

**SOCIAL CONSTRUCTION OF RACE
UNDERGIRDS RACISM BY PROVIDING
UNDUE ADVANTAGES TO WHITE PEOPLE,
DISADVANTAGING BLACK PEOPLE AND
OTHER PEOPLE OF COLOR, AND
VIOLATING THE HUMAN RIGHTS OF ALL
PEOPLE OF COLOR**

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* Professor Emerita, University of Arkansas at Little Rock, William H. Bowen School of Law. Although the editors of the *University of Colorado Law Review* prefer not to use racial slurs in this journal, I have chosen to keep a racial slur in a quote in Footnote 94 of this Article. See *A Note from the Editors: Content Warning*, in 94 U. COLO. L. REV. 373 (2023). The quote provides the context for the point being made in the Article of the hateful opinion members of the White mob in Tulsa had of the Black people they were about to murder and whose homes they were about to destroy in the Greenwood District. It is also my view that deleting the racial slur from the quoted material or rephrasing it to attempt to make it "politically correct" does not advance racial justice. The goal is not to change history. Rather, the goal is to not repeat history. This Article is dedicated to Black people and people of color who have suffered under the yoke of the human constructed theory of "White supremacy" since the 1600s, losing life, limb, livelihood, family, and social connections. White people, generally, have gained on a large and small scale, both materially and non-materially, often as the result of violence perpetrated by them on Black people and other people of color. Although the socially constructed White Supremacy affects all people of color, its focus is on Black people of African descent.

The social construction of race is fundamentally a story of power, in which those in positions of political, economic, and social authority create and recreate categories of difference and assign meaning and value on the basis of those categories to maintain and naturalize their own dominance.¹

INTRODUCTION

This Article presents a reframing of the description and, therefore, the analysis of White on Black violence. It explores the role the internalization of the socially constructed racial hierarchy plays in creating White on Black violence, seen most vividly in racial massacres such as the one that occurred in 1921 in Tulsa, Oklahoma.² This reframing also applies to other acts of violence against Black people by White people, whether acting in positions of institutional authority, such as law enforcement,³ or acting individually against a Black person without any perceivable threat to their well-being.⁴ The lynchings that took place in the United States between the mid-1860s to the 1950s, documented by the Equal Justice Initiative, implicate both White people in authority positions as well as individual White people.⁵ Finally, this Article suggests that a way to dismantle this social construction is through the development and implementation of a reparations model.

I began developing this reframing in 2004 when I started a tenure-track position at the University of Arkansas Little Rock William H. Bowen School of Law. My legal practice and other

1. Melissa N. Stein, *Race as a Social Construction*, in *BLACK WOMEN IN AMERICA* (Darlene Clark Hine ed., 2d ed. 2005).

2. See OKLA. COMM'N TO STUDY THE TULSA RACE RIOT OF 1921, TULSA RACE RIOT (2001), www.okhistory.org/research/forms/freport.pdf [<https://perma.cc/5RSU-DAAC>] [hereinafter TULSA RACE RIOT]. Tulsa, unfortunately, does not stand alone. There have been a number of racial massacres led by White people that resulted in the destruction of Black communities in white or significant part, including in Elaine, AR (1919) and Rosewood, FL (1923).

3. *E.g.*, The 2020 cases of George Floyd, murdered by White policemen on the Minneapolis Police Force, and Breonna Taylor, murdered by Louisville, KY police officers.

4. *E.g.*, Richard Fausset, *What We Know About the Shooting Death of Ahmaud Arbery*, N.Y. TIMES (Aug. 8, 2022), <https://www.nytimes.com/article/ahmaud-arbery-shooting-georgia.html> [<https://perma.cc/GP76-TDM4>] (describing the 2020 murder of Ahmaud Arbery in Georgia, the perpetrators of which were all White).

5. EQUAL JUST. INITIATIVE, LYNCHING IN AMERICA: CONFRONTING THE LEGACY OF RACIAL TERROR (3d ed. 2017).

teaching positions all focused in some way on racial justice.⁶ My scholarly interest was primarily in reparations. My first article to satisfy the tenure-track requirements did not address the social construction of race explicitly,⁷ although it is implicit in that article as well as others that followed.⁸ As many scholars do, I read broadly and narrowly in researching for my articles, including the first article to make the case for reparations from the American Bar Association.⁹ This broad reading included Derrick Bell's casebook, *Race, Racism, and American Law*, and his discussion of the racial hierarchy that was constructed to maintain Black people in a subordinate role.¹⁰ Ian Haney Lopez also presented a cogent analysis on the social construction of race in his 1994 article.¹¹ However, my initial response was not the arousal of intellectual curiosity. It was visceral: my whole physical and emotional being shouted "NO!" The social construction of race and the concomitant racial hierarchy, constructing the status of the "races," had been taught to generations of people worldwide for centuries and had been so internalized that the first lie, the lie that underpins all the other lies, was that race is a biological fact. I, not unlike most people regardless of their "race," was raised to believe that race was a biological factor—a genetic predeterminate of identity. This was taught in school, was the basis of sermons, was reinforced in the media, and, most significantly, was the basis of and explanation for brutal "racial" oppression.¹² The fact that as I taught

6. My experience includes being a staff attorney with the United States Department of Justice, a staff attorney and director of administration for the ACLU National Prison Project, Administrator at the Congressional Black Caucus Foundation, Executive Director of the National Conference of Black Lawyers, and a founding member and a national co-chair of the National Coalition of Blacks for Reparations in America.

7. See Adjoa Artis Aiyetoro, *Truth Matters: A Call for the American Bar Association to Acknowledge Its Past and Make Reparations to African Descendants*, 18 GEO. MASON UNI. C.R. L.J. 51 (2007).

8. See Adjoa A. Aiyetoro, *Can We Talk? How Triggers for Unconscious Racism Strengthen the Importance of Dialogue*, 22 NAT'L BLACK L.J. 1 (2009); Adjoa A. Aiyetoro, *Why Reparations to African Descendants in the United States Are Essential to Democracy*, 14 GENDER, RACE & JUST. 633 (2011); Adjoa Aiyetoro, *Achieving Reparations While Respecting Our Differences: A Model for Black Reparations*, 63 HOWARD L.J. 329 (2020).

9. See Aiyetoro, *supra* note 7.

10. DERRICK BELL, *RACE, RACISM, AND AMERICAN LAW* (6th ed. 2008).

11. Ian F. Haney Lopez, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 HARV. C.R.-C.L. L. REV. 1 (1994).

12. See discussion *infra* Section I (discussing the solidification of the racial hierarchy to justify slavery).

seminars on race some students initially resisted the view that race was a social construct but were willing to sit with the uncomfortableness this raised for them fueled my interest in applying this knowledge in analyzing racial oppression for which reparations are required.

The thought to rank or categorize people due to differences in appearance, known as *phenotype*, began with Europeans and spread throughout Europe and to the Americas. This racial hierarchy was formalized by a U.S. scientist and embraced throughout the United States and Europe to rationalize and defend Europe's and the United States' acts of violence against Africans and the development and implementation of the enslavement of Africans.¹³ The construct of the racial hierarchy justified the use of brute force and other inhumane actions to subordinate African peoples and maintain systems of oppression.

The embrace of this artificially constructed racial hierarchy is the conscious and frequently unconscious rationale for racial massacres of communities such as Tulsa, Oklahoma. It also is frequently used to justify the daily physical, social, and economic violence against Black people by institutions and systems in the United States, including law enforcement, educational institutions, and those that control the economic lives of people. It is the answer to the post-slavery and post-Jim Crow question: Why are Black people at the bottom of all indicia of well-being and at the top for almost every indicia of alienation and marginalization?¹⁴

This Article examines the creation of race as a social construct. It focuses on the myths of White supremacy and Black inferiority used to justify the continuing abuse and disadvantaging of Black people specifically, and other groups of color generally. It is these constructs that lead to the destruction of thriving Black communities such as Tulsa and the refusal to acknowledge and support the genius of Black people. As Otis Clarke, a survivor of the Tulsa Race Massacre and plaintiff in

13. See discussion *infra* Section I (discussing the work of Philadelphia physician and anatomist, Samuel George Morton).

14. This is a slight modification of one of the Community Healing Network's quotable cards used to educate the Black community on the social construction of race. "Why, after all this time, when calculating the achievement of the 'American dream,' are we still ranked at the bottom of almost every 'good' list and at the top of the 'bad' lists?" TOM BURRELL, *introduction to BRAINWASHED: CHALLENGING THE MYTH OF BLACK INFERIORITY* ii (2010).

the 2003 federal case said, “[T]hey were jealous of our little town.”¹⁵ In fact, since the lie that race is a biological fact has been believed by so many, the display of Black genius is unfathomable to many White people. Many White people and White-led institutions resolve this incongruency by inflicting physical and emotional violence on Black people and their communities.¹⁶ This reifies the fact that Black people are at the bottom of this man-made hierarchy.¹⁷

I. THE SOCIAL CONSTRUCTION OF RACE AND WHITE SUPREMACY

The social construction of race and the creation of the racial hierarchy was a fluid process that began with European scientists.¹⁸ These scientists classified people based on phenotype and ranked them with White Europeans at the top and Black Africans at the bottom.¹⁹ Samuel George Morton, a European-American scientist in the United States, built on the work of the Europeans, formalizing the racial hierarchy that was used to justify the brutal enslavement of Black Africans.²⁰ The European scientists determined their categorizations of people groups based on differences in physiognomy found in people as

15. Adjoa A. Aiyetoro, *The Tulsa Race Massacre and Making the Case for Reparations*, NEWSONE (May 31, 2021), <https://newsone.com/4159878/tulsa-race-massacre-reparations> [<https://perma.cc/B4HQ-ZBQC>].

16. *See, e.g.*, Hassan Kanu, *Breonna Taylor Case Shows Cops Can Be Charged for Lying in Search Warrants*, REUTERS (Aug. 22, 2022, 2:48 PM), <https://www.reuters.com/legal/government/breonna-taylor-case-shows-cops-can-be-charged-lying-search-warrants-2022-08-22> [<https://perma.cc/4W3H-LSJ4>] (discussing former Louisville police detective Kelly Goodlett’s falsified search warrant that led to Breonna Taylor’s death).

17. I use the term “man-made” because there is nothing in the literature about participation of White women in the development of the racial hierarchy, although they benefited from its creation.

18. *See generally* C. LORING BRACE, “RACE” IS A FOUR-LETTER WORD: THE GENESIS OF THE CONCEPT (2005) (discussing the evolution of race as a scientific concept) [hereinafter FOUR-LETTER WORD]; C. Loring Brace, *Racial Hierarchy: Races Ranked by Early Scientists*, in *ENCYCLOPEDIA OF RACE & RACISM* (John Hartwell Moore ed., 2008) [hereinafter *Races Ranked*]; Abby Ferber, *Planting the Seed: The Invention of Race*, in *RACE AND ETHNICITY IN SOCIETY: THE CHANGING LANDSCAPE* 24 (Elizabeth Higginbotham & Margaret Anderson eds., 2012) (discussing the rise of “scientific racism”).

19. *See* sources cited *supra* note 18.

20. *Id.*

they expanded their travel beyond Europe,²¹ using scientific methodology of observation and classification.²²

However, this line of scientists went beyond the scientific method's reliance on objective observation and classification. Once they began to rank groups, their personal prejudices for those like them (classified as White people) led to a ranking that descended by color, landing Black Africans at the bottom.²³

Before the fifteenth century there was no apparent need for Europeans to categorize people by distinctions in physical presentations because travel was largely over land and limited to fairly short distances—approximately twenty-five miles.²⁴ Therefore, the Europeans who travelled and recorded their observations saw very few physical differences.²⁵ Once Europeans developed the skill to build ships that traversed the oceans, they began seeing more distinct physical differences among peoples.

Ocean-going ships and navigational capabilities enabled people to sail from one continent to another . . . The native inhabitants of the end points of such voyages seemed

21. See FOUR-LETTER WORD, *supra* note 18, at 21–22; Ferber, *supra* note 18, at 25.

22. This methodology is called the scientific method. The scientific method is a series of processes that people can use to gather knowledge about the world around them, improve that knowledge, and attempt to explain why and/or how things occur. This method involves making observations, forming questions, making hypotheses, doing an experiment, analyzing the data, and forming a conclusion. Every scientific experiment performed is an example of the scientific method in action, but it is also used by non-scientists in everyday situations. *Scientific Method*, BIOLOGY DICTIONARY, <https://biologydictionary.net/scientific-method> [<https://perma.cc/K9B9-M7EK>] (Nov. 6, 2020).

23. There is no evidence that these scientists based their ranking on science, with the possible exception of Morton, who measured skull sizes of various people groups and found White (European) skulls had a larger cranial capacity than African skulls. See Jason E. Lewis & David DeGusta, *The Mismeasure of Science: Stephen Jay Gould Versus Samuel George Morton on Skulls and Bias*, PLOS BIOLOGY 1 (2011). But see Emily S. Renschler & Janet Monge, *The Samuel George Morton Cranial Collection*, 50 EXPEDITION 30, 38 (2008) (explaining that in 1988 a University of Pennsylvania undergraduate student remeasured the skulls Morton used and found his measurements accurate, debunking the argument by Stephen J. Gould in his book, *The Mismeasure of a Man*, that Morton's known prejudice against Black people influenced his science. Not denying that Morton was known to be prejudiced against Black people, C. Loring Brace indicated that Morton's creation of methods of skull measurement was a contribution to scientific understanding).

24. See *Races Ranked*, *supra* note 18.

25. *Id.*

categorically distinct, providing the mind-set that led to the establishment of the idea that human variation was represented by a finite number of separate entities called “races,” although that term did not enter common usage until the nineteenth century.²⁶

European scientists in the sixteenth and seventeenth centuries identified what they saw as different groups of homo sapiens by geographic directions (north, south, east, and west). In the early nineteenth century, however, Europeans began identifying these groups in ways that would later be designated as race. A Swedish botanist, Carolus Linnaeus, in the mid-eighteenth century, “developed the first authoritative racial division of humans in his *Natural System*, published in 1735.”²⁷ According to Professor Abby Ferber, Professor of Sociology, and Women’s and Ethnic Studies and co-founding Director of the Matrix Center for the Advancement of Social Equity and Inclusion at the University of Colorado, Linnaeus was considered the founder of taxonomy. In his racial categories, Linnaeus linked “physical features with character and cultural traits.”²⁸

Relying on the differences in physical appearance, Linnaeus created four categories of homo sapiens based on the four parts of the world: European, African, Asian, and American. Linnaeus described the four categories of homo sapiens based on what he determined to be their distinguishing behavioral characteristics: Europeans described as sanguine, gentle, acute, inventive; Africans described as bilious, crafty, indolent, negligent; Asians described as melancholic; and Americans described as choleric.²⁹ *Sanguine* is defined as “cheerful, hopeful;”³⁰ *bilious* as “irritable, ill-tempered;”³¹ *melancholic* as “depressed;”³² and *choleric* as “irascible, angry.”³³ Linnaeus and those scientists in his generation, although moving in the direction of establishing Europeans (White people) as a superior group, did not wholly

26. *Id.*

27. Ferber, *supra* note 18, at 25.

28. *Id.*

29. See FOUR-LETTER WORD, *supra* note 18; Ferber, *supra* note 18, at 25.

30. *Sanguine*, NEW EXPLORER DICTIONARY AND THESAURUS 464 (1999).

31. FOUR-LETTER WORD, *supra* note 18, at 51.

32. *Id.* at 323.

33. *Id.* at 93.

depart from the Bible's theory of creation that all peoples flowed from Adam and Eve:³⁴

[T]hen the Lord God formed the man of dust from the ground and breathed into his nostrils the breath of life . . . [t]hen the Lord God said, "It is not good that the man should be alone; I will make him a helper fit for him" And the rib that the Lord God had taken from the man he made into a woman and brought her to the man.³⁵

However, the assignment of distinct behavioral characterizations is a reflection of seeing those with different physiognomies as different and valuing (or devaluing) them based on these physical differences. This assignation of behavioral traits is subjective. No scientific study existed at the time of Linnaeus's assignments of behavioral characterizations that supported his conclusions. Linnaeus and his colleagues clearly based these behavioral characteristics on their perceptions of the groups and only limited interactions with any group except their own. It also reflects a denial of the variety of characteristics even within their own group. No group of people consistently present a distinct constellation of behavioral or mood characteristics different from other groups. So, looking at the highly positive behavioral characteristics Linnaeus ascribes only to those people classified as White, it clearly demonstrates a subjective, rather than objective, perspective. The ranking of White people as superior to the other so-called racial groups was a subjective decision that appears to be based on an inflated sense of self and lack of empathy for others. The overvaluation of the group to which these scientists identify, the hierarchy they created implicitly requiring others to look up to or admire them, and the cruelty with which White people have treated Black people and other groups of color are reflective of this perception. The underlying goal may have been acquiring power and a disproportionate share of the world's material resources (greed) to maintain their fictionalized position in the world—the lie of White supremacy. In order to maintain this lie, it was necessary to create its opposite—the lie of Black inferiority, indeed, the lie of inferiority of all so-called racial groups as compared to White people.

34. See Ferber, *supra* note 18, at 25.

35. *Genesis* 2:7,18,22 (English Standard Version).

In his doctoral dissertation, the leading European anatomist, Johann Friedrich Blumenbach of Germany, expanded the four “varieties” of humans posited by Linnaeus into five and named them after specific places: Caucasian, Mongolian, Ethiopian, American, and Malay.³⁶ Ferber suggests that Blumenbach and Linnaeus were indeed creating the construct of race and that Blumenbach ranked them on a “scale according to their distance from the ‘civilized’ Europeans.”³⁷ Whether Linnaeus and Blumenbach were creating the construct of race or not, their work set the stage for the artificial racial hierarchy that promotes White supremacy by overvaluation of their group:

[Blumenbach] regarded the Caucasian form of the skull the most beautiful in the human spectrum and believed that there was reason to accept it as representing the original human form, declaring “white ... we may fairly assume to have been the primitive colour of mankind.”³⁸

It may be too strong to say Blumenbach and the European scientists who embraced this view were delusional; however, they clearly engaged in overvaluation of their group—Caucasian. The article, *Racial Hierarchy: Races Ranked by Early Scientists*, indicates their overvaluation of White people also flowed from another error based on overvaluation—believing the early Christians who asserted that Jesus Christ was White.³⁹ Thus, these scientists were overvaluing their Whiteness and their status in the homo sapien species.

This overvaluation—not just seeing difference but having to rank their group, Caucasians, as better than others—overlooks what modern science has discovered and world religions teach. The theory that an African woman is the mother of modern humanity was first examined by scientists in the 1980s and has since been explored by popular news media.⁴⁰ Further,

36. See FOUR-LETTER WORD, *supra* note 18.

37. Ferber, *supra* note 18, at 25.

38. FOUR-LETTER WORD, *supra* note 18 (quoting JOHANN FRIEDRICH BLUMENBACH, ON THE NATIVE VARIETIES OF THE HUMAN SPECIES (Thomas Bendyshe trans., 1865)).

39. *Id.*

40. Maya Wei-Haas, *Controversial New Study Pinpoints Where All Modern Humans Arose*, NAT'L GEOGRAPHIC (Oct. 28, 2019),

archaeologists and anthropologists continue to find evidence linking Africa to the birthplace of modern humanity.⁴¹ The idea that an African woman is the mother of all modern humans has been studied by scientists for a number of years and has been introduced into popular culture by various popular news media.⁴² Scientists have also confirmed that human beings—homo sapiens—are more alike than different.⁴³

Christianity taught that Jesus was White, despite the fact that he was born in Bethlehem, present day Palestine, where the people are brown, at the time European scientists were creating a hierarchy based on location and color, as indicated above. Yet this falsehood of Whiteness as superior, implanted into a so-called scientific development, was important to create and maintain a status for gain. Needing to maintain that artificial ranking based on self-interest is the genesis of the violence and human destruction of people of color fomented by those of European, Caucasian descent.

The Philadelphia physician and anatomist Samuel George Morton studied the skull sizes of numerous groups from around the world and published *Crania Americana* in 1839.⁴⁴ Like his scientific predecessors, Linnaeus and Blumenthal, Morton interpreted his skull size research through his racially biased lens.⁴⁵ Through this lens, Morton described what he viewed were differences among the races in traits and value based on the differences in skull sizes, continuing the work of Linnaeus and Blumenbach. Thus, he endorsed the rankings given by Blumenthal to the five groups—Caucasian, Mongolian, Ethiopian, American, and Malay—and formalized the construction of racial hierarchy that ranked people groups based on color, world location, and his findings that the skull, and therefore the brain, decreased in size by degree of color.⁴⁶ His

<https://www.nationalgeographic.com/science/article/controversial-study-pinpoints-birthplace-modern-humans> [<https://perma.cc/KGA8-89ZB>].

41. *Id.*

42. See Marisa Dellato, *Turns Out All Humanity Is Related to a Single Couple*, N.Y. POST (Nov. 24, 2018, 4:44 PM), <https://nypost.com/2018/11/24/turns-out-all-of-humanity-is-related-to-a-single-couple> [<https://perma.cc/G5UN-NM9T>].

43. See JOSEPH L. GRAVES, JR., *THE RACE MYTH: WHY WE PRETEND RACE EXISTS IN AMERICA* (2005); Ferber, *supra* note 18.

44. FOUR-LETTER WORD, *supra* note 18.

45. There is no dispute that Morton held racist beliefs. As he traveled during the slavery period, his journal entries often reflected “deep racism.” Renschler & Monge, *supra* note 23.

46. See Lewis & DeGusta, *supra* note 23.

ranking of the races was adopted by White people in the United States, especially those actively supporting slavery, to justify slavery.⁴⁷ They also spread to Europe, where the founder of French anthropology, Paul Broca, adopted them. In World War I, English-speaking people joining the French side adopted the view of the validity of race and the racial hierarchy.⁴⁸

In contrast and suggesting that valuing groups based on phenotype was not essential to engaging the world beyond one's own location and group, Africans also travelled the world. These African world travelers, however, maintained a non-hierarchical perspective when meeting other peoples. There is significant scholarship on their presence in the Americas, pre-Columbus, and their encounters with people who were phenotypically and culturally different from them.⁴⁹ The scholarship on African travel in the Americas indicates that they were sharing culture rather than establishing a hierarchical relationship with other groups and putting themselves on the top.⁵⁰

This European, man-made creation of race and the racial hierarchy was used to justify horrific crimes against Black people and other people of color, which led to its reification. Cheryl Harris in *Whiteness as Property*⁵¹ and Ian Haney López in *White by Law: The Legal Construction of Race*⁵² are among the many critical race theory scholars whose work demonstrates how this construction has found its way into the economic and legal institutions of the United States. Indeed, U.S. legal institutions embrace racial hierarchy as seen in its rulings that upheld the violence against Black people from slavery to separate but equal and beyond.

47. *Races Ranked*, *supra* note 18.

48. *Id.*

49. See VAN SERTIMA, *THEY CAME BEFORE COLUMBUS: THE AFRICAN PRESENCE IN ANCIENT AMERICA* (1976); Garikai Chengu, *Before Columbus: How Africans Brought Civilization to America*, TRANSCEND MEDIA SERV. (Oct. 8, 2018), <https://www.transcend.org/tms/2018/10/before-columbus-how-africans-brought-civilization-to-america> [https://perma.cc/QB79-9NXA]; *The African Americans: Many Rivers to Cross: America's Earliest Africans* (PBS television broadcast Oct. 22, 2013); Atieno Odhiambo, *African Perspectives on Cultural Diversity and Multiculturalism*, 32 J. ASIAN AND AFR. STUD. 185 (1997).

50. See sources cited *supra* note 49.

51. Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1709 (1993).

52. Ian Haney López, *White by Law: The Legal Construction of Race*, 29 Harv. C.R.-C.L. L. Rev. 1 (1994).

II. THE LETHAL NATURE OF THE CONSTRUCTION OF THE RACIAL HIERARCHY AND WHITE SUPREMACY

The creation of the lie of White supremacy by scientists who used science to legitimize their conclusion that a group of people were superior to all other groups, because of the color of their skin and the part of the world in which they were born, has had devastating effects on Black people. The lie was used to support the rape of Africa, stealing its people to provide for forced free labor for Europeans and European Americans. The lie justified to White people the colonization of Africa. The lie justified to White people the brutal treatment required to maintain African enslavement. The lie stripped African men and women of the dignity of personhood. The lie justified the rape of African women, which was not treated as a crime but as a privilege of White maleness. The lie stripped African people of their ability to protect themselves and those they loved.

A. *Slavery*

The enslavement of African peoples in Europe, the Caribbean, and the United States was enabled by the socially constructed lie of White supremacy that naturally flowed from the racial hierarchy. A number of noted historians have written on the enslavement of African people including John Hope Franklin and Alfred A. Moss, Jr. in their book, *From Slavery to Freedom*,⁵³ and Vincent Harding,⁵⁴ while those who survived slavery have had some of their experiences documented.⁵⁵

In his seminal book, *Capitalism and Slavery*, Eric Williams describes the role the enslavement of Africans had in building wealth for White people.⁵⁶ The fundamental purpose of the enslavement of Africans in Europe, the Caribbean, and the United States was to increase the wealth of some White people

53. JOHN HOPE FRANKLIN, *FROM SLAVERY TO FREEDOM: A HISTORY OF AFRICAN AMERICANS* (8th ed. 2000).

54. VINCENT HARDING, *THERE IS A RIVER: THE BLACK STRUGGLE FOR FREEDOM IN AMERICA* (1992).

55. *See, e.g.*, *REMEMBERING SLAVERY: AFRICAN AMERICANS TALK ABOUT THEIR PERSONAL EXPERIENCES OF SLAVERY AND EMANCIPATION* (Ira Berlin et al. eds., 1998).

56. ERIC WILLIAMS, *CAPITALISM AND SLAVERY* (1994).

by decreasing costs.⁵⁷ Africans weren't standing on the shoreline of the Atlantic Ocean waving and shouting "Take me, Take me!" to those manning ships. They were not volunteering to cross the ocean and work for free for White folk. They had to be forced. The implementation and maintenance of the system of slavery that held captive millions of Africans necessitated unspeakable cruelty that is well documented.⁵⁸

The socially constructed racial hierarchy was engrained in the consciousness, the very fiber of the United States of America, by acts of physical, psychological, and social cruelty, imposed by White people and suffered by Black people and other people of color. This forced consciousness has been expressed throughout the United States post-slavery, destroying individual lives and whole communities. "[S]lavery left a deep legacy of inequality and racism, one that is still visible today . . ."⁵⁹

W. E. B. Du Bois writes eloquently about the effect of the racial hierarchy on Black people living in a world with the lie of White supremacy.⁶⁰ His "double-consciousness" describes one aspect of the psychological as well as sociological injury to Black people:

It is a peculiar sensation, this double-consciousness, the sense of always looking at one's self through the eyes of others, of measuring one's soul by the tape of a world that looks on in amused contempt and pity. One feels his two-ness . . . The history of the American Negro is the history of this

57. *Id.* For additional reading on this topic, see IBRAM X. KENDI, *STAMPED FROM THE BEGINNING: THE DEFINITIVE HISTORY OF RACIST IDEAS IN AMERICA* (2017) and Sven Beckert, *Ten Books on Slavery You Need to Read: You Can't Talk About Race Until You Fully Understand America's Past*, POLITICO (July 26, 2015), www.politico.com/magazine/story/2015/07/ten-books-on-slavery-you-need-to-read-120590 [<https://perma.cc/M9BZ-U8EQ>].

58. *Supra* notes 53–56.

59. Beckert, *supra* note 57. A number of authors chronicle the injuries done to African descendants from slavery to Jim Crow and beyond. See CHARSHÉE C.L. MCINTYRE, *CRIMINALIZING A RACE: FREE BLACKS DURING SLAVERY* (1992) (discussing the evolution of criminalizing race); KHALIL GIBRAN MUHAMMAD, *THE CONDEMNATION OF BLACKNESS: RACE, CRIME, AND THE MAKING OF MODERN URBAN AMERICA* (2010); LEON F. LITWACK, *TROUBLE IN MIND: BLACK SOUTHERNERS IN THE AGE OF JIM CROW* (1998); ELLIOT JASPIN, *BURIED IN THE BITTER WATERS: THE HIDDEN HISTORY OF RACIAL CLEANSING IN AMERICA* (2007).

60. See generally W.E.B. DU BOIS, *THE SOULS OF BLACK FOLK: ESSAYS AND SKETCHES* (Univ. Mass. Libr. 2018) (1903).

strife,—this longing to attain self-conscious manhood, to merge his double self into a better and truer self.⁶¹

This double-consciousness is not healed by Black people attaining material and social success in a society founded on the racial hierarchy and the lies of White supremacy and Black inferiority. Instead, Black people's success threatens many White people, who respond by protecting the myth of their superiority at any cost.⁶² The violence against Black people after slavery, including the racial massacres that destroyed Black communities, are examples of the lengths those who buy the lie of White superiority will go to defend it.

B. Post Slavery Violence and Terrorism: The Tulsa Race Massacre

The 1921 Tulsa Race Massacre that destroyed a thriving Black community in Tulsa's Greenwood District, known throughout the United States as Black Wall Street,⁶³ is one tragic example of how the lies of White superiority led White people to destroy a Black community. White people in Tulsa acted on the engrained view of White superiority by assuming the mere allegation of sexual assault by a Black man on a White woman was true. Most importantly, the engrained lie of White superiority told them they had the right to destroy a Black community in retaliation for Black World War I soldiers daring to challenge their efforts to exact punishment for this alleged sexual assault. And, of course, the base of this violent response is the audacity of Black people in Tulsa to create the thriving Black community known as Black Wall Street, a community that outshone all the White communities in Oklahoma, much less Tulsa. The fight to obtain reparations for that destruction is essential to exposing the violence done to people and property in

61. *Id.* at 3; see also Nasar Meer, *W.E.B. Du Bois, Double Consciousness and the 'Spirit' of Recognition*, 67 THE SOCIO. REV. 47 (2019) (analyzing Du Bois's discussion of double-consciousness as presented in the quoted material).

62. See generally ROBIN DIANGELO, *WHITE FRAGILITY: WHY IT'S SO HARD FOR WHITE PEOPLE TO TALK ABOUT RACISM* (2018).

63. Alexis Clark, *Tulsa's 'Black Wall Street' Flourished as a Self-Contained Hub in Early 1900s*, HISTORY, www.history.com/news/black-wall-street-tulsa-race-massacre [<https://perma.cc/G83H-7TK3>] (Jan. 27, 2021); EDDIE FAYE GATES, *RIOT ON GREENWOOD: THE TOTAL DESTRUCTION OF BLACK WALL STREET* (2003); ALFRED BROPHY, *RECONSTRUCTING THE DREAMLAND: THE TULSA RACE RIOT OF 1921: RACE, REPARATIONS AND RECONCILIATION* (2002).

violation of Black people's human and civil rights. Seeking reparations for the Tulsa Race Massacre challenges the underpinning of this violent attack—White supremacy.

The Commission Report, books, articles, lawsuits, and other work done by those committed to obtaining justice for Greenwood is essential to this effort. In doing so, the demand for reparations for the Tulsa Race Massacre joins with the work of others to expose the lie engrained in the consciousness of people throughout the world by European machinations that the racial hierarchy is a natural creation to which we all must accede as opposed to a man-made construct created for purposes of world control and greed.⁶⁴

The Tulsa Race Massacre of 1921 was one in a series of racial massacres fomented by White people that sought to destroy Black communities. The 1919 Elaine, Arkansas race massacre⁶⁵ and the 1917 East St. Louis massacre⁶⁶ are just two other examples. It is informative that these massacres occurred after World War I when Black men who had served in the United States Armed Services, albeit in segregated units, had returned to civilian life.⁶⁷ The destruction of these communities can be viewed as another violent effort of White people to remind Black people of their place and to put them there forcefully and cruelly. This Article focuses on the Tulsa Race Massacre because I was co-counsel for the plaintiffs in *Alexander v. Oklahoma* and, until shortly after filing, in *Randle v. City of Tulsa*.

64. See Scott Ellsworth, *The Tulsa Race Riot*, in TULSA RACE RIOT, *supra* note 2; Suzette M. Malveaux, *Statutes of Limitations: A Policy Analysis in the Context of Reparations Litigation*, 74 GEO. WASH. L. REV. 68 (2005); GATES, *supra* note 63; BROPHY, *supra* note 63; *Alexander v. Oklahoma*, 382 F.3d 1206 (10th Cir. 2004); *Randle v. City of Tulsa*, CV-2020-01179 (filed, September 1, 2020); Adjoa A. Aiyetoro, *The Tulsa Race Massacre and Making the Case for Reparations* (May 31, 2021), www.newsone.com/4159878/tulsa-race-massacre-reparations [https://perma.cc/3M4U-3ZFS].

65. See generally GRIF STOCKLEY, BLOOD IN THEIR EYES: THE ELAINE RACE MASSACRES OF 1919 (2001).

66. Allison Keyes, *The East St. Louis Race Riot Left Dozens Dead, Devastating a Community on the Rise: Three Days of Violence Forced African-American Families to Run for Their Lives and the Aftereffects Are Still in the Illinois City Today*, SMITHSONIAN MAG. (June 30, 2017), <https://www.smithsonianmag.com/smithsonian-institution/east-st-louis-race-riot-left-dozens-dead-devastating-community-on-the-rise-180963885> [https://perma.cc/3FCM-SUB3].

67. Clark, *supra* note 63; *The Tulsa Race Massacre*, OKLA. HIST. SOC'Y, www.okhistory.org/learn/trm4 [https://perma.cc/34QH-MCN6] [hereinafter OKLA. HIST. SOC'Y].

The story of the Greenwood District in Tulsa is the story of African descendants in the United States once again defying the lie created by European and European American men that there is a racial hierarchy, and that White people are at the pinnacle of it. In 1906, O. W. Gurley, a Black entrepreneur, founded Greenwood on land he purchased.⁶⁸ Gurley, with other Black people who moved to the area, created a thriving, affluent, self-sufficient community. J. B. Stradford built the Stradford Hotel, known at that time as the largest and finest African American owned hotel in the United States. Black people came from throughout the country to vacation in Greenwood and stay at this hotel.⁶⁹ A. J. Smitherman published the nationally recognized newspaper, the *Tulsa Star*, and served as the President of the Western Negro Press Association in Tulsa.⁷⁰ Nationally renowned surgeon A. C. Jackson provided medical services to Greenwood residents and White people in Tulsa.⁷¹

By 1921, more than ten thousand African Americans called Greenwood home.⁷² The community included hundreds of thriving Black-owned businesses, minimizing the need for residents to go into the White Tulsa community unless they worked in that community.⁷³ One such person was Dick Rowland, a Black, nineteen-year-old shoe shiner, who on May 31, 1921, was accused of sexually assaulting Sara Page, a seventeen-year-old White woman and elevator operator at the Drexel Building in Tulsa.⁷⁴ Rowland was arrested and taken to the police station where he was put in a jail cell. The White-controlled leadership in Tulsa declared Rowland guilty without trial, as is often the case when Black people are accused of crimes in the United States where White leadership and power structures control. The *Tulsa Tribune* published a false and

68. See sources cited *supra* note 67; Darhian Mills, *Deep Greenwood (Tulsa), Oklahoma (1906-)* BLACKPAST (Apr. 16, 2016), www.blackpast.org/african-american-history/deep-greenwood-tulsa-oklahoma-1906 [https://perma.cc/HF8F-63LH].

69. Clark, *supra* note 63.

70. *Id.*

71. Dr. Andrew Cheesten Jackson, BLACK WALL ST., <http://www.blackwallstreet.org/acjackson> [https://perma.cc/J5LK-H93R].

72. Mills, *supra* note 68.

73. *Id.*; Clark, *supra* note 63; see also BROPHY, *supra* note 63.

74. Clark, *supra* note 63; Deneen L. Brown, *His Arrest Sparked the Tulsa Race Massacre. Then Dick Rowland Disappeared*, WASH. POST (May 30, 2021, 12:00 PM), <https://www.washingtonpost.com/history/2021/05/30/dick-rowland-tulsa-massacre-sarah-page> [https://perma.cc/R3HR-9F63].

inflammatory article three hours after the accusation and arrest which accused Rowland of attempting to rape the White woman.⁷⁵ This article unleashed White supremacist rage based on yet another lie embedded in the psyche of White males through the racial hierarchy—White women were sought after lasciviously by Black men for their sexual pleasure.⁷⁶ White men in Tulsa had to protect Whiteness through protecting White womanhood.⁷⁷ Black World War I veterans went to the jail and offered their assistance to protect Rowland from the growing White crowd.⁷⁸ They were armed, as were members of the White mob who answered the call of the *Tulsa Tribune*. Members of the White mob sought to disarm the soldiers, and a shot was fired.⁷⁹ The police deputized and armed White civilians, many of whom had been part of the initial White lynch mob.⁸⁰

The White mob, incited by the racist and false allegation, gathered outside the courthouse and grew to as many as two thousand people. It included some women and children as well as adults.⁸¹ The portion of the mob that descended on Greenwood was supported by Tulsa officials.⁸² The National Guard, called in by local officials for assistance in abating the violence, rather than protecting the Black community, aided those attacking it.⁸³ Brigadier Barrett, dispatched to command the National Guard, wrote:

75. See Brown, *supra* note 74; *Nab Negro for Attacking Girl in Elevator*, TULSA TRIB. (May 31, 1921); Dave Cathey, *Skewed View of Tulsa Race Massacre Started on Day 1 With ‘The Story That Set Tulsa Ablaze’*, OKLAHOMAN, (May 26, 2021, 5:01 AM), <https://www.oklahoman.com/story/news/2021/05/26/oklahoma-history-dick-rowland-newspaper-tulsa-race-massacre/4879077001> [https://perma.cc/5JZC-GZGD]; Randy Krehbiel, *Tulsa Race Massacre: 1921 Tulsa Newspapers Fueled Racism, and One Story is Cited for Greenwood’s Burning*, TULSA WORLD (May 31, 2019), https://tulsaworld.com/news/tulsa-race-massacre-1921-tulsa-newspapers-fueled-racism-and-one-story-is-cited-for-sparking/article_420593ee-8090-5cfc-873e-d2dd26d2054e.html [https://perma.cc/WGW2-NKMB].

76. See, e.g., Emma Gray, *The History of Using White Female Sexuality to Justify Racist Violence*, HUFFPOST, www.huffpost.com/entry/white-female-sexuality-and-racist-violence-a-history_n_7613048 [https://perma.cc/Z3FM-F8Z7] (June 19, 2015).

77. See *id.*; Harris, *supra* note 51 (providing an analysis of how Whiteness is a valued commodity).

78. OKLA. HIST. SOC’Y, *supra* note 67.

79. Brown, *supra* note 74; see also *id.*; Ellsworth, *supra* note 64.

80. Ellsworth, *supra* note 64, at 64.

81. *Id.* at 62.

82. Danney Goble, *Final Report of the Oklahoma Commission to Study the Tulsa Race Riot of 1921*, in TULSA RACE RIOT, *supra* note 2, at 11.

83. *Id.* at 12; Ellsworth, *supra* note 64, at 66.

In all my experience, I have never witnessed such scenes that prevailed in this city when I arrived at the height of the rioting. 25,000 whites, armed to the teeth, were ranging the city in utter and ruthless defiance of every concept of law and righteousness. Motorcars bristling with guns swept through your city, their occupants firing at will.⁸⁴

The efforts of Greenwood residents to defend their community from this brutal attack were unsuccessful. They were outnumbered and outgunned.⁸⁵ The actual number of residents who died during the Massacre is not known. The final report of the Oklahoma Commission to Study the Tulsa Race Riot of 1921 indicates that between one hundred and three hundred Greenwood residents died.⁸⁶ Many more were injured.⁸⁷ The White mob burned to the ground 1,256 homes, looted an additional 215 homes that were not burned to the ground, and burned thirty-five square blocks that included the destruction of many businesses, churches, and a hospital.⁸⁸ Thousands of Greenwood residents were left homeless and lived in tents through the winter.⁸⁹ Many more simply left.⁹⁰

Adding further insult to injury, the Tulsa Regional Chamber of Commerce was put in charge of Tulsa while it was under martial law. The Chamber formed an all-White Public Welfare Board that forcefully detained between five and six thousand Greenwood residents in what the Oklahoma Historical Society calls “internment camps.”⁹¹ Greenwood residents were allowed out of these camps only on the say so of a White person

84. *Tulsa in Remorse to Rebuild Homes; Dead Now Put at 30*, N.Y. TIMES, June 3, 1921, at 1.

85. Ellsworth, *supra* note 64, at 77.

86. Goble, *supra* note 82, at 12–13.

87. Krehbiel, *supra* note 75.

88. *Id.*; see also Goble, *supra* note 82, at 14.

89. Ellsworth, *supra* note 64, at 88–89.

90. *Id.* at 89.

91. See *The Tulsa Race Massacre, The Aftermath*, OKLA. HIST. SOC'Y, <https://www.okhistory.org/learn/trm5> [<https://perma.cc/CRE8-8ZC2>]; *5,000 Negroes Held in Fairground Camp*, TULSA DAILY WORLD (June 2, 1921) at 2, <https://chroniclingamerica.loc.gov/lccn/sn85042345/1921-06-02/ed-1/seq-2> [<https://perma.cc/3RM5-BRYL>]; *Chamber Donates Meeting Minutes from 1921 to Greenwood Cultural Center*, TULSA REGIONAL CHAMBER (May 28, 2019), <https://tulsachamber.com/news/2019/05/28/community-development/chamber-donates-meeting-minutes-from-1921-to-greenwood-cultural-center> [<https://perma.cc/TDK8-LQ68>].

and had to carry a green card bearing their White sponsor's name when out of the camp.

The destruction of the Greenwood District in Tulsa is one of the more egregious examples of racial terrorism. This violence was initiated, supported, and joined by Tulsa's White leadership and power structure.⁹² Its immediate aim was to punish a Black community for the mere allegation of a White woman being sexually assaulted by a Black man. This initial goal was thwarted when Black men, many World War I veterans, dared to seek to protect him.⁹³ The White mob violence that initially focused on retaliating for the purported sexual assault of a White woman by a Black man quickly lost this focus and turned into a concerted effort to remove the evidence of the lie of Black inferiority and to put the Greenwood District in the position it should have been in if the lie were true.⁹⁴

Following the physical destruction of this Black community on May 31 and June 1, 1921, the city and state were successful in preventing Greenwood from rebuilding.⁹⁵ The White-led governments and power structure wanted to ensure this visible rebuke of the lie of White supremacy would never rise again. While members of the Greenwood community of Tulsa were forcefully interned, the city and chamber pushed for changes in fire regulations and zoning laws that deprived Greenwood community members of their property without due process of law.⁹⁶ The zoning change, eventually declared unlawful by the Oklahoma Supreme Court, made reconstruction efforts prohibitively costly for Greenwood residents. The Oklahoma Supreme Court struck down the zoning ordinance in response to an expensive and time-consuming lawsuit brought by Massacre survivors that further drained their limited resources for

92. See generally Brown, *supra* note 74 (the call for the violence was issued by the White-owned *Tulsa Tribune*); see also Ellsworth, *supra* note 64, at 75–76 (Tulsa police and national guardsmen participated in the destruction rather than performing their duty to protect the residents and the community from harm.).

93. See EQUAL JUST. INITIATIVE, *supra* note 5; Brown, *supra* note 74 (“Black World War I veterans who wanted to protect Rowland from being lynched rushed to the courthouse to defend him.”).

94. Ellsworth, *supra* note 64, at 65 (“Around midnight, a small crowd of whites gathered — once again — outside of the courthouse, yelling ‘Bring the rope’ and ‘Get the nigger.’ But they did not rush the building, and nothing happened. Because the truth of the matter was that, by then, most of Tulsa’s rioting whites no longer particularly cared about Dick Rowland any more. They now had much bigger things in mind.”).

95. *Id.* at 88.

96. *Id.*

rebuilding.⁹⁷ The ordinance caused a months-long delay in the rebuilding efforts. It left Black residents of Greenwood who survived the Massacre to live in makeshift tents as their shelter into the winter, subjecting them to cold, filth, and disease for up to a year after the Massacre.⁹⁸ The ordinance had done its damage although struck down by the Oklahoma Supreme Court ruling.

After the Massacre, Oklahoma and Tulsa's all-White leadership structures, including government officials and civic leaders, failed to assist the once-thriving community in rebuilding.⁹⁹ Rather, this White leadership and power structure actively engaged in practices that prevented the community from regaining even part of its former status. For example, the White-led Tulsa government implemented policies and practices that maintained poor housing conditions in what was known as the Greenwood District.¹⁰⁰ The White-led state and city government and civic leaders have refused to make reparations or aid in the healing process for the murders as well as the physical, psychological, and material devastation the Massacre caused, beyond a token medal to survivors of the Massacre in 2001.¹⁰¹ The Massacre, a form of racial terrorism, "inflicted deep traumatic and psychological wounds on survivors, witnesses, family members, and the entire African American community."¹⁰² The Massacre violently eviscerated the gains of Black Wall Street because its very existence challenged the myth of White supremacy that the mob embraced. Continuing to embrace and act from the White supremacist perspective, White-led Tulsa and its civic leaders refuse to own their violations of

97. *Id.*; see also *Randle v. Tulsa*, No. CV-2020-01179 (Okla. Dist. Filed Sept. 1, 2020).

98. Ellsworth, *supra* note 64, at 88–89.

99. *Id.*

100. See generally TULSA URBAN LEAGUE, A CONCISE REVIEW OF HOUSING PROBLEMS AFFECTING NEGROES IN TULSA (1958), https://utulsa.as.atlas-sys.com/repositories/2/archival_objects/85594 [<https://perma.cc/E93A-ER8B>] (discussing how private, White citizens have worsened housing conditions for Black residents).

101. See, e.g., Brian Ford, *Memories of Riot Evoked as Survivors Win Medals*, TULSA WORLD (Apr. 25, 2001), https://tulsaworld.com/archive/memories-of-riot-evoked-as-survivors-win-medals/article_4a6e61e5-2c53-536f-b96b-15652da17ec4.html [<https://perma.cc/GJK4-X4KQ>].

102. EQUAL JUST. INITIATIVE, *supra* note 5, at 65.

the human rights of Greenwood residents and their moral and, under international law, legal duty to make reparations.¹⁰³

C. *Ending the Human and Structural Internalization of the Lie of a Racial Hierarchy and White Supremacy.*

The intransigence of Tulsa and Oklahoma to make reparations to the Greenwood District is ensconced in the deep-seated embrace of the myth of White supremacy that we experience throughout the United States. Structural racism is the major internalized value of White people that has been infused into the social, economic, and political fabric of the United States.¹⁰⁴ An exorcism of sorts is required to end this lie's hold on the United States, and perhaps the world, if one accepts the evidence that this lie is evil. This worldview devalues the injury it causes, if it admits to it at all.¹⁰⁵ And, the present-day inheritors and beneficiaries of the wrong deny their responsibility for remedying a wrong done by their foreparents, all while they continue to accept the benefits that flow from that wrong.¹⁰⁶ Reparations provide an avenue to move towards truth—the truth of not simply of what happened but why, and any injury it caused.¹⁰⁷ A reparations program that includes acknowledging past racial crimes can continue the work done by a number of organizations, such as the Community Healing Network, to refute the lies of racial hierarchy and White supremacy.¹⁰⁸

Some of the efforts to obtain reparations include advocacy work done to address the injury done to Black people of African

103. See Memorandum from Adjoa A. Aiyetoro on International and Domestic Standards for Reparations for Violations of Rights of a Group (May 26, 2022) (on file with author).

104. See generally Manning Marable, *Structural Racism and American Democracy: Historical and Theoretical Perspectives*, 3 SOULS 6, 6–24 (2001).

105. See David Horowitz, *Ten Reasons Why Reparations for Slavery is a Bad Idea for Blacks – and Racist Too*, 31 THE BLACK SCHOLAR 48 (2001). But see Al Brophy, *Reparations Talk in College*, 11 MICH. J. RACE & L. 195 (2005) (responding to Horowitz's advertisement and supporting reparations); Ernest Allen, Jr. & Robert Chrisman, *Ten Reasons: A Response to David Horowitz*, 31 THE BLACK SCHOLAR 49 (2001) (countering each of Horowitz's claims).

106. Statements are often made like “I wasn't born then” or “My family didn't own slaves.”

107. See RONALD W. WALTERS, *THE PRICE OF RACIAL RECONCILIATION* (2009).

108. COMMUNITY HEALING NETWORK, <https://communityhealingnetwork.org> [<https://perma.cc/MJ4L-6VRC>] (2021) (citing freeing Black people from the “lie of White superiority and Black inferiority” as part of its mission).

descent from slavery to today.¹⁰⁹ The efforts to obtain reparations have also included petitions to government,¹¹⁰ legislative initiatives,¹¹¹ and lawsuits.¹¹² There have been two lawsuits filed seeking reparations for the Tulsa Race Massacre. The first, *Alexander v. Oklahoma*,¹¹³ was filed by survivors of the Massacre. The second, *Randle v. City of Tulsa*, was filed in 2020 by three survivors and organizations and individuals alleging injury due to defendants' actions related to the Massacre and continuing injury. On May 2, 2022, Judge Caroline Wall denied in part and granted in part defendants' motion to dismiss.¹¹⁴ This is the first case seeking reparations to make it past the motion to dismiss filed by defendants.

Alexander v. Oklahoma, was filed in the United States District Court for the Northern District of Oklahoma. The judge granted the defendants' motion to dismiss based on the expiration of the statute of limitations.¹¹⁵ He thus made a case-ending decision, except for an opportunity to appeal, that denied plaintiffs' efforts to obtain justice in the federal courts for the horrors they suffered. The irony is the judge dismissed the lawsuit while at the same time acknowledging that exceptional circumstances existed after the riot such that plaintiffs did not have "a true opportunity to pursue their legal rights."¹¹⁶ He found that extraordinary circumstances existed, including "intimidation, fear of a repeat of the Riot, inequities in the justice system, Klan domination in the courts, and the era."¹¹⁷ Yet, the court held that the plaintiffs acting with due diligence could have filed the action prior to the publication of the Commission's Report.¹¹⁸ In her analysis of the court's conclusion to grant the defendants' motion to dismiss on the basis of the

109. See Adjoa A. Aiyetoro & Adrinne D. Davis, *Historic and Modern Social Movements for Reparations: The National Coalition of Blacks for Reparations in America (N'COBRA) and Its Antecedents*, 16 TEX. WESLEYAN L. REV. 687 (2010).

110. *Id.* at 707.

111. *Id.* at 699–700; see also, e.g., CAL. GOV. CODE § 8301.1 (West 2021).

112. Aiyetoro & Davis, *supra* note 109, at 703.

113. *Alexander v. Oklahoma*, No. 03-C-133-E, 2004 U.S. Dist. LEXIS 5131 (N.D. Okla. Mar. 19, 2004).

114. Casey McGowan, *Tulsa Race Massacre Lawsuit to Proceed After Judge Partially Denies Motion to Dismiss*, JURIST (May 4, 2022, 12:39 PM), <https://www.jurist.org/news/2022/05/judge-allows-tulsa-race-massacre-lawsuit-to-proceed> [<https://perma.cc/BGP2-ENK8>].

115. *Alexander*, 2004 U.S. Dist. LEXIS 5131, at *26.

116. *Id.* at *22.

117. *Id.*

118. *Id.*

expiration of the statute of limitations, Suzette Malveaux argues that “[t]he court’s conception of what constitutes diligence sufficient to toll the limitations period is unreasonable and out of sync with decisional law.”¹¹⁹ Malveaux also argues that the court’s decision “demonstrates how vulnerable the due diligence standard is to discretionary abuse and caprice.”¹²⁰ Whether consciously or unconsciously, the judge in this case, despite a finding that plaintiffs were unable to bring the lawsuit within the statute of limitations period due to “extraordinary circumstances,” decided that in his judgement it could have been brought at an earlier date, despite cases to the contrary.¹²¹ He prevented the claims from being heard on the merits and thereby supported the underlying principles of the socially constructed racial hierarchy and the socially constructed theory of White supremacy. Two members of the Court of Appeals passionately dissented from the panel’s affirmation of the lower court’s decision, saying:

No case in my tenure on the court could be more compellingly described as meeting the Rule 35 en banc standard of presenting a ‘question of exceptional importance’ deserving the attention of the entire court than this. . . . [The plaintiffs who were children at the time of the Tulsa Race Massacre] seek equitable tolling of the statute of limitations. The trial court abused its discretion by dismissing the plaintiffs’ complaint to the prejudice of a jury determination¹²²

So often in the history of the United States, the “judgment” of those who embrace in their hearts and minds the socially constructed racial hierarchy, which places White people at the top, leads to decisions that deny justice to African descendants.¹²³ And, insulated by their status, those who make these judgment calls are not held accountable although they may be called out by some of their colleagues (without attributing it to conscious or unconscious embrace of White

119. Malveaux, *supra* note 64, at 105.

120. *Id.* at 106.

121. *Id.* at 107.

122. Alexander v. Oklahoma, 391 F.3d 1155, 1159 (10th Cir. 2004) (Lucero, C.J., dissenting).

123. See, e.g., Dred Scott v. Sandford, 60 U.S. 393 (1857) (holding that enslaved persons were not citizens and, therefore, could not sue in federal court).

supremacy), as in *Alexander*.¹²⁴ That calling out does little to change the fundamental problem: this country's very foundation is the crime of racial genocide that led to the creation of the myth of White supremacy. It is in its bones and, unfortunately, some African descendants and other people of color believe the lie or at least work on behalf of the lie for personal gain.¹²⁵ Unfortunately, due to the judge's decision, the truth of what happened in Tulsa on May 31 and June 1 and the continuing injuries that flow from those events, was not presented to a jury. The record in the case, because it was decided on the briefs submitted on the motion for summary judgment, is devoid of documents and witness testimony to support the claims of the plaintiffs. Thus, the judicial body that is required to maintain the scales of justice used judicial judgement to maintain the scales' heavy tilt towards White people. The only story of the Tulsa Race Massacre that embodies the truth from a government-endorsed agency is the Commission Report, a body that included members of the Greenwood District and Tulsa more generally who had devoted much of their lives to revealing the truth of the Massacre and obtaining justice for the victims.¹²⁶

The state and local governments and their agencies who were identified as having responsibility for the devastation of the Greenwood District have gotten a pass because Tulsa and the state of Oklahoma have not truly held themselves accountable. Upholding White supremacy and defending the state and city governments has resulted in a vague and toothless apology. The survivors were given medals in a ceremony in 2001.¹²⁷ Yet, remaining true to the history of White supremacist behavior, the city of Tulsa co-opted the story for its benefit. It will not rebuild Greenwood. Rather, it has appropriated the story of the destruction of Greenwood, a part of North Tulsa that has a significant Black population, to its benefit. The city constructed a museum about the Massacre, Greenwood, and Black Wall Street that serves as a tourist attraction and an educational vehicle for what happened.¹²⁸ It has not shared any

124. *Alexander*, 391 F.3d at 1159–65 (Lucero, C.J., dissenting).

125. There are Black people who support, for example, the appropriation of stories about the Massacre to benefit tourism that will be brought to South Tulsa.

126. GATES, *supra* note 63.

127. Ford, *supra* note 101.

128. See GREENWOOD RISING, <https://www.greenwoodrising.org> [https://perma.cc/S5QE-SXFF], for information about the city's Greenwood Rising

plans to rebuild the homes and businesses that were destroyed in 1921.¹²⁹

III. REPARATIONS: A TOOL TO EXORCISE THE EVIL OF THE SOCIALLY CONSTRUCTED RACIAL HIERARCHY AND ITS LIE OF WHITE SUPREMACY

The defendants in *Alexander v. Oklahoma* and the ongoing case of *Randle v. City of Tulsa* curtailed economic, social, and cultural opportunities in the Greenwood District and what is currently known as North Tulsa (which now encompasses what was known as the Greenwood District).¹³⁰ There has never been an offer of reparations for the destruction of the Greenwood District, including the lives that were taken by members of the White mob as documented in the Commission Report.¹³¹ The Massacre, the effects of which continue to marginalize Black Tulsans, constitutes an ongoing assault on the Black community that largely resides in North Tulsa. The survivors, the survivors' descendants, and their supporters and allies have made, and continue to make, demands for reparations.¹³² They see reparations as a way to heal the devastation caused by the Massacre, including the murders of its residents, destruction of homes, businesses, and a way of life, as well as the failure to provide resources to assist in rebuilding the community.¹³³

What are reparations? Reparations are the “act of making amends for a wrong . . . [c]ompensation for an injury or wrong”¹³⁴ “Reparations” includes restitution—putting the person or group in the place they would have been but for the

Museum. The city has not yet developed a plan to make reparations for the Massacre.

129. Kevin Canfield, *Mayor Bynum Apologizes for City's Role in the 1921 Tulsa Race Massacre*, TULSA WORLD (July 6, 2022), https://tulsa-world.com/news/local/racemassacre/mayor-bynum-apologizes-for-citys-role-in-the-1921-tulsa-race-massacre/article_4349f000-c24b-11eb-9756-1b7b227cf74b.html [<https://perma.cc/T6CP-48UD>] (Mayor Bynum apologized for the Tulsa government's role in the Massacre without outlining a reparations plan. He publicly opposed cash payouts. Instead, Bynum “consolidated the city's major economic development boards and commissions into one organization whose stated mission is to promote shared prosperity and reduce racial disparities.”).

130. Ellsworth, *supra* note 64, at 88–89.

131. See Goble, *supra* note 82, at 11–20.

132. See, e.g., JUSTICE FOR GREENWOOD, <https://www.justiceforgreenwood.org> [<https://perma.cc/25DC-SYDP>].

133. *Id.*

134. *Reparation*, BLACK'S LAW DICTIONARY (11th ed. 2019).

injury.¹³⁵ United Nations resolutions and reports identify it as a remedy for wrongs to and injuries inflicted on a group based on their group identity.¹³⁶ Examples are reparations to victims of the Jewish Holocaust and the State of Israel;¹³⁷ reparations to twenty-eight thousand former students of Canada's Indian Residential School System;¹³⁸ reparations to the survivors of the British torture, including sexual abuse and castration of the Mau Mau;¹³⁹ reparations for the destruction of Rosewood, Florida;¹⁴⁰ and reparations for the internment of Japanese Americans during World War II by the United States.¹⁴¹

The organized effort to obtain reparations in Tulsa and other locales creates an international, national, and local dialogue on the crimes that were committed against a people due to their group identity.¹⁴² It exposes the pushback from White people seeking to protect the underpinning of their White privilege that is the lie of White supremacy by, for example,

135. G.A. Res. 74/70(b), *Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Racial Intolerance*, at 15 (Aug. 21, 2019); *see also* G.A. Res. 64/67(b), *Elimination of Racism, Racial Discrimination, Xenophobia, and Related Intolerance* (Oct. 9, 2009) (recommending how to remedy past racism, including improving education and research in that area).

136. The WCAR Declaration and Programme of Action speak to reparations for victims of historic injustices including slavery with a primary focus on taking "appropriate and effective measures to halt and reverse the lasting consequences of these practices." World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, *Declaration and Programme of Action*, at 18 (Aug. 31–Sept. 8, 2001).

137. U.S. Dep't of Just. Foreign Claims Settlement Comm'n, *German Compensation for National Socialist Crimes*, in *WHEN SORRY ISN'T ENOUGH* 61 (Roy L. Brooks ed., 1999).

138. The Canadian Press, *More Than \$3B Paid to 28,000 Victims of Residential School Abuse: Report. Residential School Abuse: Report*, CBC NEWS (Mar. 12, 2021), <https://www.cbc.ca/news/indigenous/iap-final-report-residential-schools-1.5946103> [<https://perma.cc/Y9WA-XB54>].

139. G.A. Res. 74/70(a), *supra* note 135, at 17.

140. Adam Yeomans, *Florida Pays Survivors of a 1923 Racist Attack: Rosewood: Blacks Were Run Out of Town by a White Mob. At Last, the State Allocates \$2 Million in Reparations*, L.A. TIMES (Feb. 12, 1995, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1995-02-12-mn-30965-story.html> [<https://perma.cc/6UW9-AWAQ>].

141. Civil Liberties Act of 1988, Pub. L. No. 100-383, 102 Stat. 903.

142. *See* CAL. GOV. CODE § 8301.1 (West 2021); World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, *Declaration and Programme of Action* (2002) (summarizing the Durban conference topics including violence against people based on their group identities); TRUTH & RECONCILIATION COMM'N, <https://www.justice.gov.za/trc> [<https://perma.cc/TT32-HA84>].

attempting to take the discussion of race out of the classroom.¹⁴³ The international, national, and local dialogue exposes the fear of toppling the socially constructed racial hierarchy due largely to the fact that White skin privilege will be lost.¹⁴⁴ Embracing a reparative model would acknowledge that decisions in the social, political, economic, and legal systems have been made that support the social construction of race and the lie of White supremacy.¹⁴⁵ A reparative model, to be effective, must include community-based fora to discuss scientifically and factually based truths, including who we are as humans and what was done to distort the fundamental humanity of all people.¹⁴⁶

Based on injuries documented in the dialogue within a reparations process, ways of repairing those injuries would be developed, including the redistribution of resources of governments to ensure that the injured communities receive what is rightfully theirs. For example, in *Randle v. City of Tulsa*, the plaintiffs' demands include acknowledgement and directing of resources in a way that repairs the injury caused by the continuing nuisance of the defendants' failure to repair the damage done by the Massacre.¹⁴⁷

143. Rana Jaleel, *Critical Race Theory and the Assault on Antiracist Thinking: What Counts as Racism?*, AM. ASS'N UNIV. PROFESSORS (2021), https://www.aaup.org/article/critical-race-theory-and-assault-antiracist-thinking#.Yx4_X1HMK3A [<https://perma.cc/PR7E-YLP4>].

144. See Toni Morrison, *Mourning for Whiteness*, in AFTERMATH: SIXTEEN WRITERS ON TRUMP'S AMERICA (NEW YORKER, 2016), <https://www.newyorker.com/magazine/2016/11/21/aftermath-sixteen-writers-on-trumps-america#anchor-morrison> [<https://perma.cc/HB5Z-FAQ5>].

145. See *Dred Scott v. Sandford*, 60 U.S. 393 (1857) (holding that persons of African descent are not citizens of the United States entitled to sue in its courts); *Plessy v. Ferguson*, 163 U.S. 537 (1896) (holding that segregation is lawful under the guise of "separate but equal"); *A Brief History of Jim Crow*, CONST. RTS. FOUND. <https://www.crf-usa.org/black-history-month/a-brief-history-of-jim-crow> [<https://perma.cc/4VGY-GBMR>] (describing racist statutes called "Jim Crow laws" that established different rules for White and Black people); BRUCE WRIGHT, *BLACK ROBES, WHITE JUSTICE* (1987).

146. For example, the California Reparations Task Force held regular meetings that were open to people in California and those who resided outside of California, and some included expert witnesses. See Rob Bonta, Attorney General, *Reparations Task Force Meetings*, STATE OF CAL. DEPT OF JUST. (2022), <https://oag.ca.gov/ab3121/meetings> [<https://perma.cc/25HM-YAYN>]. The Task Force issued its temporary final report on June 1, 2022, after the completion of those hearings. Rob Bonta, Attorney General, *Reparations Reports*, STATE OF CAL. DEPT OF JUST. (2022), <https://oag.ca.gov/ab3121/reports> [<https://perma.cc/J75Q-M39E>].

147. *Randle v. Tulsa*, CV-2020-01179, at 40–46 (Dist. Ct. Tulsa Cnty. 2020) (demanding a jury trial).

There has been resistance mounted to the social construction of race and the lie of White supremacy that flows from that construction.¹⁴⁸ The lawsuits filed in Oklahoma for reparations for the Massacre are a form of resistance. Much of this resistance has been to the societal structures that rely on the lies of the racial hierarchy and White supremacy.

CONCLUSION

The social construction of race began as early as the sixteenth century with Caucasian people embracing the view that they were better than the peoples they encountered in their travels based on phenotypic differences. The need to be “better than” was expressed in two primary ways: the need to have more materially than others and the need to have more power than others. This need to be “better than” is the foundation for the genocidal acts against Indigenous Peoples and Africans and their descendants. The lie of “better than” or “superior to” was fought against by those who Caucasian people sought to oppress, and their response was even more violence—desecrating communities—and incorporating in institutions and societal structures the fundamental lie of inferiority that has resulted in Black people and other groups of color being disadvantaged based on group identity.

Since Africans and their descendants are at the bottom of this human-constructed racial hierarchy, their disadvantaging continues to result in being, as a group, at the bottom of the indicia of well-being in the United States. The lie of the racial hierarchy and White supremacy is in the bones of the United States. Yet individuals and organizations founded by Black people and their allies have fought against the lie, worked tirelessly to reveal it and the damage it has caused, and formulated various strategies to tap and re-invigorate the

148. See generally CIV. RTS. CONG., WE CHARGE GENOCIDE: THE CRIME OF GOVERNMENT AGAINST THE NEGRO PEOPLE (William Patterson ed., 1970); LENNOX S. HINDS, ILLUSIONS OF JUSTICE: HUMAN RIGHTS VIOLATIONS IN THE UNITED STATES (2d ed. 2019). See also the general work of organizations such as the NAACP, the NAACP Legal Defense Fund, the National Conference of Black Lawyers, the National Medical Association, and the Association of Black Psychologists. The Community Healing Network is an example of a grassroots organization that works to exorcise the lie from the Black community through a programmatic focus entitled “defy the lie and embrace the truth.” See generally COMMUNITY HEALING NETWORK, *supra* note 108.

knowledge of human equality and the strength to own that knowledge, despite the embeddedness of the human-made lie in the structures and systems within the United States.

Seeking reparations is a vehicle for expanding the “truth-telling” process and engaging communities in a dialogue that will dismantle the lie. It is not an easy task to loosen the lie’s grip on the psyches of people and reconfigure institutions and societal structures that have this lie embedded within them. If this country has a chance of survival, of actually being great, it must embrace this challenge that incorporates restorative and transformative justice and reparations. It must stop ducking acknowledgment. It must make reparations for the crimes against humanity that were slavery and its legacy, the many acts of violence and destruction against Black people and their communities post-slavery of which the Tulsa Race Massacre is an example.