Reparations + Reckoning

1. In our own work, we have seen evidence that a meaningful notion of reparations requires a meaningful reckoning with the truth of what was taken and what was lost in the exploitation of land, bodies, and labor – as well as the enduring justifications that sustain – white supremacy.
   1. How much of our reparations discourse replicates the respectability politics? How much of our reparations discourse provides a path only for the EXCEPTIONAL?
2. This young woman had a dream to study dance at FSU and needed a particular SAT score to get there.
3. Determined to get there, she developed a disciplined plan to approach the exam. Her score jumped 300 points. ETS withheld her score (a 1230) and accused her of fraud.
4. This young woman was not interested in school at all and appeared to be heading toward a career in social media influencing, enabled by her parents’ wealth and celebrity.
5. Her parents arranged for her admission to USC and she expressed her reluctant willingness to try it out for the game days and the partying. She didn’t have a disciplined approach to school even in high school. She was admitted to USC.
6. 2 beautiful young women
   1. even the photos available online provide important data about how we see them. Kamilah Campbell is depicted as angry, the photos are video stills. She’s a kid who wants to study dance, but she is presented as formidable and her credibility was questioned endlessly. Olivia Giannuli’s photos are posed, intentional. She looks innocent and young. Does she look like our idea of who a college student is? And what have we normalized – what is our socialization – that makes that true. Olivia Jade was partying on a yacht with one of her deans when the news of this scandal broke. But no one EVER questioned her right to be there – even though her high school records certainly didn’t support USC and she never rowed crew.
   2. One of these kids mobilized additional privilege as she reaped undue rewards. How much of our socialization is racial bias that we support through small, subjective decisions every day?

Can we talk about reparations without confronting and resolving the historical assumptions grown from white supremacy, that continue to animate our actions + beliefs today?

* 1. In our taxonomy, Kamilah Campbell’s situation – whether she likes it or not, gets filed in the affirmative action bucket – situated in 150 years of struggle for access to education and equality. While the law protects our right to education, it has increasingly excused racial bias in decision-making used to systemically exclude Black and Brown folk – and undercut affirmative action and other efforts to address this.
  2. A vibrant social discourse around merit (defined via tools of white supremacy) has been wielded to preserve the white power and privilege in this space.
  3. If you are following the affirmative action trial at Harvard, you understand that the same test scores that EXCLUDE Black and Latinx students ALSO fail to INCLUDE many Asian students. In John’s Creek, GA, after an influx of Asians who dominated the standardized tests, grading, and extra-curriculars, white families sold their homes AT A LOSS and created the exact same school district across the river. Exactly the same - but no Asians. These conversations are never about merit and may never be separated from white supremacy.
  4. This is not an isolated incident. Those of us who frequent these spaces know of the legacy admissions, the donations, buildings, and libraries that lubricate and facilitate admissions, and the “gentleman’s Cs” which are really “grade inflation B+s today. This, too, is white supremacy. And it transforms and transmogrifies to maintain white privilege an access to power. But this also has the deliberate effect of systemically excluding those from whom we expect less. But when those expectations are grounded in racialized beliefs, this impacts a right to education without a clear redress in law.
  5. This is a problem reparations must address, but can it even be perceived without a real social reckoning?

1. On the US-Mexico border, we have seen a systemic practice of removing children from their parents. Children and parents have the right to family, Our children fall within our liberty interest in the US, that’s how seriously we take it, and are covered by the CRC virtually everywhere else. But no system catalogued these removals. Some children were infants and newborns who could not report their origins. Others were young children illiterate in their own languages or only speaking local dialects. Children who didn’t know their last names, the names of their parents, or the names of where they came from.
   1. Foreseeable violations of human rights and civil rights, and all well-settled law. Monetary damages, injunctive relief likely. But none of this prevented the human tragedy we saw unfolding at the border, we knew the claims of national security were pretext. We want more from our civil rights framework than mitigation of human tragedy… but can we get that without a real social reckoning on what REPARATIONS truly entails?
   2. We have been told by CBP and the President that people are informed the US is full when they approach the border and claim asylum. This is a violation of the law, yet like most international law, difficult to enforce in the face of impunity. Yet none of use doubt this implicates race and signals white supremacy – even without our president’s comments that we need less immigration from “shithole” countries, which he apparently defines as Black.
   3. Nevertheless, this continues. It bears remarkable similarity to the operation of the US child welfare system in some ways. Is there really any question that certain bodies – Brown and Black bodies – are disposable? Is there really any question that a double standard is at work?
2. On the contrary, these WHITE parents went unchallenged in an ongoing pattern of abuse and neglect of their adopted children. You may recognize them as the couple who drove their children off a cliff a year ago –
3. Their bio mom’s use of narcotics was cognizable as a danger under law (even though some research suggests this may not implicate child protection as we assume).
   1. The perception that the bio mom would have access to the kids was used by the appellate court – the family scraped together money for an appeal – to justify disqualifying all kinship foster or adoption options.
   2. The biological parents of all of these children learned of their kids’ fate via the media. As we cried out at the horror, no one took it upon themselves to inform the people from whom these kids were taken. They were not given that respect or regard.
4. Several reports and outcries from the children that were ignored or minimized. We can blame bureaucracy and state lines and jurisdiction – but is that really the reason? If you recall the social media discourse when this happened, people were fiercely defending the parents and calling out the children as ungrateful and liars - IN THE ABSENCE OF ANY EVIDENCE AT ALL.
5. Additional information came from the inquest and a coroner’s jury recently. Think how much worse these kids’ situation must have been than anyone knew. Think how demonized their parents were to them and how alone they must have felt as every cry for help fell on deaf ears. WHAT HAVE WE NORMALIZED THAT ALLOWS EITHER OF THESE SCENARIOS INVOLVING Black and brown CHILDREN TO HAPPEN?
6. White supremacy is not just our history. It is a current assumption that animates credibility determinations. It impacts decisionmaking in the law and in society every day.
7. Does the Law Meaningful Impact Key Exercises of White Supremacy?
   1. WGEPAD – Belgium country visit. Belgium and the ECHR, leaders in defining and protecting our human rights framework, tend to define racism as racial violence and legalized exclusion. But in our recent country visit, we heard very consistent messages from civil society, including PAD who had been in the country for generations.
      1. Diverted to vocational education, downgrading – jobs below educational levels, and systemic exclusion from public facing roles in leadership and management – these were denied by the government yet omnipresent throughout our visit. These operated through the exercise of individual subjective decision-making, and the exercise of racial bias in individual subjective decision-making.
      2. The assumptions, stereotypes, and strongly-held beliefs underlying these racially biased subjective decisions were not grounded in fact – but in colonial justifications for exploitation of African land, labor, resources, and bodies. Even so, and even after colonialism ends, this construction of whiteness and wite supremacy persists – and is subtly reinforced via social conditioning in education, media, and family.
      3. Since our visit, Belgium did apologize for one systemic practice of child removal of racially mixed kids, an important first step. But much of Europe and the US remain challenged to understand individual outcomes as systemic practices and the proof of racism in subjective decision-making sometimes eludes even the decision-maker.
   2. USA + Canada – systemic unfairness in criminal justice – climate of racialized terror
   3. FLOYD – In 2013, Judge Shira Schiendlin in SDNY found that the NYPD was systematically racially profiling Black and Brown New Yorkers in investigative encounters. Racial disparities were a key indicator of this, via an advanced statistical analysis, and she mandated broad cultural change. But what do we conclude from the fact that entrenched racial disparities still exist six years later? What should we conclude from the federal Monitor’s recent report with found that NYPD has not sustained (found credible) a single allegation of racial profiling since trial. Shouldn’t we be MORE critical in our discourse?
   4. Recklessness is a standard (mens rea) that can incarcerate. But isn’t it *per se* reckless to market – or purchase – a commercial product that has a significant racial disparity in reliability and is used in law enforcement, targeting, automatic vehicles, and automatic weapons. Talking about AI facial recognition – commercially marketed by Amazon, Microsoft and others - and often 99% accurate for white men but as low as 70% accurate for Black women – include misgendering and mis-estimating ages significantly. In this context, this error may get you pulled out of line in TSA or immigration, stopped on the streets, or much, much worse.
      1. ERROR = RISK = RECKLESSNESS. But the products are sold – and used – commercially and by the government today. Yet the recklessness standard that may be used to deprive someone of their liberty does not prevent this exercise of racial bias.
      2. Even to address it, must find and prove someone is materially damaged, yet we know these items are cloaked in secrecy.
   5. FINALLY. It is not at all clear that the LAW, our greatest weapon against injustice, can fix this. Is the law David or Goliath in this scenario? Or neither? Is the law the limbering giant who is taken down by the tenacity and ingenuity of a nimbler and unexpected adversary? Or can the law be more deft in its undermining of the ongoing iterations of white supremacy when they are more visible and cognizable to fact finders, litigators, and others in our justice system charged with defending and protecting the law?
      1. What does it mean for that potential if I am confused for a defendant or my client when I walk into court – despite indicia of being a lawyer? What does it mean if this has happened to every single black and Latinx attorney I know – and if it is routine for men? What does It mean when you hear even our wins, our successes, our excellence and attribute it to “being good with the clients” or “the judge likes you,” rather than intellectual excellence. If we want to dismantle the way our commitments to civil rights are compromised by the routine operation of white supremacy, these Qs must be answered.