

## Chapter 1

# The Real Status of Blacks Today

### *The Chronicle of the Constitutional Contradiction*

AT THE END of a journey back millions of light-years, I found myself standing quietly at the podium at the Constitutional Convention of 1787. It was late afternoon, and hot in that late summer way that makes it pleasant to stroll down a shaded country lane, but mighty oppressive in a large, crowded meeting room, particularly one where the doors are closed and locked to ensure secrecy.

The three dozen or so convention delegates looked tired. They had doubtless been meeting all day and now, clustered in small groups, were caucusing with their state delegations. So intense were their discussions that the few men who looked my way did not seem to see me. They knew this was a closed meeting, and thus could not readily take in the appearance, on what had just been an empty platform, of a tall stranger—a stranger who was not only a woman but also, all too clearly, black.

Though I knew I was protected by extraordinary forces, my hands were wet with nervous perspiration. Then I remembered why I was there. Taking a deep breath, I picked up the gavel and quickly struck the desktop twice, hard.

"Gentlemen," I said, "my name is Geneva Crenshaw, and I appear here to you as a representative of the late twentieth century to test whether the decisions you are making today might be altered if you were to know their future disastrous effect on the nation's people, both white and black."

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For perhaps ten seconds, there was a shocked silence. Then the chamber exploded with shouts, exclamations, oaths. I fear the delegates' expressions of stunned surprise did no honor to their distinguished images. A warm welcome would have been too much to expect, but their shock at my sudden presence turned into an angry commotion unrelieved by even a modicum of curiosity.

The delegates to the Constitutional Convention were, in the main, young and vigorous.<sup>1</sup> When I remained standing, unmoved by their strong language and dire threats, several particularly robust delegates charged toward the platform, determined to carry out the shouted orders: "Eject the Negro woman at once!"

Suddenly the hall was filled with the sound of martial music, blasting trumpets, and a deafening roll of snare drums. At the same time—as the delegates were almost upon me—a cylinder composed of thin vertical bars of red, white, and blue light descended swiftly and silently from the high ceiling, nicely encapsulating the podium and me.

The self-appointed ejection party neither slowed nor swerved, a courageous act they soon regretted. As each man reached and tried to pass through the transparent light shield, there was a loud hiss, quite like the sound that electrified bug zappers make on a warm summer evening. While not lethal, the shock each attacker received was sufficiently strong to knock him to the floor, stunned and shaking.

The injured delegates all seemed to recover quickly, except one who had tried to pierce the light shield with his sword. The weapon instantly glowed red hot and burned his hand. At that point, several delegates tried to rush out of the room either to escape or to seek help—but neither doors nor windows would open.

"Gentlemen," I repeated, but no one heard me in the turmoil of shouted orders, cries of outrage, and efforts to sound the alarm to those outside. Scanning the room, I saw a swarthy delegate cock his long pistol, aim carefully, and fire directly at me. But the ball hit the shield, ricocheted back into the room, and shattered an inkwell, splattering my intended assassin with red ink.

At that, one of the delegates, raising his hand, roared, "Silence!" and then turned to me. "Woman! Who are you and by what authority do you interrupt this gathering?"

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"Gentlemen," I began, "delegates"—then paused and, with a slight smile, added, "fellow citizens, I—like some of you—am a Virginian, my forefathers having labored on the land holdings of your fellow patriot, the Honorable Thomas Jefferson. I have come to urge that, in your great work here, you not restrict the sweep of Mr. Jefferson's self-evident truths that all men are equal and endowed by the Creator with inalienable rights, including 'Life, Liberty and the pursuit of Happiness.'" "It was, I thought, a clever touch to invoke the name of Thomas Jefferson who, then serving as American minister to France, was not a member of the Virginia delegation.<sup>2</sup> But my remark could not overcome the offense of my presence.

"How dare you insert yourself in these deliberations?" a delegate demanded.

"I dare," I said, "because slavery is an evil that Jefferson, himself a slave owner and unconvinced that Africans are equal to whites, nevertheless found involved 'a perpetual exercise of the most boisterous passions, the most unremitting despotism on the one part, and degrading submissions on the other.' Slavery, Jefferson has written, brutalizes slave owner as well as slave and, worst of all, tends to undermine the 'only firm basis' of liberty, the conviction in the minds of the people that liberty is 'the gift of God.'<sup>3</sup>

"Gentlemen, it was also Thomas Jefferson who, considering the evil of slavery, wrote: 'I tremble for my country when I reflect that God is just; that his justice cannot sleep forever.'"<sup>4</sup>

There was a hush in the group. No one wanted to admit it, but the ambivalence on the slavery issue expressed by Jefferson obviously had meaning for at least some of those in the hall. It seemed the right moment to prove both that I was a visitor from the future and that Jefferson's troubled concern for his country had not been misplaced. In quick, broad strokes, I told them of the country's rapid growth, of how slavery had expanded rather than withered of its own accord, and finally of how its continued presence bred first suspicion and then enmity between those in the South who continued to rely on a plantation economy and those Northerners committed to industrial development using white wage workers. The entry into the Union of each new state, I explained, further

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dramatized the disparity between North and South. Inevitably, the differences led to armed conflict—a civil war that, for all its bloody costs, did not settle those differences, and they remain divisive even as we celebrate our two-hundredth anniversary as one nation.

"The stark truth is that the racial grief that persists today," I ended, "originated in the slavery institutionalized in the document you are drafting. Is this, gentlemen, an achievement for which you wish to be remembered?"

Oblivious to my plea, a delegate tried what he likely considered a sympathetic approach. "Geneva, be reasonable. Go and leave us to our work. We have heard the petitions of Africans and of abolitionists speaking in their behalf. Some here are sympathetic to these pleas for freedom. Others are not. But we have debated this issue at length, and after three months of difficult negotiations, compromises have been reached, decisions made, language drafted and approved. The matter is settled. Neither you nor whatever powers have sent you here can undo what is done."

I was not to be put off so easily. "Sirs," I said, "I have come to tell you that the matter of slavery will not be settled by your compromises. And even when it is ended by armed conflict and domestic turmoil far more devastating than that you hope to avoid here, the potential evil of giving priority to property over human rights will remain. Can you not address the contradiction in your words and deeds?"

"There is no contradiction," replied another delegate. "Governor Morris of Pennsylvania, the Convention's most outspoken opponent of slavery, has admitted that 'life and liberty were generally said to be of more value, than property, . . . [but] an accurate view of the matter would nevertheless prove that property was the main object of Society.'"<sup>5</sup>

"A contradiction," another delegate added, "would occur were we to follow the course you urge. We are not unaware of the moral issues raised by slavery, but we have no response to the delegate from South Carolina, General Charles Cotesworth Pinckney, who has admonished us that 'property in slaves should not be exposed to danger under a Govt. instituted for the protection of property.'"<sup>6</sup>

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"Of what value is a government that does not secure its citizens in their persons and their property?" inquired another delegate. "Government, as Mr. Pierce Butler from South Carolina has maintained here, 'was instituted principally for the protection of property and was itself . . . supported by property.' Property, he reminded us, was 'the great object of government; the great cause of war; the great means of carrying it on.'" And the whole South Carolina delegation joined him in making clear that 'the security the Southern states want is that their negroes may not be taken from them.'"<sup>8</sup>

"Your deliberations here have been secret," I replied. "And yet history has revealed what you here would hide. The Southern delegates have demanded the slavery compromises as their absolute precondition to forming a new government."

"And why should it not be so?" a delegate in the rear called out. "I do not represent the Southern point of view, and yet their rigidity on the slavery issue is wholly natural, stemming as it does from the commitment of their economy to labor-intensive agriculture. We are not surprised by the determined bargaining of the Georgia and South Carolina delegations, nor distressed that our Southern colleagues, in seeking the protection they have gained, seem untroubled by doubts about the policy and morality of slavery and the slave trade."

"Then," I countered, "you are not troubled by the knowledge that this document will be defended by your Southern colleagues in the South Carolina ratification debates, by admissions that 'Negroes were our wealth, our only resource?'"<sup>9</sup>

"Why, in God's name," the delegate responded, "should we be troubled by the truth, candidly stated? They have said no less in these chambers. General Charles Cotesworth Pinckney has flatly stated that 'South Carolina and Georgia cannot do without slaves.' And his cousin and fellow planter, Charles Pinckney, has added, 'The blacks are the laborers, the peasants of the Southern states.'"<sup>10</sup>

At this, an elderly delegate arose and rapped his cane on his chair for attention. "Woman, we would have you gone from this place. But if a record be made, that record should show that the economic benefits of slavery do not accrue only to the South.

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Plantation states provide a market for Northern factories, and the New England shipping industry and merchants participate in the slave trade. Northern states, moreover, utilize slaves in the fields, as domestics, and even as soldiers to defend against Indian raids."<sup>11</sup>

I shook my head. "Here you are then! Representatives from large and small states, slave states and those that have abolished slavery, all of you are protecting your property interests at the cost of your principles."

There was no response. The transparent shield protected my person, served as a language translator smoothing the differences in English usage, and provided a tranquilizing effect as it shimmered softly in the hot and humid room. Evidently, even this powerful mechanism could not bring the delegates to reassess their views on the slavery issue.

I asked, "Are you not concerned with the basic contradiction in your position: that you, who have gathered here in Philadelphia from each state in the confederacy, in fact represent and constitute major property holders? Do you not mind that your slogans of liberty and individual rights are basically guarantees that neither a strong government nor the masses will be able to interfere with your property rights and those of your class? This contradiction between what you espouse and what you here protect will be held against you by future citizens of this nation."<sup>12</sup>

"Unless we continue on our present course," a delegate called out, "there will be no nation whose origins can be criticized. These sessions were called because the country is teetering between anarchy and bankruptcy. The nation cannot meet its debts. And only a year ago, thousands of poor farmers in Massachusetts and elsewhere took up arms against the government."

"Indeed," I said, "I am aware of Shay's Rebellion, led by Daniel Shay, a former officer who served with distinction in the war against England. According to historians of my time, the inability of Congress to respond to Massachusetts's appeal for help provided 'the final argument to sway many Americans in favor of a stronger federal government.'"<sup>13</sup> I understand the nature of the crisis that brings you here, but the compromises you make on the slavery issue are——"

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"Young woman!" interrupted one of the older delegates. "Young woman, you say you understand. But I tell you that it is 'nearly impossible for anybody who has not been on the spot to conceive (from any description) what the delicacy and danger of our situation . . . [has] been. I am President of this Convention, drafted to the task against my wishes. I am here and I am ready to embrace any tolerable compromise that . . . [is] competent to save us from impending ruin.'" <sup>14</sup>

While so far I had recognized none of the delegates, the identity of this man—seated off by himself, and one of the few who had remained quiet through the bedlam that broke out after my arrival—was unmistakable.

"Thank you, General Washington," I responded. "I know that you, though a slave owner, are opposed to slavery. And yet you have said little during these meetings—to prevent, one may assume, your great prestige from unduly influencing debate. Future historians will say of your silence that you recognize that for you to throw the weight of your opinion against slavery might so hearten the opponents of the system, while discouraging its proponents, as to destroy all hope of compromise. This would prevent the formation of the Union, and the Union, for you, is essential." <sup>15</sup>

"I will not respond to these presumptions," said General Washington, "but I will tell you now what I will say to others at a later time. There are in the new form some things, I will readily acknowledge, that never did, and I am persuaded never will, obtain my cordial approbation; but I did then conceive, and do now most firmly believe, that in the aggregate it is the best constitution, that can be obtained at this epoch, and that this, or a dissolution, awaits our choice, and is the only alternative." <sup>16</sup>

"Do you recognize," I asked, "that in order to gain unity among yourselves, your slavery compromises sacrifice freedom for the Africans who live amongst you and work for you? Such sacrifices of the rights of one group of human beings will, unless arrested here, become a difficult-to-break pattern in the nation's politics." <sup>17</sup>

"Did you not listen to the general?" This man, I decided, must be James Madison. As the delegates calmed down, he had re-

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turned to a prominent seat in the front of the room directly in front of the podium. It was from this vantage point that he took notes of the proceedings which, when finally released in 1840, became the best record of the Convention. <sup>18</sup>

"I expect," Madison went on, "that many will question why I have agreed to the Constitution. And, like General Washington, I will answer: 'because I thought it safe to the liberties of the people, and the best that could be obtained from the jarring interests of States, and the miscellaneous opinions of Politicians; and because experience has proved that the real danger to America & to liberty lies in the defect of *energy & stability* in the present establishments of the United States.'" <sup>19</sup>

"Do not think," added a delegate from Massachusetts, "that this Convention has come easily to its conclusions on the matter that concerns you. Gouverneur Morris from Pennsylvania has said to us in the strongest terms: 'Domestic slavery is the most prominent feature in the aristocratic countenance of the proposed Constitution.' <sup>20</sup> He warned again and again that 'the people of Pennsylvania will never agree to a representation of Negroes.' <sup>21</sup>

"Many of us shared Mr. Morris's concern about basing approval on slaves as insisted by the Southern delegates. I recall with great sympathy his questions:

Upon what principle is it that the slaves shall be computed in the representation? Are they men? Then make them citizens & let them vote? Are they property? Why then is no other property included? . . .

The admission of slaves into the Representation when fairly explained comes to this: that the inhabitant of Georgia and S.C. who goes to the Coast of Africa, and in defiance of the most sacred laws of humanity tears away his fellow creatures from their dearest connections & damns them to the most cruel bondages, shall have more votes in a Govt. instituted for protection of the rights of mankind, than the Citizen of Pa or N. Jersey who views with a laudable horror, so nefarious a practice. <sup>22</sup>

"I tell you, woman, this Convention was not unmoved at these words of Mr. Morris's only a few weeks ago."

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"Even so," I said, "the Convention has acquiesced when representatives of the Southern states adamantly insisted that the proposed new government not interfere with their property in slaves. And is it not so that, beyond a few speeches, the representatives of the Northern states have been, at best, ambivalent on the issue?"

"And why not?" interjected another delegate. "Slavery has provided the wealth that made independence possible. The profits from slavery funded the Revolution. It cannot be denied. At the time of the Revolution, the goods for which the United States demanded freedom were produced in very large measure by slave labor. Desperately needing assistance from other countries, we purchased this aid from France with tobacco produced mainly by slave labor.<sup>23</sup> The nation's economic well-being depended on the institution, and its preservation is essential if the Constitution we are drafting is to be more than a useless document. At least, that is how we view the crisis we face."

To pierce the delegates' adamant front, I called on the oratorical talents that have, in the twentieth century, won me both praise and courtroom battles: "The real crisis you face should not be resolved by your recognition of slavery, an evil whose immorality will pollute the nation as it now stains your document. Despite your resort to euphemisms like *persons* to keep out of the Constitution such words as *slave* and *slavery*, you cannot evade the consequences of the ten different provisions you have placed in the Constitution for the purpose of protecting property in slaves.\*

\*The historian William Wiecek has listed the following direct and indirect accommodations to slavery contained in the Constitution:

1. Article I, Section 2: representatives in the House were apportioned among the states on the basis of population, computed by counting all free persons and three-fifths of the slaves (the "three-fifths" clause);
2. Article I, Section 2, and Article I, Section 9: two clauses requiring, redundantly, that direct taxes (including capitations) be apportioned among the states on the foregoing basis, the purpose being to prevent Congress from laying a head tax on slaves to encourage their emancipation;
3. Article I, Section 9: Congress was prohibited from abolishing the international slave trade to the United States before 1808;
4. Article IV, Section 2: the states were prohibited from emancipating fugitive slaves, who were to be returned on demand of the master;
5. Article I, Section 8: Congress empowered to provide for calling up the states' militias to suppress insurrections, including slave uprisings;
6. Article IV, Section 4: the federal government was obliged to protect the states against domestic violence, including slave insurrections;
7. Article V: the provisions of Article I, Section 9, clauses 1 and 4 (pertaining to the slave trade and direct taxes) were made unamendable;

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"Woman!" a delegate shouted from the rear of the room. "Explain to us how you, a black, have gotten free of your chains and gained the audacity to come here and teach white men anything."

I smiled, recognizing the eternal question. "Audacity," I replied, "is an antidote to your arrogance. Be assured: my knowledge, despite my race, is far greater than yours."

"But if my race and audacity offend you, then listen to your contemporaries who have opposed slavery in most moving terms. With all due respect, there are few in this company whose insight exceeds that of Abigail Adams who wrote her husband, John, during the Revolutionary War: 'I wish most sincerely there was not a slave in the province; it always appeared a most iniquitous scheme to me to fight ourselves for what we are daily robbing and plundering from those who have as good a right to freedom as we have.'<sup>25</sup> Mrs. Adams's wish is, as you know, shared by many influential Americans who denounce slavery as a corrupting and morally unjustifiable practice.<sup>26</sup>

"Gentlemen," I continued, "how can you disagree with the view of the Maryland delegate Luther Martin that the slave trade and 'three-fifths' compromises 'ought to be considered as a solemn mockery of, and insult to that God whose protection we had then implored, and . . . who views with equal eye the poor African slave and his American master'? I can tell you that Mr. Martin will not only abandon these deliberations and refuse to sign the Constitution but also oppose its ratification in Maryland. And further, he will, in his opposition, expose the deal of the committee on which he served, under which New England states agreed to give the slave trade a twenty-year immunity from federal restrictions in exchange for Southern votes to eliminate restrictions on navigation acts. What is more, he will write that, to the rest of the world, it must appear 'absurd and disgraceful to the last degree, that we should except from the exercise of that power [to regulate commerce], the *only branch of commerce which is unjustifiable in its nature, and contrary to the rights of mankind.*'"<sup>27</sup>

"Again, woman," a Northern delegate assured me, "we have

8. Article I, Section 9, and Article I, Section 10: these two clauses prohibited the federal government and the states from taxing exports, one purpose being to prevent them from taxing slavery indirectly by taxing the exported product of slave labor.<sup>24</sup>

heard and considered all those who oppose slavery. Despite the remonstrations of the abolitionists—of whom few, I must add, believe Negroes to be the equal of white men, and even fewer would want the blacks to remain in this land were slavery abandoned—we have acted as we believe the situation demands.”

“I cannot believe,” I said, “that even a sincere belief in the superiority of the white race should suffice to condone so blatant a contradiction of your hallowed ideals.”

“It should be apparent by now,” said the delegate who had shot at me, but had now recovered his composure and shed his ink-stained coat, “that we do not care what you think. Furthermore, if your people actually had the sensitivities of real human beings, you would realize that you are not wanted here and would have the decency to leave.”

“I will not leave!” I said steadily, and waited while the delegates conferred.

Finally, a delegate responded to my challenge. “You have, by now, heard enough to realize that we have not lightly reached the compromises on slavery you so deplore. Perhaps we, with the responsibility of forming a radically new government in perilous times, see more clearly than is possible for you in hindsight that the unavoidable cost of our labors will be the need to accept and live with what you call a contradiction.”

The delegate had gotten to his feet, and was walking slowly toward me as he spoke. “This contradiction is not lost on us. Surely we know, even though we are at pains not to mention it, that we have sacrificed the rights of some in the belief that this involuntary forfeiture is necessary to secure the rights for others in a society espousing, as its basic principle, the liberty of all.”

He was standing directly in front of the shield now, ignoring its gentle hum, disregarding its known danger. “It grieves me,” he continued, “that your presence here confirms my worst fears about the harm done to your people because the Constitution, while claiming to speak in an unequivocal voice, in fact promises freedom to whites and condemns blacks to slavery. But what alternative do we have? Unless we here frame a constitution that can first gain our signatures and then win ratification by the states, we shall soon have no nation. For better or worse, slavery has

been the backbone of our economy, the source of much of our wealth. It was condoned in the colonies and recognized in the Articles of Confederation. The majority of the delegates to this convention own slaves and must have that right protected if they and their states are to be included in the new government.”

He paused and then asked, more out of frustration than defiance, “What better compromise on this issue can you offer than that which has been fashioned over so many hours of heated debate?”

The room was silent. The delegate, his statement made, his question presented, turned and walked slowly back to his seat. A few from his state touched his hand as he passed. Then all eyes turned to me.

I thanked the delegate for his question and then said, “The processes by which Northern states are even now abolishing slavery are known to you all.<sup>28</sup> What is lacking here is not legislative skill but the courage to recognize the evil of holding blacks in slavery—an evil that would be quickly and universally condemned were the subjects of bondage members of the Caucasian race. You fear that unless the slavery of blacks is recognized and given protection, the nation will not survive. And my message is that the compromises you are making here mean that the nation’s survival will always be in doubt. For now in my own day, after two hundred years and despite bloody wars and the earnest efforts of committed people, the racial contradiction you sanction in this document remains and threatens to tear this country apart.”

“Mr. Chairman,” said a delegate near the podium whose accent indicated that he was from the deep South, “this discussion grows tiresome and I resent to my very soul the presence in our midst of this offspring of slaves. If she accurately predicts the future fate of her race in this country, then our protection of slave property, which we deem essential for our survival, is easier to justify than in some later time when, as she implies, negroes remain subjugated even without the threats we face.”

“Hear! Hear!” shouted a few delegates. “Bravo, Colonel!”

“It’s all hypocrisy!” the Colonel shouted, his arms flailing the air, “sheer hypocrisy! Our Northern colleagues bemoan slavery while profiting from it as much as we in the South, meanwhile

avoiding its costs and dangers. And our friends from Virginia, where slavery began, urge the end of importation—not out of humanitarian motivations, as their speeches suggest, but because they have sufficient slaves, and expect the value of their property will increase if further imports are barred.

“Mr. George Mason, of the Virginia delegation, in his speech opposing the continued importation of slaves expressed fear that, if not barred, the people of Western lands, already crying for slaves, could get them through South Carolina and Georgia. He means that: ‘Slavery discourages arts & manufactures. The poor despise labor when performed by slaves. They prevent the immigration of Whites, who really enrich & strengthen a Country. They produce the most pernicious effect on manners.’ Furthermore, according to Mr. Mason, ‘every master of slaves is born a petty tyrant. They bring the judgment of heaven on a Country . . . [and] by an inevitable chain of causes & effects providence punishes national sins, by national calamities.’<sup>29</sup>

“This, Mr. Chairman, is nothing but hypocrisy or, worse, ignorance of history. We speak easily today of liberty, but the rise of liberty and equality in this country has been accompanied by the rise of slavery.<sup>30</sup> The negress who has seized our podium by diabolical force charges that we hold blacks slaves because we view them as inferior. Inferior in every way they surely are, but they were not slaves when Virginia was a new colony 150 years ago. Or, at least, their status was hardly worse than the luckless white indentured servants brought here from debtors’ prisons and the poverty-ridden streets of England. Neither slave nor servant lived very long in that harsh, fever-ridden clime.”

The Colonel, so close to the podium, steadfastly refused to speak to me or even to acknowledge my presence.

“In the beginning,” he went on, “life was harsh, but the coming of tobacco to Virginia in 1617 turned a struggling colony into a place where great wealth could be made relatively quickly. To cultivate the labor-intensive crop, large numbers of mainly white, male servants, indentured to their masters for a period of years, were imported. Blacks, too, were brought to the colony, both as slaves and as servants. They generally worked, ate, and slept with the white servants.

“As the years passed, more and more servants lived to gain their freedom, despite the practice of extending terms for any offense, large or small. They soon became a growing, poverty-stricken class, some of whom resigned themselves to working for wages; others preferred a meager living on dangerous frontier land or a hand-to-mouth existence, roaming from one county to another, renting a bit of land here, squatting on some there, dodging the tax collector, drinking, quarreling, stealing hogs, and enticing servants to run away with them.”

“It is not extraordinary to suggest that the planters and those who governed Virginia were caught in a dilemma—a dilemma more like the contradiction we are accused of building into the Constitution than may at first meet the eye. They needed workers to maintain production in their fields, but young men were soon rebellious, without either land of their own or women, who were not seen as fit to work the fields. Moreover, the young workers were armed and had to be armed to repel attacks from Indians by land and from privateers and petty-thieving pirates by sea.

“The worst fears of Virginia’s leaders were realized when, in 1676, a group of these former servants returned from a fruitless expedition against the Indians to attack their rulers in what was called Bacon’s Rebellion. Governor William Berkeley bemoaned his lot in terms that defined the problem: ‘How miserable that man is that Governes a People wher six parts of seaven at least are Poore Endebedted Discontented and Armed.’<sup>31</sup>

“The solution came naturally and without decision. The planters purchased more slaves and imported fewer English servants. Slaves were more expensive initially, but their terms did not end, and their owners gained the benefits of the slaves’ offspring. Africans, easily identified by color, could not hope to run away without being caught. The fear of pain and death could be and was substituted for the extension of terms as an incentive to force the slaves to work. They were not armed and could be held in chains.

“The fear of slave revolts increased as reliance on slavery grew and racial antipathy became more apparent. But this danger, while real, was less than that from restive and armed freedmen. Slaves did not have rising expectations, and no one told them they had rights. They had lost their freedom. Moreover, a woman

could be made to work and have children every two years, thereby adding to the income of her master. Thus, many more women than indentured servants were imported.

"A free society divided between large landholders and small was much less riven by antagonisms than one divided between landholders and landless, masterless men. With the freedmen's expectations, sobriety, and status restored, he was no longer a man to be feared. That fact, together with the presence of a growing mass of alien slaves, tended to draw the white settlers closer together and to reduce the importance of the class difference between yeoman farmer and large plantation owner.

"Racial fears tended to lessen the economic and political differences between rich and poor whites. And as royal officials and tax collectors became more oppressive, both groups joined forces in protesting the import taxes on tobacco which provided income for the high and the low. The rich began to look to their less wealthy neighbors for political support against the English government and in local elections.

"Wealthy whites, of course, retained all their former prerogatives, but the creation of a black subclass enabled poor whites to identify with and support the policies of the upper class. With the safe economic advantage provided by their slaves, large landowners were willing to grant poor whites a larger role in the political process."

"So, Colonel," I interrupted, "you are saying that slavery for blacks not only provided wealth for rich whites but, paradoxically, led also to greater freedom for poor whites. One of our twentieth-century historians, Edmund Morgan, has explained this paradox of slave owners espousing freedom and liberty:

Aristocrats could more safely preach equality in a slave society than in a free one. Slaves did not become leveling mobs, because their owners would see to it that they had no chance to. The apostrophes to equality were not addressed to them. And because Virginia's labor force was composed mainly of slaves, who had been isolated by race and removed from the political equation, the remaining free laborers and tenant farmers were too few in number to constitute a serious threat

to the superiority of the men who assured them of their equality.<sup>32</sup>

"In effect," I concluded, "what I call a contradiction here was deemed a solution then. Slavery enabled the rich to keep their lands, arrested discontent and repression of other Englishmen, strengthened their rights and nourished their attachment to liberty. But the solution, as Professor Morgan said, 'put an end to the process of turning Africans into Englishmen. The rights of Englishmen were preserved by destroying the rights of Africans.'"<sup>33</sup>

"Do you charge that our belief in individual liberty is feigned?" demanded a Virginian, outraged.

"It was Professor Morgan's point," I replied, "not that a belief in republican equality had to rest on slavery, but only that in Virginia (and probably in other southern colonies) it did. The most ardent American republicans were Virginians, and their ardor was not unrelated to their power over the men and women they held in bondage."<sup>34</sup>

And now, for the first time, the Colonel looked at me, amazed. "My thoughts on this slavery matter have confounded my mind for many years, and yet you summarize them in a few paragraphs. I must, after all, thank you." He walked back to his seat in a daze, neither commended nor condemned by his colleagues. Most, indeed, were deep in thought—but for a few delegates I noticed trying desperately to signal to passersby in the street. But I could not attend to them: my time, I knew, must be growing short.

"The Colonel," I began again, "has performed a valuable service. He has delineated the advantages of slavery as an institution in this country. And your lengthy debates here are but prelude to the struggles that will follow your incorporation of this moral evil into the nation's basic law."

"Woman! We implore you to allow us to continue our work. While we may be inconsistent about the Negro problem, we are convinced that this is the only way open to us. You asked that we let your people go. We cannot do that and still preserve the potential of this nation for good—a potential that requires us to recognize here and now what later generations may condemn as evil.



And as we talk I wonder—are the problems of race in your time equally paradoxical?”

I longed to continue the debate, but never got the chance. Apparently someone outside had finally understood the delegates’ signals for help, and had summoned the local militia. Hearing some commotion beyond the window, I turned to see a small cannon being rolled up, pointing straight at me. Then, in quick succession, the cannoner lighted the fuse; the delegates dived under their desks; the cannon fired; and, with an ear-splitting roar, the cannonball broke against the light shield and splintered, leaving me and the shield intact.

I knew then my mission was over, and I returned to the twentieth century.

**G**ENEVA had related the Chronicle of the Constitutional Contradiction as though she were living it again—and, indeed, I felt, as she talked, as though I, too, were in that hot and humid hall arguing along with her. Now she sat back in her chair and looked toward me in anticipation. She was waiting for me to say something, but what? Clearly she didn’t consider her Chronicles mere flights of high fantasy. She would never have asked me to cross the country simply to listen to her recount a series of dreams. She had always been pragmatic—a realist in an idealist world, she had said back in the early 1960s while trying to explain why she could not accept the idea that the evil of racial discrimination would be swept away in a sea of legal precedents generated by the Supreme Court’s decision in the 1954 school-desegregation case of *Brown v. Board of Education*.<sup>35</sup>

And, just as during the 1960s when we traveled across the South as co-counsel in dozens of civil rights cases, I resisted the unblinking pragmatism that was a part of Geneva’s strength and the source of our constant arguments. But she was obviously still

waiting for me to express an opinion about the Chronicle.

“The story was very real for me,” I told her honestly enough. “Knowing the difficulty I have trying to get bicentennial committees on which I serve even to acknowledge how the Constitution handled the slavery issue, I can understand your frustration with the Framers themselves, but——”

“But, had you been there, you might have succeeded where I failed?”

“I’m not sure I could have done better, Geneva. Your presence shocked them, and any black person seeking acceptance as a peer in that group would have been a shock, but a black woman——” I struggled without success for some suitable analogy. “I kept waiting for you to dazzle them with a devastating analysis of the increasing tension between slave and nonslave states, its threat to the Union, the Civil War, and the amendments that, in granting blacks full citizenship rights, altered the dimensions but not the essence of the racial contradiction.”

“I wanted to, but I sensed that they did not want to know a future that lay outside their imagination. Their rhetoric spoke to the ages, but their attention was focused on events close at hand. I guess contemporary policy making is not much different.”

“Perhaps,” I agreed, and then ventured unwisely, “but if you had provided more information about the future, you might have better demonstrated your superior knowledge and your entitlement to be heard.”

“When did you last win an argument with a white man by proving you were smarter than he was?” And certain she knew the answer to that question, she continued, “I hope you have not missed the real point of the Chronicle. It was not a debate. The Chronicle’s message is that no one could have prevented the Framers from drafting a constitution including provisions protecting property in slaves. If they believed, as they had every reason to do, that the country’s survival required the economic advantage provided by the slave system, then it was essential that slavery be recognized, rationalized, and protected in the country’s basic law. It is as simple as that.”

“And not so simple, to judge by the Colonel’s revelations,” I

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suggested. "As a result of your aggressive advocacy, you forced him and the rest of the Convention to think through motivations for the slavery compromises that went beyond the Southern delegates' refusal to compromise on this issue."

"The Colonel's reaction surprised me," Geneva admitted, "but his insight into the political as well as the economic importance of slavery simply added more compelling reasons for recognizing and providing protection for slavery in the Constitution."

"The implications for current civil rights work are a bit too close for comfort."

"Exactly right." Geneva leaned forward in her chair to give emphasis to her words. "Even in that extraordinary setting, what struck me as I fought for their attention was how familiar it all was. You know, friend, we civil rights lawyers spend our lives confronting whites in power with the obvious racial bias in their laws or policies, and while, as you know, the litany of their possible exculpatory responses is as long as life, they all boil down to: 'That's the way the world is. We did not make the rules, we simply play by them, and you really have no alternative but to do the same. Please don't take it personally.' The Colonel's speech revealed components of those rules far more complex than ignorant prejudice."

I smiled at her vehemence. "No one will be surprised to learn that you've not become a racial romantic during your long absence."

"Maybe not, but I am surprised that after all these years you continue to believe in this nation's Fourth of July fantasy which most people pack away on July fifth with the unused fireworks."

"We've all got to have faith."

"Faith is not foolishness, my friend," Geneva countered, serious now. "And, as we are reminded in Scripture, 'Faith, if it hath not works, is dead, being alone.'"<sup>36</sup>

"We in civil rights have worked hard," I said. "Why are you so ready to criticize those who try to end the evil of racism rather than those who perpetrate it?"

"Because," she said flatly, ignoring my irritation, "you seem so complacent even though you have lived to see your faith betrayed, your hard work undone. Through it all, you pretend that

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all is well or that 'real freedom' is almost here. The reports and statistics I have been reading about the current state of most black Americans make that character of belief seem closer to cowardice than to courage."

Before I could respond to the charge, Geneva continued on a less challenging tack. "Of course, I understand that, with the removal of formal segregation barriers, it is a rare area of endeavor where at least a few blacks have not made notable achievements—a progress in which civil rights workers can take pride. But all but the most optimistic among you must concede that the once swiftly moving march toward racial equality through law reform has slowed to a walk, leaving millions of black Americans no better off than they were before the civil rights movement."

Geneva handed me a sheaf of news clippings and reports along with a summary of each which she had copied out in long hand. "Though you know this material, I am sure," she said, frowning, "you can imagine how, after the many years I had been unaware of what was happening, it hit me to learn—as these data indicate—how little had in fact happened."

The reports were all too familiar. One study showed that "blacks in every income strata, from the poorest to the most affluent, lost ground and had less disposable income in 1984 than in 1980, after adjusting for inflation." In sharp contrast, the top 60 percent of the white population experienced income gains; and, worst of all, the study found "a consistent pattern of widening income inequality between blacks and whites since 1980."<sup>37</sup>

The National Urban League in its annual report, *The State of Black America*, charted the decline in the economic fortunes of many black people. In his overview written for the 1985 report, the Urban League president John E. Jacob found that, in virtually every area of life that counts, black people made strong progress in the 1960s, peaked in the 1970s, and have been sliding back ever since. In 1975, he reported, black unemployment was 14.1 percent, about double that of white unemployment (7.6 percent). At the end of 1984, black unemployment was 16 percent; white, 6.5 percent. Constituting some 10 percent of the labor force, blacks account for 20 percent of the jobless. Then in his 1986 overview, Jacob noted that "the median black family had about

56 cents to spend for every one dollar white families had to spend, which was two cents less than they had in 1980, and almost six cents less than they had in 1970."<sup>38</sup>

The long-term impact of joblessness and underemployment on the economic well-being of black households was traced with depressing figures in a Bureau of the Census report. Based on a sampling of 20,000 families, the study revealed that white families, whose median income is almost twice that of black families, have accumulated assets almost twelve times as high. Figures varied by age, income, and marital status; but while the median net worth of all families was \$32,667, the overall black median was \$3,397, compared with assets for the median white family of \$39,135.<sup>39</sup>

"I would think," Geneva remarked, "that few civil rights proponents can feel much satisfaction about the progress of some blacks when the statistics on the woeful state of so many loom large even as they, month by month, grow worse."<sup>40</sup>

"You're right. We all acknowledge the devastating impact of these statistics on the black family. Focusing on female-headed households, a recent summary by a group of black academics pointed to statistics showing that 48 percent of black families with related children under eighteen are headed by women, and that half of all black children under eighteen live in female-headed households. The 1979 median income for black female-headed households was only \$6,610 compared with close to \$20,000 for all families."<sup>41</sup>

"We must, of course, keep in mind," I cautioned, "that, despite the disparate statistics on virtually every measure of black/white comparison, not all blacks are adrift on the sea of poverty. In the deluge of statistics concerning the plight of the black family, we must not lose sight of the fact that over half of them (53 percent) are intact, married-couple families. Such families represent the most economically viable family unit, boasting a median income in 1983 of \$26,686 when both husband and wife were in the labor force. Unfortunately, the married-couple family as a percentage of all black families has declined over the last two decades from 68 percent in 1960 to 53 percent in 1983."<sup>42</sup>

"Isn't the major issue here," Geneva asked, "the disappearance of black men, whose absence has led to the tremendous growth

in black-female-headed families and the accompanying rise in poverty among black families?"

"It would seem obvious," I replied, continuing to skim through the reports. "One paper here suggests the 'economic status of black, adult men is the other, largely unnoticed, side of the troubling increase in single-parent black families.'<sup>43</sup> The report focuses on your word *disappearance*, Geneva. Unemployment is only one cause of black male absence. As of 1982, there were 8.8 million black men from the ages of sixteen to sixty-four. Only 54 percent of them were working, compared with 78 percent of white males. The balance of these black men were unemployed (13.1 percent), not in the labor force (20 percent), in prison (2.1 percent), and unaccounted for (10.5 percent). These percentages are not only much higher than those for white males but are higher for black males than in 1960 when, according to the report, 'nearly three-quarters of all black men included in Census data were working; today, only 55 percent are working.'<sup>44</sup>

"But, beyond overt racial discrimination, these grim figures are influenced by a great many factors, including the automation of many jobs at low-skill levels and the loss of so-called smokestack industries where great numbers of blacks used to be employed. The severe cutback in social service programs has also worsened unemployment statistics for black workers, though whites have been hurt by all these factors as well."

"There is, I gather," Geneva broke in, "a widening income gap between the top and bottom of U.S. society. In fact, some of the most distressing data relate to income distribution of American families. In 1983, the wealthiest two-fifths of all U.S. families earned 67.1 percent of the total national income, while the poorest two-fifths earned only 15.8 percent, and the poorest fifth—where nearly one-half of all black families fell—earned only 4.7 percent of the national income."<sup>45</sup>

"What percentage of blacks are in the top fifth?" I asked, looking for some positive note.

"Only 7 percent of all black families are in this group. Worse yet, the top fifth of American families earned 42.7 percent of the income, or nine times as much as the bottom fifth—hardly a basis for your perverse optimism since 9.9 million blacks, nearly 36 per-

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cent of our population, are living in poverty. This is the highest black poverty rate since the Census Bureau began collecting data on black poverty in 1968."<sup>46</sup>

"Let me anticipate you, Geneva," I suggested. "Yes, these statistics reflect many ruined lives for whom the oft-heralded legal gains have been fatally tardy. Professor William J. Wilson, one of the most perceptive of contemporary observers, reports: 'The pattern of racial oppression in the past created the huge black underclass, as the accumulation of disadvantages were passed on from generation to generation, and the technological and economic revolution of advanced industrial society combined to insure it a permanent status.'<sup>47</sup>

"My conclusion may be premature," Geneva interjected, "but my reading indicates that because the Supreme Court is unable or unwilling to recognize and remedy the real losses resulting from long-held, race-based subordinated status, the relief the Court has been willing to grant, while welcome, proves of less value than expected and exacts the exorbitant price of dividing the black community along economic lines."

"Precisely one of the points Professor Wilson makes as he compares the ever-worsening situation for unskilled black workers with the increased opportunities for educated blacks with skills. In fact, Wilson has upset some civil rights advocates by noting that affirmative action programs are not designed to deal with the problem of the disproportionate concentration of blacks in the low-wage labor market. Their major impact has been in the higher-paying jobs of the expanding service-producing industries in both the corporate and government sectors.' Furthermore, Wilson shares your concern, Geneva, about the 'deepening economic schism . . . developing in the black community, with the black poor falling further and further behind middle- and upper-income blacks.'<sup>48</sup>

"So," said Geneva, "to sum up this discussion before moving on to my second Chronicle, there seems little doubt that the abandonment of overtly discriminatory policies has lowered racial barriers for some talented and skilled blacks seeking access to opportunity and advancement. Even their upward movement is, however, pointed to by much of the society as the final proof that

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racism is dead—a too hasty pronouncement which dilutes the achievement of those who have moved ahead and denies even society's sympathy to those less fortunate blacks whose opportunities and life fortunes are less promising today than they were twenty-five years ago.

"Despite your optimism, you seem ready to agree that the future for a great many black people is bleak. The necessary question that I hope we can decide during our discussions is whether this result—this economic-political disadvantage set in motion by the Framers—is beyond any known power to halt or even alter. Or, whether different strategies might make the annual observances of the *Brown* decision celebrations of great expectations realized rather than increasingly sorrowful commemorations of what might have been. And finally, whether, as I tried to suggest to the Framers, the real problem of race in America is the unresolved contradiction embedded in the Constitution and never openly examined, owing to the self-interested attachment of some citizens of this nation to certain myths—myths that I hope my Chronicles will allow us to examine in detail."

"Your summary, Geneva, is a good place to start, but my optimism about the future doesn't mean that I'm not as disturbed as you are about the current condition of black people in this country. It is all too true that much of our effort in the courts and in getting civil rights laws through Congress fell far short of eliminating our subordinate status in this society."

Geneva looked suspicious. "I sense a thinly veiled *but* in your statement."

"Not really. I am troubled, though, by the challenge you faced in your first Chronicle, and continue to wonder whether there wasn't some way to get the Framers to acknowledge that their compromises on slavery could only have dire human consequences."

For far from the last time that day, Geneva was exasperated. "And what makes you think that the Constitution's Framers who saw us as slaves, and used that lowly status to convince themselves that we were an inferior race, would have been more likely to recognize our humanity than are the country's contemporary leaders who, having every reason to know that we are not inferior,

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seem determined to maintain racial dominance even if that aim destroys us and the country?"

"Yes, white policy makers' racial motivations seem hardly to have changed at all over these two centuries—but, Geneva, before you go on to your next Chronicle, tell me, what was the main lesson you derived from your debate with the Framers?"

She answered at once. "That they would not, or could not, take seriously themselves or their ideals." Noticing my puzzled look, she tried to explain. "The men who drafted the Constitution, however gifted or remembered as great, were politicians, not so different from the politicians of our own time and, like them, had to resolve by compromise conflicting interests in order to preserve both their fortunes and their new nation. What they saw as the requirements of that nation prevented them from substantiating their rhetoric about freedom and rights with constitutional provisions—and thus they infringed on the rights and freedom not only of the slaves, who then were one-fifth of the population, but, ultimately, of all American citizens."

"If this situation is part of the nation's basic law, how are we to reach the whites in power today and gain redress?"

"That's a hard question," said Geneva, standing, "and one even the Celestial Curia has had trouble answering. Indeed, that's why they sent me here."

"The Celestial what?"

"Curia," she said calmly, heading for the kitchen, "a sort of supreme court with more than the usual judicial power. You'll understand in the next Chronicle—the one with which my visions began. But before I start on it, let me put on some more tea."

## Chapter 2

# The Benefits to of Civil Rig Litigation

## *The Chronicle of the Celest*

I ARRIVED after what seemed a long but was ushered into a great hall, like that of walls of highly polished rosewood were piecing at regular intervals by narrow windows cately carved columns supported the high painted frescoes of scenes depicting human struggles. The only light came through stained glass cast shadows of rose, indigo the expectant faces of the throngs of men there. Those faces, I later learned, belongedists from all over the world. Until I recall populate most of the earth, I wondered Caucasians present.

Everyone was dressed in plain black and language that I was able to understand but just as I was about to ask why we were there from an unseen organ, and a burst of spirit the gathering.

## NOTES TO PAGES 20-35

nantly white law school. See Kellis Parker and Betty Stebman, "Legal Education for Blacks," *Annals* 407 (1973): 144, 152.

7. The careers of these black scholars and civil rights lawyers are documented in R. Bland, *Private Pressure on Public Law: The Legal Career of Justice Thurgood Marshall* (1973); Richard Kluger, *Simple Justice* (1976) (documenting the civil rights careers of Justice Marshall and Judge Carter); Genna Rae McNeil, *Groundwork: Charles Hamilton Houston and the Struggle for Civil Rights* (1983); and Gilbert Ware, *William Hastie: Grace under Pressure* (1984).

8. W. E. B. DuBois, "The Talented Tenth," in J. Lester, ed., *The Seventh Son: The Thought and Writings of W. E. B. DuBois* (1971), p. 385.

9. John Gwaltney, *Drylongso: A Self-Portrait of Black America* (1980).

10. Peter Bergman, *The Chronological History of the Negro in America* (1969), pp. 586-87.

11. See, for example, Bergman, *Chronological History*, pp. 583, 584.

12. See Harold Schonberg, "A Bravo for Opera's Black Voices," *New York Times*, 17 January 1982, sec. 6, pp. 24, 82-90.

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

## Chapter 1

1. Samuel Eliot Morison, *The Oxford History of the American People* (1965), p. 305.

2. See J. Miller, *The Wolf By the Ears* (1977), p. 31.

3. Donald Robinson, *Slavery in the Structure of American Politics: 1765-1820* (1971), p. 92, quoting from Thomas Jefferson, *Notes on the State of Virginia*, T. Abernethy, ed. (1964).

4. *Ibid.*

5. Staughton Lynd, *Class Conflict, Slavery, and the United States Constitution* (1967), pp. 181-82 (quoting Max Farrand, ed., *The Records of the Federal Convention of 1787* [1911], vol. I, p. 533).

6. See, for example, Lynd, *Class Conflict*, p. 182.

7. Robinson, *Slavery in the Structure of American Politics*, p. 185.

8. Farrand, *Records*, vol. I, p. xvi.

9. William Wiecek, *The Sources of Antislavery Constitutionalism in America: 1760-1848* (1977), pp. 63-64.

10. Robinson, *Slavery in the Structure of American Politics*, p. 210.

11. *Ibid.*, pp. 55-57.

12. Charles Beard, *An Economic Interpretation of the Constitution of the United States* (1913), pp. 64-151. See also Pope McCorkle, "The Historian as Intellectual: Charles Beard and the Constitution Reconsidered," *American Journal of Legal History* 38 (1984): 314, reviewing the criticism of Beard's work and finding validity in his thesis that the Framers primarily sought to advance the property interests of the wealthy.

13. Morison, *Oxford History*, p. 304.

14. Dumas Malone, *Jefferson and the Rights of Man* (1951), p. 172 (letter from Washington to Thomas Jefferson, 31 August 1788).

15. W. Mazyck, *George Washington and the Negro* (1932), p. 112.

16. *Ibid.*

17. Derrick Bell, *Race, Racism and American Law* (2d ed. 1980), pp. 29-30.

18. James Madison, quoted in Farrand, *Records*, vol. I, p. xvi.

19. Malone, *Jefferson*, p. 167 (letter written in 1788 from James Madison to Philip Mazzei).

20. *The Records of the Federal Convention of 1787* (rev. ed. 1937), vol. II, p. 222.

21. Gouverneur Morris, quoted in Robinson, *Slavery in the Structure of American Politics*, p. 200.

22. *The Records of the Federal Convention of 1787*, p. 222.

23. See Edmund Morgan, "Slavery and Freedom: The American Paradox," *Journal of American History* 59 (1972): 1, 6.

24. See Wiecek, *Sources of Antislavery Constitutionalism*, pp. 62-63.

25. A. Leon Higginbotham, *In the Matter of Color, Race and the American Legal Process: The Colonial Period* (1978), p. 380.

## NOTES TO PAGES 35-56

26. Wiecek, *Sources of Antislavery Constitutionalism*, p. 42.
27. Luther Martin, quoted in David Brion Davis, *The Problem of Slavery in the Age of Revolution, 1770-1823* (1975), p. 323.
28. In the Northern states, slavery was abolished by constitutional provision in Vermont (1777), Ohio (1802), Illinois (1818), and Indiana (1816); by a judicial decision in Massachusetts (1783); by constitutional interpretation in New Hampshire (1857); and by gradual abolition acts in Pennsylvania (1780), Rhode Island (1784), Connecticut (1784 and 1797), New York (1799 and 1817), and New Jersey (1804). See L. Litwack, *North of Slavery* (1961), pp. 3-20.
29. Broadus Mitchell and Louise Mitchell, *A Biography of the Constitution of the United States* (1964), pp. 100-101.
30. Morgan, "Slavery and Freedom." The position taken by the Colonel is based on the motivation for American slavery set out in Professor Morgan's paper; he developed the thesis at greater length in his *American Slavery, American Freedom* (1975).
31. Morgan, "Slavery and Freedom," p. 22.
32. Morgan, *American Slavery, American Freedom*, pp. 380-81.
33. Morgan, "Slavery and Freedom," p. 24.
34. Morgan, *American Slavery, American Freedom*, p. 381.
35. *Brown v. Board of Education*, 347 U.S. 483 (1954).
36. James 2: 17.
37. Center on Budget and Policy Priorities, *Falling Behind: A Report on How Blacks Have Fared Under the Reagan Policies* (October 1984).
38. John E. Jacob, in National Urban League, *The State of Black America* (1985), pp. i-ii.
39. Bureau of the Census, *Household Wealth and Asset Ownership: 1984* (July 1986), pp. 4-5.
40. Alphonso Pinkney, *The Myth of Black Progress* (1984).
41. Joint Center for Political Studies, *A Policy Framework for Racial Justice* (1983), p. 10.
42. James McGhee, "The Black Family Today and Tomorrow," in National Urban League, *The State of Black America* (1985), pp. 1-2.
43. Center for the Study of Social Policy, *The "Flip-Side" of Black Families Headed by Women: The Economic Status of Black Men* (1984), p. 1.
44. *Ibid.*, p. 6. See also William J. Wilson and Kathryn Neckerman, "Poverty and Family Structure: The Widening Gap Between Evidence and Public Policy issues," in *Fighting Poverty: What Works and What Doesn't*, ed. S. Danziger and D. Weinberg (1986), pp. 232-59.
45. Center on Budget and Policy Priorities, *A Report on How Blacks Have Fared Under the Reagan Policies*, 3 (1984).
46. *Ibid.*, pp. 3-4.
47. William J. Wilson, *The Declining Significance of Race* (1978), p. 120.
48. *Ibid.*, pp. 110, 152.

## Chapter 2

1. David Shapiro, "Mr. Justice Rehnquist: A Preliminary View," *Harvard Law Review* 90 (1976): 293. Professor Shapiro found that, in Justice Rehnquist's first four and one-half years on the bench, his judicial product had been adversely affected by "the unyielding character of his ideology" which made possible a tripartite characterization of his votes. Whenever possible, Justice Rehnquist (1) resolved conflicts between an individual and the government, against the individual; (2) resolved conflicts between state and federal authority—whether on an executive, a legislative, or a judicial level—in favor of the states; and (3) resolved questions of the exercise of federal jurisdiction—whether on the district, the appellate, or the Supreme Court level—against such exercise (p. 294). See also John Jenkins, "Partisan: A Talk with Justice Rehnquist," *New York Times Magazine*, 3 March 1985, p. 28, where Justice Rehnquist candidly discusses his view of the Court's role in American government.

2. See, for example, Laurence Tribe, "Unraveling National League of Cities: The New