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Introduction

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INTRODUCTION

*Dorothy A. Brown**

The idea for this Special Issue began with a conversation between me and Mr. Sam Reilly, the then Editor-in-Chief of the *Emory Law Journal*. Mr. Reilly and I go way back—all the way to his first semester in law school when he was a student in my Legislation and Regulation class. I subsequently selected him to become one of my research assistants later that summer. Mr. Reilly wanted to discuss what more the *Emory Law Journal* should be thinking about doing given the moment of racial reckoning the country found itself in. We discussed the Journal putting together a special issue dedicated to addressing systemic racism and the law. He brought the idea to the Executive Board, and they enthusiastically agreed. The *Journal* issued a call for proposals for a forthcoming Special Issue: Systemic Racism in the Law & Anti-Racist Solutions.¹ The *Journal* received ninety-four abstracts and, from an embarrassment of riches, selected the seven Essays published on these pages.

In May of 2020, millions of people around the world witnessed the murder of George Floyd.² Protests followed across the country³ and abroad.⁴ Corporate America voiced support for Black Lives Matter, although questions were raised as to whether this was merely symbolic.⁵ All of this occurred in the midst of a pandemic that revealed the structural racism present in virtually every area of our lives: who could work from home;⁶ who was an essential worker;⁷ who had

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¹ The Symposium call was published on the Faculty Lounge blog. *CFPL Emory Law Journal Special Issue on Systemic Racism in the Law & Anti-Racist Solutions*, FAC. LOUNGE (Aug. 31, 2020), <https://www.thefacultyounge.org/2020/08/cfpl-emory-law-journal-special-issue-on-systemic-racism-in-the-law-anti-racist-solutions.html>.

² Evan Hill, Ainara Tiefertalder, Christiaan Triebert, Drew Jordan, Haley Willis & Robin Stein, *How George Floyd Was Killed in Police Custody*, N.Y. TIMES (Apr. 20, 2021), <https://www.nytimes.com/2020/05/31/us/george-floyd-investigation.html>.

³ Associated Press, *Protests Explode Across U.S. After Cop Charged with Killing George Floyd*, CNBC (May 30, 2020, 9:51 AM), <https://www.cnbc.com/2020/05/29/protests-over-george-floyds-death-spread-across-the-nation.html>.

⁴ Zamira Rahim & Rob Picheta, *Thousands Around the World Protest George Floyd's Death in Global Display of Solidarity*, CNN (June 1, 2020, 6:31 PM), <https://www.cnn.com/2020/06/01/world/george-floyd-global-protests-intl/index.html>.

⁵ David Gelles, *'Corporate America Has Failed Black America'*, N.Y. TIMES (June 6, 2020), <https://www.nytimes.com/2020/06/06/business/corporate-america-has-failed-black-america.html>.

⁶ Elise Gould & Heidi Shierholz, *Not Everybody Can Work from Home: Black and Hispanic Workers Are Much Less Likely to Be Able to Telework*, ECON. POL'Y INST. (Mar. 29, 2020), <https://www.epi.org/blog/black-and-hispanic-workers-are-much-less-likely-to-be-able-to-work-from-home/>.

⁷ Dion Rabouin, *Black Workers Overrepresented in Essential Work During Coronavirus Pandemic*,

access to the Paycheck Protection Program;⁸ who had to depend on public transportation;⁹ who was subject to stricter enforcement of mask restrictions;¹⁰ and more recently, which Americans were getting access to the vaccine.¹¹ We were warned about the risks of white supremacist violence by FBI director Christopher A. Wray,¹² yet no targeted response came. And although the Department of Homeland Security declared “[t]he November 3rd election was the most secure in American history,”¹³ on January 6 we saw an insurrection at the United States Capitol amid conspiracy theories about a stolen election.¹⁴ We also witnessed deadly anti-Asian American violence, including in Emory University’s home city of Atlanta.¹⁵ Sadly, since the death of George Floyd, more Black Americans have been killed by the police.¹⁶ Over time, this Special Issue has regrettably become even more important.

AXIOS (June 3, 2020), <https://www.axios.com/black-workers-essential-coronavirus-c502fc2e-a4fc-4c4f-ae0c-722a50d74ecd.html>.

⁸ Sifan Liu & Joseph Parilla, *New Data Shows Small Businesses in Communities of Color Had Unequal Access to Federal Covid-19 Relief*, BROOKINGS INST. (Sept. 17, 2020), <https://www.brookings.edu/research/new-data-shows-small-businesses-in-communities-of-color-had-unequal-access-to-federal-covid-19-relief/>.

⁹ David Harrison, *Public Transit Use Is Associated with Higher Coronavirus Death Rates, Researchers Find*, WALL ST. J. (June 28, 2020, 7:00 AM), <https://www.wsj.com/articles/public-transit-use-is-associated-with-higher-coronavirus-death-rates-researchers-find-11593342001>.

¹⁰ Josiah Bates, *Police Data Reveals Stark Racial Discrepancies in Social Distancing Enforcement Across New York City*, TIME (May 8, 2020, 5:26 PM), <https://time.com/5834414/nypd-social-distancing-arrest-data/>.

¹¹ Amy Schoenfeld Walker, Anjali Singhvi, Josh Holder, Robert Gebeloff & Yuriria Avila, *Pandemic’s Racial Disparities Persist in Vaccine Rollout*, N.Y. TIMES (Mar. 5, 2021), <https://www.nytimes.com/interactive/2021/03/05/us/vaccine-racial-disparities.html>.

¹² Zolan Kanno-Youngs, *F.B.I. Director Warns of Russian Interference and White Supremacist Violence*, N.Y. TIMES (Sept. 17, 2020), <https://www.nytimes.com/2020/09/17/us/politics/fbi-russia.html>.

¹³ Sarah Al-Arshani, *The Department of Homeland Security Breaks from Trump and His Baseless Claims of Election Fraud, Calling This Year’s Presidential Race ‘the Most Secure in American History’*, BUS. INSIDER (Nov. 12, 2020, 7:14 PM), <https://www.businessinsider.com/dhs-breaks-from-trump-2020-election-most-secure-in-history-2020-11>.

¹⁴ Dan Barry, Mike McIntire & Matthew Rosenberg, *‘Our President Wants Us Here’: The Mob That Stormed the Capitol*, N.Y. TIMES (Apr. 2, 2021), <https://www.nytimes.com/2021/01/09/us/capitol-rioters.html>.

¹⁵ Weiyi Cai, Audra D.S. Burch & Jugal K. Patel, *Swelling Anti-Asian Violence: Who Is Being Attacked Where*, N.Y. TIMES (Apr. 3, 2021), <https://www.nytimes.com/interactive/2021/04/03/us/anti-asian-attacks.html>; Jill Cowan, *Looking at the Rise of Anti-Asian Racism in the Pandemic*, N.Y. TIMES (Mar. 19, 2021), <https://www.nytimes.com/2021/03/19/us/anti-asian-racism-pandemic.html>; Jessica Gynn & Aleszu Bajak, *Asian Americans Report Biggest Increase in Serious Incidents of Online Hate and Harassment During COVID-19 Pandemic*, USA TODAY (Mar. 25, 2021, 11:26 AM), <https://www.usatoday.com/story/tech/2021/03/24/asian-american-hate-crimes-covid-harassment-atlanta-google-facebook-youtube/6973659002/>; Jiayang Fan, *The Atlanta Shooting and the Dehumanizing of Asian Women*, NEW YORKER (Mar. 19, 2021), <https://www.newyorker.com/news/daily-comment/the-atlanta-shooting-and-the-dehumanizing-of-asian-women>.

¹⁶ Nicholas Bogel-Burroughs, Julie Bosman & Shawn Hubler, *Minnesota Officer Who Shot Daunte Wright Meant to Fire Taser, Chief Says*, N.Y. TIMES (Apr. 16, 2021), <https://www.nytimes.com/2021/04/12/us/brooklyn-center-police-shooting-minnesota.html>; Mark Guarino, Meryl Kornfield & Kim Bellware, *Chicago Releases Video of Officer Fatally Shooting 13-Year-Old Adam Toledo*, WASH. POST (Apr. 15, 2021, 9:50 PM),

The Issue begins with *Systemic Racism, the Government's Pandemic Response, and Racial Inequities in COVID-19*, by Professors Ruqaiyah Yearby and Seema Mohapatra. The authors convincingly show how occupational segregation in the labor market leads to racial inequality in access to perks like paid sick leave and health care, which are essential to successfully navigating a global pandemic. We all lose in such a system. Recognizing that, they advocate for a better path forward using a health justice framework.

The next Essay, *Rejecting Honorary Whiteness: Asian Americans and the Attack on Race-Conscious Admissions*, by Professor Philip Lee, persuasively argues that the “model minority” myth pits racial and ethnic minority groups against one another while providing Asian-Americans with an implicit invitation to the status of “honorary whiteness.” In sum, the model minority myth only serves to maintain the existing racial hierarchy. This piece is particularly timely given the rise in anti-Asian American racism that COVID-19 has provoked.¹⁷ I will also observe that although Filipino American nurses constitute only 4% of nurses, they represent almost one-third of the nurses who have died from COVID-19.¹⁸ In other words, “honorary whiteness” as applied to Asian-Americans does not protect from racial violence and death.

In *The New Tipping Point: Disruptive Politics and Habituating Equality*, Professors Rachel D. Godsil and Sarah E. Waldeck show how the Black Lives Matter Movement gained traction following the summer 2020 protests as many Americans from all walks of life became interested in understanding systemic racism. The authors caution that individual interest and concern are insufficient to change social institutions that “were formed by governmental actions designed to maintain both racial hierarchy and separation.”¹⁹ They argue that what will be required is the mainstreaming of policies that dismantle governmental support for whiteness. Professors Godsil and Waldeck provide a possible path forward by observing that we may be at a tipping point for such a change. They use the examples of affordable housing and transportation (documenting how racist governmental policies in those areas operated to exclude Black Americans and decimate Black communities) to demonstrate how systemic change could work and be beneficial for people of all races.

https://www.washingtonpost.com/national/adam-toledo-video/2021/04/15/939283cc-9e08-11eb-8005-bffc3a39f6d3_story.html.

¹⁷ See *supra* note 15.

¹⁸ Catherine E. Shoichet, *Covid-19 Is Taking a Devastating Toll on Filipino American Nurses*, CNN (Dec. 11, 2020, 10:54 AM), <https://www.cnn.com/2020/11/24/health/filipino-nurse-deaths/index.html>.

¹⁹ Rachel D. Godsil & Sarah E. Waldeck, *The New Tipping Point: Disruptive Politics and Habituating Equality*, 70 EMORY L.J. 1507 (2021).

Building upon the last Essay, in *Systemic Racism and Housing*, Professor A. Mechele Dickerson begins by documenting how the federal government actively prevented Black Americans from buying homes and then condemned Black neighborhoods to situate federal highways that enabled white workers to more easily commute from their homes in the suburbs (purchased with racially discriminatory government insured loans) to work in cities. She makes a compelling argument that only if the federal government enacts anti-racist policies can we begin to reverse decades of discrimination. Professor Dickerson's proposed solutions include: (i) eliminating tax subsidies that disproportionately benefit higher income white homeowners; (ii) creating government provided down payment assistance programs; and (iii) increasing focus on creating affordable housing units (including high-density affordable housing buildings) that will benefit Black, Latinx, and low-income white Americans.

The next contribution, *The Illusory Promise of Free Enterprise: A Primer to Promoting Racially Diverse Entrepreneurship*, by Professor Mirit Eyal-Cohen provides a look into another area where systemic racism was highlighted during COVID-19: small businesses. (The many difficulties of black entrepreneurs and small businesses having difficulty accessing funds in the Paycheck Protection Program compared with their white peers has been well documented.²⁰) She describes the myriad barriers preventing wealth building through entrepreneurship. Those barriers include access to capital and bias in lending decisions, as well as regulatory obstacles. Professor Eyal-Cohen builds a strong case for her argument that lawyers can be social agents and become part of the solution by helping entrepreneurs understand their legal rights and gain access to resources they are entitled to in order to maximize their wealth building opportunities.

The following Essay, *Advertising Injustices: Marketing Race and Credit in America*, by Professor Jim Hawkins and Ms. Tiffany Penner, tackles consumer credit access more broadly and addresses the problem of payday lenders who target advertising toward Black and Latinx Americans, while banks are more likely to send their credit card offers to white consumers. Using Houston as a case study, they document how the racial identities of those pictured on websites exacerbates the existing disparities. Banks tend to show white people, while payday lenders tend to be more inclusive of Black and Latinx Americans—a long-standing problem, but one that may be ripe for reform given this historical

²⁰ See *supra* note 8.

moment. Professor Hawkins and Ms. Penner argue that reforming advertising laws is a simple and effective (but overlooked) solution.

The final contribution to the symposium looks at an area that has only recently gained traction in the public's imagination as having anything to do with systemic racism: tax policy.²¹ *Ten Truths About Tax Havens: Inclusion and the 'Liberia' Problem*, by Professors Steven A. Dean and Attiya Waris, shows how the discourse surrounding tax havens in the international tax context, feeds into the racial stereotyping of Black lawlessness and white innocence. Predominantly Black jurisdictions like Liberia and Trinidad and Tobago are routinely included on tax haven lists, but not predominantly white countries like Switzerland and Luxembourg. They offer ten truths that should be a prerequisite for informing international tax reform going forward—including truths that need to be taken seriously by the Biden Administration.²²

The Executive Editors and staff of the *Emory Law Journal* and I hope that these Essays will play a part in furthering scholarly discourse on systemic racism and help lead to societal transformation in a world desperately in need of it.

²¹ Naomi Jagoda, *IRS Chief Pledges to Work with Congress on Examining Tax Code's Role in Racial Wealth Disparities*, HILL (June 30, 2020, 2:05 PM), <https://thehill.com/policy/finance/505247-irs-chief-pledges-to-work-with-congress-on-examining-tax-codes-role-in-racial>; see also DOROTHY A. BROWN, *THE WHITENESS OF WEALTH: HOW THE TAX SYSTEM IMPOVERISHES BLACK AMERICANS—AND HOW WE CAN FIX IT* (2021).

²² Steven Dean, *A Plea to President Biden to Stop Perpetuating Racist Tax Policy*, NATION (Apr. 13, 2021), <https://www.thenation.com/article/economy/biden-tax-policy/>.