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Lost in the Fire: Reflections on the Tulsa Race Massacre Centennial

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Lost in the Fire: Reflections on the Tulsa Race Massacre Centennial

BY ALINA BALL*

The Tulsa Race Massacre centennial, occurring on the heels of the Movement for Black Lives and its historic national spotlight on racial inequity, provides a rare moment to be reflective about how transactional lawyering can advance racial and economic justice. This Essay examines the Greenwood District to not only explain the continuing economic disenfranchisement of people of color, but also provide transactional lawyers a case study through which they can critically examine their efforts to move beyond the rhetoric of economic development to rooting out racial violence and oppression that threatens not merely minority-owned businesses, but the lives of people of color.

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Introduction

After a year of demanding that Black lives must matter¹ if this country is to take its self-description as “the land of the free” seriously, the nation responded to the Tulsa Race Massacre centennial with an unusual focus on examining racial violence and disenfranchisement.² For nearly a century, the horrific destruction of the Greenwood District was rarely acknowledged outside of African American communities.³ To commemorate the 100th anniversary, however, there was a flurry of mainstream coverage on the Tulsa Race Massacre documenting and discussing what is now widely

1. Nikole Hannah-Jones, *What is Owed*, N.Y. TIMES (June 30, 2021), <https://www.nytimes.com/interactive/2020/06/24/magazine/reparations-slavery.html> (“Black Lives Matter, the group founded in 2013 by three [B]lack women, Patrisse Khan-Cullors, Alicia Garza, and Opal Tometi, after the acquittal of Trayvon Martin’s killer, saw its support among American voters rise almost as much in the two weeks after [George] Floyd’s killing than in the last two years. The cascading effect of these protests has been something to behold.”); Amna Akbar, *Toward a Radical Imagination of Law*, 93 N.Y.U. L. REV. 405, 407 n3 (2018) (describing the Movement for Black Lives as “made up of sixty-plus organizations, including Black Lives Matter, the now well-known chapter-based organization that many partially credit with launching the movement with the hashtag #BlackLivesMatter.”); *Black Power Rising*, MOVEMENT FOR BLACK LIVES, <https://m4bl.org/black-power-rising/> (last visited Nov. 30, 2022) (“The Movement for Black Lives is an ecosystem of individuals and organizations creating a share vision and policy agenda to win rights, recognition, and resources for Black people.”).

2. H. Res. 398, 117th Cong. (2021) (“Whereas, on May 31, 1921, a mob of armed White men descended upon Tulsa’s Greenwood District and launched what is now known as the ‘Tulsa Race Massacre’”); Ayesha Rascoe, *Biden Says The Tulsa Race Massacre ‘Can’t Be Buried, No Matter How Hard People Try,’* NPR (June 1, 2021), <https://www.npr.org/2021/06/01/1001380354/biden-to-visit-tulsa-to-mark-the-1921-race-massacre-that-wrecked-black-wall-stre> (“President Biden traveled to Oklahoma on Tuesday to mark the 100th anniversary of the Tulsa Race Massacre amid a renewed reckoning over a long-overlooked attack that left as many as 300 people dead in a community once known as Black Wall Street.”); Mike Hale, *Tell the Story of the Tulsa Massacre*, N.Y. TIMES, <https://www.nytimes.com/2021/05/30/arts/television/tulsa-race-massacre-documentaries.html> (last updated June 1, 2021) (“The Tulsa race massacre of June 1, 1921, has gone from virtually unknown to emblematic with impressive speed, propelled by the national reckoning with racism and specifically with sanctioned violence against Black Americans. This awareness is reflected in a spate of new television documentaries on the occasion of the massacre’s 100th anniversary.”).

3. See Tulsa Race Riot, OKLA. STAT. tit. 74, § 8000.1.4-5 (2014) (“Perhaps the most repugnant fact regarding the history of the 1921 Tulsa Race Riot is that it was virtually forgotten, with the notable exception of those who witnessed it on both sides, for seventy-five (75) years. This ‘conspiracy of silence’ served the dominant interests of the state during that period which found the riot a ‘public relations nightmare’”); DeNeen L. Brown, *They Was Killing Black People*, WASH. POST (Sept. 28, 2018), <https://www.washingtonpost.com/news/local/wp/2018/09/28/feature/they-was-killing-black-people/> (“For decades, few talked about what happened in this city when a white mob descended on Greenwood Avenue, a [B]lack business district so prosperous it was dubbed ‘the Negro Wall Street’ by Booker T. Washington.”); and DeNeen L. Brown, *One of the Last Survivors of the 1921 Tulsa Race Massacre – 107 Years Old – Wants Justice*, WASH. POST (May 19, 2021), <https://www.washingtonpost.com/history/2021/05/19/viola-fletcher-tulsa-race-massacre-survivor/> (quoting Viola Fletcher, who lived through the Tulsa Race Massacre: “I have lived through the massacre every day. Our country may forget this history, but I cannot. I will not. And other survivors do not. And our descendants do not.”).

acknowledged as one of the most brutal racial violence attacks committed against African Americans.⁴ The significance of the approaching Tulsa Race Massacre centennial was not lost on me as my research focuses on business law, social entrepreneurship, and racial justice. Thus, in anticipation of the milestone, I began gathering sources on the Greenwood District even before I knew how I would incorporate the information into a writing project. My research on the Tulsa Race Massacre was well underway when, on March 12, 2021, Robert Aaron Long targeted Asian-owned businesses in the metropolitan Atlanta killings of eight individuals, six of whom were women of East-Asian descent.⁵ The Atlanta shootings and the recent increase of anti-

4. Karlos K. Hill, *Community-Engaged History: A Reflection on the 100th Anniversary of the 1921 Tulsa Race Massacre*, AM. HIST. REV. 12 (June 2021) (describing the Tulsa Race Massacre the worst “race riot” in America’s history yet underexplored for decades). For information detailing the American genocide of Indigenous Peoples, see BRENDAN C. LINDSAY, MURDER STATE: CALIFORNIA’S NATIVE AMERICAN GENOCIDE, 1846-1873, 2 (2015) (“[Judge Serranus C.] Hastings and his fellows committed, directly and indirectly, some of the foulest depredations that men have committed against their fellow men in human history, and they did so openly and under the color of authority, legally, and in the name of freedom and democracy . . .”); JEFFREY OSTLER, SURVIVING GENOCIDE: NATIVE NATIONS AND THE UNITED STATES FROM THE AMERICAN REVOLUTION TO BLEEDING KANSAS 2 (2019) (“Tocqueville put his finger on the undeniable fact that U.S. expansion unleashed destructive forces on American Indian nations. He also identified what may be a particular genius of the American people: their ability to inflict catastrophic destruction all the while claiming to be benevolent.”); and Rennard Strickland, *Genocide-at-Law: An Historic and Contemporary View of the Native American Experience*, 34 U. KAN. L. REV. 713, 714 (1986) (arguing for an examination of “the role of law in the historical and contemporary experience of the natives of North America . . . [and] the law both as a factor in the genocidal extermination and as a weapon in the contemporary struggle for survival.”).

5. Richard Fausset, *8 People Killed in Atlanta-Area Massage Parlor Shootings*, N.Y. TIMES (Mar. 12, 2021), <https://www.nytimes.com/2021/03/16/us/atlanta-shootings-massage-parlor.html> (“Six of the people killed were Asian, and two were white . . . Although it was not clear whether there was a racial motivation in the shootings, Stop AAPI Hate, formed to prevent anti-Asian discrimination during the coronavirus pandemic, called them ‘an unspeakable tragedy’ for both the victims’ families and an Asian-American community that has ‘been reeling from high levels of racists attacks.’”). The victims of the Atlanta shooting are Elcias R. Hernandez-Ortiz, Daoyou Feng, Xiaojie Tan, Hyun Jung Grant, Suncha Kim, Soon Chung Park, Yong Ae Yue, Paul Andre Michels, and Delaina Ashley Yaun. See Ester Fung et al., *For Atlanta Shooting Victims, American Life Was Often a Lonely Struggle*, WALL ST. J. (Mar. 28, 2021), <https://www.wsj.com/articles/atlanta-shooting-victims-anti-asian-violence-11616947628> (“[The victims were] working at immigrant-run spas, and most were struggling to make ends meet. Some left behind family members who described them as isolated, leading quiet lives of hard work.”).

Asian violence⁶ are the vestiges of a country founded on white supremacy resistant to rooting out the causes of continued racial violence.⁷

Preparing teaching notes for my first Business Associations class subsequent to the Atlanta murders, my research on the Tulsa Race Massacre framed the information and breaking news reports from Atlanta.⁸ I asked myself how I should use class time to acknowledge these takings of life and the vicarious trauma of racial violence.⁹ I received emails from students describing their distraction and emotional exhaustion to explain what they anticipated would be their lackluster class participation that day. One student of East Asian descent mentioned fear for their mother who owns a small business, while another student discussed their own fear of physical

6. Sabrina Tavernise & Richard A. Oppel Jr, *Spit On, Yelled At, Attacked: Chinese-Americans Fear for their Safety*, N.Y. TIMES, <https://www.nytimes.com/2020/03/23/us/chinese-coronavirus-racist-attacks.html> (last updated May 5, 2021) (“Mr. Du said he posted on Facebook that ‘this is the darkest day in my 20-plus years of life in the United States,’ referring to Mr. Trump’s doubling down on use of the term [Chinese virus].”).

7. Jesse McKinley, Alex Traub, & Troy Closson, *Gunman Kills 10 at Buffalo Supermarket in Racist Attack*, N.Y. TIMES, <https://www.nytimes.com/live/2022/05/14/nyregion/buffalo-shooting> (last updated May 17, 2022); Brian X. Chen, *The Cost of Being an ‘Interchangeable Asian,’* N.Y. TIMES, <https://www.nytimes.com/2021/06/06/business/the-cost-of-being-an-interchangeable-asian.html> (last updated June 10, 2021) (“‘The interchangeable, nameless, faceless but also thoroughly dehumanized Asian American was further solidified during wars,’ said Shelley Lee, a history professor at Oberlin College in Ohio. ‘When the Americans fought in Asia with the goal of killing as many Asians as possible, that also encouraged Americans to dehumanize Asian people, to not empathize with the enemy you’re seeking to destroy.’”); Marlene Lenthang, *Atlanta Shooting and the Legacy of Misogyny and Racism Against Asian Women*, ABC NEWS (Mar. 21, 2021), <https://abcnews.go.com/US/atlanta-shooting-legacy-misogyny-racism-asian-women/story?id=76533776> (“‘This is racially motivated sexual violence against women,’ Sung Yeon Choimorrow . . . told ABC News. ‘The reason they died wasn’t just because they were women, even though that’s what the killer says it is. They were murdered because they were Asian American women,’ Choimorrow said. ‘You cannot separate that.’”); Elie Mystal, *The Massacre in Atlanta Was as Predictable as White Supremacy*, THE NATION (Mar. 18, 2021), <https://www.thenation.com/article/society/atlanta-massacre-hate/> (“From the moment Donald Trump started blaming the coronavirus pandemic on ‘China,’ everybody paying attention knew his rhetoric would result in violence against the many, varied Asian communities all across this country.”).

8. Associated Press, *A Man Accused of Killing 8 in Atlanta Area Spa Shootings Pleads Guilty to 4 Deaths*, NPR (July 22, 2021), <https://www.npr.org/2021/07/27/1021144933/georgia-man-pleading-guilty-to-4-of-8-atlanta-area-spa-killings> (“A man accused of killing eight people, most of them women of Asian descent, at Atlanta-area massage businesses pleaded guilty to murder Tuesday in four of the killings and was handed four sentences of life without parole. Robert Aaron Long, 22, still faces the death penalty in the four other deaths, which are being prosecuted in a different county.”).

9. Kenya Downs, *When Black Death Goes Viral, It Can Trigger PTSD-like Trauma*, PBS NEWS HOUR (July 22, 2016), <https://www.pbs.org/newshour/nation/black-pain-gone-viral-racism-graphic-videos-can-create-ptsd-like-trauma> (“But research suggests that for people of color, frequent exposure to the shootings of [B]lack people can have long-term mental health effects. According to Monnica Williams, clinical psychologist . . . graphic videos (which she calls vicarious trauma) combined with lived experiences of racism, can create severe psychological problems reminiscent of post-traumatic stress syndrome.”).

violence.¹⁰ As I searched for words, I wanted to not only help my students process this tragedy, but also illuminate for them how their Business Associations course was explicitly germane to contextualizing the Atlanta murders.¹¹

Racial violence¹² and hate crimes¹³ are an enduring reality for people of color in the United States.¹⁴ As the murders in Atlanta illustrate, a century

10. See Jill Cowan, *A Tense Lunar New Year for the Bay Area After Attacks on Asian-Americans*, N.Y. TIMES, <https://www.nytimes.com/2021/02/12/us/asian-american-racism.html> (last updated Mar. 18, 2021) (“Carl Chan, the president of the Oakland Chinatown Chamber of Commerce, has tallied more than 20 assaults over the past two weeks in Oakland’s Chinatown alone. Many of them were not reported, Mr. Chan said, partly because it can take hours for the police to arrive at the scene. ‘Our seniors are afraid to walk their own streets,’ Mr. Chan said.”).

11. See GARY SHIFFMAN, *THE ECONOMICS OF VIOLENCE: HOW BEHAVIORAL SCIENCE CAN TRANSFORM OUR VIEW OF CRIME, INSURGENCY, AND TERRORISM* (2020) (arguing that terrorism is primarily about personal expression and entrepreneurship).

12. See Lynn Parramore, *How America’s Economy Runs on Racism*, INST. FOR NEW ECON. THINKING (June 5, 2020), <https://www.ineteconomics.org/perspectives/blog/how-americas-economy-runs-on-racism> (quoting Darrick Hamilton “‘Throughout our history we’ve used violence as a mechanism to impose a particular political economy and to control populations. . . . As horrified as we are by the murder of George Floyd, it serves as an example or a metaphor of a larger political economy context. Violence is used to fuel a system.’”).

13. Audra D. S. Burch & Luke Vander Ploeg, *Buffalo Shooting Highlights Rise in Hate Crimes Against Black Americans*, N.Y. TIMES (May 16, 2022), <https://www.nytimes.com/2022/05/16/us/hate-crimes-black-african-americans.html?smid=url-share> (explaining Black Americans made up more than half of the victims of the 8,052 reported hate crimes in 2020); Daniel Villareal, *Hate Crimes Under Trump Surged Nearly 20 Percent Says FBI*, NEWSWEEK (Nov. 16, 2020), <https://www.newsweek.com/hate-crimes-under-trump-surged-nearly-20-percent-says-fbi-report-1547870> (“Hate crimes have surged nearly 20 percent during the administration of President Donald Trump, according to a new FBI report on hate crime statistics. . . . [H]ate-motivated murders, largely committed by white supremacists, spiked to their highest number in 28 years. . . . Of 2019’s hate crimes, 57.6 percent were motivated by race . . . ; 20.1 percent were motivated by religion; 16.7 percent were motivated by sexual orientation; 2.7 percent by gender identity; 2 percent by disability and 0.9 percent by gender.”).

14. Robert O’Harrow Jr., Andrew Ba Tran, & Derek Hawkins, *The Rise of Domestic Extremism in America*, WASH. POST (Apr. 12, 2021), https://www.washingtonpost.com/investigations/interactive/2021/domestic-terrorism-data/?utm_source=instagram&utm_medium=social&utm_campaign=wp_main&cr18_id=5b20224e-95e8-4bf3-92a5-1604566343fa (“Domestic terrorism incidents have soared to new highs in the United States, driven chiefly by white-supremacist, anti-Muslim and anti-government extremists on the far right, according to a Washington Post analysis of data compiled by the Center for Strategic and International Studies.”); Rachel Kent & John Raphling, *Interview: How Policing in One U.S. City Hurts Black and Poor Communities*, HUM. RTS. WATCH (2021), <https://www.hrw.org/news/2019/09/12/interview-how-policing-one-us-city-hurts-black-and-poor-communities> (discussing the virtual recording of Tulsa police killing Terence Crutcher in September 2016 and other high-profile killings of Black people by police in Tulsa, Oklahoma nearly 100 years after the Tulsa Race Massacre); Debbie Elliot, *5 Years After Charleston Church Massacre, What Have We Learned?*, NPR (June 17, 2020), <https://www.npr.org/2020/06/17/878828088/5-years-after-charleston-church-massacre-what-have-we-learned> (“‘They welcomed him in,’ [Rev. Sharon] Risher says, ‘He sat there and listened to this whole Bible study. And when they were in a circle holding hands in prayer is where he took out his Glock 45 and commenced to shooting and killing them like they were animals.’ He fired 70 rounds.”).

after the Tulsa Race Massacre, minority-owned or operated businesses are still the targets of White rage.¹⁵ There is a rich tradition of African American entrepreneurship.¹⁶ Black-owned businesses, for example, are not merely engines of economic activity in communities that are predominately of color,¹⁷ they are also tangible manifestations rebutting the core tenets of white supremacy,¹⁸ which purport that people of color are inferior to Whites.¹⁹ Thus, identity-based attacks on minority-owned businesses are intended to transmit a message of subordination throughout the identity community,²⁰ which was in fact an immediate effect of the Atlanta shootings.²¹ In particular, women of Asian descent across the country understood that they were vulnerable to

15. See CAROL ANDERSON, *WHITE RAGE: THE UNSPOKEN TRUTH OF OUR RACIAL DIVIDE* 3 (2016) (“The trigger for white rage, inevitably, is [B]lack advancement. It is not the mere presence of [B]lack people that is the problem; rather, it is [B]lackness with ambition, with drive, with purpose, with aspirations, and with demand for full and equal citizenship.”).

16. Margaret Levenstein, *African American Entrepreneurship: The View from the 1910 Census*, 24 *BUS. & ECON. HIST.* 106, 107 (1995) (“One of the most striking findings of this study is that in 1910 African-Americans were more likely than white Americans to be employers, and almost as likely as whites to be self-employed.”).

17. Michelle Singletary, *Black Businesses Are Fighting for Their Lives. We Can't Afford to Lose Them*, *WASH. POST* (Nov. 20, 2020), <https://www.washingtonpost.com/business/2020/11/20/black-businesses-face-discrimination/> (providing examples of Black businesses that double as community centers as well as economic engines); Dana Thompson, *L3Cs: An Innovative Choice for Urban Entrepreneurs and Urban Revitalization*, 2 *AM. U. BUS. L. REV.* 115, 122–23 (2012) (“It is essential to develop urban small businesses owned by people of color for several reasons. First, small businesses owned by people of color operating in economically depressed urban areas tend to employ more people of color and residents living in these areas than White-owned businesses.”).

18. Yuliya Parshina-Kottas et al., *What the Tulsa Race Massacre Destroyed*, *N.Y. TIMES* (May 24, 2021), <https://www.nytimes.com/interactive/2021/05/24/us/tulsa-race-massacre.html> (“In May 1921, the Tulsa, Okla., neighborhood of Greenwood was a fully realized antidote to the racial oppression of the time.”).

19. See ISABEL WILKERSON, *CASTE: THE ORIGINS OF OUR DISCONTENTS* 234 (2020) (“In a caste system, there can be little allowance for the disfavored caste to appear equal, much less superior at some human endeavor.”).

20. See Wendy Leo Moore & Joyce M. Bell, *The Right to Be Racist in College: Racist Speech, White Institutional Space, and the First Amendment*, 39 *L. POL'Y* 99, 108 (2017) (“The real significant, then, of lynching was its message to the [B]lack community as a whole: this barbarous torture can happen to you if you challenge whiteness or step outside of the confines of your racially oppressed position. As a mechanism of symbolic violence, lynching serves as a form of public spectacle torture, which evoked widespread terror that compelled [B]lack acquiescence to the racial order”); EQUAL JUSTICE INITIATIVE, *LYNCING IN AMERICA: CONFRONTING THE LEGACY OF RACIAL TERROR* 3 (3rd ed. 2017), <https://eji.org/wp-content/uploads/2005/11/lynching-in-america-3d-ed-052421.pdf> (“Lynching created a fearful environment where racial subordination and segregation was maintained with limited resistance for decades. Most critically, lynching reinforced a legacy of racial inequality that has never been adequately addressed in America.”).

21. Michelle Fox, *'We Were Scared': Asian-Owned Small Businesses Devasted by Double Whammy of Covid and Hate Crime*, *CNBC* (May 10, 2021), <https://www.cnbc.com/2021/05/10/covid-and-racism-are-devastating-for-many-asian-owned-small-businesses.html>.

attack, injury, and even death.²² Because minority-owned or operated businesses often function as community institutions,²³ attacking a minority-owned business expeditiously broadcasts the message of racial animus to the broader community.²⁴

As I reflected on what to say to my students to not only help them grieve the Atlanta murders, but also contextualize those murders within the history of legalized violence²⁵ and economic disenfranchisement of communities of color,²⁶ I realized there was an even wider audience of transactional lawyers²⁷ to address. Increasingly, transactional lawyers are working within

22. Kimmy Yam, *One-third of Asian Americans Fear Someone Might Threaten or Physically Attack Them, Survey Finds*, NBC NEWS (Apr. 22, 2021), <https://www.nbcnews.com/news/asian-america/one-third-asian-americans-fear-someone-might-threaten-or-physically-n1265016> (“The Pew Research Center survey, released Wednesday, revealed that roughly one-third of Asian Americans feared someone might threaten or physically attack them, a larger share than all other races. More than 80 percent say violence against them is increasing.”).

23. See THOMAS BOSTON, JOBS AND ECONOMIC DEVELOPMENT IN MINORITY COMMUNITIES 161–175 (Paul Ong & Anastasia Loukaitou-Sideris eds., 2006) (explaining the significant effect of Black-owned businesses near large, densely populated public housing within central cities); Brian S. Feldman, *The Decline of Black Business*, WASH. MONTHLY (Mar. 19, 2017), <https://washingtonmonthly.com/2017/03/19/the-decline-of-black-business/> (“[B]lack-owned independent businesses . . . supplied critical leadership and financial support for the civil rights movement.”); Louis Ferleger & Matter Lavalley, *How Black Businesses Helped Save the Civil Rights Movement*, INST. FOR NEW ECON. THINKING (Jan. 15, 2018), <https://www.ineteconomics.org/perspectives/blog/how-black-businesses-helped-save-the-civil-rights-movement> (“But without the development of carpools and the support of small businesses, the boycott could not have succeeded. These stories demonstrate that the support of small [B]lack-owned businesses helped the civil rights movement to succeed in a variety of ways.”).

24. *Continuing Injustice: The Centennial of the Tulsa-Greenwood Race Massacre*, 117th Cong. (2021), <https://docs.house.gov/meetings/JU/JU10/20210519/112648/HHRG-117-JU10-Wstate-VanEllisH-20210519.pdf> (*Hughes Van Ellis Written Testimony for the House Subcommittee on the Constitution, Civil Rights and Civil Liberties*) (“We were made to feel that our struggle was unworthy of justice, that we were less than the Whites, that we weren’t fully Americans. We were shown that in the United States, not all men are equal under law. We were shown that when Blacks’ voices called out for justice, no one cared.”).

25. Jamal Greene, *The Anticanon*, 125 HARV. L. REV. 379, 428 (2011) (summarizing the logic of *Prigg v. Pennsylvania* as “violence against [B]lacks was ‘legal’ violence; ‘illegal’ violence was violence against whites.”).

26. Ian Duncan, *Detroit Wins Grant to Remove Interstate that Wrecked a Black Community*, WASH. POST (Sept. 15, 2022), <https://www.washingtonpost.com/transportation/2022/09/15/detroit-highway-removal-paradise-valley/> (“Detroit’s Paradise Valley was a buzzing nightlife district, home to jazz clubs and hundreds of other Black-owned business [sic]. Then urban renewal plans launched after World War II and the digging of a highway through the area displaced more than 100,000 residents [and businesses].”); Mehrsa Baradaran, *Jim Crow Credit*, 9 U.C. IRVINE L. REV. 101, 101 (2019) (“The New Deal created a separate and unequal credit market—high-interest, non-bank, installment lenders in [B]lack ghettos and low-cost, securitized, and revolving credit card market in the white suburbs.”).

27. The term “transactional lawyer” is used in this Article to describe lawyers who represent entities and enterprises in establishing business entities, managing risks, as well as structuring and negotiating commercial contracts and financing for business transactions. See Steven L. Schwarcz,

low-income communities of color through economic inclusion efforts.²⁸ This essay is in essence a letter to these “anti-poverty transactional lawyers,” whose work is well-intentioned but may lack historical context or the race consciousness needed to be transformative. As with most poverty lawyers,²⁹ anti-poverty transactional lawyers are at risk of not accomplishing the objectives of their practice if their lawyering is divorced from context. The Tulsa Race Massacre centennial, occurring on the heels of the Movement for Black Lives and its historic national spotlight on racial inequity,³⁰ provides a rare moment to be reflective about how to better frame anti-poverty transactional lawyering and contextualize minority-owned business clients’ goals.

Lost in the fires³¹ that raged from May 31 through June 1, 1921³² and consumed more than thirty-five city blocks of the Greenwood District³³ were not only lives, homes, businesses, and property, but also possibilities for

Explaining the Value of Transactional Lawyering, 12 STAN. J.L. BUS. & FIN. 486, 486 (2007) (defining transactional lawyer and counsel); Susan M. Chesler, *Training for Tomorrow: Negotiations for Future Transactional Lawyers*, 2011 BUS. L. TODAY 1, 1 (2011) (“Most transactional lawyers negotiate deals and contract terms in situations where both parties to the negotiations seek the same final outcome—the commencement or continuation of a contractual relationship.”).

28. See e.g., Philip Bantz, *Corporate Counsel, Big Law Join Lawyers for Racial Justice Initiative*, CORP. COUNS. (Sept. 10, 2020, 4:23 PM), <https://www.law.com/corpcounsel/2020/09/10/corporate-counsel-big-law-join-lawyers-for-racial-justice-initiative/?srlturn=20210720210813>.

29. See Gerald P. López, *The Work We Know So Little About*, 42 STAN. L. REV. 1, 2 (1989) (“After all, the [client] lives in which these lawyers intervene often differ considerably from their own – in terms of class, gender, race, ethnicity, and sexual orientation. Without laboring to understand these [client] lives and their own entanglement with them, how else can lawyers begin to appreciate how their professional knowledge and skills may be perceived and deployed by those with whom they strive to ally themselves?”).

30. Larry Buchanan, Quoctrung Bui & Jugal K. Patel, *Black Lives Matter May Be the Largest Movement in U.S. History*, N.Y. TIMES (June 3, 2020), <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html> (“The recent Black Lives Matter protests peaked on June 6, when half a million people turned out in nearly 550 places across the United States Four recent polls . . . suggest that about 15 million to 26 million people in the United States have participated in demonstrations over the death of George Floyd and other in recent weeks. These figures would make the recent protests the largest movement in the country’s history . . .”).

31. DeNeen L. Brown & Yutao Chen, *The Devastation of the Tulsa Race Massacre*, WASH. POST (May 28, 2021), <https://www.washingtonpost.com/history/interactive/2021/tulsa-race-massacre-centennial-greenwood/> (quoting Greenwood lawyer B.C. Franklin, “The sidewalk was literally covered with burning turpentine balls For fully forty-eight hours, the fires raged and burned everything in its path, and it left nothing but ashes and burned safes and trucks and the like that were stored in beautiful houses and businesses.”).

32. Antoine Gara, *The Baron of Black Wall Street*, FORBES (June 18, 2020), <https://www.forbes.com/sites/antoinegara/2020/06/18/the-bezos-of-black-wall-street-tulsa-race-riots-1921/?sh=42b5e530f321> (“By the early morning of June 1, an armed white mob had already started burning Greenwood to the ground.”).

33. *Id.* (“By 1920, a walk through ‘Black Wall Street’ meant traversing more than 35 bustling city blocks, with the locus being the intersection of Greenwood Avenue and Archer Street . . .”).

future Black prosperity that Greenwood would have generated. Some current estimates suggest between \$27 million and \$50 million in property loss,³⁴ an estimated 300 people massacred, and more than 10,000 people left homeless because of the destruction.³⁵ There were also countless “opportunities denied, and dreams deferred” because of the massacre.³⁶ With the incredible amount of research accumulated on the Tulsa Race Massacre, anti-poverty transactional lawyers have an opportunity to investigate the Greenwood District as a case study in Black wealth creation.³⁷ It is critically important that anti-poverty transactional lawyers learn from the past to root out economic exclusion and promote sustainable economies within communities of color. Thus, this essay offers several reflections on Greenwood and the Tulsa Race Massacre that anti-poverty transactional lawyers should glean and incorporate into their contemporary practice.

Part I explains the recent influx of transactional lawyers in anti-poverty initiatives and racial justice programs. As sustaining social movements often requires building institutions, anti-poverty transactional lawyers will be increasingly needed to counsel and advise these new social movements. Thus, the need for anti-poverty transactional lawyers is likely to continue to grow. However, the goal of social movements is to create transformative social change, not merely address the acute needs of poverty. For this reason, I argue that well-intentioned, anti-poverty transactional lawyering is not sufficient,³⁸ as what social movements require are anti-subordination transactional lawyers who understand, among other things, the salience of racial context to business development.

34. Parshina-Kottas et al., *supra* note 18 (“The financial toll of the massacre is evident in the \$1.8 million in property loss claims – \$27 million in today’s dollars . . .”); Gara, *supra* note 32 (estimating \$50 million in present day dollars destroyed and recognizing “that Greenwood money never got a chance [to] compound.”); see Brown & Chen, *supra* note 31 (explaining that Greenwood residents’ real estate and commercial insurance claims were rejected).

35. Parshina-Kottas et al., *supra* note 18 (“Much bigger is a sobering kind of inheritance: the incalculable and enduring loss of what could have been, and the generational wealth that might have been shaped and secured the fortunes of Black children and grandchildren.”).

36. Gara, *supra* note 32; Andre M. Perry, Anthony Barr, & Carl Romer, *The True Costs of the Tulsa Race Massacre, 100 Years Later*, BROOKINGS (May 28, 2021), <https://www.brookings.edu/research/the-true-costs-of-the-tulsa-race-massacre-100-years-later/> [herein after *The True Costs*] (illustrating that Black Tulsans “are largely shut out of the jobs in financial firms and institutions. . . . Without direct connection to sources of capital investment and loans, Tulsa’s Black residents and communities face barriers to creating and expanding businesses, and thus also face barriers to the personal and communal wealth that business ownership can create.”).

37. Parshina-Kottas et al., *supra* note 18 (“[Greenwood] was a thriving community of commerce and family life to its roughly 10,000 residents.”).

38. See Lucie White, “Democracy” in *Development Practice: Essays on a Fugitive Theme*, 64 TENN. L. REV. 1073, 1076 (1997) (explaining that a “transactional lawyer [can] practice in ways that erode, rather than enhance, her clients’ power”).

Part II highlights three pertinent observations the economic success of the Greenwood District and the ensuing racial violence transactional lawyers need to acknowledge in their lawyering if their goal is advancing racial justice. First, the Greenwood District demonstrates the effectiveness of race-conscious interventions in fostering wealth creation for communities of color. Second, the Greenwood District is an example of “horizontal” economic inclusion that provides an alternative to the individualist entrepreneurial stories that often dominate contemporary conversations of economic empowerment. Moreover, as Greenwood demonstrates, horizontal economic inclusion facilitates vertical economic prosperity, contributing to a sustainable economic environment. In other words, the robust Greenwood economic ecosystem enabled the success of other Black-owned businesses to be more likely.³⁹ Third, notwithstanding all its successes, the duality and contradictions of entrepreneurialism and the private market are also present in the history of the Greenwood District. Ultimately, the economic success of Greenwood residents could not overcome the racial animus and oppressive economic forces that surrounded their temporary oasis. Thus, the possibilities and limitations of economic inclusions are also observable. Taken together, these lessons from the Greenwood District also help explain the continuing disenfranchisement of people of color and provide anti-poverty transactional lawyers a case study through which they can critically examine their efforts toward advancing an anti-racist society. Working towards horizontal economic inclusion in coordination with government and public policy reformers, anti-poverty transactional lawyers could move beyond the rhetoric of economic development to help root out racial violence and oppression that ultimately threatens not merely minority-owned businesses, but the lives of people of color.

I. Anti-Poverty Transactional Lawyers

This section discusses the increase in anti-poverty transactional lawyering and argues that the need for transactional lawyers in social movements is likely to increase as mobilized, marginalized groups form and manage institutions to sustain their social and racial justice initiatives.

39. See Keiko Morris, *Black Land Ownership Primed Greenwood's Rebound After Massacre*, WALL ST. J. (May 29, 2021, 9:00 AM), <https://www.wsj.com/articles/black-land-ownership-primed-greenwoods-rebound-after-massacre-11622293201> (“Well-to-do Greenwood residents made loans to other members of the community.”).

A. Increase in Anti-Poverty Transactional Lawyers

As I have previously discussed in other pieces,⁴⁰ transactional lawyers working in anti-poverty initiatives are gaining momentum and notoriety.⁴¹ Take, for example, Morrison & Foerster LLP launching a Black Venture Accelerator to provide pro bono corporate and transactional representation to Black-owned businesses.⁴² In addition to private law firms, nonprofit law firms and legal services centers have also targeted transactional representation for Black-led organizations to further their racial justice work.⁴³ Traditionally, poverty lawyering was not a territory for transactional lawyers, as the field predominately consisted of providing low-income clients direct access to services and representation in the areas of criminal defense, civil rights litigation, family law, as well as immigration and refugee law. As poverty lawyers began to see the same issues repeat themselves from client to client, more emphasis within the field was placed on changing systems that debilitate and subordinate classes of clients. A significant shift coalesced in the 2000s as poverty lawyers strategically began working with mobilized client populations not to merely gain rights through formal legal proceedings, but also to acquire and leverage their collective power for local policy reform. These “social movement lawyers”⁴⁴ are characterized as working alongside coalitions of marginalized groups of individuals seeking to implement social change.⁴⁵ The recent influx of transactional lawyers in anti-poverty and social justice initiatives may indicate yet another wave of progressive lawyering. If earlier waves of poverty lawyering were characterized by advocating for the right to *work*, and contemporary waves of

40. See Alina Ball, *Transactional Community Lawyering*, 94 TEMP. L. REV. 397, 399–400 (2022).

41. See Louise G. Trubek, *Poverty Lawyering in a New Millennium*, 17 YALE L. & POL’Y REV. 461, 466 (1998) (“The use of sliding scale fee schedules and unbundling services along with the growing importance of community economic development and entrepreneurial advising for low-income people has increased the importance of for-profit firms in poverty lawyering.”).

42. *Morrison & Foerster Launches Black Venture Accelerator*, MORRISON & FOERSTER LLP (Feb. 18, 2021), https://www.mofo.com/resources/news/210218-black-venture-accelerator.html?utm_source=linkedin_elevate&utm_medium=social (“The Black Venture Accelerator’s goal is to foster financial inclusion by providing access to sophisticated legal services as well as opportunities for growth. In addition to pro bono legal services, the inaugural program will offer creative and practical solutions to business challenges, mentorship, educational resources, networking opportunities, and connections to other needed professional services.”).

43. See e.g., *CORP Racial Equity Partnership*, BAR ASS’N OF S.F., <https://www.sfbar.org/jdc/jdc-legal-services-programs/corp/rep/> (last visited Nov. 30, 2022) (“The Racial Equity Partnership (REP) is a partnership between CORP and the East Bay Community Foundation’s ASCEND: BLO Initiative, as well as the Greenlining Institute’s Economic Equity Project, providing pro bono legal support to Black-led organizations (BLOs) in California.”).

44. See Amna A. Akbar et al., *Movement Law*, 73 STAN. L. REV. 821, 841 (2021).

45. See SCOTT L. CUMMINGS, *AN EQUAL PLACE: LAWYERS IN THE STRUGGLE FOR LOS ANGELES* (2021) (documenting movement lawyering in Los Angeles between 1992 and 2008).

movement lawyers are characterized by advocating for dignified *wages*, then a next wave of social movement lawyers may be characterized by advancing *wealth* creation as a means of sustaining and entrenching social movements. With accumulated wealth, organized and structured social movements can not only support their efforts financially, but also implement their social change vision through their owned institutions, businesses, organizations, and entities. If this is the trend, then social movements would need even more transactional lawyers representing and advising them in the future.

B. From Anti-Poverty to Anti-Subordination

Social movements foster and sustain social change. In the context of racial justice work, that requires a new vision for how to order and coordinate social groups without anchors of racist ideologies and practices. In other words, institutions, businesses, organizations, and entities supporting social movements specifically need anti-subordination transactional lawyers, not merely anti-poverty transactional lawyers, advising and representing them. Transactional lawyers can be part of the undoing of racial terror in this country if they closely examine the historical context of economic disenfranchisement and work to root out the causes of violence instead of merely engaging in the rhetoric of economic empowerment.⁴⁶ Moving from a well-intentioned, anti-poverty focus to an anti-subordination framing of transactional lawyering may, however, be particularly difficult given how few models of anti-subordination transactional lawyering exist. For this reason, anti-poverty transactional lawyers should examine and investigate case studies like the Greenwood District to inform their practice.

II. Greenwood Applications to Transactional Lawyering

The creation and destruction of the thriving Black commercial center in the Greenwood District⁴⁷ provide valuable insights to transactional lawyers committed to anti-subordination objectives. The recent increase in reported hate crimes during the Trump administration⁴⁸ and the increased national

46. See MAYA ANGELOU, *ON THE PULSE OF MORNING: INAUGURAL POEM* (1993) (“History, despite its wrenching pain cannot be un-lived, but if faced with courage, need not be lived again.”); AMANDA GORMAN, *THE HILL WE CLIMB: AN INAUGURAL POEM FOR THE COUNTRY* (2021) (“It’s because being American is more than a pride we inherit, it’s the past we step into and how we repair it.”).

47. Yun Li, *Black Wall Street Was Shattered 100 Years Ago. How the Tulsa Race Massacre Was Covered Up and Unearthed*, CNBC, <https://www.cnn.com/2021/05/31/black-wall-street-was-shattered-100-years-ago-how-tulsa-race-massacre-was-covered-up.html> (last updated June 1, 2021) (“At the turn of the 20th century, the Greenwood District of Tulsa, Oklahoma, became one of the first communities in the country thriving with Black entrepreneurial businesses.”).

48. See Villareal, *supra* note 13.

emphasis on racial justice⁴⁹ resemble the circumstances that gave rise to the racial violence of the 1920s.⁵⁰ These indicators in the midst of the Tulsa Race Massacre centennial should demand our attention and further investigation. Although these truths may be uncomfortable to study, continuing to disregard the Tulsa Race Massacre⁵¹ in transactional law circles impedes the advancement of racial justice. Thus, this section offers three reflections on the Greenwood District that transactional lawyers should glean if they want to embody the anti-racist goals that poverty initiatives often espouse.

A. Race-Consciousness

The success of the Greenwood District illustrated a race-conscious intervention effectively addressing the disenfranchisement of Black communities.⁵² Indeed, race-conscious mechanisms have been used since the inception of this country to foster and support the creation of White wealth.⁵³ For example, in addition to race-conscious government initiatives that benefited Whites such as compensation for the emancipation of enslaved individuals, the Homestead Act, the New Deal, and the G.I. Bill, people of color were also excluded from higher education and professional careers where they

49. See Gene Demby et al., *The Racial Reckoning That Wasn't*, NPR (June 9, 2021), <https://www.npr.org/2021/06/08/1004467239/the-racial-reckoning-that-wasnt> (discussing the so-called racial reckoning that was well-intentioned and widespread but not necessarily transformative regarding racial equity); Marco Quiroz-Gutierrez, *American Companies Pledged \$50 Billion to Black Communities. Most of it Hasn't Materialized*, FORTUNE (May 6, 2021), <https://fortune.com/2021/05/06/us-companies-black-communities-money-50-billion/>.

50. See DeNeen L. Brown, *Red Summer: When Racist Mobs Ruled*, PBS (Feb. 4, 2021), <https://www.pbs.org/wgbh/americanexperience/features/t-town-red-summer-racist-mobs/> [hereinafter *Red Summer*] (arguing that Black intellectuals and activists encouraging Black veterans to resist injustice, disenfranchisement, and lynching and the economic prosperity of African Americans resulted in White backlash and brutality); Parshina-Kottas et al., *supra* note 18 (“One factor that drove the violence: resentment toward the Black prosperity found in block after block of Greenwood.”).

51. Hannah-Jones, *supra* note 1 (“The inclination to bandage over and move on is a definitive American feature when it comes to anti-[B]lack racism and its social and material effects.”); Parshina-Kottas et al., *supra* note 18 (“The final insult of the massacre came in the silence. For decades, Tulsa deliberately ignored and covered up what had happened in Greenwood. Many descendants said they learned about the mob and the killings only as adults – and even then, some of the recounting was told in whispers.”).

52. See Ta-Nehisi Coates, *The Enduring Solidarity of Whiteness*, THE ATLANTIC (Feb. 8, 2016), <https://www.theatlantic.com/politics/archive/2016/02/why-we-write/459909/> (“Black poverty is fundamentally distinct from white poverty—and so cannot be addressed without grappling with racism.”).

53. See e.g., RICHARD ROTHSTEIN, *THE COLOR OF LAW* xii (2017) (“Racial segregation . . . was a nation-wide project of the federal government in the twentieth century, designed and implemented by its most liberal leaders. . . . [S]cores of racially explicit laws, regulations, and government practices combined to create a nationwide system of urban ghettos, surrounded by white suburbs.”).

could amass wealth.⁵⁴ The creation of the Greenwood District did not ignore or undervalue the harms racism inflicted on Black people. In fact, the success of Greenwood was meaningful precisely because it was an oasis surrounded by racial terror and disenfranchisement exacted on Black communities. Without race-conscious interventions, Greenwood may not have ever existed, let alone thrived only six decades removed from legalized chattel slavery.

Racial oppression operated all around the Greenwood District.⁵⁵ In media reports, Greenwood was referred to as “Little Africa,” as well as “Nigger town.”⁵⁶ The violence that erupted on May 31, 1921, was an extreme example of what the community experienced on a regular basis. In fact, racial violence was rampant, and massacres of Black individuals were so common place during the early twentieth century that the summer of 1919 is known as the Red Summer⁵⁷ because of the frequent extrajudicial murders and racial violence terrorizing Black communities, such as in Washington, D.C.,⁵⁸ Longview, TX,⁵⁹ Phillips County, AK,⁶⁰ and Chicago, IL.⁶¹ The Ku Klux Klan and other white terrorist groups reemerged⁶² on the heels of dignified Black veterans returning to segregation and racism having just served in

54. See Hannah-Jones, *supra* note 1 (“Wealth begets wealth, and white Americans have had centuries of government assistance to accumulate wealth, while the government has for the vast history of this country worked against [B]lack Americans doing the same.”); WILKERSON, *supra* note 19 at 234 (“The caste system all but ensured [B]lack failure by preempting success.”).

55. Gara, *supra* note 32 (“When Oklahoma was granted statehood in 1907, the first acts of the legislature were to institute segregation.”).

56. See Brown & Chen, *supra* note 31.

57. *Red Summer*, *supra* note 50 (“That year [of 1919], Omaha would become one of at least 26 cities across the country where barbaric white mobs attacked Black people and Black communities during a reign of racial terror that author James Weldon Johnson labeled ‘Red Summer’ . . . [which was] a term used to describe that blood that flowed in the streets of America, were sparked by disparate events, but common denominator was racial hatred against a people who had recently risen out of enslavement and prospered.”).

58. *Id.* (“In Washington, D.C., it was an accusation that Black men tried to take a white woman’s umbrella.”).

59. *Id.* (“In Longview, Texas, it was a Black man writing a newspaper story about a love affair between a Black man and a white woman.”).

60. *Id.* (“In Elaine, Arkansas, it was Black sharecroppers trying to get better payment for their cotton crops.”).

61. *Id.* (“In Chicago, it was a Black teenager swimming in Lake Michigan and accidentally floating over an invisible color line.”).

62. Joshua D. Rothman, *When Bigotry Paraded Through the Street*, THE ATLANTIC (Dec. 4, 2016), <https://www.theatlantic.com/politics/archive/2016/12/second-klan/509468/> (“[T]he Klan was easily at its most popular in the United States during the 1920s, when its reach was nationwide, its members disproportionately middle class, and many of its very visible public activities geared toward festivities, pageants, and social gatherings. . . . [T]he Klan of the 1920s encouraged native-born white Americans to believe that bigotry, intimidation, harassment, and extralegal violence were all perfectly compatible with, if not central to, patriotic respectability.”).

World War I and broadening their horizons after touring the world. Given the extent of racism, there were very few mechanisms for Black people to accumulate wealth.⁶³

Greenwood was created because of the land grants that were provided to the Freedmen of the Five Tribes through land allotments to the Cherokee, Creek, Seminole, Chickasaw, and Choctaw Nations.⁶⁴ When communal Cherokee lands were divided into individual allotments, tribal members with treaty rights to land and citizenship (which included members of African descent)⁶⁵ were permitted to establish individual land claims in the Cherokee Outlet. The redistribution of Cherokee land created the pathway for what would become the Greenwood District.⁶⁶

Greenwood existed and thrived because its founders and residents acknowledged the racist society in which they lived and worked. Race consciousness confronts the structural racism working to prevent financial success of people of color.⁶⁷ As exemplified during the post-COVID economic crisis, economic downturns continue to disproportionately disadvantage minority-owned businesses.⁶⁸ Thus, anti-subordination transactional lawyers need to develop the fluency of Greenwood founders in identifying and creatively developing race conscious means to confront structural racism.

63. HANNIBAL B. JOHNSON, *BLACK WALL STREET: FROM RIOT TO RENAISSANCE IN TULSA'S HISTORIC GREENWOOD DISTRICT 27* (2007) (“Constrained by law, racism, and social custom, Tulsa’s African-American community survived and thrived for decades as a separate city, serving almost exclusively the needs of its own residents.”).

64. Morris, *supra* note 39 (“Many of the territory’s early Black residents were descendants of those formerly enslaved by Native Americans who had been pushed west by the U.S. government in the 19th century . . . [T]hese Native Americans and the more than 23,000 formerly enslaved Black men and women of the tribes—known as freedmen—became eligible for allotments as much as 160 acres in Oklahoma”); Victor Luckerson, *The Story of Black Wall Street #013: Why Black Wall Street Flourished*, RUN IT BACK (July 9, 2020), <https://runitback.substack.com/p/013-why-black-wall-street-flourished> (“When the federal government forced Native Americans to abandon communal land ownership in favor of individual allotments, more than two million acres of land were granted to the [B]lack freedmen who were members of the Five Tribes.”).

65. See ALAINA E. ROBERTS, *I’VE BEEN HERE ALL THE WHILE: BLACK FREEDOM ON NATIVE LAND 2* (2021) (“It became evident that slavery was now both economically and socially important within the Five Tribes as the United States saw the 1830s period of plantation expansion shift into the 1850s skirmishes . . .”).

66. Gara, *supra* note 32 (“On September 16, 1893, the 25-year-old entrepreneur [Gurley] joined the Cherokee Outlet Opening . . .”).

67. Hannah-Jones, *supra* note 1 (“To summarize, none of the actions we are told [B]lack people must take if they want to ‘lift themselves’ out of poverty and gain financial stability – not marrying, not getting educated, not saving more, not owning a home – can mitigate 400 years of racialized plundering.”).

68. Arielle Mitropoulos, *Supporting Black Businesses as Means to Combat Racism Grows in Momentum*, ABC NEWS (June 19, 2020), <https://abcnews.go.com/Business/supporting-black-businesses-means-combat-racism-grows-momentum/story?id=71311180> (“Further, 95% of small businesses in mostly [B]lack communities hold a cash buffer of two weeks or less, making it difficult for them to keep their businesses going during economic downturns.”).

B. Horizontal Economic Inclusion

In August 2020, Pharrell Williams and Jay-Z released their hit song, “Entrepreneur,” with their music video featuring several successful Black entrepreneurs.⁶⁹ Most of the individuals featured in the music video represent islands of Black entrepreneurship in industries overwhelmingly dominated by White entrepreneurs.⁷⁰ A pitfall of Black exceptionalism,⁷¹ such as the examples featured in the “Entrepreneur” music video, is that it provides society with the illusion of progress when virtually no progress has been made over the past 70 years in reducing the wealth inequality between Black and White households.⁷² While the infectious tune of the song and joyous imagery of the music video are compelling and inspiring, the Greenwood District illustrates a very different representation of wealth creation for people of color.

Entrepreneurship is difficult under any circumstance. The vast majority of new businesses fail even for serial, experienced entrepreneurs.⁷³ In reality, entrepreneurs without strong social networks within their industry

69. Pharrell Williams & Jay-Z, *Entrepreneur*, YOUTUBE (Aug. 20, 2020), <https://www.youtube.com/watch?v=bTOoY5MIkVM>.

70. See e.g., *Scientists and Engineers Working in Science and Engineering Occupations: 2015*, NAT'L SCI. FOUND., <https://www.nsf.gov/statistics/2017/nsf17310/digest/occupation/overall.cfm> (showing that White men constitute about one-half of scientists and engineers employed in science and engineering occupations, while Black men and women account for approximately five percent far below the thirteen percent of the national Black population); and Lynnise E. Phillips Pantin, *Race and Equity in the Age of Unicorns*, 72 HASTINGS L.J. 1453, 1456 (2021) (“Silicon Valley purports itself to be the ultimate meritocracy, but in reality, the culture reproduces and reinforces racial and gender inequities.”).

71. See Feldman, *supra* note 23 (“A closer look at the numbers, however, reveals that these pioneering companies are the exception to a far more alarming trend. The last thirty years also have brought the wholesale collapse of [B]lack-owned independent businesses and financial institutions that once anchored [B]lack communities across the country.”); Samuel Getachew, *Black Valedictorians and the Toxic Trope of Black Exceptionalism*, N.Y. TIMES (June 29, 2021), <https://www.nytimes.com/2021/06/29/opinion/black-valedictorians-education-segregation.html> (“When a person is exceptional for doing what I have done, the whole system is cruel to its core.”).

72. Mortiz Kuhn et al., *Income and Wealth Inequality in America, 1949-2016*, 128 J. POL. ECON. 3469 (2020); Hannah-Jones, *supra* note 1 (“And yet most Americans are in an almost pathological denial about the depth of Black financial struggle.”); Galen Gruman, *Minority Tech Startups in the US Have Seen Almost No Progress in VC Funding*, COMPUTERWORLD (Oct. 7, 2020), <https://www.computerworld.com/article/3584734/minority-tech-startups-in-the-us-have-seen-almost-no-progress-in-vc-funding.html> (“Black and Latinx tech startups have made almost no progress in securing venture capital funding over the past seven years in the US...”).

73. See William Vanderbloemen, *Do You Have the DNA of a Successful Entrepreneur?*, FORBES (July 31, 2016, 7:00 PM), <https://www.forbes.com/sites/williamvanderbloemen/2016/07/31/do-you-have-the-dna-of-a-successful-entrepreneur/?sh=3856e9ba63ab> (“The chance of an entrepreneur’s first or second startup ending in success is about 20%. After the first two attempts, the odds get slightly better, but are still pretty terrifying (30% chance of success).”).

struggle to sustain themselves.⁷⁴ The Greenwood District, on the other hand, was a case study in horizontal economic inclusion, where the average dollar circulated between 36 and 100 times within the community before departing.⁷⁵ In other words, a single dollar is estimated to have flowed through Greenwood for about a year to 19 months before exiting.⁷⁶ Among its many enterprises, the community contained Black-owned general stores, theaters, newspapers, repair shops, taxi companies, hotels, beauty parlors and barber shops, banks, grocers, medical and law practices, a roller skating rink, and funeral homes.⁷⁷ “In Greenwood, residents held more than 200 different types of jobs.”⁷⁸ The horizontal economic activity was not merely private but included coordination between the Black business leadership and civic leadership, as Greenwood housed a public library, public transportation system, and remarkable school system.⁷⁹

Greenwood District provides a blueprint for how anti-subordination transactional lawyers might prioritize working within geographic communities to support a robust economic ecosystem within communities of color⁸⁰ instead of working with discrete businesses indiscriminately. A horizontal approach to wealth creation also helps anti-subordination transactional lawyers better achieve the goal of inclusion. Witnessing the Black success in

74. See Pantin *supra* note 70 at 1498–99 (discussing the important of cultural capital for unicorn companies and noting that unicorn “[e]ntrepreneurs often have success because they are able to tap into [their] cultural capital.”); Chris Cancialosi, *4 Reasons Social Capital Trumps All*, FORBES (Sept. 22, 2014, 9:00 AM), <https://www.forbes.com/sites/chrisancialosi/2014/09/22/4-reasons-social-capital-trumps-all/?sh=5dae4ccf6986> (“[S]ocial capital—the connections and shared values that exist between people and enable cooperation—is the key to entrepreneurial success.”).

75. Parshina-Kottas et al., *supra* note 18 (quoting Star Williams whose grandfather, Otis Grandville Clark, was an 18-year-old Greenwood resident at the time of the massacre).

76. *The True Costs*, *supra* note 36 (“The Greenwood Cultural Center notes that this local economy had such good financial circulation that the average dollar would stay within the community’s network of households and firms for approximately 19 months.”).

77. *Id.* (providing a detailed map and imagining of the collection of businesses located the 100 block of Greenwood Avenue, the marque pulse of the commercial community); Gara, *supra* note 32.

78. Parshina-Kottas et al., *supra* note 18 (“About 40 percent of the community’s residents were professionals or skilled craftspeople, like doctors, pharmacists, carpenters and hairdressers, according to a Times analysis of the 1920 census.”).

79. Gara, *supra* note 32 (“The district had its own elite high school, name after Booker T. Washington, which boasted a curriculum that would prepare students to eventually study at colleges like Columbia in New York, Oberlin in Ohio, and historically Black colleges such as Hampton, Tuskegee, and Spelman. . . . So important was education in upwardly mobile Greenwood that teachers were among the highest paid workers.”).

80. *Economic Justice*, MOVEMENT FOR BLACK LIVES, <https://m4bl.org/policy-platforms/economic-justice/> (last visited Nov. 30, 2022) (“We demand economic justice for all and a reconstruction of the economy to ensure Black communities have collective ownership, not merely access. This includes . . . support[ing] the development of cooperative or social economy networks to help facilitate trade across and in Black communities globally.”).

Greenwood generated a “sense of identity and pride”⁸¹ among Black residents. A sense of belonging, pride, and dignity are each an antonym of subordination and exclusion. Thus, anti-subordination transactional lawyers need to be intentional about their client selection and their long-term investment in supporting not merely vertical, but also horizontal economic growth.

C. Duality of Transactional Law

While it is tempting to romanticize the Greenwood District because of its astounding success against the most tremendous of odds of racial hostility, that would be a misstep. Anti-subordination transactional lawyers should also be examining the creation of the Greenwood District through a critical lens. For example, the redistribution of communal Cherokee lands⁸² that enabled the creation of Greenwood was also a deeply problematic transaction, in which the U.S. government used coercive tactics to deprive Indigenous Peoples of their economic rights and weaken Native sovereignty.⁸³ In a society where racial subordination is embedded into its mainstream economic system,⁸⁴ economic transactions have a strong possibility of recreating or facilitating the oppression of another marginalized group. This recognition needs to inform the counsel and advice anti-subordination transactional lawyers provide their clients.

While much is written about the immense wealth of the Greenwood District, historians also note the poor Black residents living in shanties that

81. Parshina-Kottas et al., *supra* note 18 (quoting Star Williams whose grandfather, Otis Grandville Clark, was an 18-year-old Greenwood resident at the time of the massacre).

82. See Melinda C. Miller, *Cherokee Nation Policies After the Civil War Show that Reparations Work*, WASH. POST (Mar. 24, 2021, 6:00 AM), <https://www.washingtonpost.com/outlook/2021/05/24/ Cherokee-nation-policies-after-civil-war-show-that-reparations-work/> (“After the Civil War, the Cherokee Nation was forced to renegotiate its relationship with the U.S. government. Federal representatives prioritized land grants to those formerly enslaved by Cherokee citizens. In an 1866 treaty, the Cherokee Nation granted ‘all the rights of native Cherokees’ to those who had been formerly enslaved within its borders.”).

83. See Dawes Act, ch. 119, 24 Stat. 388 (1887) (repealed in part 1934) (authorizing the allotment, privatization, and sale of reservation lands previously held in trust by the U.S. government for Native nations); L. Scott Gould, *Mixing Bodies and Beliefs: The Predicament of Tribes*, 101 COLUM. L. REV. 702, 720 (2001) (describing the allotments of communal land among tribal members under the Dawes Act as a “practice [that] led to massive losses of tribal lands, because Indians whose lineage derived from more than one tribe might not be eligible for allotments, even though they were full-blooded. Lands that should have gone to them were made available instead to whites.”); M. Kaye Tatro, *Curtis Act (1898)*, ENCYCLOPEDIA OF O.K. HISTORY AND CULTURE, <https://www.okhistory.org/publications/enc/entry.php?entry=CU006> (“In 1887 the Dawes Severalty Act (General Allotment Act) legislated the allotment of communal tribal lands into individually owned plots, indicating a major shift in federal government policy.”).

84. See Parramore, *supra* note 12 (quoting Darrick Hamilton “‘The system of profit-making and the system of discrimination end up reinforcing each other . . . Racism is profitable.’”).

surrounded the commercial district of Greenwood.⁸⁵ Additionally, much of the wealth used to create Greenwood came from the oil industry surrounding Tulsa.⁸⁶ Larger systems in our society virtually ensured that there will be extreme poverty and extraction industries despite pockets of reprieve,⁸⁷ such as Greenwood. Anti-subordination transactional lawyers need to grapple with these realities. Because as the Tulsa Race Massacre illustrates, failing to address larger systems of oppression threatens to not only undermine the success of minority-owned businesses, but also the lives of people of color.

Conclusion

I shared these reflections on the Greenwood District with my Business Associations students in my first class after the Atlanta massacre. I told them that to understand racism and economic exclusion, they needed to also understand the theoretical approach we have embedded in our business association laws. I also told them that I believed in their ability to take what they were learning in the course and use it to address the effects and root causes of racial violence.

This essay attempts to distill several insights from the Greenwood District and the subsequent Tulsa Race Massacre salient to anti-subordination transactional lawyering. Examining the Greenwood District as a case study of Black economic success provides several distinctions from the mainstream focus on individual entrepreneurial success without historical, racial, or systemic context. The development of the Greenwood District demonstrates the potential of race-conscious interventions that provide economic integration and inclusion. The essence of economic justice is advancing community empowerment, race-conscious problem-solving to combat the persistence of racism, and remaining conscious about the greater systems business clients participate in and how those may perpetuate marginalization. This is because economic justice is not about simply letting people “have a seat at the table.” Instead, economic justice is about creating more

85. See Tom Huddleston Jr., ‘Black Wall Street’: The History of the Wealthy Black Community and the Massacre Perpetrated there 100 Years Ago, CNBC, <https://www.cnbc.com/2020/07/04/what-is-black-wall-street-history-of-the-community-and-its-massacre.html> (last updated May 28, 2021, 12:10 PM) (“[T]he Greenwood District was far from a utopia. Even though many Black residents owned successful businesses and lived in relative luxury, historian Scott Ellsworth has pointed out that many others were poor and lived in ‘shanties and shacks.’”).

86. Gara, *supra* note 32.

87. *Racial Equity in the Boardroom*, MAJORITY ACTION, <https://www.racialjustice.majorityaction.us> (last visited Nov. 30, 2022) (“Systemic racism in our corporate and financial systems goes far beyond the unacceptable prevalence of all-white corporate boards, or boards with one tokenized person of color. It is embedded in unchecked corporate behavior – from financing pipelines that run through Indigenous lands . . . to funneling political donations to elected officials championing voter suppression efforts, and much more.”).

tables of different heights and materials that serve a variety of foods. To achieve economic and racial justice, transactional lawyers need to be committed to anti-subordination, not merely anti-poverty objectives. Even as public discourse retreats from understanding systemic racism,⁸⁸ transactional lawyers should work to understand and dismantle racism and its many forms of economic exclusion.

88. See *Welcome to the #TruthBeTold Campaign*, THE AFRICAN AMERICAN POLICY FORUM, <https://www.aapf.org/truthbetold> (last visited Nov. 30, 2022); Eesha Pendharkar, *A \$5 Million Fine for Classroom Discussions on Race? In Tennessee, This is the New Reality*, EDUC. WK. (Aug. 3, 2021), <https://www.edweek.org/leadership/a-5-million-fine-for-classroom-discussions-on-race-in-tennessee-this-is-the-new-reality/2021/08> (“Tennessee aims to levy fines starting at \$1 million and rising to \$5 million on school districts each time one of their teachers is found to have ‘knowingly violated’ state restrictions on classroom discussions about systemic racism, white privilege, and sexism, according to guidance proposed by the state’s department of education late last week.”).