

21. Stember, *Sexual Racism*, p. 8. See also polls indicating that resistance to interracial sex, though weakened, still exists, particularly among close relatives or family members of the people involved. One survey of these polls found that, between 1968 and 1972, the proportion of whites who disapproved of marriages between blacks and whites declined from 76 percent to 65 percent, but the proportion who would be "concerned" if one's own teenage child dated a black dropped only from 90 percent to 83 percent. And in a 1975 survey, fully 85 percent expressed disapproval, in varying degrees of intensity, to the idea of marriage of one's daughter to someone of another race.

Constructing Masculinity

Maurice Berger, Brian
Wallis, and Simon
Watson, eds. New York:
Routledge, 1995.

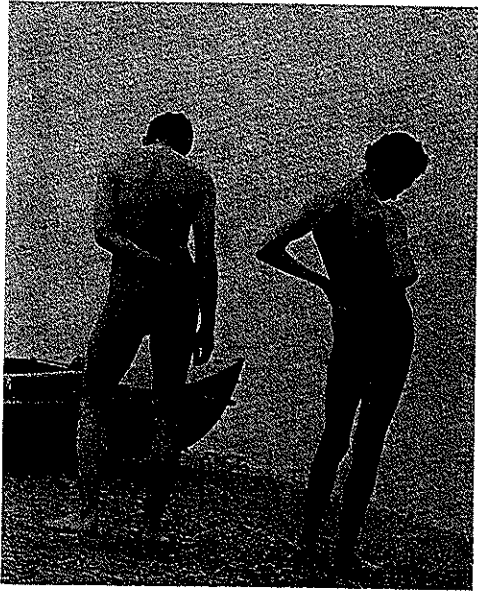
RICHARD DELGADO AND JEAN STEFANCIC

MINORITY MEN, MISERY, AND THE MARKETPLACE OF IDEAS

INTRODUCTION

As everyone knows, the social construction of masculinity is problematic. The stereotype of the ideal man is forceful, militaristic, hyper-competitive, risk-taking, not particularly interested in culture and the arts, protective of his woman, heedless of nature, and so on. And in many families, boys are conditioned actually to behave that way.

But the social construction of men of color is even more troublesome and confining than that of men in general. Men of color are constructed as criminal, violent, lascivious, irresponsible, and not particularly smart. In this chapter



Thomas Eakins and J. Laurie Wallace, *At the Shore*, c. 1882.

we review the history of society's depiction of men of color in stories, films, editorials, and other social texts. We find that these images are almost always negative, although their specific content varies from era to era. Equally important, the harmful nature of these images is rarely seen as such at the time, yet have eerie parallels across the four main racial groups we study. Moreover, these negative images and stereotypes are not accidental, but functional: Racist depiction, far from being a social evil, is a social good that enables society to accomplish goals that vary from era to era but always includes the subordination or marginalization of minority men.

Finally, the harmful images are not easily dispelled by counterimages, or "more speech," as legal theorists call it. For reasons we discuss, the racism of our time is only dimly seen as such. Countervailing speech, exhortation, narratives of all kinds aimed at dispelling the negative images of minority people thus rarely arise, and when they do they are apt to be dismissed as humorless, political, or extreme. We employ narrative theory and history to show how and why this happens. Not only is the vaunted marketplace of ideas a poor tool for dispelling harmful racial depiction, the very playing field is slanted. The system of narratives and received understandings that the would-be reformer must contend with itself contains a set of agreed-upon truths and presuppositions, including "feelings are minor," "the cure for harmful speech is more speech—talk back!" and "who would believe you—you are partial." The old adage that

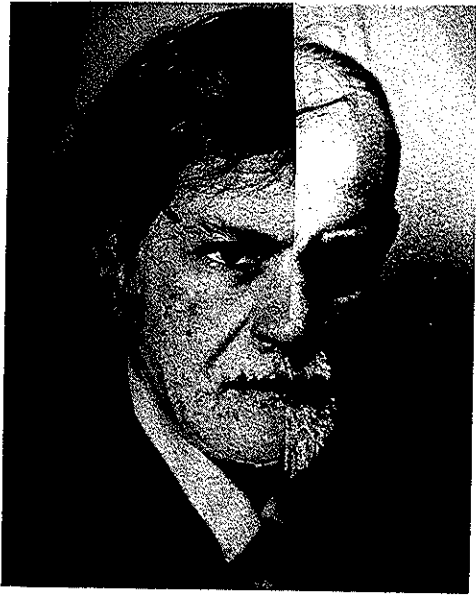
one cannot use the master's tools to dismantle the master's house unfortunately has more truth than First Amendment theorists would like us to believe.

In this essay, we first set out the empirical evidence for (i) the ubiquity; (ii) the functionality; and (iii) the parallels among negative stereotypes of the four principal groups of color in the United States—African Americans, Native Americans, Mexican Americans, and Asian Americans. Then we explain why these negative images proliferate and endure, and develop a framework—the "empathic fallacy"—to explain why the system of negative depiction resists alteration through a talking-back or more-speech solution of the type favored by the American Civil Liberties Union (ACLU) and other free-speech traditionalists.

IMAGES OF THE MINORITY MALE IN AMERICAN LAW AND CULTURE

The images of African-American *women* in U.S. culture—the Mammy, the welfare mother, the militant-but-lazy office worker—are bad enough (and the same is true of Mexican señoritas, Indian squaws, and Asian temptresses and Mata Haris), but those of males of color are, if anything, worse. Early in our history, minstrel shows depicted African-American men as slow-witted, lazy, happy-go-lucky creatures fawning on the goodwill of their masters. The Sambo, a stock character incorporating these characteristics, appeared in popular American dramas in the eighteenth century. Portrayed by white actors wearing blackface, Sambo spoke gibberish and generally acted the buffoon. A later black male caricature, Jim Crow, added singing and shuffle-dancing to blackface minstrelsy, furthering the image of the happy, childlike slave. Harriet Beecher Stowe's *Uncle Tom* exhibited a dignity denied to previous black characters. As she drew him, the happy slave image took on a more somber cast, giving Tom a long-suffering, pious demeanor in the face of the hardships of slavery. Even so, her character's kindness and nobility enabled readers to be comfortable with white-over-black social relations. By drawing on previous stereotypes, Tom constituted little break with a happy past. Other stories from this period depicted black men as either contented with their lot or imbued with a kind of fatherly wisdom. *Uncle Remus* stories, for example, show the latter kind of male—kindly, wise, compassionate, incapable of doing harm.

This changed, however, during Reconstruction. The freed black, no longer enmeshed in the economics of slavery as a property interest of whites, was consequently less subject to direct control. His new liberty threatened the balance of social relations. His sexuality, previously denied or unacknowledged,



Anne Rowland, *Untitled (Sigmund Freud)*, 1987/93.

suddenly became the subject of obsessive attention. Tacit acceptance of miscegenation during slavery, justified by the economic necessity to create more workers, reversed itself into fear of race pollution—black men sexually overpowering white women. In fiction, black males were portrayed as brutish, aggressive, and bestial.

These widely held social attitudes found artistic expression in D.W. Griffith's 1915 movie *The Birth of a Nation*. In that film, a beastlike black man pursues a young white woman until she jumps from a cliff to her death. Other scenes showed black males as irresponsible, vindictive and threatening. The movie was based on the novel *The Klansman*, authored by Thomas Dixon, a white Kentuckian and former classmate of President Woodrow Wilson. Wilson thought so highly of Griffith's film that he requested a private screening for himself and members of the Supreme Court. Although the National Association for the Advancement of Colored People (NAACP) protested the vicious racial stereotyping in *The Birth of a Nation*, film critics lauded its purely cinematic achievements, which, in their view, outweighed any harm caused to blacks. Black men returned from World War I to a hostile environment in the United States, finding that their acceptance was influenced more by such derogatory film images than by an appreciation for their service in the armed forces.

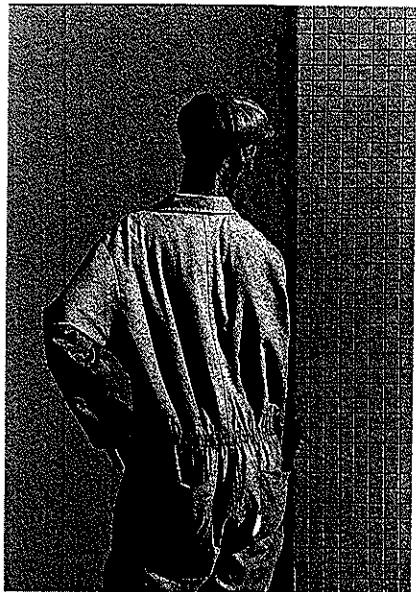
When the literary movement known as the Harlem Renaissance sprang up in the 1920s, white onlookers were bemused and baffled, considering it a kind

of aberration. They were fascinated by its "otherness" and deemed it exotic. Not threatening in any economic sense, its sexual aspects were in tune with the new permissive era of the 1920s.

The depiction of Native-American males in our national literature parallels that of blacks. From the seventeenth century, Indians were placed on either end of a spectrum of social relations, but seldom in the middle. Early explorers, starting with Columbus, described the Native American as innocent, generous, and friendly. Initial contacts between settlers and Indians were often favorable. James Fenimore Cooper reflected these relations when, in *The Last of the Mohicans* (1826), he created the faithful Indian friend Chingachgook, a forerunner of the nonthreatening and loyal sidekick, Tonto.

Later, of course, conflict broke out. As happened with blacks, writers began to depict the Native American as menacing, hostile, and threatening. The first captivity narrative in which a white woman is taken away by pillaging Indians appeared in 1682. Other tales of the period depicted Indians as looters, burners, and killers. Cotton Mather and Puritan writers called them sorcerers and demons possessed by Satan. The legal system tapped theological notions to develop the "Discovery Doctrine," by which Indian land could be seized by any European person or nation. Nineteenth-century narratives obligingly followed suit, portraying Indians as barbarous and half-civilized, unable to enjoy stable, civilized, Western-style lives. This genre continued into the twentieth century, when early filmmakers featured Indians, played by whites, dancing war dances, launching surprise attacks on innocent or heroic whites, and engaging in other ruthless behavior. By 1911, the depiction of Native Americans was so skewed that four Western tribes sent protests to then-President William Howard Taft. But little changed. Indeed, just two years later, D.W. Griffith produced *The Battle of Elderbush Gulch*. In this film, as in the slightly later *The Birth of a Nation*, a white woman is in danger of sexual violation, this time by Indians. Trapped in a cabin, surrounded by hostile renegades, her fate hangs in the balance. The white men trying to defend her even deliberate whether they should kill her in order to save her from the Indians. The cowboys-and-Indians genre continued in this vein until World War II, when the enemy role in movies was transferred to the Japanese.

If most European settlers of America knew something of blacks and Indians, they had far fewer contacts with Asians and Mexicans. Chinese immigration, mostly male, was encouraged in Western states during the mid-nineteenth century. Most Chinamen, as they were called, worked in the gold mines, built railroads, and did the backbreaking work that other settlers shunned (much as today's immigrant workers perform tasks whites consider too menial or



low-paying to do themselves). During this period, depiction of Asians was either neutral or mildly negative. A few editorials and cartoons made fun of the newcomers' inability to speak perfect English, rendering them hapless and nonthreatening figures somewhat reminiscent of Sambo.

But many Chinese gained a foothold by working for others, then set off independently to run their own shops, laundries, and restaurants. Their perseverance, independence from whites, and willingness to help each other were both admired and feared; they became economic competitors. The easiest way to rally animus against them was to ridicule and scorn their physical and cultural traits and to question their motives and loyalty to the United States. If not rendered as harmless innocents, they were presented as sinister agents of evil, much as Indians and blacks had been portrayed. In 1919, in a film series called *Patria*, newspaper publisher William Randolph Hearst presented such a virulent image of Chinese immigrants as a "yellow menace" that even President Wilson protested. Hearst responded by changing the series so that it became predominantly anti-Mexican. In the 1930s, as Japan became a political threat on the world scene, filmmakers transferred the Asian stereotype to them, showing Japanese men, played by whites, as cunning, foul, savage, tricky, and potential rapists of white women.

Mexicans entered, settled, and remained in the Western and Southwestern regions of North America in the sixteenth century. Largely unknown by Eastern

settlers, they became part of the romance and mythology of the West, generally taking one of two forms: the harmless innocent or the wily villain. As the first, the Mexican was represented either as a shiftless but happy-go-lucky lover of song, dance, and food, or as a mysterious tall, dark, handsome, "Spanish" type. The villain image took the form of the conniving and treacherous *bandido* or the greaser. During and just after the war with Mexico (1848 to 1850), Mexicans were uniformly characterized the second way—as shifty and brutal. But when whites finally secured an economic advantage by winning the Texas territory, Mexicans were no longer a threat. Depiction took on a more generous quality. Though they still were rendered as indolent, pious, and lacking in resourcefulness, stories and scripts showed them as traditional, sedate, and law-abiding. There was, however, the ever-present fear of the Mexican who did not know his place, and might become sexually aggressive toward white women.

When the labor supply was ample, Mexicans were less of a threat. During these periods, early film imagery presented Mexicans as harmless buffoons or tequila-drinking clowns. In times of war or competition, however, the image changed. Movies such as Griffith's *The Greaser's Gauntlet* (1908) showed Mexicans shooting Anglo heroes in the back, stealing their gold or horses, lusting after white women. Novels and newspapers also reinforced these stereotypes. World War II brought a need for labor for the war effort. Most racial groups (except the Japanese) were afforded a temporary respite. Though the negative Mexican type continued somewhat, heroic Mexicans, such as Marlon Brando's character in the 1952 movie *Viva Zapata!*, began to appear.

WHY THESE NEGATIVE IMAGES PROLIFERATE AND ENDURE

As we have seen, the predominant images of men of color in any era are apt to be intensely negative, although the quality or content of the images changes from period to period—now a hapless, dim-witted figure, now a threatening animalistic one—in response to social needs. In one period, society needs reassurance that blacks are happy with their lot (as during slavery, for example), in another, it needs to justify repression. The sullen, out-of-control black suited the latter purpose. And the same is true for the other three nonwhite groups whose history we have briefly reviewed—the hapless, ever-smiling Sambo is to Charlie Chan as the Indian sidekick is to . . . and so on. Negative depiction, far from being a mistake or a product of ignorance, is *functional* for the dominant society—not a bad, in other words, but a good.

Moreover, the vicious images we have discussed were *not seen as such at the time*. The reading and viewing public was exposed to hundreds of such

scripts, pictures, narratives, and films. And, because so few persons in the dominant group had close friends who were black, Mexican, Native American, or Asian, the images became the reality. Narrative theory teaches that our sense of the world is the product of hundreds and thousands of such stories or narratives, which we use to interpret, construct, and understand our experiences, including new stories and narratives that others offer us. This explains why the dominant narrative of race is so slow to change—individuals interpret new narratives in terms of their preexisting stock, which serve as a kind of screen. If the new story is too different from the ones we hold, we pronounce it extreme, political, or bizarre. During every historical period, most readers tended to accept the existing stock characters of minority persons as “the way things are” or, at worst, as slight exaggerations. Except from members of the racial groups concerned, there were few protests.

History shows that one cannot effectively “talk back” against the dominant narrative of one’s day. And, with race, the reason is that we simply do not see the racism of our time as such. We see it only years later, after the paradigm has begun to shift and society has adopted a different, sometimes more enlightened, view of the group in question. But while the image prevails, it constitutes the truth. Criticisms of images of blacks in novels or movies, for example, are rejected as humorless or extreme. Everyone uses stock characters, we say. What is so wrong with a film that includes a black maid? Are not many maids, in reality, black? And, just last week, I heard two of them talking in the accent and jargon I used in my script.

True, in every era a few courageous writers and artists speak out against the racism of their day. Unfortunately, they are generally ignored; they have no audience. Harriet Beecher Stowe’s famous novel sold well only after decades of abolitionist agitation had sensitized her public to the possibility that slavery might be wrong. Nadine Gordimer won the Nobel Prize only after decades of writing about the evils of apartheid, and only when her country was on the verge of abandoning that system of governance. Early films by blacks found small audiences. Consider also the recent “discovery” of a generation of African American poets and novelists such as Charles Chesnutt and Zora Neale Hurston, who were writing fifty or a hundred years ago.

We have coined the phrase “empathic fallacy” to describe the mistaken belief that we can quickly and endlessly reform each other and ourselves through verbal means—by presenting arguments, novels, texts, and films that show another side of the story, that show stigmatized people as normal. Both history and narrative theory show that things simply do not work that way. The

marketplace of ideas is useful for making incremental, not large, changes; for correcting small, not systemic, error. Notions that are deeply inscribed in consciousness, that form part of the narrative by which we understand the world—including the counternarrative the dissenting writer offers—are for all intents and purposes unchangeable. Deeply inscribed narratives do not seem like narratives or stories at all, but the truth. The narratives by which we reason are unassailable because they form the basis from which we judge new narratives, including ones that would challenge our received views about, for example, the intelligence or niceness of black people as a group.

Furthermore, it is difficult to have one’s counterstory (about an intelligent, sensitive, high-achieving Mexican, for example) heard. Those most likely to attempt to circulate those stories—creative people of color—face additional obstacles in being taken seriously. They strike us as partial or biased because of their very membership in the group whose status they are attempting to lift. Moreover, the storyteller of color confronts a host of cultural narratives and rules that reduce his or her credibility and impact. Dominant stereotypes of persons of color present them as shrill, unintelligent, lazy, affirmative-action babies, or—at best—soulful, poetic, deep, and in touch with their feelings. Who would take seriously a lecturer or storyteller like that?

Not only does the system of images resist changes, our political system of free expression often makes matters worse. Writers and graphic designers feel freer to use racist images because another writer is equally free to make an antiracist movie. Moreover, the system of free expression has an important apologetic function. Because there is a free market in ideas, our group’s superior position must be deserved; *their* poverty must be a result of a fair competition. Our culture’s ideas competed with their more easygoing ones and won: It was a fair fight. If black or Mexican people are poor and despised in many cases, well, what can be done?

Finally, our very imagery of outsider groups shows that we do not really want them to speak out effectively in their own behalf. Try to recall how people of color speak in the dominant narratives. Generally, poorly: in grunts, broken language, and words of one syllable. The dominant narratives contain very few examples of eloquent, self-assured speakers of color. In real life, of course, they exist in profusion. But when we encounter one, it is invariably a surprise. What a welcome exception, we say!

The empathic fallacy helps us to understand why many minorities place less stock in the First Amendment than others, and also why that amendment is now beginning to be seen as a legitimating tool of conservative forces. The

empathic fallacy is related to the pathetic fallacy, familiar from literary theory. The latter holds that nature is like us, has moods, thoughts, and feelings that we can understand. The poet, noticing that it is raining, writes, "The world weeps with me." The empathic fallacy points out a similar mechanism by which incessant and systematic depiction resists rapid change, through verbal means—exhortation, argumentation, preaching, texts of all sorts. Both fallacies are based on *hubris*, the belief that we can be more than we are, that we may somehow surmount our limitations of experience, positionality, and framework through a magical text, easily and endlessly making ourselves more and more humane. Both history and theory reveal that this is not so, indeed that a principal function of our system of free expression is to reproduce social reality, not to change it. Nowhere is this more visible than in the case of ethnic depiction. Images change slowly, resisting the one simple rational counterargument that reductionist First Amendment marketplace analysis holds ought to work. Pernicious images circulate, are believed, become ingrained. Fifty years later, when the times, economic conditions, and finally consciousness have shifted, we look back and say: "How could we have believed that? Why did no one protest?"—blithely ignoring the Willie Hortons, the Indian sports mascots, and all the other vicious images that circulate daily, freely, almost without protest, in our midst.

KENDALL THOMAS

"MASCULINITY," "THE RULE OF LAW," AND OTHER LEGAL FICTIONS

By way of a beginning, I want to quote the description that accompanied the editors' invitation to contribute to this chapter on "Masculinity and the Rule of Law":

American legal studies have recently undergone a radical shift. The application of critical theory to juridical thought by certain scholars has raised a number of new questions. Can universal legal "truths," themselves rooted in the sexist, racist, and class presumptions of the 200-year-old Constitution, be deconstructed in order to accommodate the altered social terrain of the 1990s? Can a masculinist legal theory be developed to