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GIVING BIRTH TO A RACIALLY JUST SOCIETY IN THE 21ST CENTURY

David Hall

There comes a time in most of our lives when we wonder if the patterns of injustices that we witness and study will ever really change. This doubt and pessimism are often fueled by the contradictory signals we observe in society. Issues that we thought were resolved in one generation or decade appear to reemerge in subsequent periods. Brilliant remedies for critical social problems end up generating unforeseen consequences which challenge our moral and political constitutions in ways that we are not collectively prepared to address. The history of racism and racial discrimination in this society is a classic example of this cycle of frustration and dashed hopes. As we approach the close of the 20th Century a retrospective analysis would provide numerous examples of what some have come to call the civil rights shuffle—one step forward, two steps backwards, side step, side step.¹ This dance was eloquently and consistently choreographed for the last one hundred years and beyond. This dance does not negate or belittle the important and significant progress which was made during this century, but one could accurately say at the dawning of the 21st Century what W.E.B. DuBois said about the 20th Century—the issue of the century will be the color line.² Therefore it is critically important and appropriate to not only learn lessons from the mistakes of this closing century, but to find the spiritual will to bring an end to this dance. Though a seminal symposium on race creates important opportunities to discuss these critical matters, one has to wonder if we are only engaged in a ritualistic exercise that pacifies our insecurities as the world around us gets worse.³ In the midst of those moments of sobering reflection,

* I would like to thank Dean Rodney Smith, and the UALR staff for inviting me to participate in this seminal conference. I would also like to thank Patrick Parker, a Northeastern University Law School student, for his valuable research and indispensable work in regards to the footnotes in this essay. I dedicate this essay to my two daughters, Sakile and Kiamsha. I was honored to witness and participate in their birth. Both experiences brought me tremendous joy, and reminded me of the power and beauty of the birth process.

1. See generally DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* (1992).

2. W.E.B. DuBois predicted that the problem of the 20th Century would be the color line. See generally W.E.B. DUBOIS, *THE AUTOBIOGRAPHY OF W.E.B. DUBOIS: A SOLILOQUY ON VIEWING MY LIFE FROM THE LAST DECADE OF ITS FIRST CENTURY* (1994).

3. "The twin problems of poverty and racial division continue to create a nation that is deeply divided, and the situation seems to be getting worse." Clarence Page, *Revisiting Kerner: A Half-Right Prediction*, CHI. TRIB., Mar. 11, 1998, at 10A (reporting Kerner Commission's recent findings). Two of the leading scholars on hate crimes assert that America is experiencing a "rising tide" of hate crimes that will get worse in the next decade. See JACK LEVIN & JACK MCDEVITT, *THE RISING TIDE OF BIGOTRY AND BLOODSHED: HATE CRIMES* (1993). See also Leland Ware, *Symposium: Forty Years After Brown v. Board of Education: Are Our Remedies*

one must realize that each opportunity we have in life to touch each other's souls, to challenge each other's minds, and to lift each other's spirits, is a precious gift. The mere possibility that words and human interaction can make a difference in the reality of the world is what should inspire our future efforts and dedication, even when there is very little tangible evidence of progress.

The mere possibility that we can change reality is what we must seize upon as we approach this pivotal moment in the history of this society and the world. It is a moment in which we will be given the opportunity to change our lives and this society in dramatic ways. It may sound too mystical for some, but I deeply believe that the ending of this century and the beginning of a new one will provide us with a precious opportunity to shape the future in ways we only dreamed about before. Only a small portion of people in the history of the world experience the end of a century and the dawning of a new millennium. In certain religious traditions the millennium represents an ideal state,⁴ "a period of great happiness and human perfection." It represents the transformation of the world from what it is, to what it ought to be. Yet the period preceding a profound event is as critical as the event itself. With the birth of a child, it is the time spent in the womb of the mother which has a tremendous impact on the personality and behavior of that child. Likewise, it is what we do in the remainder of the 20th Century that will influence the birth and shape of the 21st Century, and determine if we will truly have a millennium experience. More importantly, what we do in the early stages of this new century will greatly determine if we are creating a new century or continuing old destructive patterns. Thus the focus of this brief essay is, "Giving birth to a racially just society in the 21st Century."

for Racial Discrimination Working?, 15 ST. LOUIS U. PUB. L. REV. 1 (1995). "What is most ironic is that public schools in major metropolitan areas are more segregated and underfunded today than they were when *Brown* was decided This means that the savage inequalities between urban and suburban school districts will persist well into the twenty-first century." *Id.* at 12.

4. See *Revelation* 20:4-5 ("And I saw thrones, and they sat upon them and judgment was given unto them . . . and they lived and reigned with Christ a thousand years. But the rest of the dead lived not again until the thousand years were finished. This is the first resurrection."); see also Symposium, *Yale University: Looking to the Millennium*, M2 PRESSWIRE, Jan. 23, 1998, available in 1998 WL 5046743 ("Those of many faith traditions recognize that the Millennium has a very special meaning for Christians, but see it also as an opportunity for wider shared reflection and spiritual renewal in society as a whole." (internal quotations omitted)). The National Council of Catholic Bishops "created the Office for the Third Millennium and the Jubilee Year 2000, an initiative to implement the papal exhortation to celebrate the new millenium with religious renewal." Robert M. Parham, *The Return of Jubilee*, RELIGION NEWS SERV., Dec. 29, 1998, available in 1998 WL 7661836.

There are many predictions about this new century that await us.⁵ There are those who believe that the technological changes in the 21st Century will revolutionize the way in which business is conducted in the world. Professor James Cash of the Harvard Business School predicts that by 2025 the list of Fortune 100 companies will not resemble the list we see today. He believes that the powerful internet system, and the technology that undergirds it, will generate an entirely new set of successful entrepreneurs. He also predicts that the rate of growth for those companies will be astounding.

Others predict that the recent scientific breakthrough with cloning will spur new medical discoveries that will allow us to find answers to life's most crippling diseases.⁶ Human space exploration will become so commonplace in the 21st Century that airlines will have to drastically raise the cap on frequent flyer miles. The medical community is already using technology to provide operations in locations other than where the doctor and health care provider exist.

Lawyers will be trained out of electronic casebooks that can be updated daily. The walls of the classroom will disappear. Professors and students will be engaged in continuous dialogues through the sophisticated use of computer technology.⁷

5. See Susan Page, *Americans Expect Good, Bad and Catastrophic*, USA TODAY, Oct. 13, 1998, at 1A (Americans predict that the "United States will elect a black president and people routinely will live past 100 in the 21st Century . . . a deadly new disease will emerge by 2025, and . . . a global environmental catastrophe."); *Two Billion Potential Parents*, THE FUTURIST, Dec. 1, 1998, at 7 ("World population is expected to reach six billion in 1999, and many observers predict that the first half of the twenty-first century will mirror the explosive growth that occurred in the second half of the twentieth."); see also Mary Johnson, *Americans and Religions in the Twenty-First Century: The Reweaving of Catholic Spiritual and Institutional Life*, 558 ANNALS AM. ACAD. POL. & SOC. SCI. 135, 138 (1998) (predicting that the twenty-first century will be marked by a Catholic reclamation of spiritualities, prayer forms, traditions, practices).

6. See Earl Lane, *Down on the 'Pharm' / Dolly Grabbed the Headlines, But Cloning Researchers Are Focused on More Efficient Methods to Create Drugs and Tissue*, NEWSDAY, May 5, 1998, at C12 (researchers in Massachusetts and Colorado predict that the use of "cloned cows as hosts for dopamine-producing brain cells . . . might someday be useful in treating Parkinson's disease, a progressive disorder of the central nervous system."); See also *Panel Urges End To British Ban on Embryo Cloning Research*, GENE THERAPY WEEKLY, Dec. 21, 1998 (quoting Harry Griffin, the creator of the first cloned adult mammal, the famed Dolly the sheep, who forecasts: "The use of cloning in cell therapy promises to provide radical new treatments for a number of common diseases like Parkinson's, diabetes, and strokes.").

7. In 1998, 798 universities in the United States had classes using the internet. See Faith Bremner, *On-line College Classes Get High Marks Among Students: Cyber Courses Handy but More Work for Teacher*, USA TODAY, Nov. 16, 1998, at 16E (citing Petecher's, a company that publishes college guides). Renowned Harvard Law School Professor Arthur R. Miller offers a free non-credit course online titled Privacy in Cyberspace. See Richard Chacon, *Business Computing, Harvard Law School Going Online*, THE ARIZONA REPUBLIC, Feb. 23, 1998, at E5.

There are those who see the implementation of these innovations as the defining features of this new century. Yet, when I gaze into the future, through the lens of history, and through the sobering reality of the present, I see different challenges. I believe that the major challenges facing us in the coming century will not be our ability to master technological innovation, nor to develop cures for critical diseases. Our greatest challenge is our ability to wrestle with the continuing systematic inequities that plague this society,⁸ especially those that are a product of racial subordination.⁹

That may sound like a myopic, self-serving statement, and it may be. But, I am less concerned with our ability to find technological answers, and more concerned with our inability to make those answers accessible to all. Though I have no crystal ball, I am confident that in the 21st Century there will be medical breakthroughs that dramatically slow down or eradicate the AIDS epidemic. Yet, I am not as confident that the remedies will find their way as readily to communities of color as they will to those who are in positions of power and influence.¹⁰

I am not overly fearful about whether we will find a way to maximize the benefits of a global economy. My fear is that certain parts of the globe will benefit so much more than others. Since racism is not a domestic issue limited to the boundary of the United States, it will shape and influence global economic decisions and patterns just as it shaped the development of mortgage lending, redlining and economic development within major cities. I am not concerned about whether engineers and architects can develop a plan which could resurrect our inner cities from physical decay,¹¹ but I am concerned about whether we can revitalize the spiritual, emotional and educational fabric

8. See Geneva Gay, *Achieving Educational Equality Through Curriculum Desegregation*, 72 PHI DELTA KAPPAN 56 (1990) (noting that "[d]espite more than 35 years of desegregation, all students still do not have an equal opportunity to learn the high-status knowledge that society values").

9. Socioeconomic inequality between whites and African Americans is staggering. "The median net worth of white Americans (\$47,815) is more than ten times that of blacks (\$4,606)." Rochelle L. Stanfield, *Black Frustration*, NAT'L J., May 16, 1992, at 1162.

10. Despite any new medical developments, people of color will have less access to treatment against AIDS. See NATIONAL COMMISSION ON AIDS, THE CHALLENGE OF HIV/AIDS IN COMMUNITIES OF COLOR 14-17 (1992) (describing the lack of access to health care in communities of color). The National Commission on Aids also indicates that from 1981 through 1990, a total of 100,777 African Americans and Hispanics/Latinos died of AIDS. See *id.* at 3. Of that number 28 percent were African American and 15.7 percent were Hispanic/Latino. See *id.*

11. See U.S. DEP'T OF COMM., ECONS. & STAT. ADMIN., BUREAU OF THE CENSUS, 1990 CP-1-B, 1990 CENSUS POPULATION—GENERAL POPULATION CHARACTERISTICS—METROPOLITAN AREAS (1990) (disclosing that the percentage of minorities in some of the major U.S. cities ranges from 11.7% in Miami Beach to 70.4% in Washington, D.C.).

of the lives of the people who are trapped in many of these cities. And since so many who are trapped are persons of color, we will cement patterns of racial inequality that developed in the 20th Century.

The question is not whether lawyers will be trained through electronic casebooks, but, for what end will they be trained. I am concerned that if we continue down the present path, access to the legal system will be totally denied to large segments of the society because they can't afford to pay.¹² If lawyers are not trained with a deep appreciation for the value and calling of social justice, then they will only perpetuate the racial sins of the 20th Century. If *Hopwood*¹³ and Proposition 209¹⁴ become the general rule and not the exception, then the keys to the doors of justice in the 21st Century will once again be placed in the hands of whites only.

I have no doubt that in the 21st Century, we will push the boundaries of the information revolution. Information, and one's ability to manipulate it in sophisticated ways, will continue to transform our lives. Yet, the more advances we make in these areas, the more likely we are to create greater gaps between those who have the power to use information for their benefit, and those who do not.¹⁵ So, in the words of Herbert Schiller, the challenge of the 21st Century is not information services, but "information inequality."¹⁶ Though some argue that the information superhighway provides the answer to educational inequities,¹⁷ I would beg to differ. The industrial revolution of

12. See *Legal Aide's Last Stand?*, CHRISTIAN SCI. MONITOR, Apr. 15, 1996, at 20 (only about twenty percent of the poor have had access to legal services in the past); see also James Podgers, *Chasing the Ideal*, A.B.A. J., Aug. 1994, at 56, 57 (discussing how economic disparity results in inequalities in the American justice system). "As a widening gulf emerges between rich and poor in American society and access to legal services becomes further removed from subordinated communities, the importance of clinical legal education's historic commitment to social justice becomes manifest." Jon C. Dubin, *Clinical Design for Social Justice Imperatives*, 51 SMU L. REV. 1461, 1505 (1998).

13. See *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996), cert. denied, 518 U.S. 1033 (1996).

14. Proposition 209, California Ballot Pamphlet, General Election Nov. 5, 1996 (enacted as CAL. CONST. art. I, S 31).

15. See Robert Holleyman, *Software Piracy Abroad: Challenges and Opportunities*, 453 PRACTICING LAW INST. 419, 433 (1996):

Just as the industrial revolution favored countries with relatively well educated work forces and access to capital and technology, and with the essential means to protect that technology, so the information revolution will favor countries with the same features, as well as the ability to protect the technology and intellectual content used and displayed in cyberspace.

Id.

16. See HERBERT I. SCHILLER, INFORMATION INEQUALITY: THE DEEPENING SOCIAL CRISIS IN AMERICA 23 (1996).

17. Bill Gates predicts that when schools and libraries set up technically, they can improve access to knowledge for the poor. See Jay Strother, *The Gates' Way To The Future: An Interview*, 16 NO. 2 LEGAL MANAGEMENT 24, 30 (1997); see also Keth A. Dittahavong,

the 20th Century did not create equality in schools, in the workplace or at home.¹⁸ And the technological revolution of the 21st Century will not automatically do it either. In the 20th Century, we witnessed systematic segregation, lynching and oppression; we experienced a holocaust and the creation of internment camps; we saw the marginalization and brutalization of women, and yet we placed a person on the moon. So technological advances do not immunize us from the spread of hatred, injustice and neglect. Nor do they automatically redeem us from the sins of prior generations.

The lesson of the 20th Century is that unless we make equality, equity and access fundamental values, then we will not give birth to a new century—we will continue to perpetuate the sins of the old. If we fail to set a different standard and raise our moral expectations, then the racial inequality that has been discussed at this conference will become permanent fixtures on the landscape of this society. What makes this problem worse is that future generations will see those fixtures as having come into existence by their own making. When a society ignores years of oppression, it manufactures and substantiates theories of inferiority. The fact that Black and Latino students score lower on standardized tests¹⁹ is not understood as a consequence of a 19th Century policy that prohibited certain persons of color from receiving formal education,²⁰ and a 20th Century policy that permitted serious inequities in education.²¹ There are serious consequences from the existence of these

Paving the Way for Women of the Information Superhighway: Curbing Sexism Not Freedoms, 4 AM. U. J. GENDER & L. 455, 499 (1996) (The Information Superhighway "will serve to equalize the power relations between the weaker social factions and the powerful majority.").

18. Some scholars contend that the industrial revolution meant that education would no longer be for the elite, but instead for the majority of citizens, even blacks. See John A. Powell & Marguerite L. Spencer, *Remaking the Urban University for the Urban Student: Talking About Race*, 30 CONN. L. REV. 1247, 1251 (1998). However, all we need to do is look at the inequities since the industrial revolution between blacks and whites as evidence that the above notion absurd.

19. See LAW SCHOOL ADMISSIONS COUNCIL, 1990-95 NATIONAL STATISTICAL REPORT F-5 (1996) (providing that in 1992-93, 25.7% of white applicants scored at or above 160 on the LSAT, compared to 11.5% of Latino applicants, and 2.9% of African-American applicants. In 1994, the average LSAT score of African American applicants was a 149 as compared to a 158 for white applicants).

20. See GILBERT THOMAS STEPHENSON, *RACE DISTINCTIONS IN AMERICAN LAW* (1910) (surveying a variety of statutory restrictions on blacks' economic and educational opportunities before and after the Civil War). Stereotyping of African-Americans and Latinos is known to have an adverse effect on their performance on standardized tests. See generally Claude Steele, *A Threat in the Air: How Stereotypes Shape Intellectual Identity and Performance*, 52 AMERICAN PSYCHOL. 613 (1997) (arguing that stereotypes of African Americans negatively affect their performance on standardized tests).

21. Gary Orfield, in a study by the Harvard Project on School Desegregation, found that the educational system increasingly perpetuates "the educational inequality of minority students." Gary Orfield, *Perspective on School Desegregation: America Lacks Equal Opportunity*, L.A. TIMES, Dec. 26, 1993, at M5 (summarizing the report's contents); see also

policies and laws, and the longer one defers and delays a dream the easier it is to blame the victim for not dreaming hard enough.²²

So if we want to usher in a new reality, then we can't continue to put new wine in old bottles.²³ If we want to give birth to a new century at the dawn of the new millennium, then we must now plant, cultivate and nurture new seeds of social justice. In order to do that we must have a deeper understanding and appreciation of this seed.

Social justice is not charity.²⁴ It is not something we give to others, it is something we do for ourselves. In the words of Professor Robert Rodes, "I do not owe any poor person a share of my wealth, but I owe every poor person

RICHARD KLUGER, *SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF EDUCATION AND BLACK AMERICA'S STRUGGLE FOR EQUALITY* (1977) (discussing enforced inequalities in education).

22. See Langston Hughes, *Harlem (Montage of a Dream Deferred)*, in *THE COLLECTED POEMS OF LANGSTON HUGHES* 426 (Arnold Rampersad & David Roessel eds., 1995). Langston Hughes, the poet laureate of Harlem, writes:

What happens to a dream deferred?

Does it dry up

like a raisin in the sun?

Or fester like a sore—

And then run?

Does it stink like rotten meat?

Or crust and sugar over—

like a syrupy sweet?

Maybe it just sags

Like a heavy load.

Or does it explode?

23. See *Matthew* 9:17. "Neither do men put new wine into old bottles; else the bottles break, and the wine runneth out, and the bottles perish; but they put new wine into new bottles, and both are preserved." *Id.*

24. For example:

Social justice implies that persons have an obligation to be active and productive participants in the life of society and that society has a duty to enable them to participate in this way. . . . The meaning of social justice also includes a duty to organize economic and social institutions so that people can contribute to society in ways that respect their freedom and the dignity of their labor.

NAT'L CONFERENCE OF CATHOLIC BISHOPS, PASTORAL LETTER, *ECONOMIC JUSTICE FOR ALL: CATHOLIC SOCIAL TEACHING AND THE U.S. ECONOMY* 36 (1986); see also Bobby Jindal, *Relativism, Neutrality, and Transcendentalism: Beyond Autonomy*, 57 *LA. L. REV.* 1253, 1256 (1997) ("social justice is a collective good necessary for individual flourishing"); Marion Smiley, *1991 Survey of Books Relating to the Law v. Gender, Difference, and Postmodernism, Gender Justice Without Foundations*, 89 *MICH. L. REV.* 1574, 1583 (1991) ("[S]ocial justice means the elimination of institutionalized domination and oppression."); David Hall, *The Law School's Role in Cultivating a Commitment to Pro Bono*, 42 *JUN B. B.J.* 4, 20 (1988) ("A threshold requirement of social justice is to ensure that the doors to the legal system and the profession are open to all."); and John Martinez, *Trivializing Diversity: The Problem of Overinclusion in Affirmative Action Programs*, 12 *HARV. BLACK LETTER J.* 49, 55 (1995) ("The quintessential concern for achieving social justice is the desire to distribute social benefits fairly.").

my best efforts to reform the social institutions by which I am enriched and he or she is impoverished."²⁵ Justice is a virtue that moves us to render others what is due them, not what we want to give them. It serves as the basis of our integrity and legitimacy as individuals and as a society. If those social institutions are not reformed so that the poor and oppressed truly have access and substantive opportunities to fulfill their dreams, then we have not only undercut the integrity of the system, we have created perpetual nightmares for many. These nightmares produce the social diseases of crime, brutality and homelessness that will ultimately end up at all of our doors.

Social justice is not a static state. It is not a place we reach. It is a process that we are constantly and forever engaged in. If we are to give birth to a new century, then social justice cannot be an after thought to a well-planned strategy for the 21st Century. It must be the core value of any viable policy or plan for the future. Otherwise, we will continue to live in a society where we make tremendous strides in the areas that are our strengths, and continue to be stymied in the areas where our greatest opportunities for growth exist. If we dismiss this profound calling by labeling it as merely politically correct rhetoric, then we will have forsaken the religious, spiritual and moral foundations of our lives.²⁶ So, social justice cannot be the period after the sentence about our accomplishment and identity. It must be the core value through which we identify ourselves.

The reason we must be deeply concerned about the shape of the new century is that if we are not concerned, then this century could turn out to be more devastating for people of color than the 20th Century. This may sound as if I'm trying to be a prophet of doom, but the facts and predictions speak for themselves.

Thomas Weils, in an article entitled "The American Health System," predicts that in the next 50 years there will be an enormous growth in the number and percentage of the population with chronic disease. He goes on to indicate that the rising number of homeless and uninsured individuals, which already totals 41 million, is expected to grow at a rate of one million a year. A disproportionate number of those individuals will be persons of color. Though we are presently experiencing a decline in violent crimes,²⁷ there are

25. See Robert E. Rodes, Jr., *Social Justice and Liberation*, 71 NOTRE DAME L. REV. 619, 620-21 (1996).

26. Roger Haight notes that social justice is constitutive of Christian faith "because it is the determining form that structures faith's love for other human beings." ROGER HAIGHT, S.J., *AN ALTERNATIVE VISION: AN INTERPRETATION OF LIBERATION THEOLOGY* 41 (Paulist Press, 1985).

27. See Butterfield Fox, *Decline of Violent Crimes Is Linked to Crack Market*, N.Y. TIMES, Dec. 28, 1998, at A5 (discussing statistics released by the Justice Department in 1998 indicating a drop in robbery and homicide over the last seven years after a surge in the 1980's);

those who predict that this is the calm before another great storm.²⁸ As the percentage of teenagers in the population expands, so will the incidence of violent crime, unless something is done to redirect this energy.

It is predicted that by the year 2030, the number of people of color will exceed the number of whites in this country for the first time.²⁹ That pace will continue to steadily grow throughout the rest of the century. If we do not correct the systemic inequality that exists along racial lines, then America, by the end of the 21st Century, will be the South Africa of the 20th Century.³⁰ Wealth, power, and prestige will be in the hands of a white minority, and the majority will linger in apartheid-like conditions. No, they will not lie in squatter camps, but they will reside in technological wastelands. If large segments of the society are not absorbed into this technological revolution, they will be left behind. These advances that we now applaud will separate people based on their knowledge and ability to manipulate technology. Unless we give birth to a new century rooted in the principle of social justice, then race will remain a defining characteristic of the technologically deprived.

To add to an already large 21st Century agenda is the unfinished business of this century. Some of our solutions to the social injustices of the 20th Century have created lingering problems for the 21st Century. The society removed barriers so that women could enter the workplace, yet, we have not developed a comprehensive, fair, and humane way to care for our children. Women of color who are poor find themselves in an even more precarious situation. Welfare reforms will require that they make the hard choice

see also Lori Montgomery, *Juvenile Homicide Arrests Decline; Arrests for All Teen-age Violent Crimes Fall Slightly, Reversing Longstanding Trend*, AUSTIN-A.M. STATESMAN, Aug. 9, 1996, at A1; and Robert L. Jackson, *FBI: Violent Crimes by Youths Decline*, PROV. J. BULL., Aug. 9, 1996, at A1.

28. The anticipated growth in the juvenile population has led criminologist James Alan Fox to describe the current offense rates as "the calm before the crime storm." James Alan Fox, *The Calm Before the Crime Wave Storm*, L.A. TIMES, Oct. 30, 1995, at B5.

29. See Thomas Weil, *The American Health System: A Contentious Environment in the 21st Century*. Between 1992 and 2050, the growth rate of African Americans will increase by 93.8%; Latinos 237.5%; Asian and Pacific Islanders 412.5%; and Native Americans 109.1%, compared to only a 29.4% increase for white Americans. See Robert Pear, *New Look at the U.S. in 2050: Bigger, Older and Less White*, N.Y. TIMES, Dec. 4, 1992, at A1, A10; see also *America's Immigrant Challenge*, TIME SPECIAL ISSUE, Fall 1993, at 3, 5 (Experts predict that by the latter part of the 21st Century, descendants of white Europeans will fall into minority status in the United States).

30. Under apartheid, the White minority-ruled government defined South Africa's citizenry according to an elaborate system of racial classifications. See LEONARD THOMPSON, *A HISTORY OF SOUTH AFRICA* 16 (1990); see also WEBSTER'S NEW WORLD COLLEGE DICTIONARY 63 (1997) (defining apartheid as "a policy of strict racial segregation and political and economic discrimination against nonwhites").

between caring for their kids or making a living, and our social structures do not provide sufficient support for either choice.

We were appalled at the conditions of mental institutions,³¹ so we made it easier for patients to return to society; yet we made no provision for their return and now the homelessness rate has skyrocketed.³² As we pass the homeless on the streets of major and small cities each day, we have to be struck by the disproportionate number who are persons of color. In the middle of the 20th Century a disproportionate number of black men stood on corners begging for work, at the close of the 20th Century they stand on corners begging for handouts. Unless something changes dramatically, many of them will die on these street corners of despair.

In the middle of the 20th Century we pursued the strategy of integration with such abandon that we ignored the consequences that this strategy would have on the culture, institutions, and way of life of African Americans. America had not fully created a welcoming home in her mainstream of life for us, yet we were forced to abandon the institutions and communities that gave us strength, purpose and psychic power. African Americans found themselves in the latter part of the 20th Century straddling the fence of integration and cultural solidarity, not being fully in either place. Legal theories were developed that supported integration, yet cultural solidarity remedies were never fully developed or implemented.³³

So, in addition to what the 21st Century holds for us, there are debts which we owe to the 20th Century. This is not new. There has been a consistent passing of the torch from one generation to another, from one century to another. The occupants of the 19th Century failed to fully address the problem of racism and white supremacy in their midst, and decided to pass on the torch to another generation. They abolished the institution of slavery,³⁴ but the vestiges of slavery remained. Freedom and equality were finally enshrined into the Constitution through the post war amendments,³⁵ but were

31. As social reformers, psychiatrists, lawyers, and political leaders became more aware of the dehumanizing conditions of mental institutions, states began to reform their commitment laws and courts began to apply "stringent substantive and procedural due process protections to the involuntary commitment process." See Stephen J. Morse, *A Preference for Liberty: The Case Against Involuntary Commitment of the Mentally Disabled*, 70 CAL. L. REV. 54, 55 (1982).

32. See H. Richard Lamb, *Deinstitutionalization and the Homeless Mentally Ill*, in *THE HOMELESS MENTALLY ILL* 55, 55 (H. Richard Lamb ed., 1984) (noting that the poor implementation of deinstitutionalization has contributed to the homelessness problem).

33. See David Hall, *Paths to Equality: A Constitutional Theory of Collective Rights*, 5 HARV. BLACKLETTER J. 27 (1998).

34. In 1865, Congress passed the Thirteenth Amendment abolishing slavery. See U.S. CONST. Amend. XIII.

35. Following the Civil War, Congress enacted three constitutional amendments

guted by Supreme Court interpretations in the Civil Rights Cases³⁶ and *Plessy v. Ferguson*.³⁷ The occupants of the first half of the 20th Century continued the legacy of denial for as long as they could, but ultimately had to embrace the true meaning of those 19th Century amendments because of *Brown*³⁸ and the Civil Rights Movement.³⁹ Yet the underlying inequality and cultural subordination were not adequately nor fully addressed.

Those in the second half of the 20th Century found it economically inefficient and politically risky to address the consequences of racial subordination and justice. Though progress was surely made, we ultimately have decided that another generation in another century must settle this debt. Some even pretend that the debt has been paid and the nation has been healed. But when we look at the statistics of mortality rates, income, mortgage lending patterns, and even criminal incarcerations, the injustice is vividly apparent.

designed to eradicate vestiges of slavery. The Thirteenth Amendment abolished slavery by providing that: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." *Id.* The Fourteenth Amendment guaranteed that no state would deprive persons born or naturalized in the United States "due process . . . [or] equal protection of the laws." U.S. CONST. Amend. XIV. The last of the post-war amendments was the Fifteenth Amendment which provides that: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." U.S. CONST. Amend. XV.

36. See *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 32 (1971) (ordering interdistrict school busing as remedy for school segregation); *Loving v. Virginia*, 388 U.S. 1 (1967) (striking down state anti-miscegenation law under the Fourteenth Amendment); *South Carolina v. Katzenbach*, 383 U.S. 301, 326 (1966) (implementing 1965 voting rights act in which Congress invalidated discrimination on the basis of race in voting); *Burton v. Wilmington Parking Auth.*, 365 U.S. 715, 726 (1961) (holding that refusal of private restaurant in a public building to serve on account of race violates equal protection clause); *Brown v. Board of Education*, 347 U.S. 483, 496 (1954) (recognizing social equality by striking down the "separate but equal" doctrine adopted in *Plessy*); *McLaurin v. Oklahoma State Regents*, 339 U.S. 637, 641 (1950) (holding graduate school segregational seating violated equal protection clause); *Sweatt v. Painter*, 339 U.S. 629, 636 (1950) (holding educational opportunities for black law students in Texas unequal, in violation of equal protection clause); *Shelley v. Kraemer*, 334 U.S. 1, 23 (1948) (invalidating racially restrictive covenants).

37. See *Plessy v. Ferguson*, 163 U.S. 537, 550-51 (1896) (upholding the "separate but equal" doctrine in systems of education and transportation. The Supreme Court stated "we cannot say that a law which authorizes or even requires the separation of the two races . . . is unreasonable, or more obnoxious to the fourteenth amendment than the acts of congress requiring separate schools for colored children . . . the constitutionality of which does not seem to have been questioned.")

38. See *Brown v. Board of Education*, 347 U.S. 483 (1954).

39. For information on civil rights leaders and activists of the 1960's, see books about Martin Luther King, Jr., Fred Hampton, Malcolm X, James Dombrowski, Fannie Lou Hamer, Stokely Carmichael, Medgar Evers, the Black Panthers, the Student NonViolent Coordinating Committee, Mississippi Summer, Mississippi Freedom Democratic Party, the Albany Movement, etc.

But the 20th Century gave us a precious gift. Though the 20th was marred with challenging, dehumanizing and painful events, it was also the century in which social justice was really born in America. When historians write of this century, if they are courageously honest, they will say that the greatest contribution of the 20th Century in America was our stride toward freedom. Though we did not correct all the problems, in the process we gave a semblance of meaning and truth to the ideals upon which this country was founded. One could argue that it was not until 1965, with the passage of the Voting Rights Act,⁴⁰ that America finally became a true democracy. The experiences of the oppressed and deprived have been the cultural and intellectual fuel that has propelled and given meaning to the American drama.

The 20th Century also exposed us to the joy, agony and tensions of a truly pluralistic society. At a time when it is much more fashionable to articulate a vision of America through color-blind lenses⁴¹ and melting pot ideology, we must remember that during a part of this century we proclaimed a commitment to creating a society where the distinct characteristics of each group are highlighted and embraced. Pluralism⁴² demands that we appreciate our differences and not pretend they do not exist. If we are truly committed to a pluralistic society, then we must be more adamant about our commitments to social justice. For social justice is critical to the existence and maintenance of a pluralistic society. Without a systematic and consistent effort to achieve social justice, then pluralism becomes domination by a more sophisticated

40. See Voting Rights Act of 1965 (codified as amended at 42 U.S.C. §§ 1971, 1973 (1994)). The Voting Rights Act provides that:

[A]ll citizens of the United States who are otherwise qualified by law to vote at any election . . . shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.

Id. § 1971.

41. See SHELBY STEELE, *THE CONTENT OF OUR CHARACTER: A NEW VISION OF RACE IN AMERICA* 109 (1990) (advising those in black middle class to ignore racism that they face and move on to help create a colorblind system).

42. Pluralism holds that differences are to be celebrated rather than feared. See Adeno Addis, *Individualism, Communitarianism, and the Rights of Ethnic Minorities*, 67 NOTRE DAME L. REV. 615 (1992). Pluralism "is often used as a synonym for diversity." Judge Dale Segrest, *Foundations in Pluralism: A Learning Experience for Judges*, 57 ALA. L. REV. 300 (1996); see also Michael Walzer, *Pluralism: A Political Perspective*, in HARVARD ENCYCLOPEDIA OF AMERICAN ETHNIC GROUPS 781, 784-85 (Stephan Thernstrom ed., 1980) (arguing that pluralism sustains the culture of minority groups against assimilation, celebrates cultural identity, and builds the community); and 136 CONG. REC. S1067, S1073 (daily ed. Feb. 8, 1990) (statement of Sen. Hatch) (Congress recognized that "[d]ifferences in the race, religion, and ethnicity of our citizens should be a source of national strength, cultural diversity, and celebration of our Nation's pluralism.").

name. In order for pluralism to truly flourish then all of the distinct groups and entities in a society must be operating at their full potential.

CONCLUSION

We must give birth to a century that is based on this pluralistic ideal. A century where we deeply believe in our capacity to transcend existing limitations. We must give birth to a century where love is not a slogan, but a deeply felt and experienced reality. Have you ever had the opportunity to birth a century? Now is the time for us to seize the opportunity to shape a new world that lies waiting in a new century. This new century must not be shaped by guns and mortar. It must be fashioned by human ingenuity and sacrifice. It must be shaped by our willingness to be guided by the divine that lies dormant in these human shells. It will be shaped by our willingness to turn our technological swords into technological plowshares, which can feed and nurture all of humanity.⁴³

We must create a 21st Century, in the words of John Hope Franklin,⁴⁴ where we face our history, face ourselves and find the best of who we are within each other. We must create a 21st Century, in the words of Derrick Bell,⁴⁵ where economic rights and justice are as important as social and political rights. We must create a 21st Century, in the words of Cornell West,⁴⁶ where we build a spiritually inspiring culture that transcends the present market driven consumeristic culture. For only when the entire culture washes itself free from the commodification of human life will people of color no longer be viewed as commodities that can be bought and sold, segregated and destroyed, marginalized and dismissed. We cannot completely free ourselves from the badges, incidents, and shackles of slavery until this society frees itself from the alluring psychic trappings of ownership, domination, and control.

So, as you think about the future, think not just about how smart our minds must be, but how smart our hearts can be. If there can be an ideal state of our minds and hearts, then there can be a better state for us to dwell within. For the millennium is in us, as well as it is before us. We create the peace,

43. See *Isaiah* 2:04. "And he shall judge among the nations, and shall rebuke many people; and they shall beat their swords into plowshares, and their spears into pruninghooks; nation shall not lift up sword against nation, neither shall they learn war any more." *Id.*

44. See JOHN HOPE FRANKLIN, *THE COLOR LINE: LEGACY FOR THE TWENTY-FIRST CENTURY* (1993).

45. See Derrick A. Bell, *Racism: A Prophecy for the Year 2000*, 42 RUTGERS L. REV. 93 (1989).

46. See Dr. Cornell West, Harvard University, Speech/Richard Allen Lecture, St. Paul A.M.E. Church, Cambridge, Massachusetts (Feb. 15, 1999).

love and prosperity that the world desires. If we truly learn our lessons from the 20th Century, we can give birth to a new century where justice reigns supreme. And the placenta will be those organizations and individuals that are willing to feed and nurture the child of justice today, so that she may come to birth tomorrow. And I pray each of us will be the midwives who humbly assist in the delivery of this socially just society of the 21st Century.