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## LOS ANGELES AS A SINGLE-CELLED ORGANISM

*Robert S. Chang\**

Rampart has many people pointing fingers. Some say that the problem stems from a few rogue cops. Others say that the problem can be located in the culture of the Los Angeles Police Department (LAPD). Still others blame prosecutors, judges, defense attorneys, and so on. Fingers pointing everywhere.

There is plenty of localized blame to go around, but I would like to expand the temporal and geographic frame to look at broader governmental and societal practices, the "master narrative,"<sup>1</sup> that led us here. The master narrative seems to include a set of rules similar to three basic rules for survival that guide a single-celled organism:

- (1) keep out that which is undesirable;
- (2) isolate and control that which cannot be kept out; and
- (3) expel, whenever possible, undesirable elements.

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\*Professor of Law, Loyola Law School; A.B., Princeton University; J.D., M.A., Duke University. © 2000 Robert S. Chang. A version of this Essay was presented on September 15, 2000, at *Looking Beyond Rampart: Lessons for Los Angeles*, a Symposium sponsored by Loyola Law School and the *Loyola of Los Angeles Law Review*. I would like to thank my colleague Catherine Fisk for inviting me to participate, and the editors of the law review for their careful attention to this Essay. I blame my undergraduate training in molecular biology for the cell metaphor, something I seem unable to escape. See, e.g., Robert S. Chang, *A Meditation on Borders*, in IMMIGRANTS OUT! THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE IN THE UNITED STATES 244, 246 (Juan F. Perea ed., 1997); Robert S. Chang & Keith Aoki, *Centering the Immigrant in the Inter/National Imagination*, 85 CAL. L. REV. 1395, 1411 (1997), 10 LA RAZA L.J. 309, 325 (1998).

1. Lisa Ikemoto uses the phrase "'master narrative' to describe white supremacy's prescriptive, conflict-constructing power, which deploys exclusionary concepts of race and privilege in ways that maintain intergroup conflict." Lisa C. Ikemoto, *Traces of the Master Narrative in the Story of African American/Korean American Conflict: How We Constructed "Los Angeles,"* 66 S. CAL. L. REV. 1581, 1582 (1993).

Los Angeles, like many cities, abides by these rules. The same can be said of California and the United States. At each of these levels, we can find evidence of this strategy of exclusion, containment, and expulsion. My thesis is that Rampart was produced by the application of these rules by Los Angeles, the state of California, and the United States.<sup>2</sup> In this sense, Rampart is not just a problem with the LAPD or with our legal system generally. It is part of a larger system and part of the city and nation's story about racialized minorities.<sup>3</sup> Things like Rampart happen when the rules of survival are applied against racialized groups who are coded as undesirable.

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2. For the purposes of this Essay, I will focus on the United States and Los Angeles, leaving for another discussion the history of California. For excellent discussions centered on California, see TOMÁS ALMAGUER, *RACIAL FAULT LINES: THE HISTORICAL ORIGINS OF WHITE SUPREMACY IN CALIFORNIA* (1994); ALEXANDER SAXTON, *THE INDISPENSABLE ENEMY: LABOR AND THE ANTI-CHINESE MOVEMENT IN CALIFORNIA* (1971).

3. For much of the history of the United States, the rule of recognition for the undesirable has depended largely upon those things that can be perceived easily. Adrienne Davis notes that while the legal categories of race depended upon ancestry or "blood," the practice of social differentiation relied largely on what she terms scopic rules. See Adrienne D. Davis, *Identity Notes One: Playing in the Light*, 45 AM. U. L. REV. 695, 705 (1996) ("I call this physical component scopic in that it relies on the inspecting and scrutinizing gaze of a (white) individual in order to discern and assign racial identity."). We might understand these as visual and auditory rules of recognition. For the visual, undesirable is coded as nonwhite. The auditory includes certain accents, sometimes in combination with limited English proficiency. Cf. Mari J. Matsuda, *Voices of America: Accent, Antidiscrimination Law, and a Jurisprudence for the Last Reconstruction*, 100 YALE L.J. 1329, 1333-49 (1991) (narrating the experiences of a number of employees who were penalized for not losing their "foreign" accents). If you register as undesirable, you will be subject to the rules.

I use the phrase "racialized groups" to emphasize that "race" is not an essence or something discovered in nature but is instead the result of a process by which racial categories are created and maintained. See Charles R. Lawrence, III, *If He Hollers Let Him Go: Regulating Racist Speech on Campus*, 1990 DUKE L.J. 431, 443 n.52 (discussing the use by Kendall Thomas of the term "race-ing" to describe the constructed-ness of race). For the social construction of race, see generally MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES: FROM THE 1960S TO THE 1990S* (2d ed. 1994).

I will begin by discussing historical antecedents to Rampart. I will then locate Rampart within a larger societal and temporal framework.

### I. THAT WAS THEN, THIS IS NOW

On the first day of this Symposium, Johnnie Cochran reminded us that the brutalization of minorities and minority communities is neither limited to Los Angeles nor limited to the present.<sup>4</sup> In addition to linking Rampart to the harsh treatment of racial minorities by the New York Police Department, Cochran linked Rampart to the earlier Zoot-Suit Riots that took place in Los Angeles in 1943.<sup>5</sup> An examination of these earlier events is instructive in understanding police and mainstream societal attitudes toward minorities, especially minority youths associated with gangs.

During these so-called riots, White, United States servicemen and civilians went on a rampage beating, stripping, and shearing the hair off young Latinos around the city.<sup>6</sup> This rampage was apparently a response to a group of servicemen being attacked by members of a Mexican American "gang."<sup>7</sup> As the violence against Mexican American youth escalated, Los Angeles police officers did little to intervene. On the third night of mob violence directed against

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4. See Johnnie Cochran, Remarks, Panel: Lawyers, Judges and the Community, Rampart Symposium (Sept. 14, 2000).

5. See *id.* Zoot-suit is a reference to a style of clothing that became popular among various groups of American youth in the 1940s. See MAURICIO MAZÓN, *THE ZOOT-SUIT RIOTS: THE PSYCHOLOGY OF SYMBOLIC ANNIHILATION* 6-7 (1984) (discussing possible origins of the zoot-suit style). The use of "zoot-suit" and "Pachuco" to refer to Mexican Americans was actually a concession by newspapers to the war effort after Mexico declared war on Germany, Italy, and Japan. Worried about international relations, the Office of the Coordinator of Inter-American Affairs "urged the newspapers in particular to cease featuring the word 'Mexican' in stories of crime." CAREY MCWILLIAMS, *NORTH FROM MEXICO: THE SPANISH-SPEAKING PEOPLE OF THE UNITED STATES* 215 (new ed. 1990). Use of these code words did little to ameliorate the anti-Mexican attitudes in newspaper coverage. See *id.*

6. See DAVID G. GUTIÉRREZ, *WALLS AND MIRRORS: MEXICAN AMERICANS, MEXICAN IMMIGRANTS, AND THE POLITICS OF ETHNICITY* 124 (1995). Gutiérrez notes that "the events were widely publicized in the local and national press as yet another example of Mexicans' inherent barbarity, hooliganism, and questionable loyalty." *Id.*

7. See MCWILLIAMS, *supra* note 5, at 220.

Mexican Americans, the police adopted a policy of following the mob "at a conveniently spaced interval,"<sup>8</sup> which gave the servicemen time to wreak their violence and move on to new victims. Instead of arresting perpetrators, Los Angeles police officers mopped up after them by arresting Mexican American victims on charges of disturbing the peace; "[b]y morning, some forty-four Mexican boys, all severely beaten, were under arrest."<sup>9</sup>

This treatment of Mexican American youths was made possible by racial attitudes or profiles held by Los Angeles police officers.<sup>10</sup> These racial profiles became evident during the sensationalized Sleepy Lagoon trial that took place in Los Angeles shortly before the Zoot-Suit Riots.<sup>11</sup> A group of twenty-four, comprising mostly young Mexican American boys and men,<sup>12</sup> were charged with the murder of a young Mexican American, José Díaz.<sup>13</sup> The defendants were

8. *Id.* at 222.

9. *Id.* at 223. Over the next couple days, spurred by newspaper accounts warning of mass retaliations by Mexican zoot suiters, thousands of Anglo Angelenos took to the streets. Although most of the victims were Mexican American, some Filipinos and Negroes were also attacked. *See id.* at 223-24.

10. Although racial profiling by law enforcement has only recently gained national attention, it is not a new phenomenon as the discussion *infra* shows.

11. Mauricio Mazón goes further and states that "[u]ntil the advent of the Sleepy Lagoon case Mexican-American youth had not been the focus of either widespread police or journalistic investigation." MAZÓN, *supra* note 5, at 20.

12. One of the group, Victor Rodman Thompson, is described as "an Anglo youngster who, by long association with the Mexican boys in his neighborhood, had become completely Mexicanized." MCWILLIAMS, *supra* note 5, at 208-09.

13. *See People v. Zammora et al*, 66 Cal. App. 2d 166, 152 P.2d 180 (1944). Seventeen were convicted. The entire group was charged with murder in the first degree because the "alleged felony had been committed during [a] 'conspiracy.'" MAZÓN, *supra* note 5, at 21. As explained by George Shibley, the attorney for several of the defendants,

The conspiracy was a conspiracy or an agreement to commit a trespass. In other words, when these twenty-two or forty-two young men and women said, "let's go crash the party," or "let's go to the Williams ranch," whether they said it in words or by assent in just joining the group, they were agreeing or conspiring to commit a misdemeanor.

*Id.*

The trial is dramatized in the film *Zoot Suit* directed by Luis Valdez. *See ZOOT SUIT* (Universal Pictures 1981). Except for the cars, the clothes, and the hairstyles, you might think you were watching a dramatization of the goings on at Rampart. The actions of the police, the prosecution, and the judge

described throughout the trial by the prosecution as members of the 38th Street Gang.<sup>14</sup> Seventeen were convicted, twelve for having conspired to murder Díaz, five for assault.<sup>15</sup> Of the seventeen, fifteen were born in the United States, two in Mexico.<sup>16</sup> The proceedings were highly irregular: with the exception of two defendants who were able to get a separate trial, the rest of the defendants were tried together; they were not permitted to sit with their attorneys and could confer with them only during breaks; they were not permitted to get haircuts during the months before trial; and upon orders of the prosecutor, clean clothing meant for the defendants was intercepted by the jail staff.<sup>17</sup>

The irregularities began, though, before the trial. The grand jury that was convened to decide if charges should be brought heard a report prepared by Lieutenant Edward Ayers that set forth a "number of factors contributing to the great proportion of crime by a certain element of the Mexican population."<sup>18</sup> The report begins innocently enough, citing a number of economic rationales, including discrimination in employment and job training.<sup>19</sup> The report also referred to segregation in public schools and public accommodations, all of which "causes resentment among the Mexican people."<sup>20</sup> But after these early nods to societal discrimination directed against Mexican Americans, the report sets forth biology as the main basis for understanding Mexican criminality:

Although a wild cat and a domestic cat are of the same

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seem eerily similar to some of the things described at the Symposium by the Deputy Public Defender Tamar Toister. See Tamar Toister, Remarks, Panel: Lawyers, Judges and the Community, Rampart Symposium (Sept. 14, 2000); see also Tamar Toister, *Commentary: Rampart Hasn't Changed How Criminal Courts Do Business*, L.A. TIMES, Sept. 21, 2000, at B11.

14. See Eduardo Obregón Pagán, *Sleepy Lagoon: The Politics of Youth and Race in Wartime Los Angeles, 1940-45*, at 158-59 (1996) (unpublished Ph.D. dissertation, University of Michigan, 1996) (on file with the author).

15. See CITIZENS' COMM. FOR THE DEF. OF MEXICAN AMERICAN YOUTH, *THE SLEEPY LAGOON CASE 7* (1942).

16. See *id.*

17. See MCWILLIAMS, *supra* note 5, at 209.

18. Foreign Relations Bureau of the Los Angeles Sheriff's Office, *Statistics*, reprinted in Solomon J. Jones, *The Government Riots of Los Angeles*, June 1943, at 85 (1969) (unpublished thesis, UCLA) (on file with the author).

19. See *id.*

20. *Id.*

family they have certain biological characteristics so different that while one may be domesticated the other would have to be caged to be kept in captivity; and there is practically as much difference between the races of man as so aptly put by Rudyard Kipling when he said when writing of the Oriental, "East is east and west is west and never the twain shall meet," which gives us an insight into the present problem because the Indian is . . . Oriental in background—at least he shows many of the Oriental characteristics, especially in his utter disregard for the value of life.<sup>21</sup>

Ayres reinforces his point about Oriental/Indian barbarity by discussing Aztecs and human sacrifice. Ayres goes on to state that "the Mexican Indian is mostly Indian—and that is the element which migrated to the United States in such large numbers."<sup>22</sup> The genetic heritage is something that Mexican immigrants cannot escape and which becomes apparent in styles of fighting:

The Caucasion [sic], especially the Anglo-Saxon, when engaged in fighting, particularly among youths, resort to fisticuff and may at times kick each other, which is considered unsportive, but this Mexican element considers all that to be a sign of weakness, and all he knows and feels is a desire to use a knife or some lethal weapon. In other words, his desire is to kill, or at least to let blood. That is why it is difficult for the Anglo-Saxon to understand the psychology of the Indian . . .<sup>23</sup>

Drastic measures are necessary to deal with this problem element: in the name of controlling and preventing gangsterism by this biologically-inclined population, Ayres suggested harsh sentences for violators, curfew regulations, and legalized fingerprinting for "everyone taken into custody whether for prosecution or merely for investigation."<sup>24</sup> Many of these views were shared by Captain Vernon Rasmussen of the LAPD Homicide-Subversive Bureau, who testified to the Grand Jury "that too many Mexican-American youth were being

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21. *Id.* at 85-86.

22. *Id.* at 86.

23. *Id.* at 87.

24. *Id.*

released on parole rather than doing hard time. . . . [O]nly swift and harsh punishment for 'the Mexican element' would deter youth from developing attitudes 'exactly contrary to [those] adopted by the respectable Caucasian element.'"<sup>25</sup>

These attitudes expressed by these LAPD officers appear to have been put into practice:

Law enforcement officials assembled files on suspected gang members, coordinated men and materiel [sic] and combed the east side of Los Angeles where mostly working-class people of color lived. The police and sheriffs proudly netted hundreds of arrests during the summer of 1942. . . . Hundreds of young men and women from central and eastern Los Angeles were rounded up during this period, fingerprinted, and booked not for crimes committed but for criminality suspected.<sup>26</sup>

The Sleepy Lagoon trial and the Zoot-Suit Riots are reflective of the effects of racial profiling that is made all the worse when it is done with the sanction of law. The earlier demonization of Latino youths, the racial profiles based on their genetic and cultural heritage, animate today's racial profiles. We can see echoes of this in Linda Beres and Tom Griffith's discussion of a gang expert who wrote and testified about super criminal youths who engaged in impulsive violence, had vacant stares with remorseless eyes, and were morally impoverished.<sup>27</sup> This history helps us to understand how Rampart was constructed.

When you locate Rampart within a larger temporal and geographic framework, you begin to understand that Rampart did not just happen. The history of Los Angeles, the state of California, and the United States made Rampart possible.

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25. Pagán, *supra* note 14, at 146 (quoting Letter from Vernon Rasmussen, to Ernest W. Oliver, 1942 Los Angeles County Grand Jury Foreman (Aug. 12, 1942) (on file at Ron López Papers, Sleepy Lagoon Material Collection, Chicano Studies Resource Library Special Collections, University of California, Los Angeles)).

26. *Id.* at 142-43.

27. See Linda Beres & Tom Griffith, Remarks, Panel: Lawyers, Judges, and the Community, Rampart Symposium (Sept. 14, 2000).



## II. THE UNITED STATES AS A SINGLE-CELLED ORGANISM

The United States, with regard to racialized minorities who were coded as undesirable, has pursued a policy of exclusion, isolation and control, and expulsion when possible. The treatment of Blacks provides ample support for this proposition.

In its early history, the United States permitted Blacks to be brought into the country because it was to the advantage of those with power.<sup>28</sup> Entry of Blacks was allowed, but Blacks were isolated and controlled by the legal regime surrounding slavery.<sup>29</sup> But this presence of Blacks was considered by many of this nation's Founding Fathers to be detrimental to the future of this nation. For example, Thomas Jefferson who expressed the belief that if slavery were abolished, rather than permit the freed slaves to remain, they must be deported with their labor replaced by that of imported free White settlers.<sup>30</sup> Then you have President Abraham Lincoln who met with a deputation of colored men in 1862 and told them that a sum of money had been appropriated by Congress, and placed at his disposition for the purpose of aiding the colonization in some country of the people, or a portion of them, of African descent.<sup>31</sup> Lincoln blamed the war on the presence of Blacks: "But for your race among us there could not be war, although many men engaged on either side do not care for you one way or the other. . . . It is better for us both, therefore, to be separated."<sup>32</sup> He then proposed a colony in Central America, saying that "The country is a very excellent one for any people, and with great natural resources and advantages, and especially because of the similarity of climate with your native land—

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28. See generally JAMES MADISON, NOTES OF DEBATES IN THE FEDERAL CONVENTION OF 1787 (1966).

29. For the development of the institution of slavery in the British colonies, see A. LEON HIGGINBOTHAM, JR., IN THE MATTER OF COLOR: RACE & THE AMERICAN LEGAL PROCESS: THE COLONIAL PERIOD (1978).

30. See Thomas Jefferson, *Notes on the State of Virginia (1781-82)*, in CLASSICAL BLACK NATIONALISM: FROM THE AMERICAN REVOLUTION TO MARCUS GARVEY 45 (Wilson Jeremiah Moses ed., 1996).

31. See ABRAHAM LINCOLN, *Address on Colonization to a Deputation of Colored Men (1862)*, in CLASSICAL BLACK NATIONALISM, *supra* note 30, at 209.

32. *Id.* at 211.

thus being suited to your physical condition."<sup>33</sup> Another example of rule 3: Expel when possible that which is undesirable.

It turned out that expulsion of Blacks to Central America or to the African colony Liberia was not feasible. So what then? If you have already let them in and cannot resort to rule 3, you are left with rule 2—isolate and control that which is undesirable. You create a legal and social regime where Blacks are segregated with regard to residence,<sup>34</sup> education,<sup>35</sup> employment,<sup>36</sup> and intimate relations.<sup>37</sup>

But as racial minorities began to gain or press for civil rights, new control mechanisms arose. When residential or educational integration threatened rule 2, other mechanisms developed to isolate and control. The production of inner city ghettos populated largely by racial minorities, and suburbs populated largely by Whites was no accident. White flight out of cities required local, state, and federal governments to invest massively in infrastructure in the form of highways, sewers, and other utilities to serve the newly forming suburbs. This has been described by George Lipsitz as the active investment in whiteness.<sup>38</sup>

But in order for this investment in whiteness to keep paying dividends long into the future, neighborhoods and schools must remain segregated. With Proposition 209 and the actions of the University of California Board of Regents, we are seeing the resegregation of our top public institutions of higher education. This fits into the story that I am developing.

The segregation in our local public schools and the residential segregation in Rampart is part of this story. The ethnic breakdown of the Rampart district is as follows:

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33. *Id.* at 212.

34. *Cf. Shelley v. Kraemer*, 334 U.S. 1 (1948) (outlawing court enforcement of racially restrictive covenants).

35. *Cf. Brown v. Bd. of Educ. (Brown II)*, 349 U.S. 294 (1955) (outlawing de jure segregation on the basis of race in public education).

36. *Cf. Civil Rights Act of 1964*, 42 U.S.C. § 1971 (creating a limited cause of action against private employers who discriminate on the basis of race and other forbidden characteristics).

37. *Cf. Loving v. Virginia*, 388 U.S. 1 (1967) (outlawing statutory scheme preventing marriages between persons solely on racial classification basis).

38. *See* GEORGE LIPSITZ, *THE POSSESSIVE INVESTMENT IN WHITENESS: HOW WHITE PEOPLE PROFIT FROM IDENTITY POLITICS* (1998).

TABLE 1: ETHNIC COMPOSITION OF RAMPART AND LOS ANGELES<sup>39</sup>

	Rampart	City of Los Angeles
Latino	79%	48%
Asian	15%	10%
Black	4%	12 %
White	3 %	30%
American Indian	less than 1%	less than 1%

Rampart is just part of the story of a highly segregated Los Angeles. Segregated neighborhoods lead to segregated schools. You can see this if you visit our local public schools. They are right around the corner. Drive by their playgrounds and look at the kids.

These segregated schools with limited resources lead to lessened educational opportunities. Lessened educational opportunities lead to lessened employment opportunities. Limited employment opportunities maintain the concentrated poverty in the segregated neighborhoods. Concentrated poverty, substandard overcrowded housing, and educational and employment disadvantage create the conditions for crime and social disorder.<sup>40</sup> Crime and social disorder invites the military style occupation described in this Symposium by Robert Benson.<sup>41</sup>

Watts in 1965,<sup>42</sup> the civil unrest in 1992,<sup>43</sup> and Rampart are merely symptoms of the explosions that can take place when dreams are deferred. Fixing the Rampart police scandal will require fixing the conditions that made Rampart possible.

39. See *The Rampart Scandal: Genesis of a Scandal*, L.A. TIMES, Apr. 25, 2000, at A18.

40. See DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS 137-40 (1993).

41. See Robert W. Benson, Remarks, Changing Police Culture: The Sine Qua Non of Reform, Rampart Symposium (Sept. 14, 2000).

42. See, e.g., GERALD HORNE, FIRE THIS TIME: THE WATTS UPRISING AND THE 1960S (1995).

43. See, e.g., LOS ANGELES—STRUGGLES TOWARD MULTIETHNIC COMMUNITY: ASIAN AMERICAN, AFRICAN AMERICAN, AND LATINO PERSPECTIVES (Edward T. Chang & Russell C. Leong eds., 1993).

Neighborhood segregation, what I'm calling a strategy of containment, did not arise by accident. It was the product of both neglect and purposeful discrimination. It requires redress.

My account of the development of residential segregation is largely a story of Black and White. I apologize for my Black/White focus but I will relate it to L.A. and the largely Latino population of Rampart.

At the turn of the century, the level of residential segregation was significantly lower than it is now.<sup>44</sup> Perhaps surprisingly, this century has seen an intensification of residential segregation along racial lines. At the turn of this century, Whites and Blacks encountered each other on a casual basis more frequently than today.<sup>45</sup> It is arguable that new methods for achieving residential segregation arose as a response to demands for equality by Blacks and other racial minorities. Residential segregation might have contained within it a cultural meaning where White people could gain a psychological wage from the feeling of racial superiority that separation engendered. It is arguable that poor Whites put up with class oppression in part because of the social status they had over the truly disadvantaged.<sup>46</sup>

When zoning by local authorities was upheld by the Supreme Court, a number of local authorities used zoning ordinances that were explicitly racial, the effect of which was to exclude certain racial minorities from living in certain areas.<sup>47</sup> In 1917, these explicit racial zoning ordinances were deemed unconstitutional.<sup>48</sup> New methods were required. Extralegal means were used: mob violence was directed against White homeowners who contemplated selling their homes to persons of color, or against the persons of color if and when they moved into a White neighborhood.<sup>49</sup> There are numerous documented instances of this throughout this century, some of recent vintage. The primary legal method was the use of racially restrictive

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44. See MASSEY & DENTON, *supra* note 40, at 17.

45. See *id.* at 17-18.

46. See W.E.B. DU BOIS, *BLACK RECONSTRUCTION* (1935); DAVID ROEDIGER, *THE WAGES OF WHITENESS: RACE AND THE MAKING OF THE AMERICAN WORKING CLASS* (1991).

47. See LIPSITZ, *supra* note 38, at 25.

48. See MASSEY & DENTON, *supra* note 40, at 41-42.

49. See *id.* at 34-35.

covenants to create and maintain residential segregation.<sup>50</sup> Use of racially restrictive covenants became widespread, and they were enforceable in a court of law until *Shelley v. Kraemer*<sup>51</sup> in 1948. This case, like *Brown* in the context of school desegregation,<sup>52</sup> provided a very limited remedy. *Shelley v. Kraemer* did not outlaw the use of racially restrictive covenants; nor did it forbid private discrimination in home sales; all it prevented was the participation of courts in enforcing the covenants.

The government actively participated in encouraging and often requiring the use of racially restrictive covenants for FHA and VA loan insurance programs through 1950.<sup>53</sup> The FHA's Underwriting Manual "openly stated that 'if a neighborhood is to retain stability, it is necessary that properties shall continue to be occupied by the same social and racial classes' and further recommended that 'subdivision regulations and suitable restrictive covenants' are the best way to ensure such neighborhood stability."<sup>54</sup> For two years following *Shelley v. Kraemer*, these governmental agencies actively defied the Supreme Court's mandate.<sup>55</sup> If you put this together with the Federal Home Owners' Loan Corporation's explicit use of race in marking neighborhoods as creditworthy or not,<sup>56</sup> it is difficult to say that the government did not actively prevent racial minorities from getting loans while simultaneously aiding White borrowers. The maps created by the HOLC, "Residential Security Maps," were widely used by private banks in deciding whether or not to make loans.<sup>57</sup> The result—disinvestment in Black areas; investment in White areas.

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50. *See id.* at 36.

51. 334 U.S. 1 (1948).

52. For a discussion of some of the limits of the *Brown* ruling, see Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470 (1976).

53. *See* LIPSITZ, *supra* note 38, at 26.

54. MELVIN L. OLIVER & THOMAS M. SHAPIRO, *BLACK WEALTH/WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL EQUALITY* 18 (1995).

55. *See id.*

56. *See* MASSEY & DENTON, *supra* note 40, at 51-54 (detailing the practices of the Home Owners' Loan Corporation, a government-sponsored program, which rated neighborhoods as creditworthy or not, with Black neighborhoods redlined as the least creditworthy).

57. *See id.* at 52.

The effect was dramatic. Between 1934 and 1962, the FHA and VA programs made possible the purchase of \$120 billion of real estate, with less than two percent going to nonwhite families.<sup>58</sup> Between 1934 and 1969 the percentage of families living in owner-occupied dwellings increased from 44% to 63%.<sup>59</sup> These programs were quite effective in aiding upward class mobility, creating a significantly larger middle class that was largely White. These programs affected the racial composition of neighborhoods.

The effects of this explicit racial discrimination are still with us today. In 1993, "86% of suburban whites lived in places with a Black population below 1%."<sup>60</sup> Of course, evidence of residential segregation, by itself, does not indicate that racial discrimination continues to occur in the housing market. Further, the data over the past three decades have shown increasing agreement among Whites with the principle that Blacks should be allowed to live wherever they want.<sup>61</sup> However, the polling data also reveals that most Whites feel comfortable living in neighborhoods where the percentage of Black families is very low.<sup>62</sup> In other words, the polling data indicates the following sentiment among Whites: "Blacks should be free to live wherever they want. I wouldn't want to live in a neighborhood that had more than a few Black families."

This sentiment is given force by mechanisms whereby Blacks receive less favorable treatment from real estate brokers and from lending institutions. In 1977, Housing and Urban Development (HUD) conducted a study in forty metro areas in which they sent auditors, Black and White, to seek housing. They found that Whites received more favorable treatment than Blacks in close to half the transactions:

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58. See LIPSITZ, *supra* note 38, at 6.

59. See MASSEY & DENTON, *supra* note 40, at 53.

60. LIPSITZ, *supra* note 38, at 7.

61. See HOWARD SCHUMAN ET AL., *RACIAL ATTITUDES IN AMERICA: TRENDS AND INTERPRETATIONS* 150-53 (rev. ed. 1997).

62. See MASSEY & DENTON, *supra* note 40, at 88-93.

TABLE 2: PERCENTAGE OF TRANSACTIONS IN WHICH WHITES RECEIVE MORE FAVORABLE TREATMENT THAN BLACKS.<sup>63</sup>

	Northern Metro Areas	Southern Metro Areas
Rental	52	45
Sales	54	41

White favoritism is defined to occur when white auditor receives favorable treatment on at least one of the following items and Black auditors receive favorable treatment on none: housing availability, courtesy to client, terms and conditions of sale or rental, information requested of client, information supplied to client.

In 1988, HUD repeated the study in twenty metro areas.<sup>64</sup> They used the following methodology:

Real estate ads in major metropolitan newspapers were randomly sampled and realtors were approached by auditors who inquired about the availability of the advertised unit; they also asked about other units that might be on the market. The Housing Discrimination Study (HDS) covered both the rental and sales markets, and the auditors were given incomes and family characteristics appropriate to the housing unit advertised.

The typical advertised unit was located in a White, middle to upper class area, as were most of the real estate offices; few homes were in Black or racially mixed neighborhoods.<sup>65</sup>

HUD noticed that real estate brokers generally didn't advertise homes in Black or racially mixed neighborhoods, or if they did, they just gave them one line descriptions. As a result, "[r]eal estate companies . . . do a poor job advertising and marketing homes in racially

63. *See id.* at 101 (citation omitted).

64. *See id.* at 102.

65. *Id.*

mixed neighborhoods, thereby restricting white demand for integrated housing and promoting segregation."<sup>66</sup>

The 1988 study found "little evidence that discrimination against Blacks has declined since the first nationwide assessment in 1977."<sup>67</sup> It also found that perhaps the level of discrimination was understated in the 1977 study. The 1988 study revealed that "[h]ousing was systematically made more available to whites in 45% of the transactions in the rental market and in 34% of those in the sales market. Whites also received more favorable credit assistance in 46% of sales encounters, and were offered more favorable terms in 17% of rental transactions."<sup>68</sup> There was a high probability that an additional unit was presented to White but not to Black auditors. As a result, between 60-90% of the housing units made available to Whites were not brought to the attention of Blacks.<sup>69</sup>

The strategy of isolation and containment in the form of residential segregation coupled with other barriers to home ownership has had a tremendous impact on the average wealth of Black and White families. Melvin Oliver and Thomas Shapiro note that:

Skewed access to mortgage and housing markets and the racial valuing of neighborhoods on the basis of segregated markets result in enormous racial wealth disparity. Banks turn down qualified blacks much more often for home loans than they do similarly qualified whites. Blacks who do qualify, moreover, pay higher interest rates on home mortgages than whites.<sup>70</sup>

Add to this property appreciation and intergenerational wealth transfers, and perhaps we can begin to understand why the average wealth of a White household in 1993 was over \$45,740 while the average wealth of a Black household was \$4418, and for a Hispanic family, \$4656 (with Asian Americans not mentioned).<sup>71</sup>

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66. *Id.*

67. *Id.*

68. *Id.*

69. *See id.* at 104.

70. OLIVER & SHAPIRO, *supra* note 54.

71. *See* U.S. Census Bureau, *Asset Ownership of Households: 1993* tbl. F, at <http://www.census.gov/hhes/www/wealth/wlth93f.html> (last visited Oct. 24, 2000).

Wealth is a better indicator of racial inequality than income. *See*



Residential segregation eviscerated the hope that *Brown* would result in integration which was supposed to ensure equal educational opportunities and to lessen the prejudice in the hearts and minds of children who were our future. With the fight over bussing, and the Supreme Court's ruling against interdistrict remedies,<sup>72</sup> Whites who had successfully fled to new school districts in the suburbs were then not subject to desegregation orders. The result—inner city schools that were largely minority, suburban schools that were largely White—was deemed to be a situation beyond the scope of legal redress as accepted by the Court.<sup>73</sup>

Control and containment were perhaps the primary mechanisms for controlling Blacks. The same can probably be said for Native Americans. Consider the reservation system. Isolate that which is undesirable. With Latinas and Latinos and persons of Asian ancestry, Rules 1 and 3 have played a greater role.

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OLIVER & SHAPIRO, *supra* note 54, at 2. They note that “even when Blacks and Whites display similar characteristics—for example, are on a par educationally and occupationally—a potent difference of \$43,143 in home equity and financial assets still remains. Likewise, giving the average black household the same attributes as the average White household leaves a \$25,794 racial gap in financial assets alone.” *Id.* at 8.

72. See *Milliken v. Bradley*, 418 U.S. 717 (1974). This principle was affirmed in *Missouri v. Jenkins*, 515 U.S. 70 (1995). For an excellent discussion of *Missouri v. Jenkins*, see Robert Hayman & Nancy Levit, *The Tales of White Folk: Doctrine, Narrative, and the Reconstruction of Racial Reality*, 84 CAL. L. REV. 377 (1996) (reviewing RICHARD DELGADO, *THE RODRIGO CHRONICLES: CONVERSATIONS ABOUT AMERICA AND RACE* (1995)).

73. See *Milliken*, 418 U.S. at 718. In a concurring opinion, Justice Stewart noted:

It is this essential fact of a predominantly Negro school population in Detroit—caused by unknown and perhaps unknowable factors such as in-migration, birth rates, economic changes, or cumulative acts of private racial fears—that accounts for the “growing core of Negro schools,” a “core” that has grown to include virtually the entire city. The Constitution simply does not allow federal courts to attempt to change that situation unless and until it is shown that the State, or its political subdivisions, have contributed to cause the situation to exist. No record has been made in this case showing that the racial composition of the Detroit school population or that residential patterns within Detroit and in the surrounding areas were in any significant measure caused by governmental activity.

*Id.* at 756 n.2.

As a general rule, keep them out.<sup>74</sup> But sometimes, we want their labor. When we need low wage laborers, we invite them in. In 1917, the first foreign labor program was initiated.<sup>75</sup> Agricultural employers in the Southwest brought in workers from Mexico. Then along came the Great Depression. Latinos lost their low-wage jobs as the jobs disappeared or were taken by Whites now willing to do the work they had refused to do before.<sup>76</sup> Loss of jobs, violence, denial of welfare benefits, and other tactics led to voluntary departures and mass deportations achieved through deception and coercion.<sup>77</sup>

Then World War II came along and we needed their labor again. The Bracero Program was instituted to bring Mexican workers into the United States.<sup>78</sup> The United States looked the other way when they overstayed their labor contracts and when undocumented persons filled the fields.<sup>79</sup> Their labor put cheap food on people's tables. Few complained.<sup>80</sup> When these workers were no longer needed, the Commissioner of Immigration developed Operation Wetback.<sup>81</sup>

Between 1954 and 1959, Operation Wetback was responsible for over 3.7 million Latinos being deported. Of that number, an unknown amount were American citizens. In

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74. The various measures directed against persons of Asian ancestry.

75. See GILBERT P. CARRASCO, *Latinos in the United States: Invitation and Exile*, in IMMIGRANTS OUT! THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE IN THE UNITED STATES 190, 193 (Juan Perea ed., 1997).

76. See *id.* at 202 n.19 ("As a result of the Midwest Dust Bowl, more than 350,000 Anglos found themselves unemployed and willing to work for the low wages usually earned by Latinos.").

77. See *id.* at 194.

78. See KITTY CALAVITA, *INSIDE THE STATE: THE BRACERO PROGRAM, IMMIGRATION, AND THE I.N.S.* 1-2 (1992).

79. At one point, official policy of legalization "gave priority to illegal immigrants found in the United States. By 1950, the number of Mexicans 'legalized' and 'paroled' to growers as braceros was five times higher than the number actually recruited from Mexico." *Id.* at 2.

80. A number of Mexican American groups opposed the Bracero Program because they believed that large-scale immigration from Mexico interfered with the progress of Mexican Americans to assimilate or integrate into mainstream United States society. See GUTIÉRREZ, *supra* note 6, at 135-38.

81. See CARRASCO, *supra* note 75, at 197.

their haste to deport "illegals," only 63,500 persons were removed through formal deportation proceedings.

Rule 3: Expel, whenever possible, that which is undesirable.

This is part of the history that sets the stage for Los Angeles, which also abides by the 3 rules. Los Angeles is highly segregated. This is not the product of random chance. Isolate the undesirable. Expel when possible. Expulsion can come in the form of sending the undesirable to prison. Or deporting them. The police have played a crucial role in enforcing the 3 rules.

Before 1979, the LAPD "routinely detain[ed] suspected illegal immigrants without bringing criminal charges, and transport[ed] them to the INS for arrest based on suspicion of noncriminal violations of federal immigration laws."<sup>82</sup> Reforms took place in 1979, brought about by a lawsuit.<sup>83</sup> The powers that be acknowledged that the earlier policy resulted in immigrant communities distrusting the police; members of immigrant communities, regardless of legal status, were reluctant to seek police help because of fear of the police. The changes took the form of an internal policy called Special Order 40. The police were not to initiate a "police action with the objective of discovering a person's immigration status."<sup>84</sup> Officers were not to arrest anyone for violation of the U.S. immigration code. Under certain circumstances, if an undocumented person were arrested for certain levels of crimes, the officer could refer that person to the INS but must abide by certain procedures.<sup>85</sup> This was a step in the right direction. But the policy cannot be effective if the police do not abide by it.

The Rampart scandal has revealed that the CRASH Unit sometimes worked in collusion with the INS.<sup>86</sup> In cases where there was insufficient evidence to prosecute alleged gang members, some of the cases were turned over to the INS if the alleged gang members

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82. Tina Daunt, *Council Seeks to Limit INS Presence at LAPD Stations*, L.A. TIMES, Apr. 13, 2000, at B1.

83. *See id.*

84. *Id.*

85. *See id.*

86. *See Anne-Marie O'Connor, INS Memo Calls Gang Allegations False*, L.A. TIMES, Mar. 31, 2000, at A1.

were undocumented.<sup>87</sup> If an undocumented person witnessed improper behavior by officers or complained about an officer, certain CRASH officers would refer them to INS agents.<sup>88</sup> If you can't put them in prison, if possible, expel them. It appears that INS agents used to hang out at certain LAPD stations at the invitation of the police.<sup>89</sup>

What message do you think that sends to undocumented persons who may be crime victims? The police are charged with protecting and serving the public. Undocumented persons are then excluded from the public, excluded from the full protection of the police. It creates a vulnerable victim pool.

The border is not limited to the geographic periphery. Anybody who has gone through the INS checkpoint between San Diego and Los Angeles know this. Who receives further scrutiny at this checkpoint? At the airport? At the workplace when the INS does its raids? And if Proposition 187 had been upheld, at hospitals and schools. The border is not limited to the geographic periphery. The border is inscribed upon the bodies and faces of Blacks, Browns, Yellows, and Reds who seem unable to shed the aura or taint of un-Americanness, undesirability, regardless of how good their English is, no matter how many generations their family may have been here.

The Rampart police scandal is a problem. But it's part of the larger problem created by rules I set forth before. Exclude. Contain. Expel. If we don't address the creation and maintenance of segregated neighborhoods, which create the conditions for crime and social disorder, which then are used to justify the military-style occupation of these neighborhoods, then Rampart, which has happened before, will simply repeat itself. The names may be different. The minority group may be different. But it will be the same old story.

Father Boyle said yesterday that Rampart is just a symptom.<sup>90</sup> He told us that reform depends on the underlying analysis. If you don't want Rampart to happen again, I urge you to work to undo the

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87. See Anne-Marie O'Connor, *INS Agents Suggested Rampart Deportations*, L.A. TIMES, Mar. 3, 2000, at A1.

88. See Anne-Marie O'Connor, *Rampart Set Up Latinos to Be Deported*, L.A. TIMES, Feb. 24, 2000, at A1.

89. See Daunt, *supra* note 82, at B1.

90. Father Boyle, Remarks, Rampart Symposium (Sept. 14, 2000).

rules of survival that got us here. Modeling ourselves after a single-cell organism is both stupid and unjust. It's time for Los Angeles, the state of California, and the United States to evolve.