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# A Framework for Reparations Claims

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***Abstract***

These remarks, prepared for the Boston College Reparations Symposium, compare different reparations claims in terms of their goals and viability as tort suits. I contrast two approaches observed in the claims: a "doing justice" model, which involves seeking compensation in important cases of uncorrected or uncompensated injustice; and a "social welfare" model that seeks to change the distribution of wealth. Claims under the first category are far more consistent with tort doctrine and likely to meet their goals than the social welfare-based claims.

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I am aware of two extant legal claims for reparations, the *Farmer-Paellman v. FleetBoston*[1] case in New York and now the claim for compensation in Tulsa, Oklahoma.[2] The *FleetBoston* complaint seeks compensatory damages, punitive damages, restitution, and an accounting of profits from American slavery. The Tulsa complaint seeks compensation for victims whose relatives were killed and property destroyed by angry white mobs that rioted though Tulsa's black community in 1921.[3]

Although both the *FleetBoston* and Tulsa complaints have been described as reparations claims, there are big differences between them. They reflect two distinct and in some ways conflicting policies behind reparations litigation. One approach is a desire to correct historical injustices, simply to "do justice."[4] The other is driven in large part by social welfare and distributional goals.

The justice approach views reparations lawsuits as efforts to identify uncorrected or uncompensated cases of injustice, and to seek "correction" in the Aristotelian sense of returning the parties to positions roughly similar to the pre-injury setting. This involves identifying particular individuals or entities that committed bad acts, and particular victims who were injured; specifying the precise acts that led to injury, and the sums necessary to compensate victims for the injuries. The Tulsa complaint fits this description. The lawyers who filed the complaint have rounded up individuals who had their property destroyed and relatives killed or injured during the Tulsa riots. Another example under this category is the class action suit brought against the federal government in 1973 for the Tuskegee syphilis experiment.[5] Yet another example is the Civil Liberties

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[1] Complaint and Jury Trial Demand, Farmer-Paellman v. FleetBoston Fin. Corp., (E.D.N.Y. 2002)(No. CV 02-1862).

[2] See, e.g., "Lawyers hope Tulsa case can lay foundation for more claims," The Boston Globe, Wednesday, February 26, 2003, at A16.

[3] For a recent news account, see Tatsha Robertson, "Quest for vindication: Survivors of 1921 Tulsa race riots hail suit for reparations," The Boston Globe, Wednesday, February 26, 2003, at A1 and A17; Lyle Denniston, "Lawyers hope Tulsa case can lay foundation for more claims," The Boston Globe, Wednesday, February 26, 2003, at A16 (describing Harvard Professor Charles Ogletree's leadership of team that drafted complaint seeking compensation in Tulsa case). For a full historical treatment, see Alfred L. Brophy, Reconstructing the Dreamland: The Tulsa Riot of 1921 – Race, Reparations, and Reconstruction (Oxford University Press, 2002)

[4] This view of reparations claims brings them within the class of recent criminal trials of former Klansman for murders committed in the 1960s. See, e.g., Rick Bragg, "Former Klansman Is Found Guilty of 1966 Killing," The New York Times, National Report, Saturday, March 1, 2003, at A11 (reporting case of Ernest Avants, a former Klansman found guilty by a jury, after only three hours of deliberation, for the murder of Ben Chester White); "Guilty Verdict in Church Bombing Trial," http://www.pbs.org/newshour/engenda_preview/updates/birmingham_05-02-22.html (describing conviction, on May 22, 2002, of former Klansman Bobby Frank Cherry for murder of four girls in 1963 bombing of Sixteenth Street Baptist Church).

[5] Starting in the 1930s, 399 syphilitic men signed up for free medical care from the U.S. Public Health Service. They were never told that they had syphilis, only that they had "bad blood." See, e.g., "Sour legacy of Tuskegee syphilis experiment lingers," at http://www.cnn.com/HEALTH/9705/16/nfm.tuskegee/ - 11k .

Act of 1988 providing compensation for Japanese Americans held in internment camps during World War II.[6] The statute compensates only direct victims – the individuals who were held in internment camps.

The social welfare approach reflected in the *FleetBoston* complaint aims for a significant redistribution of wealth, not to do justice in any discrete case. The complaint names several existing corporations as defendants, such as FleetBoston (a bank) and CSX (a railroad), including a reference to one thousand "Corporate Does" as additional defendants.[7] There are so many businesses that had a hand in slavery that the complaint could just as well refer to ten thousand Corporate Does. The plaintiff, Deadria Farmer-Paellmann, sues on "behalf of herself and all other similarly situated" persons.[8] This means she is suing on behalf of all African Americans whose ancestors were held as slaves in this country.

This brief description of the *FleetBoston* complaint should be sufficient to illustrate the differences between the social welfare and justice approaches. There is nothing controversial about doing justice. Most lawsuits claim to have that principle at their core. However, the social welfare approach is unusual in litigation. For at the core of the *FleetBoston* suit is a belief that reparations litigation will compensate or correct for years and years of inattention, or insufficient attention, to the welfare of African Americans. In short, proponents hope that *FleetBoston*-like lawsuits will force through the kind of broad redistribution of resources toward poor black citizens that could never be achieved through the political process.

The social welfare approach shares much in common with the recent wave of tobacco litigation and the lawsuits against gun companies. The tobacco litigation, specifically the "Master Settlement Agreement" between tobacco companies and litigating states, led to a large-scale redistribution from cigarette manufacturers and their customers to other groups in society.[9] That redistribution compensates society for some of the "externalities" imposed by the cigarette industry and helps to shrink its overall size. A lot of people had been arguing that such a change would be socially desirable for a long time. However, it was not going to happen through Congress or through the state legislatures. The cigarette sellers had enough much money floating around the legislatures to block any significant move toward greater regulation or taxation. In the same sense, proponents of *FleetBoston*-like reparations claims believe that significant redistribution toward groups that make up America's underclass will not happen through legislative action. Hence, the turn toward the courts.

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[6] See 50 U.S.C. app. § 1989.
[7] Complaint and Jury Trial Demand at 1, Farmer-Paellman (No. CV 02-1892).
[8] Id. at 1.
[9] On the tobacco settlement, see David M. Cutler, et al., How Good a Deal was the Tobacco Settlement? Assessing Payments to Massachusetts, NBER Working Paper No. 7747, June 2000, available at http://papers.ssrn.com/paper.taf?abstract_id=233750.

Statistics and the Social Welfare Approach

Perhaps the best way to get a sense of the potential of the social welfare approach is to start with a review of where things stand in terms of relative welfare levels. Table 1 shows the percentage of families living below the poverty line in the U.S. for the years 1959 to 1999. The first two columns in the table compare poverty rates for black and white families including those not married (female-headed households). The last two columns compare poverty rates for married families.

The statistics show that the poverty rate among black families fell from nearly 50 percent in 1959 to 28 percent in 1969. It held steady at that level for the next twenty years. The most recent year in Table 1, 1999, shows the poverty rate for black families at 22 percent, a substantial decline relative to the stagnation of the previous three decades.

White families appear to have made substantial progress from 1959 to 1969, with the poverty rate dropping from 15 to 8 percent, and inconsistent progress for the next twenty years. While the statistics do not show the same stagnation seen in the numbers for black families, the poverty rate at the end of 1989 is the same as it was at the end of 1969. In 1999, we see a significant drop in the white poverty rate down to almost 7 percent.

| Families Below Poverty Line in the United States | | | | |
|---|---|---|---|---|
| Year | % of Families White | % of Families Black | % of Families White Married | % of Families Black Married |
| 1959 | 15.2 | 48.1 | | |
| 1969 | 7.7 | 27.9 | | |
| 1979 | 6.9 | 27.8 | 4.7 | 13.2 |
| 1989 | 7.8 | 27.8 | 5.0 | 11.3 |
| 1999 | 7.3 | 21.9 | 4.4 | 7.1 |

Source: U.S. Bureau of the Census

Table 1

These numbers have implications for the social welfare-based reparations lawsuits. To see the implications, we should start with a consideration of the changes in poverty rates, viewed in light of the changes in redistributional policies of the federal government. The most aggressive period for redistributional policies occurred roughly between 1969 and 1989. Admittedly, the civil rights

and great society legislation began during the mid-1960s, but it is unlikely that they had much of an impact on relative wealth levels by 1969.

Table 1 suggests a pessimistic outlook for the potential of social welfare-based reparations litigation. The most aggressive period of redistributional policy coincides with more than twenty years of stagnation in the poverty rate for black families. For those who believe in the transformational potential of *FleetBoston*-like lawsuits, this is a disappointing fact.

The Census data on poverty rates for married families became available much later, and so Table 1 shows the numbers only from 1979 to 1999. Some interesting observations are suggested by these data. For both races, the poverty rates are lower within the population of married families. The decline appears to be much greater for black families, however. The ratio of white married to general family poverty rates runs from a high of 68 percent in 1979 to 60 percent in 1999. The ratio of black married to general family poverty runs from 47 percent in 1979 to 32 percent in 1999.

The relative poverty rates of married families to general families suggests most of the difference between black and white family poverty rates can be explained by family structure – specifically, the low rate of marriage among black families below the poverty line.

The Census data on poverty rates suggest the following for the year 1999. The marriage rate among white families below the poverty line was 82 percent,[10] and the marriage rate among black families below the poverty line was 48 percent.[11] The poverty rate among non-married white families was 20 percent,[12] and the poverty rate among non-married black families was 36 percent.[13] If black families below the poverty line had the same marriage rate as white families below the poverty line in 1999, the general black poverty rate would have been 12.3 percent,[14] nearly half the 22 percent level reported for that year.

That the black poverty rate appears to be so largely influenced by family structure has to be considered a discouraging piece of information for proponents of the social welfare model of reparations litigation. The problem is that reparations lawsuits cannot do much to change the marriage rate in poor black families.

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[10] This is the ratio of the number of married-couple white families in the 1999 Census sample, 48,794, to the number of white families in the sample, 60,256.

[11] This is the ratio of the number of married-couple black families in the 1999 Census sample, 4,144, to the number of black families in the sample, 8,664.

[12] I found this by using the relationship $7.3 = (1-.82)x + (.82)4.4$, where $x$ is the poverty rate among non-married white families in 1999.

[13] I found this by using the relationship $21.9 = (1-.48)y + (.48)7.1$, where $y$ is the poverty rate among non-married black families in 1999.

[14] If poor blacks had the same marriage rate as poor whites in 1999, the overall poverty rate would be given by $(1-.82)36 + (.82)7.1 = 12.3$.

Perhaps I have been unfair in my description of the social welfare model. The goal of the *FleetBoston* suit may be to use the money collected from defendants to build social institutions that foster family stability, enhancement of human capital (education, skills), and the development of businesses. If so, the social welfare based litigation may indeed lead to a substantial drop in the black poverty rate. But this is a purely speculative argument. There would be a substantial lag between payout and results if the real aim of the *FleetBoston* suit were to invest in the development of social capital. Also, there is nothing in the *FleetBoston* complaint that would lead one to believe that the aim of the lawsuit is to fund social capital development.

A Framework for Claims

Two features distinguish reparations claims from ordinary, run-of-the-mill tort lawsuits. One is a credible assertion by the plaintiffs that they faced an insurmountable *legal barrier* in the past, that it would have been impossible to seek a remedy in the courts at the time of the initial injury. This is true of both the Tulsa and *FleetBoston* complaints. The Tulsa riots were initiated by lynch mobs who claimed to be searching for a black man accused of assaulting a white woman. In that period, when racist lynchings were common, black residents of Tulsa would have rationally assumed that no court would seriously consider a lawsuit seeking compensation for injuries caused by a lynch mob. The claim of a legal barrier is obviously more credible in the case of the *FleetBoston* complaint: slavery was formally sanctioned by law until its abolition in 1865.

The second distinguishing feature of reparations claims is *passage of time*; the claims are typically brought long after relevant statutes of limitations for torts as well as many crimes have passed. The passage of time problem presents several legal difficulties. First, there is the problem of *identification*. The identities of the victims and injurers are hard to determine,[15] though the importance of this problem varies with the type of claim. The Tulsa complaint involves identifiable victims. The injurers in the Tulsa case are to some extent identifiable. Some of the vandals and killers are probably still alive, perhaps living quietly in Tulsa. If you accept plaintiffs' claims that the city and state governments are partially responsible, which seems plausible when a group launches a pogrom and goes unpunished by the state, then those entities still exist and can be sued. However, the local and state governments have surely changed since the days of the Tulsa riots. They are formally the same entities that were in existence at the time of the riots, but in terms of the characteristics relevant to the lawsuit they are vastly different from their predecessor regimes.

[15] For discussions of the identification problem, see Mari Matsuda, Looking to the Bottom: Critical Legal Studies and Reparations, 22 Harv. C.R.-C.L. L. Rev. 323 (1987); Alfred L. Brophy, Some Conceptual and Legal Problems in Reparations for Slavery, 58 New York University Annual Survey of American Law 497, 503-505 (2003); Marc Galanter, Righting Old Wrongs, in Breaking the Cycles of Hatred, at 107-31 (Martha Minow ed., Princeton Univ. Press 2002).

Identification is a much more serious problem in the *FleetBoston* case. The named corporate defendants had no direct hand in the slavery business; they are successors to businesses that once had a hand in slavery. This raises the same problem we observe in the Tulsa case but in a more severe form. While the defendants in Tulsa are formally the same entities that were in existence at the time of the riots, though their characters have changed, the defendants in *FleetBoston* are not even formally the same entities. Moreover, the successor corporations named as defendants in *FleetBoston* probably bear little resemblance to their predecessor firms. Given that successor firms are generally not liable for the torts of predecessor firms, this is a potentially important obstacle to plaintiffs. Successorship law makes exceptions, and forces successors to assume the liabilities of predecessors, in special cases in which the successor has promised to assume them or at the least continued the same operations. But the successors in this case probably fall into neither exception.

Perhaps the more troubling identification problem in *FleetBoston* is that it appears to be a matter of chance that some corporations have been identified as successors.[16] One assumes there were many more firms involved in slavery than the number that appear as named defendants on the *FleetBoston* complaint. Suppose the named defendants (including the Corporate Does) were all held liable. Should their liability be capped, as in the market share liability cases, by their degree of responsibility in creating the harm?

The identification problem on the part of plaintiffs in the *FleetBoston* case is even more severe. This is a well known problem, so I will not tax the reader with a detailed account. Who are the descendants of the victims of slavery? What should be done about African Americans who cannot trace an unbroken blood line through other descendants of slaves? Should an African American multimillionaire who can trace an unbroken blood line to slavery be considered within the plaintiff class?

The second problem connected to the passage of time is described as "causation" or "proximate cause" in the law. The law requires proof a causal link between the plaintiff's injury claim and the defendant's breach of the legal standard. I have explored this problem elsewhere.[17] For now, it should be

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[16] This version of the identification problem – inability to get substantially all of the responsible injurers in court – has emerged as a barrier to market share liability claims. See, e.g., Skipworth v. Lead Industries Association, 690 A.2d 169 (Pa. 1997) (rejecting market share liability claim in case of 100-plus year old house). Admittedly, the problem is different in the slavery reparations context. In *Skipworth*, the fact that the plaintiff could not be sure that he had joined the responsible defendant or defendants was a major flaw. Plaintiffs in the *FleetBoston* case are suing the successors of proper defendants, but their levels of responsibility for harms to the plaintiff class differ greatly. In addition, in most cases the link, in terms of finances or business practices, between the successor and its pre-1865 predecessor is tenuous.

[17] Keith N. Hylton, Slavery and Tort Law, Boston University Law School Working Paper, SSRN electronic library, available at http://papers.ssrn.com/paper.taf?abstract_id=374200.

enough to say that it will not be easy to prove that a particular plaintiff's position today is the direct result of slavery several generations ago.

The third problem connected to the passage of time is that of *prescription of legal rights*. I refer to statutes of limitation. They exist in part because of the reasons mentioned above – identification and causation, both of which become difficult to prove as time passes. They also exist because the deterrent effect of the law is likely to be weak, relative to the cost of its implementation, as more time passes between initial injury and enforcement of the law.

Looking at the identification problem alone, we can classify reparations complaints according to the scheme in Figure 1 below. The columns describe categories of identifiable and non-identifiable injurers. The rows describe categories of identifiable and non-identifiable victims. So, for example, the first cell of Figure 1 contains complaints involving identifiable injurers and victims.

Under the category of identifiable injurers I have included cases involving injurers who were actively responsible for the harms imposed on victims. For example, the Tuskegee syphilis experiments involved identifiable government departments.[18] I put the Tulsa complaint in the non-identifiable category because the only responsible parties identified so far are the local governments, who were passive.

Holocaust reparations claims belong in both the identifiable and non-identifiable injurer categories. Claims against the German government or against the Swiss banks involve identifiable injurers who were actively responsible, though again we are talking about successor corporations. Holocaust claims also involve a potentially large number of passively responsible actors, which are difficult to identify. For example, claims against manufacturers for selling technology or items that aided the Nazi regime probably could be asserted against an indeterminable number of corporations. And then there is the Goldhagen thesis that most ordinary Germans were willing accomplices,[19] which creates an even larger identification issue.

The only unexplained part of Figure 1 is that involving identifiable defendants and non-identifiable plaintiffs. The claims to communal land by American Indians or Australian Aborigines are representative of this type of reparations claim. The actively responsible injurer is easy to identify. The victims, descendants of the initial group of dispossessed natives, are sometimes

[18] In December 1974, the class action suit was settled for roughly $10 million, which provided $37,500 to each of the surviving subjects of the study and smaller amounts to other victims. Galanter, *supra* note 15, at 124, n.2 (citing James Jones, Bad Blood: The Tuskegee Syphilis Experiment (New York: Free Press, 1981)).

[19] Daniel Jonah Goldhagen, Hitler's Willing Executioners: Ordinary Germans and the Holocaust (New York: Alfred A. Knopf, 1996).

difficult to identify. Indeed, the issues are equivalent to the ones that arise in determining the group the plaintiff class in the *FleetBoston* case.

| *P\D* | *Id* | *Non-id* |
|---|---|---|
| *Id* | Tuskegee<br>Japanese internment<br>Holocaust<br>Tulsa (conspiracy theory) | Tulsa (passive theory)<br>Holocaust |
| *Non-id* | Communal land claims (in U.S., Australia) | *FleetBoston* |

Figure 1

My point in setting up this framework is to differentiate the types of reparations claims in terms of their likelihood of prevailing in court. Identifiability is a basic prerequisite for any tort suit seeking compensation for injuries. A tort plaintiff is unlikely to collect damages if a court cannot be relatively sure that the defendant he is suing is really the one who caused the plaintiff's injury; the same is true if the court cannot be sure that the plaintiff is really the one who suffered an injury. The tort cases put this problem under the general category of "factual causation." The oldest and most widely accepted solution to the identification problem appeared in *Summers v. Tice*, where the court shifted the burden of proof to two hunters who both shot at the plaintiff at the same time, only one of them wounding the plaintiff.[20]

In terms of identification, the Tuskegee case is the strongest within category of claims, because both the victims and the actively responsible injurers were identified. The Tulsa claim is almost as strong, though its closeness to the

[20] Presentation by Richard Delgado at 2003 AALS Annual Meeting, in Washington DC.

Tuskegee case depends on the plaintiffs' theory of liability. If the plaintiffs assert and produce sufficient evidence to prove that the local and state government defendants acted in conspiracy with leaders of the rioting mob, then the Tulsa claim is essentially equivalent to the Tuskegee case.[21] However, if the plaintiffs can show only that the local and state governments were negligent, in the passive sense of not doing enough to prevent the harm or punish the injurers, then the Tulsa claim is weaker than the Tuskegee case because the Tulsa defendants would not be actively responsible injurers. Still, even under this theory it is arguably too strict to put the Tulsa claim in the category of non-identifiable defendants. In terms of identification, the Tulsa complaint is much closer to the Tuskegee case than to the *FleetBoston* claim.

Though the Tulsa complaint is relatively close to the Tuskegee case on identification grounds, and therefore a relatively strong case on that score, the other barriers connected to the passage of time (reviewed above) remain and still must be surmounted. The proximate causation problem is not a serious obstacle. This is not to say that proximate cause issues are irrelevant—they clearly are relevant. However, the proximate cause objections appear to be weak.

What kind of proximate cause defense could be asserted in the Tulsa case? There is a basic rule coming out of the constitutional tort cases, similar to the general tort rule on rescue, that a government department does not have a duty to rescue a particular citizen from private harm. The doctrine can be traced to the *DeShaney v. Winnebago County Dept. of Social Services*[22] case in which the Supreme Court rejected the constitutional tort claim brought against a county social services department for failing to intervene to protect a child from being savagely beaten by his father. The governments in the Tulsa case could try to cast the lawsuit as a rescue claim, and shield themselves with this version of the no-duty rule. Of course, this defense is preposterous. The plaintiffs are claiming that there was a duty to prevent the harm *and to punish* the injurers, neither of which appears to have happened. And although I am not familiar with the case law on this issue, I would think a police force does have a duty to prevent a highly foreseeable crime.[23] The old practice of Southern police forces to be "gone fishin'" at just the time that a racist mob set out to lynch someone should be considered actionable negligence at least.

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[21] First Amended Complaint at 7-8, *Alexander v. Governor of State of Oklahoma*, (N.D. Ok. 2003) (No. 03CV133 E/C) ("Defendants the GOVERNOR OF THE STATE OF OKLAHOMA and the CITY OF TULSA conspired together and acted in concert with one another throughout and after the Riot. The Defendants called out local units of the State National Guard and deputized white citizens of Tulsa, Oklahoma ("Tulsa"), who, acting under color of state law, participated as members of a white mob in a race Riot that was designed to, and did in fact, brutalize and terrorize the African American residents of the Greenwood District.")

[22] 489 U.S. 189 (1989).

[23] See Shore v. Stonington, 187 Conn. 147, 156, 444 A.2d 1379 (1982) (to maintain an action that a police department has a duty to prevent harm to an individual, the law requires a showing of foreseeable harm to an identifiable victim).

Since the identification and proximate cause questions are relatively simple and fall in favor of the plaintiffs in the Tulsa complaint, the only remaining question is whether the claim should be barred on prescription grounds, i.e., on the passage of relevant statutes of limitation. This is a difficult question. On one hand, prescription rules serve good purposes. They bar old claims brought after actively responsible actors and witnesses have moved or passed away; evidence has disappeared and grown stale. On the other hand, this is a case in which plaintiffs have a credible claim that they were effectively barred from suing for compensation within the period of the statutes of limitation. The local police forces and courts would not have cooperated with any effort to sue for compensation in 1921. The litigants would have been left to the mercy of the same lynch mob that conducted the initial riot.

Clearly there was a period, it is difficult to say how long, in which any claim for compensation would have been quite difficult to bring and most likely unsuccessful. The Tulsa claim should not have been barred over this period, which implies that the statutes of limitation should have been tolled. The question is whether that period should be considered so long that a suit for compensation brought today should not be barred by the prescription rules. The case boils down to this simple issue. It would seem harsh for a court to deny compensation on such a narrow ground, especially in view of how close the Tulsa and Tuskegee claims are. On the other hand, I am not aware of any court tolling a statute of limitations because the plaintiffs rationally discounted the likelihood of a successful suit.

As it happens, the Tulsa plaintiffs are arguing that a successful lawsuit would have been exceedingly difficult until the year 2001, when a special commission formed by the State of Oklahoma presented a more or less full account of what occurred during the 1921 riot.[24] This should be viewed as an effort to fall within the "discovery" basis for tolling a statute of limitations. Under the discovery rule, a statute of limitations is tolled until the plaintiff discovers his injury – as in the case of medical malpractice victim who discovers that a sponge has been left inside him months after the surgeon's negligent act. The Tulsa plaintiffs can be understood as arguing that there was not enough information about the cause of the 1921 riot to bring a successful suit until the publication of the 2001 report. To be sure, this is not the same as the traditional discovery argument, but it is close.

This is a plausible justification for tolling the statute of limitations only because of the special circumstances of the Tulsa case. Lawsuits brought by victims soon after the riots were met with hostility in the local courts and government offices, and routinely dismissed.[25] Official accounts of the riots were

[24] First Amended Complaint, at 18 & 21, *Alexander* (No. 03CV133 E/C) ("The legislature of the State of Oklahoma adopted many of the Commission's findings by statute in 2001 …").
[25] *Id*. at 20 (citing Alfred Brophy, *supra* note 3, at 95-97) and 21.

deliberately vague and obfuscated the chain of causation and responsibility.[26] In addition, many of the victims eventually moved on, choosing to build their lives again in a new environment rather than staying behind to regain what was lost. Given the enormous cost of finding victims, persuading them to prosecute a claim, and proving responsibility, a highly plausible case can be made that the Tulsa suit was not a feasible claim for a private lawyer to pursue until the state's own investigation had set out the facts on causation and responsibility.

If this statute of limitations question is resolved in favor of plaintiffs in the Tulsa case, will the *FleetBoston* complaint appear to be stronger? Perhaps, but the distance between the *FleetBoston* and Tulsa claims is quite a bit farther than that between the Tulsa and Tuskegee claims.

[26] *Id*. at 20-21, and 164.