The Virginia Way, a white supremacist regime cloaked in congeniality, would take the lead in Massive Resistance, refusing to integrate schools; thus, opposing the court's ruling. "Shut 'em down," I imagine was the call of the day, as controlling powers chose to shut the public schools of Prince Edward County down rather than allow little Black children to sit in the same classrooms as little White children. Alternately, they opened private schools using taxpayer dollars so that White children could continue to learn. It was not until the U.S. Supreme Court outlawed privatized education through tuition grants five years after its closing that the County reopened schools and Black children would be afforded the equal protection of the law, which was supposedly guaranteed them by the Fourteenth Amendment.⁹

Virginia lawyers like Oliver W. Hill, Samuel W. Tucker, and Henry L. Marsh, III fought from Richmond, Virginia, the former capital of the Confederacy, against what became known as "Massive Resistance."¹⁰ Massive Resistance, which was the pushback against laws that demanded equal treatment of Black students and led by Senator Harry F. Byrd, emanated from the legislative branch of government. The goal of the Byrd

8. 347 U.S. 483 (1954).

9. Long after the Brown decision, the debate persists regarding the right to education, the federal role in education, inequitable school funding, and the resegregation of schools. The question remains whether the massive resistance to the Brown decision has subsequently worsened the state of inequality in education and if a more radical solution could have averted such unintended consequences. Some scholars argue that children are not growing up in a society much different from the one in existence pre-Brown. See William L. Taylor, *Brown, Equal Protection, and the Isolation of the Poor*, 95 YALE L.J. 1700 (1986); Gary Orfield & Chungmei Lee, "Brown" at 50: *King's Dream or "Plessy's" Nightmare*, THE CIVIL RIGHTS PROJECT AT HARVARD UNIVERSITY 1–54 (2004), <https://files.eric.ed.gov/fulltext/ED489168.pdf>.

10. For discussions of *massive resistance*, see MATTHEW D. LASSITER & ANDREW B. LEWIS, *THE MODERATES DILEMMA: MASSIVE RESISTANCE TO SCHOOL DESEGREGATION IN VIRGINIA* (1998); BRIAN J. DAUGHERITY, *KEEP ON KEEPING ON: THE NAACP AND THE IMPLEMENTATION OF Brown v. Board of Education in Virginia* (2016).

Political Machine was to enact new laws and policies to subvert the power of the judiciary.¹¹

It took every player in the narrative—brave students, lawyers, locally elected officials, and other activists—to become “leaders,” persons who helped to drive the movement’s efforts and mandate social change. This counter-resistance was led largely from civil rights lawyers and politicians of the 1960s. There was a shift in political power in 1977 at the election of Henry L. Marsh, the first Black mayor of Virginia’s State capital, and with him came the first Black majority city council. Marsh was elected to the Senate of Virginia in 1991. As in the case of desegregation, the rise of Black people in power did not occur by happenstance, but rather the through strategic efforts. This type of sustained and increasingly radical organizing is important to understand because, like the efforts to massively resist the *Brown* ruling, there is still great opposition to Black progress.

That being said, pardon me if I take a moment to congratulate all of the Black women who won seats in Congress in the 2018 electoral cycle,¹² yielding the largest Black female congressional membership in the history of the country.¹³ Also, pardon me if I celebrate the fact that Black movie directors are taking control of the Black narrative with blockbuster films, which broke records in 2018.¹⁴ Please excuse me for highlighting the fact

11. *See Id.*

12. *See Women of Color in Elective Office 2018*, CTR. AM. WOMEN & POL. (2018), <https://cawp.rutgers.edu/women-color-elective-office-2018> (last visited May 3, 2019) (“Of the 110 women serving in the 115th U.S. Congress, 39, or 35.5%, are women of color; in addition, a Black woman, a Latina, an Asian Pacific Islander, and a Caribbean American woman serve as Delegates to the House from Washington, DC, Puerto Rico, American Samoa, and the Virgin Islands, respectively. Women of color constitute 7.3% of the total 535 members of Congress.”). *See also* P.R. Lockhart, *Black women turned electoral power into political power in 2018*, VOX (Nov. 9, 2018), <https://www.vox.com/identities/2018/11/9/18079046/black-women-candidates-history-midterm-elections> (“For the first time in U.S. history, more than 20 black women will serve in Congress.”).

13. The emergence of Black people in elite positions signals that a political transformation has occurred since the struggle for Black political power in the 1960s. For those like Henry L. Marsh, the first Black mayor of Richmond, Virginia and Maynard Jackson, the first Black mayor of Atlanta, the rise to political power was not easy. *See* KEEANGA-YAMAHTTA TAYLOR, *FROM #BLACKLIVESMATTER TO BLACK LIBERATION 15* (2016) (discussing this history of Black elected officials and arguing that “[t]he most significant transformation in all of the Black life over the last fifty years has been the emergence of a Black elite, bolstered by the Black political class. . .”). *See also* MANNING MARABLE, *BLACK LEADERSHIP* (1998). On the other hand, the ascent of a Black political class brings into question whether this class is complicit in furthering the same capitalist system that has historically enslaved Black people from the cotton fields to the penitentiary. *See, e.g.*, CEDRIC J. ROBINSON, *BLACK MARXISM: THE MAKING OF THE BLACK RADICAL TRADITION* (2000). However, each of these newly-elected congresswomen has the unprecedented opportunity to use their position to stand against oppressive capitalism.

14. *See* Sarah Whitten, *Record number of black directors among 2018’s top films, earning \$1.6 billion at the box office*, CNBC (Jan. 4, 2019), <https://www.cnbc.com/2019/01/04/record-number-of-black-directors-among-2018s-top-films.html> (describing the success of Hollywood’s small coterie of Black filmmakers in 2018).

that the number of Black lawyers in the U.S. continues to rise.¹⁵ Last but not least, congratulations to Cyntoia whose clemency is a result of the political pressure of movement leaders, social media activists, clergy, entertainers, and others. In her individual case, there was an encompassing plan in place. Now that we know that we have what it takes to pull off 60s-like wins, despite the unfairness of the American judicial system, let's aim higher. There must be broader reaching plans to change the landscape of America, but there is no need to recreate the wheel. In the 60s, legal advocates played a leading role among strategists committed to dismantling systemic injustice. I believe this must be the case today.

Those who are making the plea for Black equality, including lawyers and up-and-coming politicians, activists, and others can benefit not only from a court-centered narrative of legal history, but also from biographical examinations of civil rights lawyers of the past to better understand patterns of resistance and counter-resistance. The strategic navigation of laws and policies is imperative in the current political climate; now is just the right time to come together in thoughtful contemplation of victories won. All of America knows that Cyntoia Brown's imprisonment is the mere reflection of greater economic, social, and legal challenges that still face Black people even until this very hour.

It is my understanding that Cyntoia will be joining the community outreach efforts of a notable Christian congregation upon her release. Who knows, maybe she will be a lawyer one day. Whether she does or not, let's appreciate how her life's story has reminded us that there remains work to be done, and that it is ok to look back as we prepare to move forward.

15. *New ABA data reveals rise in number of U.S. lawyers, 15 percent increase since 2008*, AM. BAR ASS'N (May 11, 2018), https://www.americanbar.org/news/abanews/aba-news-archives/2018/05/new_aba_data_reveals/.