MICROCLIMATES OF RACIAL MEANING: HISTORICAL RACIAL VIOLENCE AND ENVIRONMENTAL IMPACTS

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This article examines the socially constitutive force of historical racial violence, dimensions and mechanisms of environmental impact, enduring questions, and remedial implications. I stress the importance of empirical scrutiny of racial violence since the nineteenth century, both for the development of critical race perspective on its social force and to inform oppositional movements. Areas plagued by histories of racial violence are further theorized as microclimates of racial meaning where legacies of this contention alter population characteristics, structural and emotional dynamics, and contemporary life chances. I close with consideration of remedy, encouraging more intermediate approaches to legal and policy intervention that may aid in acknowledging and interrupting environmental impacts of historical racial violence.

INTRODUCTION

Recent social research finds that areas marked by more pronounced histories of racial violence remain distinct on various measures of contemporary conflict, violence, and inequality. Studies find elevated homicide rates,[1] greater white supremacist mobilization,[2] differing support for criminal justice policy,[3] and other distinctions of areas "haunted" by histories of lynching and other racial violence.[4]

The lasting meaning of racial violence from the more and less distant past is attributed to lingering traces in psyches, identities, attitudes, behaviors, structural inequalities, and other dynamics of

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1. Steven F. Messner et al., *The Legacy of Lynching and Southern Homicide*, 70 AM. SOC. REV. 633 (2005) (histories of lynching positively predict county-level differences in contemporary homicide rates and black-victim homicide in particular); Nick Petersen & Geoff Ward, *The Transmission of Historical Racial Violence: Lynching, Civil Rights-Era Terror, and Contemporary Interracial Homicide*, 5 RACE & JUST. 114 (2015) (civil rights movement–era racial violence mediates the link between lynching and contemporary homicide rates).

2. Rachel M. Durso & David Jacobs, *The Determinants of the Number of White Supremacist Groups: A Pooled Time-Series Analysis*, 60 SOC. PROBS. 128 (2013) (white supremacist groups are more numerous today in areas with histories of lynching); Peter B. Owens et al., *Threat, Competition, and Mobilizing Structures*, 62 SOC. PROBS. 572, 585 (2015) ("[W]hile counties [in North Carolina] with strong legacies of violence [measured by lynching] are few in number, they almost always exhibited higher levels of klan mobilization" in later decades.).

3. David Jacobs et al., *Vigilantism, Current Racial Threat, and Death Sentences*, 70 AM. SOC. REV. 656, 677 (2005) (histories of lynching predict state-level differences in contemporary capital sentencing); Ryan D. King et al., *Contemporary Hate Crimes, Law Enforcement, and the Legacy of Racial Violence*, 74 AM. SOC. REV. 291 (2009) (hate crime law enforcement is diminished in counties with histories of lynching).

4. GABRIELE SCHWAB, HAUNTING LEGACIES: VIOLENT HISTORIES AND TRANSGENERATIONAL TRAUMA 49 (2010) (When traumas associated with historical violence are not addressed, descendants "inherit the psychic substance of the previous generation and display symptoms that do not emerge from their own individual experience but from a parent's, relative's, or community's psychic conflicts, traumata, or secrets.").

successive generations.[5] In places where, historically, black life has been trivialized by lethal and often sadistic violence, typically without protection or recourse through law, linked notions of "white dignitary privilege" and black devaluation may persist or grow more pronounced over time.[6] These normative impacts have been described as latent and lasting effects of racial violence and terror, where moments of "extreme racial socialization"[7] heighten the salience of race, cultivate cultural support for violent dispute resolution,[8] diminish collective efficacy,[9] and sow legal cynicism.[10] There are also material,[11] psychic,[12]

5.   *See infra* notes 7–13, 140–161 and accompanying text.

6.   Barbara J. Flagg, *"And Grace Will Lead Me Home": The Case for Judicial Race Activism*, 4 ALA. C.R. & C.L. L. REV. 103, 107–09, 109 n.9, 116–17 (2013) (describing white dignitary privilege as the fundamental element of white racial identity and status, a recognition of humanity rooted in the dehumanization of nonwhites, where "people of color are stigmatized everywhere and all the time" as less than full-persons); *see also* CHARLES W. MILLS, THE RACIAL CONTRACT 10–11 (1997) (describing white supremacy as a political system involving a contract between whites who, through formal and informal agreements, are recognized as full persons). On the role of racial violence in sustaining these status markers, see *supra* note 1.

7.   STEWART E. TOLNAY & E. M. BECK, FESTIVAL OF VIOLENCE: AN ANALYSIS OF SOUTHERN LYNCHINGS, 1882–1930, at 50 (1995) (describing lynching as a "symbolic manifestation of the unity of white supremacy"); Durso & Jacobs, *supra* note 2, at 130–31 ("Where lynchings were common, many whites were socialized to believe their dominance was unquestionable."); Emma Coleman Jordan, *A History Less: Reparations for What?*, 58 N.Y.U. ANN. SURV. AM. L. 557, 565 (2003) ("Integrating children [in the perpetration of lynching] ensured that the underlying narrative of hatred upon which lynching was based would be carried forward to successive generations.").

8.   Messner et al., *supra* note 1, at 637 ("[A] legacy of lynching might facilitate the emergence of cultural supports for the use of lethal violence as a way to settle disputes, manage interpersonal conflicts, and to punish [others]."); *id.* at 637 n.5 ("[T]he general proposition that physical punishment tends to promote rather than deter aggressive behavior is a central component of social learning theory.").

9.   Rory McVeigh & David Cunningham, *Enduring Consequences of Right-Wing Extremism*, 90 SOC. FORCES 843, 849 (2012) ("While Klan members contributed directly to lethal violence in the 1960s, we believe that the KKK's relationship to violent crime in subsequent decades stems not primarily from the acts of former Klan members and sympathizers, but rather from the ways in which prior Klan activism produced tears in the social fabric that continue to undermine informal social controls that might otherwise constrain generalized violence.").

10.   *Id.* ("Ties between local law enforcement agents and the Ku Klux Klan [suggested] black Southerners would have to fend for themselves when it came to protecting themselves from whites, but also when it came to settling internal disputes and conflicts."); Messner et al., *supra* note 1, at 649 ("[L]ynching represented an extraordinary instance of 'lack of access to formal law,' which in turn fostered 'self-help' cultural adaptations conducive to lethal violence" among black Southerners.).

11.   ELLIOT JASPIN, BURIED IN THE BITTER WATERS: THE HIDDEN HISTORY OF RACIAL CLEANSING IN AMERICA 135–40 (2007) (Blacks owned 1,900 acres of land in

and possibly biological[13] impacts for perpetrators and victims alike, along with their descendants.

Lingering, multi-faceted environmental traces of historical racial violence are illustrated by a case from 1930s Marion, Indiana, where a sadistic lynching of two black teenagers and prevented lynching of a third not only exposed but *altered* contours of racial meaning for decades to come. The State of Indiana was then a Ku Klux Klan stronghold.[14] Ironically, the survivor in this case (then-sixteen-year-old James Cameron) would later write in his memoir that there was no particular "race problem" in Marion up to then beyond the typical enforcement of racial segregation. That is, until he and his friends "crossed the boundary into the most sacred area of all, the world where

Forsyth County, Georgia when a racial pogrom drove the black population out in 1912. While some were able to hastily sell their property, often for a loss, "[t]he majority of black landowners were helpless to prevent their white neighbors from stealing their land and their homes."); CHARLES L. LUMPKINS, AMERICAN POGROM: THE EAST ST. LOUIS RACE RIOT AND BLACK POLITICS 126 (2008) ("[I]n East St. Louis, assailants terrorized at least 7,000 African Americans into fleeing across the river to St. Louis, many with only the clothes on their backs and small bundles in their arms.").

12.   Jordan, *supra* note 7, at 565 ("[P]articipating in [lynching] must have deeply psychologically disturbed children themselves, in a way akin to the most severe forms of child abuse."). Beyond documenting the loss of black lives, property, and livelihoods, the *Report of the Committee of Merchants for the Relief of Colored People, Suffering from the Late Riots in the City of New York* reported that "[s]everal cases of insanity among the colored people appear, as directly traceable to the riots." VINCENT COLYER, REPORT OF THE COMMITTEE OF MERCHANTS FOR THE RELIEF OF COLORED PEOPLE, SUFFERING FROM THE LATE RIOTS IN THE CITY OF NEW YORK 26 (1863).

13.   Christopher W. Kuzawa & Elizabeth Sweet, *Epigenetics and the Embodiment of Race: Developmental Origins of US Racial Disparities in Cardiovascular Health*, 21 AM. J. HUM. BIOLOGY 2, 10 (2009) ("[S]ocial and structural manifestations of inequality . . . impact the development of responsive biological systems."); *see also* DOROTHY ROBERTS, FATAL INVENTION 142–44 (2011) ("Through epigenetics . . . the effects of racism on parents might be transmitted to their children, perpetuating inequalities across generations."). To be sure, epigenetic effects of racism are likely as relevant to racial aggressors and their descendants, though these dynamics have been neglected. *See* FRANTZ FANON, BLACK SKIN, WHITE MASKS 60 (Grove Press 1967) (1952) ("[T]he white man enslaved by his superiority . . . behave[s] in accordance with a neurotic orientation."); Shannon Sullivan, *The Hearts and Guts of White People*, 42 J. RELIGIOUS ETHICS 591, 607 (2014) ("[W]hite people are not necessarily doomed to repeating patterns of white domination even though their bodies are suffused with it.").

14.   LEONARD J. MOORE, CITIZEN KLANSMEN: THE KU KLUX KLAN IN INDIANA, 1921–1928, at 6–7 (1991) ("Between 1922 and 1925, Indiana was the epicenter of the national Klan movement . . . one-quarter [to] one-third of all native-born white men in the state paid ten dollars to become Klansmen during the 1920s . . . figures [that] do not even include the thousands of women who joined the auxiliary order [for women], or the Junior Klan for children.").

white women lived," and were falsely accused of rape.[15] As the three sat in jail and watched a lynch mob forming outside, a white inmate assured Cameron that "[p]eople in this part of the country wouldn't lynch anybody."[16] Another black prisoner countered that the white inmate was "nuts,"[17] offering what proved a more accurate reading of the risk of racial violence. The ensuing lynching on Marion's courthouse square was like many others we now know of, where black life was ritually trivialized and the meaning of white life exalted by a crowd numbering in the thousands. What an impression this must have left on the disbelieving white prisoner who formed part of this audience.[18]

Most unusual about the Marion event is that the teenager James Cameron was spared at the last moment after witnessing the sadistic torture and lethal beatings of the other two boys, who were dead before they were hung, and he himself had been beaten by the same crowd, dragged to the same tree under police escort, and endured rope burns from the noose around his neck.[19] He and the rest of the community were nevertheless impacted by this terroristic event meant to convey and reinforce white racial dominance.

What does it mean to survive a lynching, or, what exactly survives? For Cameron and others this meaning has fluctuated, as have lived experiences of race in this particular environment and beyond. "For the first hours, days, months after his near-death," one historian recounts, "Cameron felt sick with rage and wanted to kill a white man. Any white man."[20] In his memoir, Cameron describes how that rage gave way to recurring nightmares that he tried to keep at bay by reminding himself "it all happened a long, long time ago," while accepting "I am not the same man. I am someone else now."[21]

That new self, forged in the crucible of an aborted lynching itself enabled by an entrenched (pre-existing) white supremacist political system, left impressions on societal relations far beyond Cameron and Marion, Indiana. The incredibly resilient Cameron left Indiana and became an anti-racism activist and civic leader in Milwaukee, Wisconsin, over two hundred miles away. In the 1980s, he self-published a memoir, *A Time of Terror*, having been refused by

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15.   JAMES CAMERON, A TIME OF TERROR 18 (1994).
16.   *Id.* at 42.
17.   *Id.* at 43.
18.   CYNTHIA CARR, OUR TOWN: A HEARTLAND LYNCHING, A HAUNTED TOWN, AND THE HIDDEN HISTORY OF WHITE AMERICA 17–18 (2006).
19.   CAMERON, *supra* note 15, at 73–75.
20.   CARR, *supra* note 18, at 19.
21.   CAMERON, *supra* note 15, at 37.

publishers for decades, and began work on what became America's Black Holocaust Museum. Originating in the basement of his home, the museum was established in an old boxing gym that the City of Milwaukee sold to Cameron for one dollar and did not have a single visitor for the first six months.[22] Despite these struggles, Cameron's museum and memoir (finally published in 1993) contribute to a massive, if largely scattered and uncharted, body of work[23] crucial to clarifying the haunting legacy of historical racial violence and facilitating the public reckoning essential to mourning, reparation, and the transformation of political culture.[24]

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22.   Frederick Lowe, *Life Stories: He Survived a Lynching, Now He Won't Let Us Forget*, CHI. READER (May 30, 2002), http://www.chicagoreader.com/chicago/life-stories-he-survived-a-lynching-now-he-wont-let-us-forget/Content?oid=908694.   The museum space closed in 2008 and was converted to a virtual museum. *About ABHM*, AMERICA'S BLACK HOLOCAUST MUSEUM, http://abhmuseum.org/category/about-abhm/ (last visited Mar. 13, 2016).

23.   There are numerous scholarly treatments of specific events such as "The Slocum Massacre," the "Wilmington Race Riot," and the "East St. Louis Riot," to name a few. There are many in-depth studies of specific places or groups that include close attention to histories of racial violence. Finally, events of racial violence are commonly referenced in more popular work such as visual art, novels, and poems and in memoirs, oral histories, and other testimonials. *See* Bruce Perry, *The Memories of States: How the Brain Stores and Retrieves Traumatic Experience*, *in* SPLINTERED REFLECTIONS: IMAGES OF THE BODY IN TRAUMA 9, 34 (Jean Goodwin & Reina Attias eds., 1999) ("Creative artists have always been the recorders and preservers of their cultures' emotional memory. In ways that standard recording of simple facts and figures cannot convey, a painting, poem, novel or film can capture the emotional memory of an experience."). Though massive in volume, these dispersed accounts do not easily facilitate an integrated assessment of or response to the phenomenon of racial violence.

24.   KIDADA WILLIAMS, THEY LEFT GREAT MARKS ON ME 5 (2012) ("[T]estifying about racial violence was a crucial factor in African Americans' individual recovery and their collective resistance to white supremacy because whenever victims related their experiences of this violence, the created witnesses to their trauma."). On the importance of "telling and witnessing" to mourning and reparation, Schwab writes,

> [populations are] haunted by the ghosts, that is, the unfinished business, of a previous generation. People tend to bury violent or shameful histories. They create psychic crypts meant to stay sealed off from the self, interior tombs haunted by the ghosts of the past. . . . However, untold or unspeakable secrets, unfelt or denied pain, concealed shame, covered-up crimes, or violent histories continue to affect and disrupt the lives of those involved in them and often their descendants as well. Silencing these violent and shameful histories casts them outside the continuity of psychic life but, unintegrated and assimilated, they eat away at this continuity from within.

SCHWAB, *supra* note 4, at 49; *see also* Jane L. Curry, *When an Authoritarian State Victimizes the Nation: Transitional Justice, Collective Memory, and Political Divides*, 37 INT'L J. SOC. 58, 58 (2007) ("[T]ransitional justice can free political behavior from

Legacies of the 1930 lynching endured and likely remain in Marion as well. Like Cameron, violent microclimates of racial meaning and their populations carry lingering and dynamic traces of such events. Would anyone again doubt that the people were capable of lynching, as the white prisoner had? In fact, writing about this legacy, historian James Madison notes,

> As late as the civil rights struggles of the 1950s some whites in Marion reminded African Americans of what would happened [sic] if they violated white norms. Increasingly, however, memories turned to shame, sometimes suppressed in a willful forgetting, sometimes pulled out to encourage the necessity of justice for all.[25]

Jack Edwards was mayor of Marion in 1930 and again in the 1960s.[26] In 1977, he told an interviewer that the lynching now four decades earlier had "scared the colored people to death. We had no trouble with colored people from that day on until about . . . the last ten years."[27] A black woman who was a teenager in Marion in 1930 elaborated on how the lynching changed her life, that place, and its black community. In 1994, over six decades later, she considered Marion the most racist city in Indiana, confiding in the present tense, "we're like the rabbit now; we don't trust the sound of a stick . . . ."[28]

Marion and its residents are hardly alone in embodying their past. A growing body of work in the social sciences, humanities, and law on extremely violent societies and their histories suggests that "trans-generational trauma" affects descendants of perpetrators, victims, and bystanders alike.[29] These remnants are not merely

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the trappings of the past, but only if aggressors and victims confront one another and move toward reconciliation.").

25.   James H. Madison, *A Lynching in the Heartland: Marion, Indiana, August 7, 1930*, ORG. AM. HISTORIANS, http://archive.oah.org/special-issues/teaching/2011_06/sources/day2ex1_photo_madison.html (last visited Apr. 26, 2016).

26.   JAMES H. MADISON, A LYNCHING IN THE HEARTLAND: RACE AND MEMORY IN AMERICA 143 (2001).

27.   *Id.*

28.   *Id.*

29.   *See supra* notes 1–4 and accompanying text; *see also* SCHWAB, *supra* note 4, at 108 ("For generations to come, German people will and should be haunted by their past, despite the war generation's denial and, as a transgenerational effect of this denial, an already observable reduced awareness in the generation of grandchildren."); JESMYN WARD, MEN WE REAPED: A MEMOIR 14 (2013) ("Men's bodies litter my family history. The pain of the women they left behind pulls them from the beyond, makes them appear as ghosts."); Sherrilyn A. Ifill, *Creating a Truth and Reconciliation Commission for Lynching*, 21 LAW & INEQUALITY 263, 269 (2003) ("[G]iven the power

social-psychological but may be physiological and clearly include structural inequalities resulting from associated patterns of (dis)accumulation, such as unlawful white gains and black losses of real property and business opportunity through pogroms, with inter-generational implications for mobility and wealth.[30] These insights present important advances in the understanding of structural racism with implications for future research, legal advocacy, and public policy.

This paper has two overlapping aims in examining environmental impacts of historical racial violence. One is to note the fundamental importance of empiricism, historically and today, to a critical race perspective on the social force of historical racial violence. Such understanding would not be possible were it not for long-standing work to gather, analyze, and leverage what Ida B. Wells called the *Red Record*. Efforts to identify areas of extreme racial violence and leverage these data in research, advocacy, and public policy speak to

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of lynching as a tool for white supremacy and its important role in shaping . . . the United States, efforts should be made to uncover and dismantle the legacy of lynching."). In her memoir of the Marion lynching from the perspective of a descendant of Klansmen likely to have been involved, Cynthia Carr writes, "Much of this story is about shame. . . . A lot of us who are white come from something we would rather not discuss." CARR, *supra* note 18, at 4.

    30.   *See supra* note 11 and accompanying text. Pogroms created dozens, hundreds, and sometimes thousands of black refugees who lost not only real property, possessions, and other socio-economic resources abandoned in haste, but emotional well-being. Reflecting on black community losses resulting from the New York Draft Riots, the fugitive slave and abolitionist Reverend James Pennington cited "[t]he breaking up of families; and business relations just beginning to prosper; the blasting of hopes just dawning; the loss of precious harvest time which will never again return; the feeling of insecurity engendered; the confidence destroyed." HOWARD DODSON ET AL., THE BLACK NEW YORKERS: THE SCHOMBURG ILLUSTRATED CHRONOLOGY 86 (2000). Williams recalls a former slave, James Hicks, whose family fell victim to economically motivated racial violence testifying to Congress in 1871, "They took everything I had, and all my wife had, and broke us teetotally [sic] up. I had to come away with nothing." WILLIAMS, *supra* note 24, at 1. The family relocated and attempted to start over but was tracked down and attacked again, leaving Hicks incapacitated for weeks. *Id.* at 2. "In the end, with the loss of the Hicks family's home, their belongings, their share of the crop, and [these] injuries, there was little chance they would recover from the loses they had sustained." *Id.* On black land loss rooted in violence and other manipulations, see generally Todd Lewan & Dolores Barclay, *AP Documents Land Taken From Blacks Through Trickery, Violence and Murder*, ASSOC. PRESS, *reprinted in The Case for Reparations*, *in* 148 CONG. REC. 668, 669–671 (2002) (describing losses of thousands of acres of land and treasured pieces of family history and thus the ability to transfer wealth and other resources from one generation to the next); Thomas W. Mitchell, *Destabilizing the Normalization of Rural Black Land Loss: A Critical Role for Legal Empiricism*, 2005 WIS. L. REV. 557, 564 (The decline of black rural landownership is partly attributable to the forced migration of black farm-owning families subjected to violence and intimidation.).

the role of empiricism in Critical Race Theory, in Wells's time and ours.[31] Recent advances in social science and technology demonstrate the indispensability of earlier and ongoing empirical work, improving yet also complicating our capacity to identify, interpret, and intervene in what I will describe as violent microclimates of racial meaning.

An additional objective of this paper is to advance theoretical understanding of these places distinguished by histories of racial violence, including forms and mechanisms of apparent distinction, and implications for research, advocacy, and policy. I use the term "microclimates" for descriptive, analytical, and practical purposes here, arguing that it helps to comprehend the history of racial violence as a dimension of toxicity in our environment. The microclimate characterization is particularly useful to understanding spatial variation in the trivialization of black life and to targeting remedial efforts in specific milieus. Microclimates describe often subtle environmental distinctions with potentially dramatic implications for life forms.

What follows is a partial evaluation of the interpersonal, cultural, and structural violence fundamental to a long history of white supremacism and its contemporary implications.[32] Ultimately, such an analysis requires more attention to diverse ethnoracial group experiences,[33] intersectionality,[34] and the complexly layered harms

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31.   Jordan, *supra* note 7, at 606 ("Wells, more than any other single individual, should be credited with revolutionizing the statistical portrait of lynching. . . . [She] created a detailed statistical and anecdotal record of lynchings that serve [sic] as an important starting point for . . . lynching research today. . . . The cumulative data packs the powerful punch of numeration, while the individual stories carry the moral authority of human torture and . . . depraved atrocity.").

32.   On the violence fundamental to white supremacism, see generally IVAN EVANS, CULTURES OF VIOLENCE: LYNCHING AND RACIAL KILLING IN SOUTH AFRICA AND THE AMERICAN SOUTH (2009) (Official and extra-legal violence are defining elements of white supremacist regimes.); MILLS, *supra* note 6, at 83 ("In seeking first to establish and later to reproduce itself, the racial state employs the two traditional weapons of coercion: physical violence and ideological conditioning.").

33.   *See* KEN GONZALES-DAY, LYNCHING IN THE WEST: 1850–1935, at 3 (2006) (An attempt to "reveal to the nation that—like the lynching of African Americans—Native Americans, Chinese, and Latinos of Mexican and Latin American descent were lynched in California," providing "a broader understanding of the transracial nature of lynching in the United States.").

34.   On racialized sexual violence, see, for example, DEBORAH M. HORITZ, LITERARY TRAUMA: SADISM, MEMORY, AND SEXUAL VIOLENCE IN AMERICAN WOMEN'S FICTION 71 (2000) ("[T]he violent racialized and sexualized power dynamic of the white 'master' . . . continues as a literary trope because, as a *trauma*, the dynamic persists as an historical reality."); LEONARD N. MOORE, BLACK RAGE IN NEW ORLEANS: POLICE BRUTALITY AND AFRICAN AMERICAN ACTIVISM FROM WORLD WAR II TO HURRICANE KATRINA 39–40 (2010) (recounting testimony of a black woman who accused police of raping her but did not scream or yell "because she had been afraid of

suggested in recent environmental justice work—where *contamination* is read through layers of historical racial violence, discrimination, environmental pollution, and other sources.[35] I focus on environmental repercussions of documented racial violence, given recent advances in related research, to reaffirm the ethical, analytical, and political importance of that empirical scrutiny, historically and today.[36]

The paper is organized in two parts. Part I surveys a long history of empirical work on racial violence, beginning with Ida B. Wells's *A Red Record* (1895), and strategic motivations of these analytical efforts. I also note challenges of documenting racial violence, given its ubiquity and elusive meaning, and the nevertheless longstanding and contemporary urgency of doing so, itself evident in inconsistent but continuous efforts to maintain the Red Record for over a century and still today.

Part II engages social science evidence of the environmental impact of historical racial violence, including its temporal and spatial diffusion, and specific mechanisms of enduring meaning. I highlight six overlapping theoretical mechanisms of environmental distinction— extreme racial socialization, culturally supported violence, legal cynicism, diminished collective efficacy, biological response, and

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the police since she was a child"). *See generally* Ahmad Greene-Hayes, *"Black Girls Matter": An Interview with Kimberle Crenshaw and Luke Harris*, FEMINIST WIRE (Feb. 23, 2015), http://www.thefeministwire.com/2015/02/black-girls-matter-an-interview-with-kimberle-crenshaw-and-luke-harris/ (stressing the need for studies "sculpted to the contours of the lived experiences of all of the members of the community").

35.   MELISSA CHECKER, POLLUTED PROMISES: ENVIRONMENTAL RACISM AND THE SEARCH FOR JUSTICE IN A SOUTHERN TOWN (2005). The importance of that reading is suggested in the recent police killing of Freddie Gray, a black youth who suffered developmentally from lead exposure. Jean Marbella, *Beginning of Freddie Gray's Life as Sad as Its End, Court Case Shows*, BALT. SUN (Apr. 23, 2015), http://www.baltimoresun.com/news/maryland/baltimore-city/bs-md-freddie-gray-lead-paint-20150423-story.html. Gray's killing by police might have been set in motion by the relatively unspectacular and often racialized violence of environmental contamination, among other historical sources. *See also* Paul Farmer, *An Anthropology of Structural Violence*, 45 CURRENT ANTHROPOLOGY 305, 323 (2004) (encouraging "an anthropology of affliction that can move easily from the local to the large-scale, tying together the ethnographically visible with the deeper structures that generate or perpetuate poverty and inequality and with the meanings these events and processes are given.").

36.   I reiterate points Ida B. Wells, Monroe Work, and other early contributors made themselves, as will be shown herein, and that recent scholarship has stressed. *See, e.g.*, WILLIAMS, *supra* note 24, at 7 ("African Americans' oral and written testimonies reveal victims' and witnesses' unique perspectives on having their lives transformed by violence and their desire to get justice by making other people hear and understand their suffering."); Jordan, *supra* note 7, at 596 ("Statistical reports [on lynching] provide a helpful, if banal, portrait of this evil.").

structural inequality. I describe these collectively as trans-generational traumas that are social and ecological in nature and more pronounced in "microclimates of racial meaning" shaped by distinct histories of racial violence. This understanding, rooted in an empirical critical race theory project dating back more than a century, awaits further effort to document, analyze, and leverage the Red Record.

I. KEEPING THE RED RECORD

A long view of the Black Lives Matter movement draws attention to more than a century of effort to document racial violence and contributions of that effort to critical analysis and oppositional movements. Beginning most notably with Ida B. Wells's crusade against lynching and continuing over the ensuing century, these data gathering, analysis, and distribution efforts sought to clarify and counter the trivialization of black life. The contributions include basic recognition of black human and civil rights, a moral and political assertion that "black lives matter" directed at the national conscience[37] but focusing on specific environments of normative disregard, and challenging political leaders to ensure equal protection. More broadly, this empiricism informs critical analyses of race as a socially constitutive force, including the centrality of violence to black subjugation and white privilege,[38] race and gender politics of rape,[39] and legacies of racial violence for contemporary social relations.[40]

These contributions notwithstanding, there are substantial challenges to measuring and interpreting the violent trivialization of black life and its trans-generational implications. The Red Record is a generally contested empirical account, undoubtedly incomplete and fraught with tensions related to its criteria, accuracy, and meaning.[41] Advances in social science and technology have lessened some of these difficulties while also creating new ones, including broader access to a

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37.   GONZALES-DAY, *supra* note 33, at 3 (contesting the "nearly complete erasure of [lynching in the West] from the national consciousness" through its omission in the more widely recognized Red Record).

38.   MILLS, *supra* note 6, at 83 ("In seeking first to establish and later to reproduce itself, the racial state employs the two traditional weapons of coercion: physical violence and ideological conditioning.").

39.   Angela Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 599–600 (1990) ("Ida B. Wells analyzed rape as an example of the inseparability of race and gender oppression . . . .").

40.   *See supra* notes 1–4 and accompanying text.

41.   *See infra* Part I.C.

vicarious experience[42] of racial violence (e.g., through social media) and challenges of assessing or addressing such impacts. Despite its challenges and limitations, this empiricism has played important roles in social movements and public policy, demonstrating the ethical, analytical, and political importance of keeping the Red Record.

A. Ida B. Wells and the Genesis of A Red Record

Effort to leverage empiricism as a counter to the trivialization of black life traces most prominently to the work of Ida B. Wells, whose 1895 study entitled *A Red Record* marks not only one of the earliest works of black sociology and criminology but a watershed moment in the deployment of empirical evidence to document and thus challenge the racial violence of white supremacism. Wells had long been engaged in opposition to racial violence by then, including in her work as a teacher, where she challenged the structural violence of educational deprivation diminishing black life chances more slowly.[43] Her crusade against the relatively spectacular violence of lynching commenced around 1892, when the lynching of three young black businessmen and close friends in her hometown of Memphis for the racial status offense of economic prosperity,[44] led her to "turn[] her scathing pen on the

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42.   *See* Michele R. Cooley-Quille, Samuel M. Turner & Deborah C. Beidel, *Emotional Impact of Children's Exposure to Community Violence: A Preliminary Study*, 34 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 1362, 1362 (1995) ("There appears to be an adverse relationship between high levels of exposure to community violence and emotional and conduct problems. Vicarious learning serves as an explanatory construct for these findings."); *id.* at 1366 ("[S]ocial learning theorists have argued that the majority of learning in young children occurs through vicarious mechanisms."); Perry, *supra* note 23, at 10 ("Children in a state of fear retrieve information from the world differently than children who feel calm.").

43.   *See* Geoff Ward, *The Slow Violence of State Organized Race Crime*, 19 THEORETICAL CRIMINOLOGY 299, 304 (2015) ("State organized race crime typically manifests as slow violence—'a violence occur[ing] gradually and out of sight, a violence of delayed destruction . . . dispersed across time and space, an attritional violence that is typically not viewed as violence at all.'" (quoting ROB NIXON, SLOW VIOLENCE AND THE ENVIRONMENTALISM OF THE POOR 2 (2011)) (alterations in original)); *see also* Farmer, *supra* note 35, at 315 ("However spectacular, terrorism and [military] bombardments are but minor players in terms of the body count. Structural violence, at the root of much terrorism and bombardment, is much more likely to whither bodies slowly, very often through infectious disease.").

44.   Trudier Harris, *Introduction* to SELECTED WORKS OF IDA B. WELLS-BARNETT 3, 5 (1991). Mary Church Terrell's reaction to this lynching suggests the multidimensional and inter-generational impact of racial violence. Terrell gave birth to a child shortly after the lynching but her newborn died a few days later. HERBERT SHAPIRO, WHITE VIOLENCE AND BLACK RESPONSE: FROM RECONSTRUCTION TO MONTGOMERY 579 n.25 (1988). Terrell attributed the premature death to stress and

lynchers and on the white population of the city who allowed and condoned such a lynching."[45] Subsequently threatened with lynching herself, Wells remained in exile in the North and travelled around the United States and Europe to organize anti-lynching efforts, where her comparative analysis of lynching events and narratives gave force to these moral and political appeals.[46]

In her introduction to *A Red Record*, Wells remarks on the burden and purpose of this empiricism. Noting that "student[s] of American sociology" should have already been aware of the growing scourge of lynching, the barbarity had grown so common that it seemingly "failed to have any visible effect upon the humane sentiments of the people of our land."[47] This left an obligation to chronicle these atrocities and scrutinize their alleged causes and environmental impacts—to put this evidence before us—and force more public reckoning. "It becomes a painful duty of the Negro," she wrote, "to reproduce a record which shows that a large portion of the American people avow anarchy, condone murder and defy the contempt of civilization."[48] Realizing statistics furnished by a black American would be discounted, she took pains to clarify her methods. "In order to be safe from the charge of exaggeration," she limited her account to events documented by the *Chicago Tribune*, which had been publishing southern newspaper accounts of lynching for several years.[49] The Red Record was made "not by colored men," Wells stressed, "but [from] compilations made by white men, of reports sent over the civilized world by white men in the South. Out of their own mouths shall the murderers be condemned."[50]

Through this effort to document and analyze lynching data and to publicize results, she intended to build oppositional consciousness and facilitate collective action. Her empiricism revealed the falsehood that a noble white patriarchal chivalry necessitated lynching, provoked by the scourge of rape. In her writings and a speech titled "Lynching: Our

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depression caused by the lynching but also wondered if it was divine intervention, saving the child from "the horror and . . . the bitterness which filled her soul, [and] might have seriously affected the unborn child . . . if he had lived." *Id.* at 479.

    45.   Alfreda M. Duster, *Introduction* to IDA B. WELLS, CRUSADE FOR JUSTICE: THE AUTOBIOGRAPHY, at v, xix (Alfreda M. Duster ed., 1972) [hereinafter WELLS, CRUSADE FOR JUSTICE].

    46.   *Id.*

    47.   IDA B. WELLS-BARNETT, *A Red Record* (1895), *reprinted in* SELECTED WORKS OF IDA B. WELLS-BARNETT, *supra* note 44, at 138, 140.

    48.   *Id.* at 149.

    49.   *Id.* at 150.

    50.   *Id.*

National Crime," Wells countered, "The cowardly lyncher revels in murder, then seeks to shield himself from public execration by claiming devotion to woman. But truth is mighty and the lynching record discloses the hypocrisy of the lyncher as well as his crime."[51] Wells took care to study and report lynchings in great detail, using these painful facts to show that the vast majority were not in response to rape, "the never-varying answer of lynchers and their apologists."[52] By showing that lynching was racialized economic and political violence perpetrated and excused by a "race which holds Negro life cheap," she aimed to inspire opposition and force legal remedy.[53] Lynching was "color line murder," she insisted, where "[t]he only certain remedy is an appeal to law [for] Federal protection of African American citizenship . . . ."[54]

Her evidence and arguments succeeded to some extent in generating oppositional consciousness and other resources, not only for anti-lynching campaigns but the broader twentieth-century freedom movement.[55] Norman Wood witnessed one of her anti-lynching lectures in England and later wrote,

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51.   Ida B. Wells-Barnett, *Lynching: Our National Crime*, *in* IN OUR OWN WORDS: EXTRAORDINARY SPEECHES OF THE AMERICAN CENTURY 22, 23 (Robert Torricelli & Andrew Carroll eds., 1999).

52.   Ida B. Wells-Barnett, This Awful Slaughter (1909), *available at* http://www.blackpast.org/1909-ida-b-wells-awful-slaughter.

53.   IDA B. WELLS-BARNETT, *Lynch Law*, *in* SELECTED WORKS OF IDA B. WELLS-BARNETT, *supra* note 44, at 74, 75.

54.   Wells-Barnett, *supra* note 51, at 23–24 ("Agitation, though helpful, will not alone stop the crime. Year after year statistics are published, meetings are held, resolutions are adopted. And yet lynchings go on."); *see also* Bettina Aptheker, *Introduction* to JANE ADAMS & IDA B. WELLS, LYNCHING AND RAPE: AN EXCHANGE OF VIEWS 1, 14 (Bettina Aptheker ed., 4th ed. 1982) ("Wells determined to reveal the exact details of all lynching which came to her attention. She believed . . . that if the political causes of lynching could be demonstrated, political opposition could be generated. This, coupled with a moral appeal to Christian ethics, might succeed in building an effective movement to halt the atrocities.").

55.   *See* JOHNATHAN MARKOVITZ, LEGACIES OF LYNCHING: RACIAL VIOLENCE AND MEMORY 155 n.14 (2004) ("Although many of Wells-Barnett's most important arguments about lynching were adopted [as] antilynching common sense, [others] were considered too radical by many of the movement leaders."); REILAND RABAKA, AGAINST EPISTEMIC APARTHEID: W.E.B. DU BOIS AND THE DISCIPLINARY DECADENCE OF SOCIOLOGY 209–10 (2010) (on Wells's contributions to Du Bois's sociological thought); PATRICIA A. SCHECTER, IDA B. WELLS-BARNETT AND AMERICAN REFORM 135–36 (2001) (on Wells's status as a leading "female thinker of the race," attendant contention, and the NAACP's delayed embrace of proposals in her address at its 1909 organizing meeting).

> God has raised up a modern Deborah . . . [delivering Wells]
> from being lynched at Memphis, that by her portrayal of the
> burnings at Paris, Texas, Texarkana, Arkansas, and
> elsewhere she might light a flame of righteous indignation in
> England and America which . . . will never be extinguished
> until a Negro's life is as safe in Mississippi and Tennessee as
> in Massachusetts or Rhode Island.[56]

Carefully detailed lynching data would help to assess this empirical
question of the relative security of black life and how it varied across
time and space not only with respect to mob violence. As will be
discussed further below, contemporary research finds that lynching
records can be used to estimate the vulnerability of black populations to
violence over ensuing decades, up through today. Although Wells's
tabulations and critical analyses did not end the national crime of
lynching or other racial violence, which raged over the ensuing
century, they demonstrated the importance of keeping the Red Record,
to sustain and inform indignation over the trivialization of black life.

B. *"Little Value Was Placed on the Life of an Individual Negro": The Tuskegee Lynching Report*

The budding black sociologist Monroe Work also grew aware of
lynching from accounts in the *Chicago Tribune* and began producing
his own lynching records in 1900, just five years after *A Red Record*
appeared. His empirical work began while he was an undergraduate
student at the University of Chicago, and he would become the driving
force behind the Tuskegee Institute's nationally and internationally
recognized *Lynching Report*, an extended record of racial violence
invaluable to cultural memory, social research, and advocacy in its time
and ours.[57]

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56.   WELLS, CRUSADE FOR JUSTICE, *supra* note 45, at xiii (quoting NORMAN
WOOD, THE WHITE SIDE OF A BLACK SUBJECT 381–82 (1897); *see also* Sarah L. Silkey,
*Southern Politicians, British Reformers, and Ida B. Wells's 1893–1894 Transatlantic
Antilynching Campaign*, *in* THE U.S. SOUTH AND EUROPE: TRANSATLANTIC RELATIONS
IN THE NINETEENTH AND TWENTIETH CENTURIES 145, 160 (Cornelis A. van Minnen &
Manfred Berg eds., 2013) ("[B]y changing the way British reformers understood
American lynching and encouraging them to hold southern [political] leaders
accountable for the lawless excesses of their constituents, Wells's antilynching activism
increased the perceived international 'costs' of lynching for the South during a critical
period social and economic upheaval.").

57.   LINDA O. MCMURRY, RECORDER OF THE BLACK EXPERIENCE: A
BIOGRAPHY OF MONROE NATHAN WORK 122–23 (1985).

Work focused for much of his career on black public health, documenting relationships between black health problems and social, economic, and political inequality. He observed in writings and speeches how Emancipation economically devalued black bodies in what remained a white supremacist society, such that, "little value was placed on the life of an individual Negro."[58] He stressed that this disregard for black well-being and its array of social organizational expressions not only led to pronounced rates of sickness and early death but black economic, political, and social marginalization. Poor blacks suffered disproportionately from virtually every major illness, leaving black life expectancy in the United States at just thirty-five years in 1913,[59] which was hardly enough time to invest in racial uplift—to earn money, build things, and generate resources and influence. He stressed disregard of black public health as a social, economic, and political tax on black communities and ultimately the nation,[60] framing the trivialization of black life as the waste of a national resource. While the argument collided with white supremacist denials of black humanity—in its claim that black illness and death represented real costs in productivity, innovation, and progress—Work made it his personal and professional mission to draw these connections for black and other audiences, hoping to help realize a fifty-year black life expectancy and related gains by 1964.[61] His basic tactic was to leverage what he called the "impact of fact" through careful collection, interpretation, and broad distribution of empirical evidence.[62]

Work had complete faith in the power of information.[63] He believed sociology could uniquely contribute to black community well-being because black people distinctly suffered from the lack of factual information related to their interests, including volumes of misinformation used to rationalize black subjugation.[64] Like Wells, who used empirical evidence to expose the lie that black sexual aggression fueled lynching, Work mobilized factual information to expose and counter various manifestations of racial violence. This belief in the

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58.   *Id.* at 117.

59.   *Id.* at 111.

60.   *Id.* at 111–12.

61.   *Id.* at 118.

62.   *See id.* at 112–18.

63.   Writing in 1929, "In the end facts will help eradicate prejudice and misunderstanding, for facts are the truth and the truth shall set us free." *Id.* at 7.

64.   For a review of such volumes, see Charles H. Wesley, *The Concept of Negro Inferiority in American Thought*, 25 J. NEGRO HIST. 540 (1940), an article surveying the "consistent and continuous effort . . . during the history of the United States to present American Negroes as inferior beings." *Id.* at 540.

power of basic research led him to "dedicate[his] life to the gathering of information, [and] the compiling of exact knowledge concerning [black people]," so as to promote black individual and collective well-being.[65]

Broad interests in black health and welfare combined with belief in empiricism to focus Work's attention on the compilation of lynching statistics. There was no more dramatic illustration of disregard for black life than lynching, and his appointment at Tuskegee provided the institutional base needed to systematically record lynching data and to impose that information on others.[66] Having been advised of the need for a statistician who would keep careful factual information about the black experience, Booker T. Washington recruited Work to develop sociology and history programs at Tuskegee and to lead what would become its Department of Records and Research. Washington would rely on Work's data-gathering efforts to empirically inform his own writing and speeches, and Work gained access to the resources and influence of Tuskegee and its prominent principal.[67]

Like Wells, Monroe Work was less focused on gathering original lynching data than compiling and repackaging available information to increase its public impact. The *Chicago Tribune* was the only source of regularly reported nationwide lynching statistics before 1912, and Work suspected those reports were ignored, especially by competing newspapers reluctant to credit this source. Realizing that Tuskegee's Department of Records and Research could position itself as an independent and credible source of lynching statistics, he devised a strategy to ensure the much wider visibility and, presumably, impact of these data on racial violence.

In contrast to Wells's more forceful approach, plain packaging of the data was critical to Work's political strategy and perhaps measured success. In *Recorder of the Black Experience*, his biographer stresses

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65.   McMURRY, *supra* note 57, at 28. Work wrote in 1918,

If sociology has primarily to do with human beings in their associative capacities, then its primary function is thorough investigation and research, to collect a body of information that will point out, make clear, what these relationships are and what in the present, the now, should be done in order that these relationships may be made more harmonious, more just and proper.

Id. at 21 & n.26.

66.   *Id.* at 120 ("[Work] first became aware of the extent of the problem about 1900, while he was still a student at Chicago . . . . [and] immediately started collecting records of lynchings, but only after he came to Tuskegee did he have the facilities to compile the data in a systematic manner.").

67.   *Id.* at 48–49, 51–52.

Work's firm belief that "no sort of propaganda is, in the end, so effective as the facts themselves."[68] As a result, his semi-annual lynching reports arrived with little editorial comment, in a uniform format (e.g., counts by year, percentages by alleged offense, state breakdowns, statistics showing the rarity of criminal indictments and sanctions), on Tuskegee letterhead, and typically signed by Tuskegee's president. The first publicly circulated report appeared in 1912 and by the early 1920s it was sent to hundreds of urban dailies, thousands of predominantly southern rural newspapers, the Associated Press, and black newspapers nationwide.[69] The widely cited and circulated reports were also distributed internationally, provided directly to news outlets in Canada and Europe, and reprinted in the *World Almanac*.[70]

While the report did not end the racial terror of lynching or white supremacist racial violence generally, it made several contributions. First, as Work intended, the report forced more public reckoning with the trivialization of black life in specific places named in reports and across the United States. There were reportedly over two hundred separate editorials citing the Tuskegee report in 1932 alone, and while some were dismissive and critical, many expressed shame and outrage.[71] The data also informed reckonings in other spheres of civic life, including "by ministers for sermons and by professors for articles and speeches."[72] While much of this would have been preaching to a proverbial choir, some was undoubtedly imposed on less uniform yet captive audiences of parishioners and students. Mass distribution of the carefully packaged data both forced and facilitated these public reflections, leaving its own traces on public memory and political culture. In a general sense, this countered the attempted trivialization of black life, with the *Lynching Report* compelling a significant portion of the population to reflect on the value and meaning of black lives taken but not forgotten.[73]

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68.   *Id.* at 121.

69.   *Id.* at 121–23.

70.   *Id.*; Jessie P. Cuzman, *Monroe Nathan Work and His Contributions: Background and Preparation for Life's Career*, 34 J. NEGRO HIST. 428, 450 (1949) ("The [reports] were widely quoted and used," even in the South, "thus originating agitation against lynching in the region.").

71.   MCMURRY, *supra* note 57, at 123.

72.   *Id.*

73.   The impact of this cultural influence is apparent in efforts of public officials to have their locales removed from the lynching reports. *See id.* at 124–25 ("State and local officials, loath to see their localities receive negative publicity, would question the classification of a particular incident in their domain as lynching.").

Second, the *Lynching Report* had direct political utility. The NAACP, Tuskegee, and collaborators were unsuccessful in forcing federal anti-lynching legislation, despite extensive effort to leverage their data for that purpose.[74] Yet, the record had other uses. It informed preparation of legal strategies, for example, including by lawyers in the Scottsboro case who spent days researching Work's files.[75] Further, while Tuskegee's report generated contention and competition among entities of the growing civil rights movement establishment, most notably from the NAACP,[76] which in 1918 began issuing its own report, it contributed to that movement's infrastructure by networking organizations and helping to develop and coordinate oppositional strategies and resources.[77] The report helped to sustain and spawn organizations including the Commission on Interracial Cooperation (CIC), headquartered in Atlanta, Georgia, and its off-shoot, the Association of Southern Women for the Prevention of Lynching. These groups, comprised largely of white women and men, added to the pressure Wells, Work, the NAACP, and others could mount against lynching. On Work's suggestion, the CIC "awarded medals to sheriffs who had shown courage or ingenuity" in averting a lynching.[78]

C. Red Records Lost: Missing Data and Movement Costs

Despite Work's passion for empirics, data do not speak truth for themselves and often misrepresent truth. Rival Tuskegee and NAACP

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74. *Id.* at 128 (Work sent congressmen debating the Dyer Bill in 1924 a "handout . . . full of sober statistics, [his] favorite tool of suasion.").

75. MCMURRY, *supra* note 57, at 124; Cuzman, *supra* note 70, at 451.

76. In a 1925 article in the *Crisis* titled "Who Checked Lynching," W.E.B. Du Bois gives no mention of Work or Tuskegee, crediting the Dyer Bill to the political might of the NAACP alone. MCMURRY, *supra* note 57, at 128. Several contemporary accounts similarly overlook the importance of Monroe Work and Tuskegee's *Lynching Report*. *See* JACQUELYN DOWD HALL, REVOLT AGAINST CHIVALRY: JESSIE DANIEL AMES AND THE WOMEN'S CAMPAIGN AGAINST LYNCHING 165 (1979) ("After 1910, the NAACP had expanded Ida B. Wells's one-woman anti-lynching crusade into a multifaceted offensive against mob violence."); MARKOVITZ, *supra* note 55, at 4–5 (crediting the NAACP with carrying on Wells's effort and making no reference to Work's or Tuskegee's efforts).

77. MCMURRY, *supra* note 57, at 123. As his biographer stresses, the lynching fact-gatherer worked "[b]ehind the scenes . . . [supplying] the data that others used to demonstrate the destructive and repressive power of [this] disrespect for the law." *Id.* at 130.

78. *Id.* at 128 n.34, 130 (These groups held public forums, circulated pamphlets informed by the *Lynching Report*, and succeeded in pressuring law enforcement agencies to endorse their anti-lynching agenda.).

reports generated significant conflict and confusion[79] on this point. Work initially resented the NAACP's perceived lack of rigor and dispassion in reporting lynching, charging it with placing propaganda above fact.[80] The NAACP bemoaned Tuskegee's conservative approach as an impediment to truth-telling and, ultimately, the moral force and political utility of the statistical reports.[81] Matters came to a head in the early 1940s, when NAACP secretary Walter White sent Tuskegee's president a scathing telegram challenging the accuracy of its first report that year and widely publicized the dispatch (Figure 1).

FIGURE 1: TELEGRAM FROM NAACP SECRETARY WALTER WHITE TO TUSKEGEE PRESIDENT DR. F. D. PATTERSON ASSAILING THE ACCURACY OF ITS *LYNCHING REPORT* FOR EARLY 1940[82]

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79.   *See id.* at 124.

80.   *Id.* at 126–27.

81.   *Id.*

82.   Telegram from Walter White, Sec'y, NAACP, to Dr. F. D. Patterson, President, Tuskegee Inst. (July 5, 1940), *in* LIBRARY OF CONG., PAPERS OF THE NAACP, PART 07: THE ANTI-LYNCHING CAMPAIGN, 1912–1955, SERIES A: ANTI-LYNCHING INVESTIGATIVE FILES, 1912–1953 [hereinafter PAPERS OF THE NAACP].

The telegram was picked up by various news outlets, which used the conflict for their own journalistic and political purposes, including discrediting the anti-lynching movement.[83] Letters and telegrams from outraged stakeholders poured in to Tuskegee, calling on its Department of Records and Research to get its facts and their impacts straight. Oswald Villard, an NAACP founder and grandson of abolitionist William Lloyd Garrison, wrote that he was "astounded" that the Institute would release a false report and recommended, "If Tuskegee cannot make accurate statements on lynchings it should cease all publications in regard thereto."[84] Harry T. Moore, a Florida NAACP officer, shared an editorial from that state illustrating propagandistic use of the reporting error to pronounce that state's racial progress, white-washing a reality of ongoing racial terror. "It is unfortunate that Tuskegee is a little too optimistic with its reports," Moore wrote to Walter White, "We ourselves should never try to help the white man cover up his misdeeds in dealing with our race. He keeps enough covered up himself."[85] By this point, Ralph Davis had replaced Monroe Work as head of the Department of Records and Research, yet Work was so strongly identified with the effort that he also received calls for corrections to the *Lynching Report* and felt obligated to weigh in on the evidence, agreeing with the NAACP's version.[86]

Ultimately, all sides agreed that discrepancies in their reports would undermine the moral and political force of their enumeration efforts. Despite disagreements, the NAACP, Tuskegee, and others invested in challenging the trivialization of black life were commonly concerned with preserving the value of these data to the movement. They resolved to meet and coordinate approaches to the collection and reporting of lynching statistics, bringing together an array of newspaper

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83.   *See* Letter from Harry T. Moore to Walter White (Aug. 5, 1940), *in* Papers of the NAACP, *supra* note 82 (citing an editorial that used Tuskegee's disputed claim to note a "lynchless year" and thus "create a sort of defensive propaganda for his beloved South"); Letter from Thurgood Marshall to Harry T. Moore (Aug. 9, 1940), *in* Papers of the NAACP, *supra* note 82 ("[T]he [legislative] fight for the abolishment of lynching has received a tremendous setback by the figures recently issued by Tuskegee."); *see also* McMurry, *supra* note 57, at 126 (Discrepancies "gave the prolynching forces propaganda material.").

84.   Letter from Oswald Garrison Villard to Dr. F. D. Patterson, President, Tuskegee Instit. (July 8, 1940), *in* Papers of the NAACP, *supra* note 82.

85.   Letter from Harry T. Moore to Walter White, *supra* note 83. Harry Moore and his wife, Harriette, fell victim to racial terror a decade later when they were killed by a bomb placed beneath their bed, likely by the Ku Klux Klan. *See NAACP History: Harry T. and Harriette Moore*, NAACP, http://www.naacp.org/pages/naacp-history-Harry-T.-and-Harriette-Moore (last visited May 26, 2016).

86.   Letter from Monroe Work to Arthur Raper (Aug. 24, 1940), *in* Papers of the NAACP, *supra* note 82.

editors, civil society organizations, lawyers, and researchers who were gathering, reporting, and otherwise employing the data to "get together in an effort to make a clean-cut statement as to what properly constitutes a lynching."[87] Questions surrounding the strategy and value of chronicling lynching were not settled at that meeting, notwithstanding specifications of approaches. The Red Record continues to face challenges—conceptually and empirically and, thus, in terms of utility.[88]

A key challenge surfacing amid measurement debates in 1940 was the problem of limited and unreliable sources, which prevented a comprehensive account of lynching or other racial violence, however it was defined. Recall that Wells, Work, and those succeeding them relied primarily on newspaper reports, reasoning that these sources were more authoritative and thus impactful. There were always limitations to this approach, of course, generally involving the coverage and veracity of newspaper reports. Derivative reports were dependent on local papers to recognize and report lynching events accurately, both quantitatively (i.e., how many events?) and qualitatively (when, where, and for what alleged reason, etc.). Recognizing these challenges, including evidence that local officials began to suppress records of lynching that might sully their jurisdictions, the Tuskegee operation frequently investigated reported and suspected incidents further to clarify or verify event

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87. Letter from F.D. Patterson to Walter White (July 13, 1940), *in* PAPERS OF THE NAACP, *supra* note 82. White and Patterson met at the NAACP offices in October 1940 and, in December 1940, a larger group including Charles H. Houston (Legal Defense Fund), Arthur Raper (Interracial Committee), Roy Wilkins (editor of the *Crisis*), and representatives of the Associated Negro Press, Atlanta University, the Association of Southern Women for the Prevention of Lynching, and *Time* and *Life* magazines, among others gathered for a one-day conference at Tuskegee. MCMURRY, *supra* note 57, at 127. The conference resolved that a lynching involves "a dead man (sic) illegally killed at the hands of a group which killed under the pretext of service to justice, race or tradition." *See Gaston Death Held Lynching at Tuskegee*, CONST., Dec. 15, 1940, at 11C.

88. While Gonzales-Day calls for a "transracial" reading of lynching, others contest the association between anti-black lynchings and what they dismissively describe as hangings of Latino/as. *Compare* GONZALES-DAY, *supra* note 33, at 3, *with* Roy L. Brooks & Kirsten Widner, *In Defense of the Black/White Binary: Reclaiming a Tradition of Civil Rights Scholarship*, 12 BERKELEY J. AFR.-AM. L. & POL'Y 107, 135 (2010) ("There was a rather large qualitative difference between lynchings and hangings. The latter were ad hoc occurrences most closely associated with 'the old west' . . . . Lynching was part of an on-going, systemic campaign of racialized and ritualized violence and intimidation designed to perpetuate a prior system of racial subordination under which only African Americans lived."). The argument overlooks that lynchings and hangings commonly reflected and conveyed a differential and greater valuation of white lives.

details before determining whether to include them in its own *Lynching Report*.[89]

Both the power of these data and the difficulty of maintaining them were further illustrated by an informant who warned that data were being compromised by new strategies of concealment. In August 1940, the NAACP received a letter from a concerned citizen in Mississippi citing growing efforts there and elsewhere to hide killings from journalists and, thus, from news accounts that fed lynching statistics.[90] The letter is telling in several respects. It indicated, for one, that a member of the public felt the tabulation of the Red Record so important that recorders should be warned about efforts to corrupt data. Further, the clandestine turn itself is interesting given the expressive nature of political violence, and particularly lynching, where spectacle is an important part of terroristic social control.[91] This concealment attests to the impact of the Red Record in creating political pressures to conceal racial violence and weakening its social force.

Also striking is that the informant took pains to clarify he did not believe Tuskegee or Monroe Work were *complicit* in this "studious effort . . . to keep these depredations as secret as it is possible for them to do so."[92] Work's efforts at Tuskegee over preceding decades put pressure on officials and even mobs to avoid appearing in the Red Record.[93] Yet, Tuskegee had been so reviled as a conservative keeper of facts that the already-retired sociologist might be suspected in the manipulation of its data, or so the informant believed. "[D]o not think for once that I believe Dr. Monroe Works or any of the Tuskegee friends are a party to such a procedure," he wrote, explaining that the Institute and its reports were simply vulnerable to hidden or missing data because "[t]hey go by the reports as given in the white daily papers."[94]

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89.   MCMURRY, *supra* note 57, at 120–22.

90.   Anonymous letter to Walter White (Aug. 31, 1940), *enclosed in* Letter from Richetta Randolph, Office Sec'y, NAACP, to Ralph Davis (Nov. 12, 1940), *in* PAPERS OF THE NAACP, *supra* note 82.

91.   *See* TOLNAY & BECK, *supra* note 7, at 23–24; Stewart E. Tolnay et al., *Vicarious Violence: Spatial Effects of Southern Lynchings, 1890–1919*, 102 AM. J. SOC. 788, 790 (1996) ("To be truly effective, acts of terrorism and the threat of victimization for the targeted group must be widely known in the population.").

92.   Anonymous letter to Walter White, *supra* note 90.

93.   *See* MCMURRY, *supra* note 57, at 124–25 (discussing officials seeking to avoid locales being named).

94.   Anonymous letter to Walter White, *supra* note 90; *see also* Letter from Ralph N. Davis to Richetta G. Randolph (Nov. 16, 1940), *in* PAPERS OF THE NAACP, *supra* note 82.

D. Beyond Lynching: Extending the Red Record

This problem of hidden or missing data is a serious impediment to social research and, in this case, to the broader moral and political leveraging of lynching statistics. Nevertheless, numerous civic leaders and scholars would draw upon these data to effectively challenge white supremacist ideologies and institutions in the era of lynching and to trace legacies of lynching through the end of the twentieth century, up to today. Tuskegee's *Lynching Report* in particular has informed social research on the legacy of historical racial violence, suggesting the enduring significance of these events for such contemporary outcomes as white supremacist mobilization, hate crime, and homicide in communities that once hosted lynching.[95]

A key limitation of the existing Red Record is its fixation upon lynching as formally defined. Race-related political violence is a basic social fact in racialized social systems.[96] The primary challenge facing empirical work on racial violence is the incredible scope and scale of the phenomenon of interest.[97] Emma Jordan has similarly noted what she calls the "missing years" of racial violence data (1865–82).[98] However, the missing data cover a far more vast expanse of time. Likely more important analytically and otherwise than missing lynching data is neglect of functionally equivalent cases of racial violence not classified as lynching but nevertheless constituting racial terrors and contributing to legacies of such violence. Lynching is itself a reflection of background conditions[99] conducive to its occurrence and surely not the only form of historical racial violence leaving traces within the attitudes, behaviors, and bodies of successive generations. Lynching likely reflects, facilitates, and combines with other racial violence and

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95.   *See supra* notes 1–4 and accompanying text.

96.   *See supra* note 6 and accompanying text.

97.   *See, e.g.*, WELLS-BARNETT, *supra* note 47, at 141 (claiming that *ten thousand* black Americans were killed between 1865 and 1895, "in cold blood, without the formality of judicial trial and legal execution"). This figure is twice as large as the recognized figure of around five thousand total lynchings between 1870 and 1950. Who are these ten thousand victims, where and how were they killed, and what are the implications, historically and today?

98.   Jordan, *supra* note 7, at 599 ("The absence of a database of occurrences of racial violence for the period 1865-1882 limits the options for historical interpretation in important ways."). There are scattered collections of data, such as testimonials, from the "missing period." *See, e.g.*, S. REP. NO. 41, pt. 1, at 1 (1872) (documenting harms associated with a campaign of white terror in South Carolina and other states).

99.   Messner et al., *supra* note 1, at 636 (Lynching is a proxy for culturally supported violence.).

its inter-generational trauma before, through, and especially *since* the generally recognized era of lynching (the 1880s through the 1940s).[100]

A grizzly example of an event lynching data excludes demonstrates several problems of unmeasured racial terror. Historian Kate Gillin tells a story from York County, South Carolina, where in 1871 a white woman aided several black men in successfully eluding the Ku Klux Klan by hiding them in her home, perhaps averting their lynching. Frustrated by their failure to apprehend these black targets, Klansmen returned to her home, pinned her to the floor, spread her legs, and "poured a steaming brew of tar and lime into her vagina."[101] After pouring the remaining tar and lime over her body, the racial terrorists threatened to return if she did not leave town within three days.[102]

The case points out the importance of extending the Red Record backward and forward in time, capturing relevant lynching and non-lynching events before the 1880s,[103] and missing race-related political violence (e.g., bombings, cross-burnings, assaults, and assassinations) during and since the lynching era. The 1871 event was not technically a lynching, but its relevance to the concept, and as racialized and gendered violence otherwise, can hardly be doubted. Further, the story recalls an earlier point concerning transracial racial terror.[104] There is great error in reducing the logic of American racial violence, including lynching,[105] to black victimization. The vast majority of lynchings *and* hangings were acts of racial violence premised upon a greater valuation of white life and perceived interests of a white polity.[106]

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100.   Note, for example, the 1951 bombing of the Florida home of Harry and Harriette Moore in a state notorious for lynching; this event of racial terror would not be considered a lynching or recorded as such. *See supra* note 85; *see also* Petersen & Ward, *supra* note 1, at 117 (The relationship between lynching and contemporary homicide is mediated by the prior effect of lynching on civil rights movement–era racial violence in Mississippi and North Carolina.).

101.   KATE CÔTÉ GILLIN, SHRILL HURRAHS: WOMEN, GENDER, AND RACIAL VIOLENCE IN SOUTH CAROLINA, 1865-1900, at 1 (2013).

102.   *Id.*

103.   American racial violence likely extends back to the start of the white settler period and possibly before. MILLS, *supra* note 6, at 28. The mid-nineteenth century is likely the earliest period for which systematic national records of racial violence could be obtained, considering limits to technology including printing (and thus records) and the documentary significance of social movements (e.g., abolitionist and anti-lynching).

104.   GONZALES-DAY, *supra* note 33, at 3.

105.   *See* Brooks & Widner, *supra* note 88.

106.   *See* MILLS, *supra* note 6, at 85 ("[I]n all these white and white-ruled polities, attacking or killing whites has always been morally and juridically singled out as the crime of crimes, a horrific break with the natural order, not merely because of

There is arguably greater need to account for racial terror *since* the decline of lynching. As civil rights activists and sympathizers would learn through experience, and were moved to document in their own additions to the Red Record, the reign of racial terror did not end with the 1950s decline of lynching. The Civil Rights Congress,[107] Council of Federated Organizations (COFO),[108] NAACP,[109] American Friends Service Committee,[110] and other groups continued to amass data on racial violence through the middle third of the twentieth century. In comparison to the constrained phenomenon and great spectacle of lynching, facilitating more precise measurement, the sheer volume and variable forms of racial violence otherwise make comprehensive enumeration unlikely. No compilations since the lynching reports have attempted to provide comprehensive accounts, offering instead a montage of special collections that can be compiled to assess the period since 1940 but with vast expanses of the landscape under-researched.

For example, the petition *We Charge Genocide* substantiates this complaint with hundreds of events of race-related political violence, many involving police violence, and providing relatively rare insight into the trivialization of black life in the mid-twentieth century urban North, as well as a detailed study of Georgia.[111] COFO—a coalition of civil rights organizations operating in the South—established "call centers" in 1960s Mississippi so that freedom workers subjected to or threatened by racial violence could alert supporters and enlist

the greater value of white (i.e., a person's) life but because of its larger symbolic significance as a challenge to the racial polity."). There have been lynchings perpetrated by black and other non-white mobs occasionally vindicating a non-white person. *See* TOLNAY & BECK, *supra* note 7, at 93–98. Yet, the vast majority of lynchings and hangings have been in response to violent victimization of whites or perceived threats to white group interests. For a review of the racial politics of lynching and lynching scholarship, see W. Fitzhugh Brundage, *Conclusion: Reflections on Lynching Scholarship*, 6 AM. NINETEENTH CENTURY HIST. 401, 406 (2005).

107.   CIVIL RIGHTS CONG., WE CHARGE GENOCIDE: THE HISTORIC PETITION TO THE UNITED NATIONS FOR RELIEF FROM A CRIME OF THE UNITED STATES GOVERNMENT AGAINST THE NEGRO PEOPLE 57 (William L. Patterson ed., 1951).

108.   COUNCIL OF FEDERATED ORGS., MISSISSIPPI BLACK PAPER 3 (1965).

109.   For example, the NAACP received complaints of racial discrimination and violence from victims, local branches, and other advocates across the United States, many of which are archived. For an analysis of these complaints and NAACP responses, see Risa L. Goluboff, *"We Live's in a Free House Such as It Is": Class and the Creation of Modern Civil Rights*, 151 U. PA. L. REV. 1977, 1980 (2003) ("Throughout the 1940s, [complaint] letters from African American southern agricultural workers streamed steadily into the NAACP's national office").

110.   AM. FRIENDS SERV. COMM. ET AL., INTIMIDATION, REPRISAL AND VIOLENCE IN THE SOUTH'S RACIAL CRISIS 15–30 (1959) (compiling events of racial violence in southeastern states).

111.   CIVIL RIGHTS CONG., *supra* note 107, at 192.

assistance. Resulting logs present another illustration of, and entry within, the living Red Record, albeit limited to the documentation of affiliated freedom worker experiences.[112]

In the 1980s, journalist Imani Claiborne took up the Red Record, leading the Committee on Research into Racial Violence to examine resurgent racial terror, particularly in the U.S. South. The group released fourteen issues of a newsletter titled *Racially Motivated Random Violence* between April 1981 and March 1983, each reporting incidents of racial violence, reprisal, and intimidation in communities across the country, especially the Southeast.[113] It was, as always, a painstaking empirical effort, even more daunting and implausible for the determination to catalog both extreme and subtle incidents of racial violence relevant to "social closure" in particular times and places.[114]

The data-gathering, analysis, and leveraging effort was characterized as a spontaneous occurrence prompted by chance encounters, making no mention of its prominence in black intellectual history. He and his colleagues were driving through Northern Mississippi in 1979 when they happened to hear a radio announcement that the Ku Klux Klan had just burned a cross on the front lawn of the local mayor's home in retaliation for his granting a permit for black citizens to hold a meeting in the public library.[115] Later they were told

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112.   BRUCE WATSON, FREEDOM SUMMER: THE SAVAGE SEASON OF 1964 THAT MADE MISSISSIPPI BURN AND MADE AMERICA A DEMOCRACY 74 (2010) ("Like a delicate spiderweb stretched across the state, COFO's phone network kept a vigil on the [Freedom] summer project, recoiling with each report of violence, relaxing with each report of calm.").

113.   *Premier Editorial*, RACIALLY MOTIVATED RANDOM VIOLENCE, Apr. 1981, at 9, 11 ("We propose in Racially Motivated Random Violence to report on a regular basis all cases we can ferret out . . . with special attention to its upsurge in the former slave economy states of the Deep South . . . .").

114.   Systematic documentation is difficult even in the case of spectacular violence (e.g., bombings, assaults), given limits of source material, and likely impossible using a more expansive concept of structural, psychological, and inter-personal violence. It is nevertheless important since, as Claiborne writes,

> [a]ll violence is not flamboyant. Repression is violence, and sometimes takes years to show up, in the form of loss of self-esteem and ill health. It is subtle violence which is responsible for the disproportionate number of black victims of hypertension in the American population, and for our shorter life expectancy. Violence is also perpetrated against blacks when we are systematically shut out of opportunities for political or economic power.

Id. at 10; *see also* CHARLES TILLY, DURABLE INEQUALITY 6–7 (1999) ("Social closure" involves more powerful groups denying less powerful groups full benefits of cooperative societal endeavor, reinforcing categorical—e.g., race-based—social inequality.).

115.   *Premier Editorial*, *supra* note 113, at 9–10.

that bands of white men were roaming the roads at night in search of black women to physically and sexually assault and that an unarmed black man had recently been shot by police.[116] "It was by pure chance that we wandered into the areas where these random acts of racially-motivated violence had occurred," Claiborne writes, "[w]e began to wonder how many other such 'local incidents' were occurring throughout the South, and the nation in general."[117]

Echoing Monroe Work's faith in the "impact of fact," Claiborne saw the importance of documentation in reckoning with such events. He noted what was "at best a time lag, at worst a silence in the national news media and the large urban newspapers and broadcasts" in racial violence reporting.[118] Concerned that the more committed black press had limited distribution and that reporting such incidents in isolation obscured their systematic nature, the Committee resolved to compile and report scattered event data like these on a regular basis, "networking them so that their implications may be read."[119]

The Committee stressed the need for sustained visibility and engagement with events past and present, in contrast to the routinely passing attention, if any, among the mainstream press and public. Beyond covering more recent events, the authors of this late–twentieth century Red Record hoped to uncover connective threads. The reports would "resurrect issues laid to rest, those cases where news has flared up, then faded away with no resolution," they explained, "[as] we believe that news is news as long as the problem which triggered it remains unsolved."[120] The ambitious effort to update and organize the Red Record was discontinued within a few years, leaving its own account to fade away without resolution and be recovered in another collection.

New compilations would emerge, and persistent if varied efforts to maintain, analyze, and leverage the Red Record continue today.[121]

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116. *Id.*

117. *Id.* at 10.

118. *Id.*

119. *Id.* ("We believe that bringing to the attention of concerned people of whatever race across the nation random acts of racial violence in geographically scattered communities will permit public opinion to monitor, see more precisely the patterns in, and mobilize against this most traditional and frequently practiced form of American violence and oppression.").

120. *Id.* at 11.

121. *See, e.g.*, CHRISTOPHER HEWITT, POLITICAL VIOLENCE AND TERRORISM IN MODERN AMERICA: A CHRONOLOGY (2005) (chronicling thousands of events of political violence in the United States, much of it race-related, between 1954 and 2005). The U.S. federal government has also contributed to the Red Record through congressional hearings, historically and today. *See, e.g.*, *The Federal Response to Recent Incidents of*

Through their project *Refusing to Forget*, a coalition of scholars has set out to document atrocities in the Mexico-Texas border region between 1910 and 1920, when hundreds and possibly thousands of men, women, and children of Mexican descent were killed "by strangers, sometimes by neighbors, some by vigilantes and other times at the hands of local law enforcement officers or Texas Rangers,"[122] with countless more traumatized and displaced of property and other material possessions, and with likely implications for present descendants of victims and perpetrators alike.[123] These missing entries in the Red Record are well known to "[s]cholars of Mexican American history and local residents," the coalition reports, citing common reference in art, literature, and other representations of local public memory.[124] "It is time for the state and wider public to recognize their scope and long legacy."[125]

II. Microclimates of Racial Meaning

Understanding and interrupting centuries of racial violence requires careful examination of the specific places where it occurs, forms it takes, and underlying its generative frameworks. While there is need for additional data and further clarification of environmental impacts and remedial implications, there has long been a sufficient case for intervention in what I will characterize as "microclimates of racial meaning" shaped by histories of violent contention.

Microclimates describe environmental distinctions of small or restricted areas and especially how their climates differ from those of surrounding areas. Microclimates help to describe environmental distinctions between places that might not be visible but are nevertheless determinative of life chances therein.[126] Microclimates are

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Church Burnings in Predominately Black Churches Across the South: Hearing Before the S. Comm. on the Judiciary, 114th Cong., 2d Sess. (June 27, 1996). There are also electronic data depositories. *See, e.g.*, Collective Punishment, https://collectivepunishment.wordpress.com/ (last visited Mar. 15, 2016); *Timeline*, Equal Just. Initiative: Hist. of Racial Injustice, http://racialinjustice.eji.org/timeline/ (last visited Mar. 15, 2016).

    122.   *See The History*, Refusing to Forget, http://refusingtoforget.org/the-history/ (last visited Mar. 28, 2016).

    123.   *See supra* notes 4, 24 and accompanying text.

    124.   *The History*, *supra* note 122.

    125.   *Id.*

    126.   Clive Irving, *Napa's Earthquake Is Not the Only Thing Shaking the Vineyards*, Daily Beast (Aug. 31, 2014, 5:45 AM), http://www.thedailybeast.com/articles/2014/08/31/napa-s-earthquake-is-not-the-only-thing-shaking-the-vineyards.html ("Some time ago, say a few million years ago, several tectonic plates collided. [This]

also dynamic; they are created and ostensibly changed by surrounding forces, such as the movement of tectonic plates, and this change might happen suddenly and spectacularly (e.g., an earthquake or police shooting) or at a more glacial pace (e.g., past lead poisoning or historic lynching). Ultimately, microclimates are important for life-supporting or -depriving characteristics. Climates (and thus microclimates) influence properties of water, air, soil, and other organic material and, thus, the living organisms that might take shape, thrive, or die in their midst. The concept usefully captures environmental variation in race-based life and death prospects and possible intervention in these social ecological conditions.[127]

A. Microclimates of Environmental Racism

Trans-generational implications of historical racial violence are conceptualized here as socio-historical sources of "environmental racism."[128] This term is more conventionally used to describe forms and impacts of less spectacular racial violence (in comparison to, say, lynching), which continues to have repercussions over subsequent generations, such as elevated risks of disease, developmental problems, and premature death, within affected areas. The microclimate describes a specific, if dynamic, area shaped over time by histories of environmental racism (local, regional, national, and global), where the legacies or harms may be concentrated, sustained, altered, or mitigated with implications for life prospects in these milieus.

Anthropologist Melissa Checker gives a stirring account of just such a place—the Hyde Park neighborhood of Augusta, Georgia—and its compounding histories of structural racism. She describes a layering

geological violence created two adjacent valleys in northern California. Things never quite settled down and occasionally the earth still rocks, as it did in Napa [recently]. . . . Because of the tectonic violence in which it was born, the Russian River Valley contains more variations of soil than in the whole of France.").

127.   Monroe Work was similarly attuned to environmental differences in public health. *See* MCMURRY, *supra* note 57, at 24 (discussing his mentorship by sociologist William I. Thomas, whose work on folk psychology "rejected the usefulness of biological classifications of human beings [and stressed] the importance of social groupings" spatially understood); W. I. Thomas, *The Scope and Method of Folk-Psychology*, 1 AM. J. SOC. 434, 439 (1896) (discussing "the formation of artificial or historic races, through the influence of milieu and the diffusion of a common fund of beliefs, sentiments, ideas, and interests among a heterogeneous population brought by hap and chance into the same geographical zone").

128.   CHECKER, *supra* note 35, at 14 ("'Environmental racism' describes the process that leads to the disproportionate siting of hazardous waste facilities in communities of color.").

over time; generations of socio-political exclusion, economic discrimination, and environmental contamination; and how this shapes its distinct microclimate of racial meaning today.

> [Hyde Park] has been polluted in both an ecological and social sense since its inception as a neighborhood . . . [f]or not only are Hyde Park's ecological resources (air, water, and soil) contaminated, but its social resources (access to decent jobs, housing, schools, and police protection) are also contaminated due to a history of discrimination against African Americans.[129]

Hyde Park is hardly alone.[130] Studies report that the percentage of blacks or Latinos in a census tract predicts whether that tract contains a toxic waste facility and that three out of five blacks and Latinos live in communities containing at least one uncontrolled toxic waste site.[131]

Yet, Hyde Park may be particularly inundated in so far as racial violence and its trans-generational trauma are distinctly concentrated in that otherwise polluted area. Checker describes the Hyde Park neighborhood as "the hole of an industrial donut," encircled by a junkyard, an industrial ceramics plant, a power plant, and other sources of pollution that seep into this low-income African American community, sustaining the long-standing diminution of black life prospects there. A concentration of poor black people "inside that hole" makes the ordeal therein less likely to be noticed or remedied by Augusta's mostly white political elite, historically and today.[132]

Generations of white elites have trivialized black life in and around the region. Augusta, Georgia and neighboring Aiken, South Carolina were strongholds of the Ku Klux Klan. Former South Carolina Governor and Senator Coleman Blease built a political career on

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129.   *Id.* at 4.

130.   The current Flint water crisis likely involves a similar confluence of socio-political exclusion, economic discrimination, and environmental contamination with inter-generational implications. *See* Lizzie Wade, *Flint's High Lead Levels Have Doctors Struggling for Answers*, WIRED (Jan. 14, 2016, 11:00 AM), http://www.wired.com/2016/01/flints-high-lead-levels-have-doctors-struggling-for-answers/ ("Children exposed to lead often end up with developmental problems that can plague them for the rest of their lives. The same goes for children whose mothers were exposed when they were still in the womb. Even those children's grandchildren might be affected, since lead exposure has an epigenetic effect that can be passed down for generations.").

131.   CHECKER, *supra* note 35, at 13.

132.   *Id.* at 5.

race-baiting poor whites and efforts to disenfranchise blacks.[133] He strongly opposed educational opportunities for black Americans and advocated racial violence, infamously defending lynching by declaring, "[T]o hell with the Constitution."[134] He remained a major influence in the region into the 1930s.[135] The thousand-plus-member-strong Augusta Klavern was cited in the 1940s by Georgia's Grand Dragon as one of the finest in the state, in part for its success recruiting Augusta's civic and business elite.[136] The region was host to numerous lynchings and other events of racial terror[137] before and after the Hyde Park neighborhood took shape following World War II, contaminating its environment well before industrial pollution arrived.

Checker stresses the resilience of the Hyde Park community, examining the rise of the environmental justice movement and how it has been assimilated with civil rights movement strategies and resources. She notes how environmental discourse (e.g., "it's in the air!") has been adapted to traditional struggles to yield new social movement frames.[138] She stresses the useful ambiguity of "environmental narratives," enabling the integration of multiple injustice frames or causes, development of new alliances, and innovative movement strategy.[139] Drawing on theoretical and empirical research on the enduring significance of violent histories generally, and historical racial violence specifically, I contend that "microclimates of racial meaning" offer similar conceptual and practical benefit.

B. Mechanisms of Enduring Meaning

Research across the social sciences, humanities, and biology suggests overlapping mechanisms through which historical racial

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133.   Bryant Simon, *The Appeal of Cole Blease of South Carolina: Race, Class, and Sex in the New South*, 62 J. S. HIST. 57, 62–63 (1996); *Thomas Lemuel Hamilton and the Ku Klux Klan*, CARTER-KLAN DOCUMENTARY PROJECT, http://www.carter-klan.org/Hamilton.html (last visited Mar. 28, 2016).

134.   CARTER-KLAN DOCUMENTARY PROJECT, *supra* note 133.

135.   *Id.*

136.   *Id.*

137.   *See* E. M. Beck & Stewart E. Tolnay, *Confirmed Inventory of Southern Lynch Victims, 1882–1930* (machine-readable data file available from authors) (citing dozens of lynchings in countries comprising this Georgia–South Carolina border area); *see also* CIVIL RIGHTS CONG., *supra* note 107, at 11–12 (citing 1950s and 60s police racial violence in the area); DONALD LEE GRANT, THE WAY IT WAS IN THE SOUTH: THE BLACK EXPERIENCE IN GEORGIA 387 (1993) (citing a 1953 white mob attack on blacks in Augusta).

138.   CHECKER, *supra* note 35, at 109.

139.   *Id.* at 176.

violence retains environmental influence. These include (1) extreme racial socialization, (2) culturally supported violence, (3) legal cynicism, (4) diminished collective efficacy, (5) biological markers, and (6) structural inequality. These apparent legacies map a multi-faceted "trans-generational trauma" awaiting more research, recognition, and remedy.[140]

1. EXTREME RACIAL SOCIALIZATION

As "a symbolic manifestation of the unity of white supremacy," spectacles of lynching and other racial terror constitute racial socialization events, reinforcing white supremacist cultural and institutional systems.[141] Photographs, postcards, and memorabilia of lynching illustrate this relation to white supremacist socialization, and thus identity, as do images of white adults standing proudly aside wide-eyed children at the scenes of these race crimes, suggesting intentional longer-term cultural and institutional reverberations.[142] Numerous scholars note the importance of racial violence as a form of socialization, including for marginal whites (e.g., recent immigrants) and children, in places where its cultural currency was clearly established.[143] As we have seen in the example of Marion, Indiana,

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140.   SCHWAB, *supra* note 4, at 46 ("[T]he collective or communal silencing of violent histories leads to a transgenerational transmission of trauma and the specter of an involuntary repetition of cycles of violence.").

141.   TOLNAY & BECK, *supra* note 7, at 50; *see also* ROBYN WIEGMAN, AMERICAN ANATOMIES: THEORIZING RACE AND GENDER 94–95 (1995) ("[L]ynching guaranteed the white mob's privilege of physical and psychic penetration, granted it a definitional authority over social space, and encoded the vigilant and violent system of surveillance that underwrote late-nineteenth- and early-twentieth-century negotiations over race and cultural power.").

142.   *See* AMY LOUISE WOOD, LYNCHING AND SPECTACLE: WITNESSING RACIAL VIOLENCE IN AMERICA, 1890–1940 (2011). On the intentionality of extreme racial socialization among white Americans historically, see KRISTINA DUROCHER, RAISING RACISTS: THE SOCIALIZATION OF WHITE CHILDREN IN THE JIM CROW SOUTH 4 (2011) ("White southerners realized that the primary way to forge solidarity strong enough to maintain segregation was to indoctrinate white youth into the racial order . . . ."); Ifill, *supra* note 29, at 269 ("[W]hite children who witnessed lynchings were undoubtedly psychologically scarred in ways that may have affected generations of white families.").

143.   MALCOLM MCLAUGHLIN, POWER, COMMUNITY, AND RACIAL KILLING IN EAST ST. LOUIS 159 (2005) (In noting that white women identified as prostitutes were unusually active in assaulting blacks during the East St. Louis riot, and especially prone to stripping black women of their clothing in these attacks, McLaughlin explains, "By joining respectable white women in the racial violence, perhaps prostitutes sought to [elevate their own social status] by violently emphasizing common whiteness and graphically portraying black women—through stripping them—as less decent than

black populations are also racially socialized by these events, conditioned to understand the color line as a matter of life and death, in part because of the racialization of crime control and denials of equal protection.[144]

2. CULTURALLY SUPPORTED VIOLENCE

Historical racial violence is also understood to condition attitudes towards the legitimacy of violence as a means of resolving dispute. A study of lynching and contemporary homicide argues that lynching serves as a proxy for cultural orientations towards violence in the present, albeit with differing mechanisms for blacks and whites.[145] Lynching has a "brutalization" effect for whites, they argue, endorsing the "vigilante justice" of violent dispute resolution, especially where honor or status are threatened.[146] In contrast, for blacks, lynching symbolizes state failure to protect black communities, fostering a use of violence for self-help purposes.[147] Importantly, empirical studies of the legacy of lynching for homicide note its distinct statistical relationship with contemporary black-victim homicide, suggesting direct and indirect ties between seemingly distinct forms of disregard for black life chances.[148]

3. LEGAL CYNICISM

Related to the subculture of violence thesis is the idea that legal authorities and institutions come to be understood as unreliable resources in addressing grievances, protecting vulnerable populations,

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themselves."); CYNTHIA SKOVE NEVELS, LYNCHING TO BELONG: CLAIMING WHITENESS THROUGH RACIAL VIOLENCE 2, 7 (2007) (presenting a study of a Central Texas county with histories of "[v]engeful feuds, mysterious shootings, arson attacks, mob-led lynching, and racial brutality of every sort," where Italian, Irish, and Bohemian immigrant participation in lynchings of black men helped "to resolve [their own] ambiguous racial identity and to bestow the privileges of whiteness"); *Charleston Three Months Later: Caught with Our Eyes Closed*, AFR. AM. POL'Y F. (Sept. 17, 2015), http://www.aapf.org/recent/2015/9/charleston-three-months-later-caught-with-our-eyes-closed ("Neither [the Charleston Massacre shooter's] actions nor the twisted logic behind them were an anomaly. They fall within an ugly history of enacting violence against Black bodies in the course of policing the boundaries of race and maintaining white supremacy.").

    144.   CAMERON, *supra* note 15, at 78–84; *supra* note 10.

    145.   Messner et al., *supra* note 1, at 640.

    146.   Petersen & Ward, *supra* note 1, at 9.

    147.   *Id.*

    148.   *Id.*

and honoring victims. This rationalizes the use of extra-legal violence to protect honor and other threatened interests, contributing to violence among under-policed aggressors and under-protected targets alike and to crime more generally. Criminologists have associated higher rates of African American involvement in crime to the past and present racial subordination of black Americans and their resulting collective memory of the United States as a fundamentally racist society where histories of racialized state violence figure prominently.[149]

4. DIMINISHED COLLECTIVE EFFICACY

Social scientists have also suggested that collective efficacy (i.e., collective identification and action in problem solving) may be weakened in contexts with pronounced histories of racial violence.[150] This seems especially likely among targeted populations and across racial-ethnic lines owing to perceived risks and distrust. There is considerable historical evidence of this chilling effect, especially in relation to black political demobilization, as the Marion example illustrates.[151] While populations in affected environments have clearly defied these expectations, for example, by mobilizing to secure rights and resources in the face of incredible risk, communities with histories of racial violence remain wary of these threats and are politically compromised accordingly.[152]

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149.   JAMES D. UNNEVER & SHAUN L. GABBIDON, A THEORY OF AFRICAN AMERICAN OFFENDING: RACE, RACISM, AND CRIME 29 (2011) ("[T]h[is] worldview . . . . provides a minority of blacks with the impetus to respond to racial subjugation with attitudes and behaviors that increase their likelihood of offending."); *see also* David S. Kirk & Mauri Matsuda, *Legal Cynicism, Collective Efficacy, and the Ecology of Arrest*, 49 CRIMINOLOGY 443 (crimes are less likely to be reported and lead to arrest in neighborhoods characterized by higher levels of legal cynicism); McVeigh & Cunningham, *supra* note 9, at 849; *supra* note 10.

150.   McVeigh & Cunningham, *supra* note 9, at 843 ("[R]ight-wing extremism can disrupt community cohesion."); *id.* at 858 ("Because [subsequent violence] can cause further damage to social cohesion and can undermine informal social control mechanisms, dynamics set in motion by Klan activism can endure long after memories of the Klan's contributions to disorder have faded.").

151.   CAMERON, *supra* note 15, at 78–84.

152.   The Mississippi-based organization Southern Echo pursues a community empowerment agenda, including overcoming lingering fear related to historical racial violence, and counsels supporters on this challenge. *Southern Echo Strategic Approach*, S. ECHO, http://southernecho.org/s/?page_id=540 (last visited Mar. 28, 2016) ("Truthtelling is central to the empowerment process. . . . At the same time, every community person has to deal with the fear which that person carries within as the result of generations of subjugation to the terror imposed on African-Americans.").

5. BIOLOGICAL MARKERS

A recent survey of the growing field of epigenetics reflects on histories of violence that might leave traces in survivors and their descendants. The violence of American apartheid is conspicuously absent:

> According to the new insights of behavioral epigenetics, traumatic experiences in our past, or in our recent ancestors' past, leave molecular scars adhering to our DNA. Jews whose great-grandparents were chased from their Russian shtetls; Chinese whose grandparents lived through the ravages of the Cultural Revolution; young immigrants from Africa whose parents survived massacres; adults of every ethnicity who grew up with alcoholic or abusive parents—all carry with them more than just memories.[153]

Assuming these scientific insights are valid, we should similarly anticipate "molecular scars" on people whose kin were hung, perhaps burned, and otherwise mutilated for threats to the racial structure or violations of racial etiquette, such as attempting to vote or competing economically.[154] While these traces would undoubtedly be pronounced across generations of black and other non-white populations, we must be mindful of broad societal implications, as suggested in Fanon's claim that racism is a generally "neurotic orientation."[155] How do molecular scars manifest among children "raised as racists"[156] and their descendants or those whose white bodies are otherwise "suffused" with understanding that white life matters more, conditioned by centuries of

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153. Dan Hurley, *Grandma's Experiences Leave a Mark on Your Genes*, DISCOVER MAG. (May 2013), http://discovermagazine.com/2013/may/13-grandmas-experiences-leave-epigenetic-mark-on-your-genes.

154. *See supra* note 13; *see also* Tukufu Zuberi et al., *Race, Methodology, and Social Construction in the Genomic Era*, 661 ANNALS AM. ACAD. POL. & SOC. SCI. 109 (2015) (Racial structures differentiate opportunities and experiences in ways that might shape biomarkers and gene expression of successive generations.). On the complexity and resiliency of inter-generational memories of lynching, see SHERRILYN A. IFILL, ON THE COURTHOUSE LAWN: CONFRONTING THE LEGACY OF LYNCHING IN THE TWENTY-FIRST CENTURY (2007) (describing a black man who came of age falsely remembering witnessing a 1931 lynching he heard of and recalled in vivid detail yet realizing as an adult that he had not yet been born); ORLANDO PATTERSON, RITUALS OF BLOOD 194–99 (1998) (arguing that in sacrificial lynchings, the smell of burning flesh is what becomes encoded in memory, more so than the visual spectacle).

155. FANON, *supra* note 13, at 42–43.

156. DUROCHER, *supra* note 142; *see supra* note 152 and accompanying text.

popular and juridical violence?[157] As Dorothy Roberts reminds us, the implication of this scientific work is not that we should view descendants of victims and perpetrators as lost causes. "The point of this research should not be to consign another generation to the biological fallout of past discrimination," she writes, "[as], its hopeful message is that epigenetic changes . . . can be environmentally interrupted . . . ."[158]

6. STRUCTURAL INEQUALITY

Legacies of lynching and other racial violence are not merely or primarily biological or cultural in nature. Structural impacts may be least difficult to document retrospectively and most difficult to redress, in so far as they are least amenable to transformative change. However resilient, one cannot reclaim lost material possession, in any absolute sense, or the emotional well-being and opportunity structure it creates in an actual lived experience; past benefits of related confidence, security, and capital cannot be recreated later, as associated interim benefits are lost.[159] As in post-Apartheid South Africa, where black families dispossessed of property are largely frustrated in efforts to recover these losses and related wealth,[160] American communities and inequalities remain shaped, in large part, by generally unacknowledged and unresolved histories of material dispossession. Losses of land, wages, homes, businesses, schools, families, and related material and emotional well-being—and corresponding benefits among dominant groups—represent intergenerational exchanges of disadvantage and advantage, respectively, key to enduring structural implications of historical racial violence.[161]

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157. *See supra* notes 140–141.

158. ROBERTS, *supra* note 13, at 143–44.

159. *See* Ward, *supra* note 43, at 302–05 (2015) (discussing the story of a black college student in Mississippi determined to study law in order to "get his family home back" and the challenge of restoring family pride, social status, community, and wealth). While economic impacts of property loss are clear, this example and others above, *see supra* note 30 and accompanying text, illustrate *interconnected* emotional and material impacts. *See also* MINDY THOMPSON FULLILOVE, ROOT SHOCK: HOW TEARING UP CITY NEIGHBORHOODS HURTS AMERICA, AND WHAT WE CAN DO ABOUT IT 11–17 (2004) (Displacement causes a "traumatic stress reaction to the destruction of all or part of one's emotional ecosystem" with individual and collective implications potentially spanning generations.).

160. BERNADETTE ATUAHENE, WE WANT WHAT'S OURS: LEARNING FROM SOUTH AFRICA'S LAND RESTITUTION PROGRAM 104–06 (2014).

161. *See* Lewan & Barclay, *supra* note 30, at 669 (A 2001 Associated Press study found 406 black landowners who lost more than 24,000 acres of land and 85

C. Environments of Sustained Racial Violence

White supremacism describes a long-standing, global political system, part of a general atmosphere, where we all live in the aftermath of historical racial violence.[162] This raises a basic measurement problem endemic to criminology and other fields but acute for a more circumscribed environmental argument: what counts, or, how do we define and measure relevant events and the areas they define? I have referred to race-related political violence in part to specify a focus on violence directly related to the maintenance of white racial domination but acknowledge a wide array of violent events that are infused with racial meaning.[163] *Racially Motivated Random Violence* reports were meant to document less spectacular events, as in cases of white school bus drivers failing to stop for black students, a practice of "social closure" meant to deny black educational opportunity,[164] or racial abuse on college campuses.[165] Yet the relative subtlety of these events means they have largely gone unreported in official and academic sources.[166]

smaller properties, including stores and city lots, through violence and trickery over the preceding 160 years. As of 2001, that property was valued in the tens of millions of dollars and virtually all of it was owned by whites or by corporations.); *id.* ("[H]ow different would our lives be," one descendant asks, "if we'd had the opportunities, the pride that land brings?"); *see also* MICHAEL K. BROWN ET AL., WHITEWASHING RACE: THE MYTH OF A COLOR-BLIND SOCIETY 226 (2003) ("[T]he most important source of continuing racial disparities in modern America is still the legacy of past patterns of discrimination and racially coded patterns of disinvestment."); *id.* at 228 ("Racial inequality stems from a system of [intergenerational] power and exclusion in which whites accumulate economic opportunities and advantages while disaccumulation of economic opportunity disempowers [nonwhite] communities.").

162. FULLILOVE, *supra* note 159 at 17 ("[A]ll people . . . live in an emotional ecosystem that attaches us to the environment, not just our individual selves, but as beings caught in a single, universal net of consciousness anchored in small niches we call neighborhoods or hamlets or villages."); MILLS, *supra* note 6, at 36–37.

163. *See* Flagg, *supra* note 6, at 107–10 (on expressions of white dignitary privilege); Petersen & Ward, *supra* note 1, at 130 (noting the relationship between lynching and black-victim homicide).

164. *Premier Editorial*, *supra* note 113, at 10 (reporting white school bus drivers in Morton, Mississippi routinely bypassing black children to resist school desegregation by forcing these students to walk miles to school).

165. *RMRV Around the Nation*, *in* RACIALLY MOTIVATED RANDOM VIOLENCE, *supra* note 113, at 8, 9 ("A financial aid counselor at the University of Wisconsin at Madison was recently fired for referring to a black student as 'a nigger.'").

166. This data problem and its implications for research, advocacy, and policy is analogous to missing crime data, where homicides are unique for their more comprehensive coverage. Widely acknowledged problems of missing data for other crimes (e.g., drug and property) do not prevent related research, advocacy, and policy. Historical and contemporary homicide data also omit relevant events, including countless police shootings excluded for political reasons, and erroneously include others

Among the more subtle acts of social closure that express and reinforce white dignitary status, racial micro-aggressions and implicit bias are perhaps most illustrative of pervasive racial violence that defies systematic environmental measurement yet undoubtedly influences the meaning of race in particular moments.[167]

It is likely that patterns of racial violence are correlated over time—for example, that places with longer histories of extreme inter-personal violence develop microclimates where both extreme and relatively subtle structural and cultural violence grow more likely.[168] Yet these are empirical questions we cannot definitively answer without a more comprehensive Red Record.

Meanwhile, if we accept that past events of racial violence are socially constitutive in a *relative* rather than an *absolute* sense or that events cluster in time and space and that some (e.g., lynchings or bombings) are more constitutive than others (e.g., racial micro-aggressions), in part for differences in spectacle, samples of events distinguished by public visibility and documentation can facilitate research and policy efforts, and areas of concentrated racial violence might warrant closest attention.

Notwithstanding a global white supremacist political system, some nations are understood to have done more than others to establish, sustain, and alter this global environment,[169] creating temporal and spatial *variation* within this global climate of violently proscribed "[w]hite [d]ignitary [p]rivilege and [nonwhite] [s]tigmatization."[170] There is variation between and *within* nations. In the case of the United

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(e.g., similarly wrongful arrests). *See* Ward, *supra* note 43, at 308–09 (how racial politics of social control distort crime data); *see also* KHALIL GIBRAN MUHAMMAD, THE CONDEMNATION OF BLACKNESS: RACE, CRIME, AND THE MAKING OF MODERN URBAN AMERICA 75–87 (2010) (discussing foundational racial politics of national crime data).

167.   Micro-aggression and implicit bias influence racial meaning at very proximate (or micro) interactional levels, and ultimately more broadly, through specific race discourse and identification, and resulting perceptions, feelings, and actions. *See* Derald Wing Sue et al., *Racial Microaggressions in Everyday Life: Implications for Clinical Practice*, 62 AM. PSYCHOLOGIST 271 (2007); L. Song Richardson, *Police Racial Violence: Lessons from Social Psychology*, 83 FORDHAM L. REV. 2961 (2014).

168.   *See, e.g.*, Avidit Acharya et al., *The Political Legacy of American Slavery*, J. POL. (forthcoming 2016) (finding historical persistence of political attitudes in former slaveholding areas, including greater racial animus and convervatism than in nearby nonslaveholding areas, one generation to the next); Durso & Jacobs, *supra* note 2 (Contemporary hate crime is related to historical racial violence.); Petersen & Ward, *supra* note 1 (Civil rights movement–era racial violence in Mississippi and North Carolina is predicted by histories of lynching in these states.).

169.   EVANS, *supra* note 32, at 179–237 (on the United States and South Africa); MILLS, *supra* note 6, at 98–100 (on imperialism).

170.   Flagg, *supra* note 6, at 107.

States, we refer to these distinct areas in short hand—the "Deep South," for example—or by referencing the western frontier or southern border as distinct sites of racial contention where concentrated racial violence in particular periods and forms is understood to have shaped regional specifications of racial meaning.

The Red Record facilitates more specific and comparative renderings of environments distinguished by histories of constitutive racial violence. For example, lynching scholars have used these data to assess the statistical *risk* of lynching relative to local history and population presence, illustrating variation in exposure from one place to another.[171]

States are too large and internally varied to describe as microclimates of racial meaning in an experiential, analytical, or policy-relevant sense. More proximate measures are necessary and afforded by details of the Red Record. Using my own *Racial Violence Archive*, a collection combining existing lynching data with mid-century racial violence identified through primary and secondary sources, this more proximate rendering is illustrated using a provisional "heat map" of racial terror in Mississippi between 1900 and 1970 (see Figure 2 below). The map illustrates that several counties in the state staged over eighty such events in that span, whereas others were host to far fewer, according to existing sources. Adams County, in the Southwest corner of the state, was host to over a dozen lynchings before 1930 and numerous incidents of terroristic racial violence later in the twentieth century. These include dozens of mid-1960s bombings of black homes, businesses, and churches associated with civil rights activists.

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171.   TOLNAY & BECK, *supra* note 7, at 275 (The average number of black lynching victims *per county* was 3.681 in "Deep South" states and 1.596 in "Border South" states.). For a recent reexamination of lynching data, see EQUAL JUST. INITIATIVE, LYNCHING IN AMERICA: CONFRONTING THE LEGACY OF RACIAL TERROR (2015), http://www.eji.org/files/EJI Lynching in America SUMMARY.pdf.

FIGURE 2: RACIAL VIOLENCE INCIDENT COUNTS FOR MISSISSIPPI AND
SURROUNDING COUNTIES, 1900–70[172]
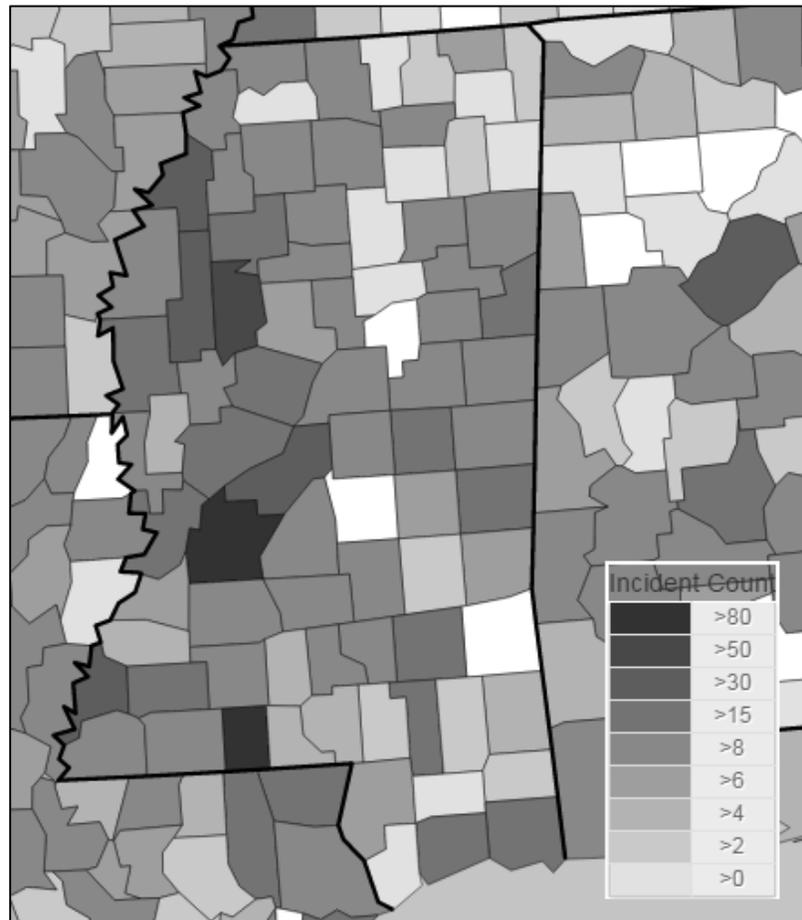
Adams County was known as a "hot spot" of racial contention *before* many of these violent anti–civil rights enforcement events. Travel writing in the late 1950s described the City of Natchez, the county seat, as a draw for its spectacular vestiges of antebellum architecture but warned of virulent white supremacism: "[In Natchez] more than anywhere else in the South or the nation," one guide reports, "I heard expressed in their most extreme form the basic issues of the

172. *See* RACIAL VIOLENCE ARCHIVE, http://www.ics.uci.edu/~yawenl2/ RacialViolenceArchiveMockup/map/preMap2.html (last visited Mar. 11, 2016).

white-black conflict."[173] Recognition of Natchez as a bastion of white supremacism was a warning to travelers contemplating a visit but might have informed greater effort to protect black life chances then and over decades since.

Recent empirical research on the contextual and temporal patterning of race-related political violence finds that *sustained* racial violence is especially important to maintaining legacies of lynching in Mississippi and North Carolina counties. Homicide rates today (and especially black-victim homicides) are elevated in counties that not only staged more lynchings but also were later host to anti–civil rights movement violence, intimidation, and reprisal in the mid-twentieth century. In fact, the effect of lynching on homicide rates in these counties is partly attributable to its *prior effect* on civil rights–era racial terror (lynching increased the odds of civil rights–era terror), suggesting that *persistent* racial violence over time is important to enduring environmental impacts of historic lynching. Mid-century racial terror appears to sustain a cultural and institutional environment—a microclimate—born in part from lynching and conducive to lethal violence today. Racial terror in the period immediately following the decline of lynching—itself causally tied to that past local history—appears to function as a *connective thread* between the preceding era of racial terror and contemporary lethal violence, including black-victim homicide.[174]

Epidemiological perspective on the spread of racial violence over time within a particular place suggests the empirical naiveté of a common critical response to the Black Lives Matter movement: in effect, that black people represent a greater threat to black life than white police or white racism, especially through gun violence.[175] This

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173.   THE AMERICAN GUIDE: A SOURCE BOOK AND TRAVEL GUIDE FOR THE UNITED STATES 905 (Henry Alsberg et al. eds., 1949). Also noteworthy here are black travel guides like the *Negro Motorist Greenbook*, which, "in an age of sundown towns, segregation, and lynching . . . became an indispensable tool for safe navigation." K Menick, *Schomburg Treasures: The Green Book*, N.Y. PUB. LIBR. (Mar. 24, 2015), http://www.nypl.org/blog/2015/03/24/schomburg-treasures-green-book.

174.   *See supra* note 1.

175.   Illustrating this naïve argument, Derryck Green of the National Leadership Network of Conservative African Americans opined that "[t]he virtuous goal of promoting the perceived value of black lives in the manner now demanded by radical community activists is tragically misguided." Derryck Green, *The "Black Lives Matter" Slogan Ignores Self-Destructive Behavior*, PROJECT 21, http://www.nationalcenter.org/P21NVGreenBlackLivesMatter90115.html (last visited Apr. 27, 2015). He continues:

   Activism advocating that black lives matter could have much more moral
   authority, and could be taken much more seriously, if it focused on actions

juxtaposition of white police killings and black-perpetrator violence oversimplifies the array of forces trivializing black life and the relationships between them.

D. Clarifying Environments Impacted

The microclimate conceptualization is consistent with a larger body of theoretical and empirical work on temporal and spatial distinctions in racial meaning.[176] However, such renderings can overestimate the significance of arbitrary jurisdictional lines (e.g., counties), and a key challenge in understanding and remedying the legacy of historical racial violence lies in understanding how its influence spreads. Boundaries between places are permeable since populations and their experiences (e.g., stories) travel, as noted in the introductory discussion of James Cameron, who was terrorized in Marion, Indiana but spent much of his life working through that trauma in Milwaukee, Wisconsin and beyond, through a museum project, public speaking, and more.[177] Further, new populations arrive through internal (domestic) and international migration, possibly diluting the cultural memory and socially constitutive power of such events but as likely recycling animosities or bearing their redirected brunt, at least in specific locales.[178] These complexities make it difficult if not impossible to estimate with great

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> devaluing black lives. These have very little to do with white cops and everything to do with self-destructive black behavior. . . . If we don't take our own lives seriously, why should we expect or demand that anyone else do so?

Id. Given the empirical relationship between historical racial violence and black-victim homicide, it seems more logical to ask, considering the dominant group and state have not taken black lives seriously for centuries, should we be surprised that many blacks themselves devalue black life today?

176.   *See, e.g.*, Michael T. Light & John Iceland, *The Social Context of Racial Boundary Negotiations: Segregation, Hate Crime, and Hispanic Racial Identification in Metropolitan American*, 3 Soc. Sci. 61 (2016) (Hispanics are more likely to identify as "other" in areas with higher levels of residential segregation and anti-Hispanic hate crime.); Geoff Ward et al., *Does Racial Balance in Workforce Representation Yield Equal Justice? Race Relations of Sentencing in Federal Court Organizations*, 43 Law & Soc'y Rev. 757 (2009) (levels of black prosecutorial representation relate to sentencing disparity within and across United States federal judicial districts). In their study of the death penalty (an extreme form of state violence concentrated in specific locales) in Maricopa County, Arizona, Fleury-Steiner et al. use the term "racist localisms" to describe the "cultural and politico-legal worlds of those few counties that keep the killing state alive." Benjamin Fleury-Steiner et al., *Racist Localisms and the Enduring Cultural Life of America's Death Penalty: Lessons from Maricopa, Arizona*, *in* Studies in Law, Politics, and Society 63, 76 (Austin Sarat ed., 2015).

177.   *See supra* note 14–24.

178.   *See supra* notes 141, 171 and accompanying text.

precision how specific people in any place are impacted over time and the bounds on these spatial and temporal implications, both of which present challenges in law. Related to this, we have entered an era where the ability to witness and thus experience racial violence is unprecedented, in a vicarious sense, as perhaps is exposure to adverse physiological, social-psychological, and cultural impacts.[179]

1. SPECIFYING TEMPORAL AND SPATIAL DIFFUSION

A basic and perhaps manageable question about temporal and spatial diffusion concerns impact across proximate areas. As more and less marked differences across state and county lines in the map above (Figure 2) illustrate, the concept of *propinquity* is important to understanding the spatial containment and spread of the constitutive influence of these events. In some places, neighboring counties within Mississippi and across state lines were barely distinguishable in terms of these event histories. Other places seem to exist in isolation as racially violent areas. Yet the absence of events in certain counties should not be interpreted to mean that they were unaffected by events in surrounding areas.[180] Legacies of lynching and other racial violence may not be neatly contained within local environments. An elaborate "distance decay function" would be needed to assess empirically how influential a specific event in place and time (e.g., a specific lynching) is across place and time (e.g., more and less proximate communities over time) on attitudes, behaviors, and other outcomes.

People and stories also move, carrying experiential and narrative traces that end up in environments elsewhere, complicating measurements of historical racial violence, the study of legacy, and remedy. These movements of population and related influences on places are generally dynamic and may be relatively temporary, as in the case of the liminal space of a moving bus, where racial meaning varies

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179.   RICHARD WRIGHT, BLACK BOY 197 (2007) ("The white brutality that I had not seen was a more effective control of my behavior than that which I knew. The actual experience would have let me see the realistic outlines of what was really happening, but as long as it remained something terrible and yet remote, something whose horror and blood might descend upon me at any moment, I was compelled to give my entire imagination over to it." This exposure "blocked the springs of thought and feeling in me, creating a sense of distance between me and the world in which I lived."); *see also supra* note 42 and accompanying text.

180.   *See* Tolnay et al., *supra* note 91, at 811 n.23, 811–12 (lynching in one county reduced odds of lynching in proximate counties, perhaps because it constituted a sufficiently terroristic event to assert racialized social control more widely).

according to riders and routes.[181] Or consider student populations converging for a time on college campuses, who potentially introduce to these environments residues of racial socialization and other legacies rooted elsewhere or become subject to related college town experiences.[182]

By contrast, population movements may be relatively enduring, involving resettlement of both people and places. For example, numerous race riots and racist pogroms in U.S. history generated hundreds and even thousands of black American refugees, many involuntarily migrating to other locales, transplanting cultural memory and structural inequality (e.g., loss of capital). As Equal Justice Initiative director Bryan Stevenson recently explained, "Lynching and the terror era shaped the geography, politics, economics and social characteristics of being black in America during the 20th century."[183]

2. NEW TECHNOLOGY, NETWORKS, AND VICARIOUS IMPACTS

Temporal and spatial diffusion of the meaning of racial violence— that is, the spread of its impact on people and places—is obviously fundamental to its environmental significance but presents substantial

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181.   Margaret Burnham, *Soldiers and Buses: All Aboard*, 5 RACE & JUSTICE 91, 97 (2015) ("It was never easy to police racialized space on the buses and streetcars of southern cities. Unlike . . . theatres, where space was more or less permanently partitioned, [bus] riders had to contend with unpredictably shifting seating needs for the two races. . . . [and] insults of Jim Crow were more keenly experienced in a small, contained space where strangers jostled against each other."); *see also* Laura Jewett, *Power Beads, Body Glitter, and Backseat Bad-Asses: Girls, Power, and Position on the School Bus*, *in* GEOGRAPHIES OF GIRLHOOD: IDENTITY IN-BETWEEN 35, 49 (2005) (describing school buses as spaces "permeated with power, forming and re-forming itself into mobile power structures and resistance in-transit.").

182.   *See* Walter C. Farrell et al., *Recent Racial Incidents in Higher Education: A Preliminary Perspective,* 20 URBAN REV. 211, 218 (1988) ("Environmental [r]acism [in] [t]he larger university community often supports racial discrimination within the university," such as discriminatory customer service, police surveillance and interaction, and other hostilities in college towns.); *id.* at 220 (Racial incidents are more likely on campuses with "[s]ubstantial numbers of low-income, working-class, majority students whose previous residence has been in majority or nearly majority cities and towns."). The *Journal of Blacks in Higher Education* has maintained a "red" record of campus racial incidents for over two decades. Brandon Griggs, *Do U.S. Colleges have a Race Problem?*, CNN (Nov. 10, 2015), http://www.cnn.com/2015/11/10/us/racism-college-campuses-protests-missouri/.

183.   Campbell Robertson, *History of Lynchings in the South Documents Nearly 4,000 Names*, N.Y. TIMES (Feb. 10, 2015), http://www.nytimes.com/2015/02/10/us/history-of-lynchings-in-the-south-documents-nearly-4000-names.html (urging greater attention to the Great Migration as a mass exodus of refugees fleeing race-based terrorism and its threat to life chances and not merely economic opportunity). On pogroms and their refugees, see *supra* notes 11, 30.

challenges for research, policy, and advocacy. The difficulty of measuring the radiation of that influence, for example, in terms of how long and how far the legacy of a particular lynching or other atrocity reaches, and the forms and strength of that legacy, cannot be fully overcome with existing data, notwithstanding important advances in social science methodologies and information technology.[184]

Considerable difficulties in analyzing the temporal and spatial diffusion of these legacies—or identifying specific microclimates of racial meaning and how they are affected—are further complicated by technological advances, including the proliferation of social media. Ironically, technological advances have both *alleviated* and *compounded* challenges of data gathering and analysis, especially through their expansion of communication networks and thus the nature of exposure.

We are presently in the midst of a technologically enhanced shift in racial meaning centering on events of racial violence, including the trivialization of black lives in and around St. Louis and other urban centers. The police killing of Michael Brown and resulting public protest brought the endemic racial violence of that environment and others into focus, forcing a reckoning that remains underway and that will inevitably leave traces in that environment and far beyond.[185] This moment of racial formation has been facilitated by information technology, which rapidly and widely circulates imagery, narrative information, analyses, and editorials via social media (e.g., Twitter) and news media outlets, giving meaning to these events.[186] The social

184. The emergence of Geographic Information Systems (GIS), complex spatial modeling, and other methodologies has vastly expanded the capacity to empirically assess temporal and spatial relationships. However, limitations of underlying event data (e.g., relevant events of racial violence) and outcome indicators (e.g., measures of traces in memories, identities, and outlooks; physiology; and material or structural impacts) present formidable challenges to research.

185. Many are skeptical that the Ferguson Commission will succeed in leading the region along "a path toward racial equity." *See* David A. Graham, *What Can the New Ferguson Report Achieve?*, ATLANTIC (Sept. 14, 2015), http://www.theatlantic.com/politics/archive/2015/09/what-can-the-new-ferguson-report-achieve/405205/ ("[S]keptics wonder whether any of its ideas will be implemented."). Still, this agenda relays an environmental understanding of historical racial violence and necessary remedial effort. The alternative, the report claims, "is to accept an untenable environment that is fraught with inequities and continued conflict." *Forward Through Ferguson: A Path Toward Racial Equity*, FORWARD THROUGH FERGUSON, http://www.forwardthroughferguson.org/ (last visited Apr. 23, 2016).

186. *See* Deen Freelon et al., *Beyond the Hashtags: #Ferguson, #Blacklivesmatter, and the Online Struggle for Offline Justice*, CTR. FOR MEDIA & SOCIAL IMPACT (Feb. 29, 2016), http://www.cmsimpact.org/beyond-hastags-ferguson-blacklivesmatter-online-struggle-offline-justice (empirically assessing the roles Twitter and other online tools have played in the Black Lives Matter movement).

networking enabled by information technology means that an incident situated in a suburb of St. Louis or some other locale almost instantly gains national and even global relevance, enabling what researchers have called "massive-scale emotional contagion."[187]

Early- to mid-twentieth-century documentation and analyses of racial violence were decidedly low-tech. Reporting depended on telegrams and letters to correspondents in reporting areas who were asked to reply through these channels with details on events in question. Analyses consisted primarily of simple tabular or graphical displays of the data, listing events by time and place. Multivariate analyses examining covariates of these events to assess causal relationships (e.g., economic competition or political threat) and impacts (e.g., for contemporary homicide) were only developed in recent decades.[188] Anti-lynching protests and other counters to racial terror were also limited to media lacking the broad exposure common to contemporary activism. Consider the solemn flag flown from the fourth-floor window of the NAACP's New York City office, which read, "A man was lynched yesterday," hoping to stoke indignation among passersby.[189]

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187. Adam D. I. Kramer, Jamie E. Guillory & Jeffrey T. Hancock, *Experimental Evidence of Massive-Scale Emotional Contagion Through Social Networks*, 111 PROC. NAT'L ACAD. SCI. 8788, 8788 (2014) ("[E]motional states can be transferred to others via emotional contagion, leading people to experience the same emotions without their awareness[,] . . . without direct interaction between people[,] . . . and in the complete absence of nonverbal cues.").

188. *See, e.g.*, TOLNAY & BECK, *supra* note 7; Messner et al., *supra* note 1. Writing in 2005, Brundage noted that "[m]ore than a century ago, sociologist James Cutler asserted that 'Our country's national crime is lynching.' Yet, only in recent years have either scholars or the broader public displayed any sustained interest in the history of lynching in America." Brundage, *supra* note 106, at 401. Publicly available datasets, interactive maps, and other digital resources documenting racial violence have also emerged only recently. *See, e.g.*, *Timeline*, *supra* note 121. Interactive maps documenting racial violence have emerged as well, including COLLECTIVE PUNISHMENT, *supra* note 121.

189. *Organizing for Civil Rights: "A Man Was Lynched Yesterday,"* LIBR. CONGRESS, https://memory.loc.gov/ammem/aaohtml/exhibit/aopart6b.html (last visited Mar. 28, 2016). The NAACP office was ordered to remove the flag by the building management company in 1937, which considered the political statement a violation of the lease agreement and threatened to withhold a lease renewal after more than thirteen years of occupancy. NAACP directors rebuked the executive staff of the New York office and ordered them to comply, noting its flag also violated a city ordinance and that being forced to move at that time would ironically compromise its advocacy of the anti-lynching bill. *See, e.g.*, Confidential Letter from Walter White, Sec'y, NAACP, to Walter Crump (Dec. 29, 1937), *in* LIBRARY OF CONG., PAPERS OF THE NAACP, PART 11: SPECIAL SUBJECT FILES, 1912–1939, SERIES A: AFRICA THROUGH GARVEY, MARCUS; Extract from Minutes of Meeting, Bd. of Dirs., NAACP (Jan. 3, 1938), *in* LIBRARY OF CONG., *supra*; Letter from Roy Wilkins, Assistant Sec'y, NAACP, to Carl Murphy (Feb. 17, 1938), *in* LIBRARY OF CONG., *supra*.

Early technological limits not only presented challenges in keeping, communicating, and, thus, leveraging the Red Record but seem likely to have limited environmental impacts of underlying events. The ability to amass, analyze, and circulate more extensively detailed data on racial violence today represents an important breakthrough in knowledge production but also dramatically expands societal exposure to these events and possible impacts. Today, there is unprecedented ability for the general public to *vicariously* witness and experience the violent trivialization of black life (e.g., through social media, video footage, constant news coverage) vividly and nearly immediately, becoming more aware of events and perhaps touched by their traumata.[190] Technological advances create new possibilities, complexities, and urgencies of reckoning with racial violence and its social ecological significance.

CONCLUSION

Legacies of historical racial violence raise remedial questions for law, public policy, and community mobilization, all of which would benefit from continued Red Record keeping and analysis to inform remedial effort and evaluate its impact. As space does not permit comprehensive discussion of remedial implications, I offer illustrative examples of the practical utility of the Red Record in law, public policy, and community action. In particular, I suggest that administrative law and social entrepreneurship may provide under-utilized intermediate venues of redress through race-related environmental regulation and intervention.

The Red Record documents what legal scholars have described as "severe environmental deprivation," specifically in relation to racial conflict and violence.[191] The sociological significance of that deprivation is suggested by noted research finding that these background events increase the probability of conflict and violence today, including black-victim homicide. Yet, legal and other practical implications are less clear. There are clearly merits and problems in prosecuting cold cases,[192] the mitigating "rotten social background"

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190.   *See supra* note 42 and accompanying text.

191.   *See* Richard Delgado, *"Rotten Social Background": Should the Criminal Law Recognize a Defense of Severe Environmental Deprivation?*, 3 LAW & INEQUALITY 9 (1985); *see also United States v. Alexander*, 471 F.2d 923, 960 (D.C. Cir. 1973) (Bazelon, C.J., dissenting) (arguing that juries should be allowed to consider a defendant's "rotten social background").

192.   *See* Emmett Till Unsolved Civil Rights Crime Act of 2007, Pub. L. No. 110-344, 122 Stat. 3934 (2008) (closing most cases); Margaret A. Burnham &

defense,[193] legislative reparations,[194] or a national truth-and-reconciliation process,[195] to name key areas of remedial effort. We should also explore other potential avenues for remedial and regulatory effort in areas plagued by legacies of historical racial violence.

Severe environmental deprivations are not solely or even ideally addressed through either relatively narrowly focused criminal or civil cases or such broad-based legal or political endeavors as reparations or truth-and-reconciliation.[196] These areas of law and policy present great challenges, including demonstrating environmental causality,[197] identifying and sanctioning parties,[198] and reluctance of witnesses to testify for fear of reprisal,[199] to name a few. Whether defending those criminally accused in areas of pronounced environmental racism or seeking judgments against those responsible for that environmental condition, each of these approaches is necessarily narrowly focused on individual parties and only indirectly related to environmental change. At the other end of the spectrum lie reparation and other truth-and-reconciliation efforts, which promise more direct, expansive,

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Margaret M. Russell, *The Cold Cases of the Jim Crow Era*, N.Y. TIMES (Aug. 28, 2015), http://www.nytimes.com/2015/08/28/opinion/the-cold-cases-of-the-jim-crow-era.html; *see also* Anthony V. Alfieri, *Prosecuting Violence/Reconstructing Community*, 52 STAN. L. REV. 809 (2000).

193.   The legal significance of these relationships, particularly for criminal defense, has been extensively debated and widely dismissed. *See* Stephen J. Morse, *Severe Environmental Deprivation (aka RSB): A Tragedy, Not a Defense*, 2 ALA. C.R. & C.L. L. REV. 147, 148 (2011). *But see* Angela P. Harris, *Rotten Social Background and the Temper of the Times*, 2 ALA. C.R. & C.L. L. REV. 131 (2011).

194.   *See* Alfred L. Brophy, *Reconsidering Reparations*, 81 IND. L.J. 811 (2006).

195.   *See* Ifill, *supra* note 29; *see also* Troy Duster, *Repairing the National Memory by Acknowledging the Living Presence of Our Childhood Locked in the Closet*, 6 AFR.-AM. L. & POL'Y REP. 43 (2004).

196.   Yet, *failure* to recognize its relevance to criminal justice might compound environmental deprivation through mass criminalization and incarceration in communities long impacted by the trivialization of black life. Richard Delgado, *The Wretched of the Earth*, 2 ALA. C.R. & C.L. L. REV. 1 (2011).

197.   *See supra* notes 191, 193 and accompanying text.

198.   Ifill, *supra* note 29, at 267–68 ("Millions of whites in communities throughout the country are implicated in the crime of lynching.").

199.   *See supra* note 152 and accompanying text; *see also supra* note 192 and accompanying text. A colleague and I recently sought to discuss a Civil Rights Movement–era murder with a woman in the Mississippi Delta who declined for fear of reprisal by perpetrators or their kin. "They still live here," she said. Personal correspondence (on file with author).

and potentially enduring environmental impacts,[200] yet face daunting obstacles relating to evidence, relevant parties and locales, and moral and political will.[201]

There are other avenues for relief. The Red Record may be a valuable resource for public policy development in areas more relevant to administrative law, for example, which might also be more feasible. Racial impact assessments, for example, could use these data to consider aspects of conflict or distrust in a particular environment that policy should not exacerbate and might seek to ameliorate.[202] Trauma-informed community policing and related engagement efforts might be prioritized in areas of likely deep-seated legal cynicism rooted in histories of under-protection.[203] Schools in such communities might be discouraged from engaging in corporal punishment or other exclusionary security measures on the grounds that such practices

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200. *See* Brophy, *supra* note 194; Ta-Nehisi Coates, *The Case for Reparations*, ATLANTIC (June 2014), http://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/ ("[W]e must imagine a new country. Reparations—by which I mean the full acceptance of our collective biography and its consequences—is the price we must pay to see ourselves squarely.").

201. A key legal challenge facing reparations is statutes of limitations. Yet recently, influential appeals for reparations have been made on moral grounds through legislatures rather than through courts. *See* MCLAUGHLIN, *supra* note 143, at 184 ("[T]he Rosewood campaign pressed a moral case, which did not stand or fall on a specific point of law: there was a need for authorities to acknowledge this shameful chapter in Florida's history and to offer reparations as a means of laying it to rest.").

202. *See* Marc Mauer, *Racial Impact Statements as a Means of Reducing Unwarranted Sentencing Disparities*, 5 OHIO ST. J. CRIM. L. 19 (2007) (Racial impact assessments obligate policymakers to review data on racial effects prior to adopting legislation.).

203. *See* PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING, OFFICE OF CMTY. ORIENTED POLICING SERVS., FINAL REPORT OF THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING 56 (2015) (Police officer standards and training "should ensure that basic officer training includes lessons to improve social interaction as well as tactical skills" on "topics such as . . . historical trauma . . . to build trust and legitimacy" and reduce the likelihood of excessive force.). The term "trauma-informed" references litigation, *Peter P. v. Compton Unified School District*, 2:15-cv-03726-MWF-PLA (C.D. Cal. Mar. 17, 2016), urging a school district in a community beset by violence to recognize related post-traumatic stress likely to influence school performance and behavior and, consistent with the Americans with Disabilities Act, address it through student services (e.g., counseling) rather than punitive sanctions (e.g., suspension and expulsion). Trauma-informed community policing would recognize community-level trauma relevant to police-civilian interaction, especially in areas where historical racial violence has likely exacerbated legal cynicism, including police distrust, in part for the participation of law enforcement in said violence. *See, e.g.*, MCLAUGHLIN, *supra* note 143, at 128–29 ("Nor did the police come to the assistance of black East St. Louisans. . . . Some local police officers were actually complicit in the violence, pointing out potential victims for the rioters.").

reinforce local subcultures of violence and are more likely to be applied differentially, sustaining inter-generational exclusion rooted in historical racial violence.[204] Policies likely to exacerbate violence, such as "Stand Your Ground Laws," have been challenged in these contexts on the grounds that the state can reasonably anticipate greater odds of lethal encounters, potentially motivated by race.[205] Environmental regulators and custodians of public lands might prioritize intervention in areas haunted by histories of racial violence, including through memorials and other commemorative efforts.[206] Private investors and state actors might concentrate efforts through Social Impact Bonds[207] supporting substantively relevant remedies (e.g., trauma-informed school and community initiatives, skill development, labor and housing market efforts) in communities marked by histories of racial violence and associated impacts.

Memory projects not simply disavowing the past but actively intervening in its collective understanding and present meaning also seem critical.[208] In theory, these should counter extreme racial socialization, legal cynicism, and other mechanisms understood to sustain the social force of historical racial violence, in part by increasing "self-other overlap" among people and in places divided by this past.[209] Focusing on the utility of lynching monuments, the Equal

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204. Eli Hager, *When Schools Feel Like Jail: Isolation Rooms and Paddling— What Some Schools in the South Are Doing to Keep Students in Line*, MARSHALL PROJECT (Nov. 11, 2015), https://www.themarshallproject.org/2015/11/11/when-school-feels-like-jail.

205. *See* Mario L. Barnes, *Taking a Stand?: An Initial Assessment of the Social and Racial Effects of Recent Innovations in Self-Defense Laws*, 83 FORDHAM L. REV. 3179 (2015); *see also* U.S. COMM'N ON CIVIL RIGHTS, BRIEFING ON STAND YOUR GROUND 25 (2014), http://www.usccr.gov/calendar/trnscrpt/CommissionBriefingTranscript_Part1_10-17-2014_Final.pdf (testimony linking histories of racial discrimination and violence to foreseeable disparate impacts of Stand Your Ground law).

206. These would intervene in "structures of feeling," which are linked to cultural memory, itself "a wide variety of mnemonic processes, practices, and outcomes, neurological, cognitive, personal, aggregated, and collective." Jeffrey K. Olick, *Collective Memory: The Two Cultures*, 17 SOC. THEORY 333, 346 (1999); Hiro Saito, *Reiterated Commemoration: Hiroshima as National Trauma*, 24 SOC. THEORY 353, 373–74 (2016).

207. Jon Hartley, *Social Impact Bonds Are Going Mainstream*, FORBES (Sept. 15, 2014, 1:59 PM), http://www.forbes.com/sites/jonhartley/2014/09/15/social-impact-bonds-are-going-mainstream/.

208. Raj Andrew Ghoshal, *Transforming Collective Memory: Mnemonic Opportunity Structures and the Outcomes of Racial Violence Memory Movements*, 42 THEORY & SOC'Y 329 (2013).

209. Thomas Craemer, *Psychological 'Self–Other Overlap' and Support for Slavery Reparations*, 38 SOC. SCI. RES. 668 (2009) (describing self-other overlap as a

Justice Initiative suggests, "National commemoration of the atrocities inflicted on African Americans during decades of racial terrorism would begin building trust between the survivors of racial terrorism and the governments and legal systems that failed to protect them."[210]

The Red Record offers our clearest guide to where such effort is especially needed and what it might entail. The Red Record also provides a basis for evaluating whether these retrospective justice efforts diminish racial violence, among other expected benefits, provided appropriate data are maintained. While there are practical implications to understanding historical racial violence as a problem of environmental racism—for law, public policy, and other advocacy— important theoretical and empirical questions remain regarding the socially constitutive force of historical racial violence. Technological advances have facilitated greater clarity while increasing the sociological complexity of these dynamics (e.g., access to vicarious experiences), adding capacity and urgency to our reckoning with the Red Record. Perhaps clearest today, as throughout the past century, is that keeping the Red Record remains vital to recognizing and countering the socially constitutive force of historical racial violence.

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form of "implicit closeness" and illustrating its relationship to remedial policy support). The impact of memorials or other retrospective racial justice is likely contingent on structural influences on collective memory in a given locale. Ghoshal, *supra* note 208.

210. EQUAL JUST. INITIATIVE, *supra* note 171, at 22 ("Most Southern terror lynching victims were killed on sites that remain unmarked and unrecognized. The Southern landscape is cluttered with plaques, statues, and monuments that record, celebrate, and lionize generations of American defenders of white supremacy, including public officials and private citizens who perpetrated violent crimes against black citizens during the era of racial terror. The absence of a prominent public memorial acknowledging racial terrorism is a powerful statement about our failure to value the African Americans who were killed or gravely wounded in this brutal campaign of racial violence."). On the importance of transitional justice initiatives to address lynching and other histories of state violence, see Ifill, *supra* note 29, at 269–70.