



## CLiME Statement on Understanding and Undoing Systemic Racism

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The Rutgers Center on Law, Inequality and Metropolitan Equity joins the national push for transformative change to dismantle systemic racism, a call that follows the Coronavirus pandemic and recession and the police killings of several African Americans, including George Floyd. **But what does systemic racism mean?**

### Definition

Systemic racism refers to the racial logic embedded in institutional behavior that reproduces racially disparate outcomes and supports white supremacy. Most of the advantages and disadvantages of life in American society come from the operation of systems—education, economic, criminal justice, housing, electoral politics, law enforcement, to name a

few. Systems work through institutional practices, which are created by laws and norms. Institutions produce measurable outcomes based on these practices, not attitudes and beliefs. Systemic racism is therefore different from, but related to, interpersonal racism (more on this shortly). The more systemic racism becomes, the harder it is to change. The racist logic of one institutional system typically joins with the racist logic of another, so that systems overlap, locking in a predictable pattern of racial advantages and disadvantages that come to look normal. This is how racial inequality becomes structured in our lives.

But racial oppression and privilege are not normal. They fuel routine violations of fundamental civil and human rights.

You can know the racist design of a system by its functions. For example, police abuse and violence directed disproportionately against Black and brown people reflects the logic of social control for some and career advancement for others. It functions to inspire fear, to invoke a sense of powerlessness and, through the workings of the criminal justice system, to marginalize economic (employment and housing effects of arrests and convictions) and democratic opportunity (disenfranchisement). On the other hand, police brutality also functions to employ police and corrections officers as exalted public employees (“heroes”), to advance the political careers of elected officials, prosecutors and judges and to provide a visceral reminder of good guys and bad guys to each successive generation of Americans. It is not designed for accountability, so it has never delivered it. Instead, it has delivered racial inequality — one key system interacting with many others to do so.

### **Contrasted with Interpersonal Racism**

Is it all impersonal system dynamics and no racial animus? Of course not. There must be agency. People can't see the racial disparities dispensed by the system and excuse them, defend them, advance them, normalize them without agency and belief. Pretending that they can is to defend notions of “white innocence”, which is another piece of the system's fatal logic. Generations of decisionmakers must keep making the decisions a racist system normalizes in order to maintain racial hierarchy. Their beliefs both support the system and are

informed by it. Taught to devalue Black lives, Black learning capacity, Black leadership, they will endorse rules that feature Black devaluation. The rules may be skewed, but they don't have to remain askew. People who believe otherwise can do otherwise. The personal agency for change matters as much as personal animus.

Ultimately, there is no better illustration of systemic racism than the moments that got us here. Black and brown people disproportionately contract and die from Covid-19 because their subordinate positions in the labor market lead to working-class and public sector employment deemed essential during a lockdown. Many factors created these economic status distinctions by race, and they have been true for as long as racism has helped design systems of opportunity in the United States—i.e., since before the founding of the republic. Today, this economic status exposed Black and brown workers at higher rates, got them sicker than others and died. Why? Because of the interaction of “underlying conditions” from which they suffered, like hypertension, diabetes, asthma and pulmonary disease. Yet the problem of underlying conditions represented a chain of causation traceable to systemic racism. Black and brown people suffer higher underlying conditions because of the cumulative effects of discriminatory housing policies, environmental toxins, exclusionary land use, limited access to quality health care and nutrition, the chronic stress associated with diminished opportunity and relative powerlessness and the trauma of community violence and family separation. They have been sickened by segregation. These too are systems at work.

### **Challenges of the Present Moment**

Which connects the moments before the coronavirus pandemic with the current momentum for change. Black and brown people experience higher unemployment and lose income and wealth sooner and longer during recessions because they have the fewest protections against economic downturns. Fewer protections—the theme that runs throughout. The virus exposed this chronic vulnerability, and the deaths mounted. The financial toll of lives and jobs lost to illness had just begun to reveal its disproportionate racial impact when a 17 year-old girl posted a video of a Black man murdered in slow motion by police in the street. Somehow, finally, this real-

life metaphor of racial injustice revealed what too many of us have struggled to communicate to a public that struggled to listen. Since slavery, we've lost enough George Floyds. The idea that Brown people increasingly share this story—and face similar dismissal and disbelief—shows the power of system design. Yet again.

It's time. It's been time for a long time.

## **New Tools, Understandings and Strategies**

Yet an understanding of the problems is not enough to transform systems. We need new tools, new understandings and new strategies.

First, the challenge to find effective tools of change is often what brings many of us to law school in the first place. We soon discover, however, that American law is not particularly designed to uplift the interests of minorities, the poor or the oppressed. Very few people can even afford to assert rights under law and have no relationship to formal law except as defendants. Even the notion of equality is rarely enforced as a right. One would be hard-pressed to identify a single area of law—even a significant doctrine—that does not directly or indirectly support already financially powerful, usually majoritarian interests. Not until the Civil Rights Movement of the 1950s and 60s was measurable progress made on securing racial equality in law against a system that had legally and explicitly favored whites over Blacks. Most of these legal challenges—in voting, employment, education, housing—were underfunded, under-enforced, rolled back or used primarily for the benefit of white litigants. Indeed, despite the 13<sup>th</sup>, 14<sup>th</sup> and 15<sup>th</sup> Amendments to the Constitution and Reconstruction-era statutes specifically designed to address the oppression of formerly enslaved people, today we rarely even allow ourselves to speak explicitly about “Black” interests in law. Legal doctrines relevant to racial justice speak to race indirectly, through ambiguous racial euphemisms like “diversity”, “inclusion” and “equity.” Yes, we continue to use law—mostly statutory, often in a defensive posture—where we can to address systemic racism. Yet our greatest promise lies in law reform, legislation and legal policy where lawyers must collaborate with other disciplines.

Second, we need new understandings, understandings that are

emerging in the middle of this moment. Very few of the ideas being sought through protest right now are new; many of them are over 50 years old. What promises to create transformative change are the more sophisticated understandings held by a growing plurality of Americans of the intersectional reality of systemic racism. Systems intersect to structure marginalization or secure advantage. Moving from an understanding of racism as purely overt malevolent targeting to the more pervasive benign neglect of institutional rules and practices is an enormous step. Equally important will be the ability among whites and white-identifying minority groups not to see allegations of racism through the distracting lens of personal innocence. This fragility gets in the way and can no longer be protected. Just as Black lives matter never meant that all lives didn't matter, this emotional sophistry has prevented us from doing two things this country has always struggled to do: acknowledge the continuing impact of historic racial wrongs and see all of our economic and social interests in mutual terms rather than zero sum. This understanding is nothing less than an anti-racist social contract plus disgorgement of ill-gotten gains under the demands of equity.

Third, strategies will vary by necessity and no principle exhausts them. From the perspective of CLiME, the strategies must always be comprehensive, rooted in clear principles (such as equity, inclusion, non-concentration, efficiency and antidiscrimination) and applicable across regions of American life. These are not Black problems. These are American problems wrought and sustained by American institutions, public and private. An example of a strategy that reaches many of these is defunding the police. This strategy may serve to punish police departments that have inflicted great harms with impunity yet whose excesses, when discovered, are always charged to the public fisc. However, there is another side of this idea. Police simply cost too much relative to other human needs in our society, and police are not trained or organized to deal with them effectively. Stripping away the mythology of police as heroes responding first to life and death situations, research shows us that police spend much of their time on things that other professionals specifically train for, such as mental health intervention, school discipline and homeless services. These other professions are often more diverse, paid less, more accountable and more effective—without the risks

of official misconduct and lethal force. Some may require expansion of public agencies, some may involve contracts with private and community-based organizations. But reallocation of scarce resources away from police budgets and to these disciplines will almost certainly be less expensive, more transparent, fairer and more effective. Fewer arrests mean fewer impediments to employment and less incarceration, family separation, re-entry challenges and disenfranchisement, all of which cost individuals and taxpayers dearly. Sometimes social justice is just good government.

The events of the past few months—a deadly and frightening pandemic, a devastating recession, grotesque police violence against Black people and public exasperation with a reactionary and racist chief executive—has led to a guarded moment of hope. We see the problems that divide us and that divide too many from healthy and productive lives. We see the ideologies and policies that design persistent unfairness and racial marginalization into daily life. We desperately and diligently want better.

**At CLiME, we stand with the movement for Black lives.** The impact research and advocacy we do is targeted at the place-based repository of systemic racism: structural inequality. The journey is long but the goal sublime. Join us!

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