Introduction

By the summer of 2020, the nation's centuries-old commitment to racial injustice changed. Something had interrupted the national instinct for racial avoidance inside our institutions. It came with little warning. Some of it was the predictability with which the global Covid pandemic was finding and killing disproportionate numbers of Black people. Some of it was a societal reaction to four vituperative years of Donald Trump, a presidential spectacle of reactionary racism empowered by festering resentment at Barack Obama, the country's first Black president. And clearly, some of it was in defiance of another public lynching of a Black man in police custody, whose plaintive pleas for humanity were callously ignored as the planet looked on. We called the ensuing swell of mass demonstrations, DEI (diversity, equity and inclusion) pledges, retraining conferences, apologetic op-eds and promises to be antiracist a "racial reckoning." It wasn't always clear whether reckoning referred only to awareness or if it extended to an accounting for racial inequality. This confusion proved costly. As did the question of *what* was being reckoned. Police brutality? Covid deaths? Systemic racism? The perennial Black struggle for freedom? At the time, what was briefly certain, if not universally acknowledged, was that Black lives mattered so much you could stake it on a lawn sign or hang it in a window.

Within two years the reckoning was in rapid retreat. Then it was over.

The uniquely American déjà vu of racial backlash was swift, unrelenting and surprisingly effective. Racial reckoning had been reckoned with. It came with threats, mandates and the force of law. Despite Trump's reelection defeat, the Republican campaign against "wokeism" converted more than Republicans to protests against "critical race theory" in schools, against state anti-DEI laws in the workplace and against most

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efforts at curbing police brutality. Just three summers after the start of racial reckoning, the US Supreme Court all but eviscerated diversity as the last refuge of affirmative action in admissions. Then, in 2024 when issues of race had slipped back into silence nationally, Trump won again, and a counter-racial reckoning was refueled with new energy and an irrepressible vengeance.

There have been no mass protests against the backlash, no antiracism statements and no lost elections.

This book, though, imagines something else. It acknowledges that a racial redress of American institutions was overdue in 2020 and asks what a real racial reckoning would look like. What would we address, for what reasons and how would we approach it? If the goal was not just awareness of the forces that sustain racial inequality but to take just account for them, what would accountability do? For the sake of a single book, I take the racial reckoning of 2020 to be about three issues – systemic racism, lives weakened and shortened by chronic health disparities, and police abuse. While not the entirety of racial inequality, these three elusive features of injustice explain a lot about the motivation for mass protests at the time and the need for actual reckoning now. In the past, moments of reckoning have been subject to pendular swings between exasperation and backlash, which historically have cycled with American partisan politics to produce legal compromises. A principle of this book is that racial justice must be pragmatic, but it cannot be compromised. Another is that we must better define what needs reckoning and how to do it.

What becomes clear on this journey is that the very idea of racial justice is contested, squishy and often diluted by intersecting, if not competing, interests. This ambiguity feeds compromise, especially on the most challenging aspects of white supremacy and its effects. To talk seriously about a racial reckoning, we should agree on two things at the outset. First, we must be able to name Blackness. We have to be able to say "Black," period, and sustain the focus as if addressing racial inequality against African Americans benefits the whole of American democracy in important ways. For that reason, I acknowledge but do not attempt to integrate the many threads of struggle faced by other racial minorities in this book.

Second, we must agree that cumulative harms of racial inequality produce a debt. The debt issue is a quagmire because it provokes accusations of blame, avoidance of guilt, intricate arguments about group

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exculpation, assertions of eligibility and ultimately the very real transfer of wealth – from some of them to some of us, an "us–them" that must somehow become a "we" again. The debt issue is at the heart of recent efforts to secure racial reparations. This book covers some of the same ground. Like reparations, it asks how we might think about responsibility for generations of specifically defined racial injustices; why we never got around to securing accountability before; and how we can apply it to the three areas of focus in this book. Unlike reparations, this book does not contemplate the whole debt since slavery, nor see it as dischargeable in discrete acts or payments. Instead, it asks how we should understand remedial accountability for the continuing, traceable harms of more contemporary wrongs. Remedies for racial harms should be an ordinary reparative instinct for a society of civil rights. Reparations are extraordinary measures in a society designed for white supremacy. It's a difference of scope (which harms are accounted for) and degree (how much debt is retired), where reparations envision a more comprehensive accounting with, to me, more challenging questions of proof. Reparations work can continue beyond racial reckoning. My focus on accountability, then, requires cumulative loss remediation to undo the demonstrable effects of racial inequality. Where we can show the harmful consequences of responsible conduct – intentional or not – compensation is due in order to bring people back to where they would have been without it. For two precious years, the racial reckoning bypassed remedy in favor of a reconciliation that might never come. It focused too much on racial awareness and not enough on racial accountability. That was a lost opportunity.

The three related areas of remedial focus examined here – systemic racism in wealth creation, racial health disparities and police abuse – illustrate why racial reckoning is long overdue and still necessary.

For systemic racism, I focus on the mostly housing-based institutions that have sustained the racial wealth gap for generations. The 6:1 gap we see today (by 2022 measures) started with the dream of migration to a better life. The Great Migration was a process that by 1970 would transform Southern Blacks into mostly urban Blacks. In the cities to which they went in search of jobs, freedom and democratic rights, Black presence heralded a national interest in segregation policies, less overt but more durable than Jim Crow. The national program of "urban renewal" has escaped responsibility (and scholarly scrutiny) for its profound effects on

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Black household wealth and Black urban neighborhoods through government racism, even though it lasted a quarter century from 1949 to 1974. The federal–local program displaced millions of Black migrants from their squalid neighborhoods and separated them from the very wealth opportunities a generous federal government was bestowing upon the wealthiest generation the world has ever known, white baby boomers and their parents. This mass dispossession of Black people's homes and communities was not just a question of housing, but the instantiation of an urban condition that would become known in the decades to follow as "the urban crisis." It is from there that Black Americans become identified not with sharecropping or convict leasing but with ghettoes and public housing. Blacks became the subject of antipoverty policies that come and go, change and diminish. Yet it's the economic effects on land values in Black-identified areas that expand the wealth gap, the high costs and limited availability of credit, and their effects on every kind of investment, from homeownership to the price of eggs. The resulting patterns of systemic devaluation I call "racial bargaining" have set the transactional terms of business in Black neighborhoods long enough to condition predatory and subprime lending, pervasive environmental hazards, gentrification, the loss of public housing, the foreclosure and eviction crises, and profound affordability-instability challenges that remain with us today.

Racial health disparities weaken people unfairly and unnecessarily, producing disability and chronic pain until Black people die – usually earlier than others. Racial health disparities are easier to see than systemic racism because there is so much data about both physical and mental health. For instance, we know that the national difference between Black and white life expectancy in the US, about five years, can differ dramatically from state to state and due to other characteristics. Yet specific health outcomes are often embedded in confidentiality, big numbers and prejudice. Perhaps unwittingly, Black people become the sum of health stereotypes. During Covid, for instance, we sympathized with dying Black folk who faced greater exposure to the risk of death because of either their status as "essential workers" or their high incidence of "underlying conditions" such as kidney disease, heart disease, obesity, diabetes and to some extent hypertension. But we rarely asked why their jobs and housing put them at considerably increased risk. And

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we certainly never questioned why so many had underlying conditions that, once the virus appeared, turned fatal. My analysis assumes there are two primary explanations for which reckoning is due. One is the prevalence of implicit bias altering the terms and outcomes of the patient–caregiver relationship and the other is the "social determinants of health." Both terms are ungainly. Both require some patience for subtlety. Not surprisingly, both bases for understanding disparate harms have been attacked by a legal and social backlash that began long before the current one.

Finally, there's the issue where all the reckoning began – the mistreatment of Black bodies by armed officers of the state: police abuse and the acquittals that follow. Police brutality is much more than George Floyd's horrific death (or the many others who died that year, the year before or the year after). It is a particular state-inflicted harm reserved specially, though not exclusively, for Black people and has been since the birth of the nation. Every generation of Black person knows the names of multiple people who died or were badly beaten under the most suspicious and incredible circumstances. It is the subject of jokes, parental talks and untold numbers of urban riots, yet it continues almost without accountability. The racial reckoning over police abuse recognized that it was more than the sordid public spectacle of Black death by state action. It was also a symbolic representation of disparate treatment of Black (mostly male) people in the criminal justice system as a whole. The justifications for surveillance, confrontation, arrest, detention and charging would be steps in a pipeline of radically reduced life chances. Disenfranchisement; loss of parenting; loss of education, income and wealth accumulation; lesser health; loss of freedom – Black people saw so much more than the execution of a human being the day George Floyd was mercilessly killed in the street by five police officers. But the larger story is how little stamina the country had for genuine reform and police accountability, reflected in a system of law enforcement oversight that's not designed to deter misconduct.

My goal in this book is to restart a crucial conversation in the United States about African-American well-being and the fair expectations of American democracy, as seen through a brief period of racial reckoning that taught us much about how racial inequality is reproduced and

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rejected in the twenty-first century. It's a story told in public policy, social science, law and vernacular.

Although some of the research is original – on urban renewal, some legal analyses and the mobility project in the final chapter – my contribution is mostly in the sequence and ordering of ideas and themes. Many recommendations on how to think about the wealth debt, the health debt or criminal justice reform have been made, at least in part, by others. Another aspect of my approach is to overcome the chief legal impediment to racial reckoning: colorblind notions of racial equality. These ideas have long been the lemonade masking the arsenic. Structurally, colorblind doctrine has subverted the meaning of antidiscrimination so that it is at odds with remedying racial inequality. This has undermined the ability of Black people to claim the nature of the racial injuries they've experienced. You don't often hear a Black person describe a basic fact of racial disadvantage – such as being denied housing because of a prior misdemeanor conviction or joining the statistics of people with limbs lost to diabetes – in terms of racist intent. It happens, but that's the language of antidiscrimination lawsuits, not individual harms that flow out of racially inequitable systems. Instead, what diminishes economic, social and physical well-being in a country that has not come to terms with its racism is shown by disparate treatment and disparate impact. Without the ability to show harm this way, it's as if it never happened. Such was the goal of Federalist Society jurisprudence over the last forty years. There are all kinds of creative ways to inflict race-conscious harm on a people without saying so. Not saying so has worked to silence claims in a white noise of false neutrality. But not here. Here, I present proof of harm for the sake of remedy.

ORGANIZATION OF THE BOOK

The book starts with revisiting the racial reckoning of 2020. I invite readers to go back to that remarkable moment in order to understand what it signaled, what it achieved and what, if anything, remains just a few years later. It began as a resistance story and became a battle in a longer American war story, as predictable reactions from the right raged back with unpredictable force. That force often took structural form, which I argue was missing from the articulation of racial reckoning goals. The

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prospects for correcting course were interrupted by the fierce continuation of white backlash embodied by Trump's second presidency, which resurrected anti-Black themes of "illegal DEI" and reversed discrimination with the full force of the federal government, turning what I call Rules of Avoidance and Denial into political gospel – at least for the time being.

Resistance to racial justice follows a cynical pendulation in US history, so I then turn my attention to understanding why a reckoning is due and how it might remediate inequality, with a pause to consider what we actually mean by racial inequality. After all, there can be no claims to a racial reckoning for or against Blacks without some agreed-upon ways of measuring racial injury and how it occurs in a world of mostly de facto discrimination. A big part of what derailed racial reckoning was the inability to define racial inequality as it's experienced – in locational context, as a continuation of persistent themes, producing cumulative harms through race-neutral means – and to focus on its material consequences. Colorblind constitutionalism obscures these means and ends, righting mostly theoretical wrongs and denying manifest injuries. I argue that inequality is reproduced in plain sight. We see it in place after place, maximizing and minimizing resources by the rules of residential formation in spite of recent Supreme Court decision-making to the contrary. Understanding racial inequality in concrete terms is essential to racial reckoning for Black Americans, who, unlike all other groups except Native Americans, experience a contested idea of progress in key areas of opportunity, such as admissions, employment, income and life expectancy.

After a foundation in racial inequality, I offer the legal and empirical arguments to support reckoning over the denial of wealth accumulation, chronic health disparities and unjust policing. These are stories of migration, underlying conditions and immunities built into law. How did migration condition the terms for wealth creation, and what sustains the racial bargains that resulted? Why *did* so many Black (and Indigenous) people catch Covid and die from it initially – and why do so many suffer daily from "underlying conditions"? Is it possible to hold police officers accountable to the law, and why don't law-and-order basics prevent police brutality the way they're supposed to enforce civilian obedience to law? Because the reckoning was interrupted at the point of DEI, and because conservatives have targeted DEI lest it become a basis

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for reckoning, we reexamine its origins. How did affirmative action become "diversity," and how did diversity become DEI? Is that the only framework for racial remediation we have? I reevaluate DEI's possibilities and, after a lengthy critique, find some promise in its remedial potential after all.

This brings us closer to the present, explored in the final chapter. There we search for the mythical thing – like "vibranium" in the *Black Panther* movie – that makes Black people move around the US more than any other group in the twenty-first century. Internal migrations have occurred quietly, often reversing the course of the more famous one set in the previous century, but seemingly for the same types of reasons: well-being. Sometimes the movement for racial justice comes down to just that: movement. Most moves are local and reflect a mix of displacement and aspiration. Others are long distance, especially to Southern states under firm Republican control that have legislated a hostility to racial equity initiatives at the local level. Nevertheless, I suspect that what we called "racial reckoning" turns out to be some version of Black well-being. Well-being is pursued in different places, primarily at a local level, to achieve some quality or qualities that are worth moving for. What combination of elements make up that sense of twenty-first century well-being in a country rededicated to white supremacy, and how is it any different from what every other American wants? Maybe migration patterns show that the national battles over democracy have obscured the importance of the many closer to home. Maybe for most of us racial reckoning entails enacting local practices and policies that create opportunity out of our material needs and enhance the bedrock of our collective dignity. Which comes down to our voices – keeping them strong and making them heard, against a concerted attack on First Amendment freedoms. Finally, the epilogue offers a summary of solutions and a framework for action, mostly at the local level.

Overall, what follows offers a mixed picture on the prospects for racial reckoning a quarter way into the twenty-first century. Black interests struggle for attention and can't hold it for long without engendering a punitive response. Even a reckoning of mass awareness during a national crisis could not be defended from attack just months after it was launched. Conservative opposition to remedying racial inequality

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effectively mobilized legal, political and cultural strategies simultaneously under a banner of colorblindness that has undone principles of racial equity and remediation, elevated white victimhood and now seeks to silence Blackness as it might be studied, celebrated and expressed openly. Accountability reckoning may or may not arise from this in the near future. So the struggle continues.

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