

- at <http://www.curp.neu.edu/visualdata/pdfs/Urban%20Policy%20Seminar.Triple%20Revolution.ppt>.
17. See Weekly Dig, “Segregation in Boston.”
 18. J. R. Logan et. al. “Segregation in Neighborhoods and Schools: Impacts on Minority Children in the Boston Region” (paper presented at the Color Lines Conference, Harvard University Civil Rights Project, Cambridge, September 1, 2003), at 7.
 19. Figures analyzed by the Mumford Center for Comparative Urban and Regional Research at the Univ. at Albany.
 20. See Cindy Rodriguez and Megan Tench, “White Student Ratios Falling Pattern in Boston’s Elementary Schools,” *Boston Globe*, Jan. 25, 2002, at A1.
 21. Ibid.
 22. Nancy McArdle and Guy Stuart “Race, Place, and Segregation: Redrawing the Color Lines in Our Nation’s Metros: Boston” (Cambridge: Civil Rights Project, Harvard Univ., May 2002).
 23. Douglas S. Massey and Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass* (Cambridge: Harvard Univ. Press, 1993).
 24. Student data report of 1993–94, Cambridge public schools.
 25. Letter from Benjamin Banneker to Thomas Jefferson, Aug. 19, 1791, available at <http://extext.lib.virginia.edu/readex/24073.html>.
 26. Letter from Thomas Jefferson to Benjamin Banneker, Aug. 30, 1791, available at <http://etext.lib.virginia.edu/readex/24073.html>.
 27. <http://www.metcoinc.org>.

CHAPTER 17: ADDRESSING THE RACIAL DIVIDE: REPARATIONS

1. Martin Luther King, Jr., “I Have a Dream,” in *A Testament of Hope: The Essential Writings and Speeches of Martin Luther King, Jr.*, ed. James Melvin Washington (San Francisco: Harper, 1986), 217.
2. Lyndon B. Johnson, “To Fulfill These Rights” (commencement address at Howard Univ., June 4, 1965). Johnson continued,

We seek not just freedom but opportunity. We seek not just legal equity but human ability, not just equality as a right and a theory but equality as a fact and equality as a result. For the task is to give 20 million Negroes the same chance as every other American to learn and grow, to work and share in society, to develop their abilities—physical, mental and spiritual, and to pursue their individual happiness. To this end equal opportunity is essential, but not enough, not enough. Men and women of all races are born with the same range of abilities. But ability is not just the product of birth. Ability is stretched or stunted by the family

that you live with, and the neighborhood you live in—by the school you go to and the poverty or the richness of your surroundings. It is the product of a hundred unseen forces playing upon the little infant, the child, and finally the man.

3. Ibid.
4. Ibid.
5. There are also various lawsuits seeking reparations for theft of Jews' belongings during World War II. See *Rosner v. United States*, 01-CV-1859 (S.D. Fla.), order on motion to dismiss dated Aug. 28, 2002; *Deutsch v. Turner Corp.*, 2003 WL 139746 (9th Cir. 2003) (Japanese and holocaust litigation case).
6. See *Porter v. Lloyds of London*, Docket No. 02-CV-6180 (N.D. Ill. filed Aug. 29, 2002); *In re: African-American Litig.*, 02-CV-7764 (N.D. Ill.).
7. See Darryl Fears, "Slaves' Descendants Sue Firms: Filing Seeks Reparations from Profits on Free Labor," *Washington Post*, Sept. 4, 2002, sec. A, at 22.
8. See *Carrington v. Fleet Boston Fin. Corp.*, Docket No. 2002cv01863 (E.D.N.Y. filed March 26, 2002); *Farmer-Paellmann v. Fleet Boston Fin. Corp.*, Docket No. 2002cv01862 (E.D.N.Y. filed March 26, 2002); *Ntzebesa v. Citigroup, Inc.*, Docket No. 2002cv04712 (S.D.N.Y. filed June 19, 2002).
9. See *Barber v. New York Life Ins.*, Docket No. 02-CV-2084 (D.N.J. filed May 2, 2002).
10. See *Johnson v. Aetna Life Ins. Co. et al.*, 02-CV-9180 (E.D. La).
11. See *Hurdle v. Fleet Boston*, Docket No. CGC-020412388 (Cal. Sup. Ct. filed Sept. 10, 2002); *Hurdle v. Fleet Boston*, 02-CV-4653 (N.D. Ill., transferred from N.D. Cal.).
12. See *Alexander v. Governor of the State of Oklahoma*, Docket No. 03cv00133 (N.D. Okl. filed Feb. 24, 2003).
13. *In re: African-American Litig.* 02-CV-7764 (N.D.Ill.) Minute Order dated Jan. 17, 2003 (noting that the following cases had been transferred to the Northern District of Illinois pursuant to 28 U.S.C. 1407: "02c6180 [*Porter*], 02c7765 [*Barber*], 02c7766 [*Farmer-Paellman*], 02c7767 [*Carrington*], 02c9180 [*Johnson*], 02c9181 [*Bankhead*], and recently transferred *Timothy Hurdle v. Fleet Boston Financial Corp.* [02-CV-4653]").
14. Fla. Legis. 94-359 (2002 Fl. ALS 387 § 210 [codified at Fla. Stat. 1004.60 (2002)]).
15. Cal. Ins. Code §§ 13810–13 (2003).
16. Oklahoma House Joint Resolution 1035 (1997) (codified as amended at 74 Okl. Stat. § 8201.1 [2003]).
17. Sabrina L. Miller and Gary Washburn, "New Chicago Law Requires Firms to Tell Slavery Links," *Chicago Tribune*, Oct. 3, 2002, west. ed., at 1.
18. Commission to Study Reparations for African Americans Act, H.R. 40, 108th Cong. (2003).

19. For a useful synopsis of the modern attempts to obtain reparations from corporations that profited from the Holocaust, see Michael J. Bazylar, “Nuremberg in America: Litigating the Holocaust in United States Courts,” *University of Richmond Law Review* 34 (2000): 1.
20. On the Japanese American reparations movement, see, generally, Lilian Baker, *The Japanning of America: Redress and Reparations Demands by Japanese-Americans* (Oregon: Webb Research Group, 1991); Peter Irons, *Justice at War: The Story of the Japanese American Internment Cases* (Oxford: Oxford Univ. Press, 1983); Mitchell T. Maki, *Achieving the Impossible Dream: How Japanese Americans Obtained Redress* (Chicago: Univ. of Illinois Press, 1999); Charles McClain, ed., *The Mass Internment of Japanese Americans and the Quest for Legal Redress* (New York: Garland, 1994); Eric K. Yamamoto, “Beyond Redress: Japanese Americans’ Unfinished Business,” *Asian Law Journal* 7 (2000): 131. The Civil Liberties Act of 1988, Pub. L. No. 100-383, 102 Stat. 903 (1988) (codified at 50 U.S.C. app § 1989 [2003]) awarded reparations to Japanese Americans and Aleut Indians. For a discussion of the events leading to the passage of the Civil Liberties Act, see Leslie T. Hatamiya, *Righting a Wrong: Japanese Americans and the Passage of the Civil Liberties Act of 1988* (Stanford: Stanford Univ. Press, 1993). The two major Japanese American reparations cases that eventually forced passage of the act are *Hirabayashi v. United States*, 828 F. 2d 591 (9th Cir. 1987), and *Hohri v. United States*, 586 F. Supp. 769 (D.D.C. 1984) (dismissing reparations claim on statute of limitations grounds) *aff’d* 847 F. 2d 779 (Fed. Cir. 1988).
21. In 1829, David Walker “passionately protested the lack of compensation for the labor of slaves.” See Ewart Guinier, “Book Review,” *Yale Law Journal* 82 (1973): 1719, 1721.
22. Vincene Verdun, “If The Shoe Fits, Wear It: An Analysis of Reparations to African-Americans,” *Tulane Law Review* 67 (1993): 597, 600–601.
23. *Ibid.*, 602–3.
24. *Ibid.*, 603–4.
25. King, “I Have a Dream,” 217.
26. The Muslim program is reprinted in every issue of the *Final Call*—e.g., in that of Sept. 7, 1990, at 39, cited in Verdun, “If the Shoe Fits,” 604.
27. See Verdun, “If the Shoe Fits,” 604; Boris I. Bittker, *The Case for Black Reparations* (New York: Random House, 1973), 2–6.
28. See Verdun, “If the Shoe Fits”; see also Rhonda V. Magee, “The Master’s Tools, from the Bottom Up: Responses to African-American Reparations Theory in Mainstream and Outsider Remedies Discourse,” *Virginia Law Review* 79 (1993): 863; Mari Matusda, “Looking to the Bottom: Critical Legal Studies and Reparations,” *Harvard Civil Rights–Civil Liberties Law Review* 22 (1987): 323; Charles Ogletree, “Repairing the Past: New Efforts in the Reparations Debate in America,” *ibid.*, 38 (2003). For an earlier

- example, see Graham Hughes, “Reparations for Blacks?” *New York University Law Review* 43 (1968): 1063.
29. Randall Robinson, *The Debt: What America Owes to Blacks* (New York: Dutton, 2000), 8.
 30. *Ibid.*, 62–63.
 31. Pub. L. No. 100-383, §1, 102 Stat. 903 (codified at 50 U.S.C. app. 1989 [2003]).
 32. Lori Horvitz, “Race Adviser Says Payback Impractical,” *Orlando Sentinel*, April 28, 1998, at C1 (noting that the African-American historian John Hope Franklin, head of the advisory board to President Clinton’s Initiative on Race, objected to the payment of reparations). For further discussion of the attacks on the feasibility of reparations, see Ogletree, “Repairing the Past,” 290–94.
 33. Some members of the caucus still have not endorsed H.R. 40.
 34. *Johnson*, 45 U.S. App. D.C. 440 (1915).
 35. *Cato*, 70 F.3d 1103 (9th Cir. 1995).
 36. *Ibid.*, 1106. *Cato* sought damages for “forced, ancestral indoctrination into a foreign society; kidnapping of ancestors from Africa; breakup of families; removal of traditional values, deprivations of freedom; and imposition of oppression, intimidation, miseducation, and lack of information about various aspects of their indigenous character.”
 37. *Ibid.*, 1111.
 38. See Scott Ellsworth, *Death in a Promised Land: The Tulsa Race Riot of 1921* (Baton Rouge: Louisiana State Univ. Press, 1982), 46–50.
 39. Alfred L. Brophy, “Assessing State and City Culpability: The Riot and the Law,” in *Tulsa Race Riot: A Report by the Oklahoma Commission to Study the Tulsa Race Riot of 1921* ([Oklahoma City]: The Commission, 2001), 153, 155. One estimate places the number of whites’ deputies at over five hundred. See Alfred L. Brophy, “Reconstructing the Dreamland: Contemplating Civil Rights Actions and Reparations for the Tulsa Race Riot of 1921” (preliminary draft of report to Tulsa Race Riot Commission), 32, available at <http://www.law.ua.edu/staff/bio/abrophy/reparationsdft.pdf> (last visited Jan. 1, 2004).
 40. Ellsworth, *Tulsa Race Riot*, 156.
 41. Brophy, “Reconstructing the Dreamland,” 42.
 42. *Ibid.*, 107 and n. 85.
 43. *Ibid.*
 44. Ellsworth, *Tulsa Race Riot*, 20.
 45. See *Alexander v. Governor of the State of Oklahoma*, Docket No. 03cv00133 (N.D. Okl.), First Amended Complaint filed Feb. 28, 2003, at 417–20.
 46. *Ibid.*, 487–90.

47. “Norman Mob after Singie Smith Jazz,” *Oklahoma City Black Dispatch*, Feb. 9, 1922, cited in Brophy, *Reconstructing the Dreamland*, 8–9.
48. For a further discussion of the statute of limitations in the context of reparations lawsuits, see Ogletree, “Repairing the Past,” 299–305.

**CHAPTER 18: THE INTEGRATION IDEAL:
SOBERING REFLECTIONS**

1. Gerald Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* (Chicago: Univ. of Chicago Press, 1991), 52.
2. *Ibid.*, 156.
3. Michael J. Klarman, “*Brown*, Racial Change, and the Civil Rights Movement,” *Virginia Law Review* 80 (1994): 7, 10, 13.
4. Mark Tushnet, “The Significance of *Brown v. Board of Education*,” *Virginia Law Review* 80 (1994): 173, 176–77.
5. David Schultz and Steven E. Gottlieb, “Legal Functionalism and Social Change: A Reassessment of Rosenberg’s *The Hollow Hope: Can Courts Bring About Social Change?*” *Journal of Law and Politics* 12 (1996): 63.
6. *Ibid.*
7. Ellsworth, *Tulsa Race Riot*, 22.
8. See, generally, Alfred L. Brophy, *Reconstructing the Dreamland*.
9. See Derrick A. Bell, Jr., “*Brown v. Board of Education* and the Interest Convergence Dilemma,” in *Critical Race Theory: The Key Writings That Formed the Movement*, ed. Kimberlé Crenshaw et al. (New York: Basic Books, 1992), 22.
10. Derrick A. Bell, Jr., *Faces at the Bottom of the Well: The Permanence of Racism* (New York: Basic Books, 1992), 7.
11. *Fordice*, 505 U.S. 717, 748–49 (1992) (Thomas, J., concurring).
12. Orlando Patterson, “Affirmative Action: The Sequel,” *New York Times*, June 22, 2003, sec. 4, at 11.
13. See Ogletree, “Repairing the Past,” 282–84.
14. See Bell, *Faces at the Bottom of the Well*, 7.
15. Bell considers the relationship between racism and liberal democracy to be “symbio[ti]c” such that “liberal democracy and racism in the United States are historically, even inherently, reinforcing; American society as we know it exists only because of its foundation in racially based slavery, and it thrives only because racial discrimination continues.” *Ibid.*, 10.
16. As evidence of the permanence of racism, Bell points to the “unstated understanding by the mass of whites that they will accept large disparities in economic opportunity in respect to other whites as long as they have a priority over blacks and other people of color for access to the few opportunities available.” *Ibid.*, 9.