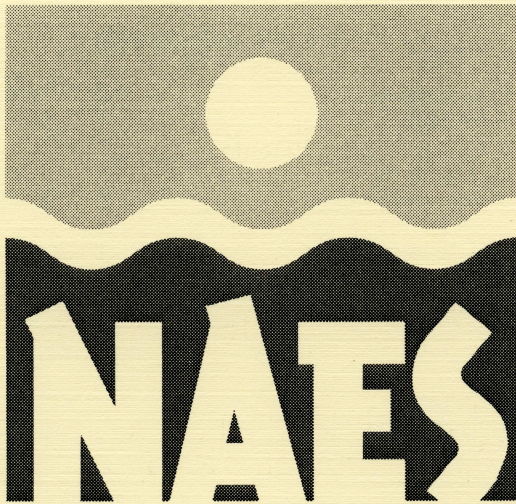


**EXPLORATIONS
IN
ETHNIC STUDIES**



Ethnicity and Public Policy

January 1993
Volume 16, Number 1

The National Association for Ethnic Studies

The National Association for Ethnic Studies (NAES) was founded in 1971. NAES has as its basic purpose the promotion of activities and scholarship in the field of ethnic studies. The Association is open to any person or institution. The Association serves as a forum to its members for promoting: research, study, curriculum, design as well as producing publications of interest to the field. NAES also sponsors an annual conference on ethnic studies. *Explorations in Ethnic Studies* is an interdisciplinary journal devoted to the study of ethnicity, ethnic groups, intergroup relations, and the cultural life of ethnic peoples. The journal is refereed and provides a forum for socially responsible research. Contributors to the journal demonstrate the integration of theory and practice.

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Editor's Note

This is my first issue as Publications Editor for the National Association for Ethnic Studies (NAES). I consider it quite an honor to have been nominated to be the new incoming editor. I would like to thank the outgoing editor, Gretchen M. Bataille, for all of her support and guidance during this transition period. NAES Publications have profited greatly by her commitment and dedication to ensuring that our journal remain an active outlet in publishing important research being produced by scholars in the field of ethnic studies. With the able assistance of Catherine Udall Turley, our managing editor, I am confident that NAES can continue to serve as an effective vehicle for featuring some of the up-to-date research in our discipline. Ethnic studies publications have had to struggle, sometimes continuously, for their survival. There continue to be positive signs about publications in the field. The new journal of the National Council for Black Studies, *The Afrocentric Scholar*, recently began publication. Unfortunately, there are some not-so-positive occurrences, like the demise of the *Journal of Ethnic Studies* after nineteen years of publication. Many individuals had their careers positively impacted by having their research published in this journal when they were yet budding scholars. We cannot afford to have our new publication accomplishments overshadow or obfuscate our knowledge of simultaneous publishing setbacks.

It is a time when colleges and universities are attempting to establish a strong commitment to 'internationalizing' the curriculum. This is understandable, given all the events taking place in Europe, South Africa, and other foreign countries. However, we must remind our institutions of higher education that this process must not come at the expense of U.S. race and ethnicity studies. There is still a great deal to do in order to "nationalize" our curriculum offerings on most campuses across the country. We need to focus our attention on the experiences of African Americans, Chicanos/Latinos, Native Americans, and Asian Americans, and make their experiences an integral part of the U.S. ethnic/racial tradition. There is also an urgent need to compare and contrast the international and national group experiences. Our 1994 NAES National Conference, to be held March 17-20, 1994 in Kansas City, Missouri, has "Ethnicity: Global Perspectives" as its theme in order to help people understand how the differences and also the similarities of oppression impact ethnic groups, no matter where they live.

Finally, this special issue of *Exploration in Ethnic Studies* focuses on the topic of "Ethnicity and Public Policy." I am pleased that Maulana Karenga, special issue editor, has compiled an excellent set of articles that illuminate the importance of public policy and how public policy can affect the situation for ethnic/racial groups in the United States.

Miguel A. Carranza
University of Nebraska-Lincoln

Introduction

Maulana Karenga, Guest Editor

California State University, Long Beach

This special issue on "Ethnicity and Public Policy" explores critical issues in public policy from various vantage points. Its scope is wide-ranging and aims at delineating and analyzing discourse and practices which both inform and constitute public policy on ethnic questions. It includes theoretical, historical and practical studies and represents a variety of approaches to both the definition and discourse of ethnicity and public policy on the national and international level.

ChorSwang Ngin's article "A New Look at the Old 'Race' Language: Rethinking 'Race' and Exclusion in Social Policy" seeks to deconstruct and place into disuse the vocabulary of "race" and "race relations" and the accompanying discourse on social relations. She examines the problems which this vocabulary and discourse pose in the academy, governmental practice and everyday discussion and interaction, using an analytical framework informed by the work of British sociologist Robert Miles on the social construction of race. Rejecting race as an analytical and explanatory category, Ngin demonstrates how racialization of groups leads to negative structuring of both social relations and public policy.

In their article "Institutionalized Discrimination in the Legal System: A Socio-historical Approach," Michael Hodge, Kevin Early and Harry Gold seek to explain the contradiction between the continuing persistence of high levels of institutionalized discrimination in the US. criminal justice system and apparently decreasing levels of self-reported racial prejudice. To do this, they use a socio-historical analysis which focuses on macro-sociological forms of social control by legal institutions rather than on micro-sociological

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expressions of prejudice. Moreover, they argue that contrary to the conventional view that links prior prejudice to discrimination, they also emerge, persist and disappear independently of each other. The authors also contend that an institutional model of discrimination rather than an individualistic one reveals often-hidden ideological roots and structural patterns which exist and persist to determine discriminatory outcomes.

Paul Dauphinais' article, "Local Control of Nineteenth Century Public Policy and the Ethnic Working Class in New England's Mill Towns," reflects on how local industrial structures act as a major factor in influencing both community formation and resultant public policy. He argues cogently that the economic structure of a given locality, by influencing the direction of public policy for its exclusive interest or in the public interest, can create a venue for contestation or cooperation between ethnic groups. This same process, he maintains, can either lead to openness and exchange among various given ethnic groups or to inward focus and hostility.

In her article, "Setting Sun: Popular Culture Images of the Japanese and Japanese Americans and Public Policy," Mary Young takes a critical look at the effect of negative popular imagery of Japanese on public policy. Reconstructing the historical framework in which this interaction of imagery and policy occurs, she traces its multifaceted forms and results. Moreover, she demonstrates the continuity of earlier and later imagery and the evolving public policy stances which are informed and influenced by this imagery.

In their article, "When all the World's a Stage: The Impact of Events on News Coverage of South Africa, 1979-1985," Stanley O. Gaines, Jr., David C. Roberts and Donald J. Baumann use a time series analysis to establish factors contributing to significant news coverage of South Africa between 1979 and 1985. They are interested in determining whether the geographic and/or socio-political impact of events rather than deaths caused the increase in coverage. Also, they discuss the impact of symbolic events on public policy and social change through media coverage.

Charles Henry's article, "Human Rights and National Minorities in the US," examines the challenge of redefining the traditional conception of human rights in the US and laying a foundation for a more grounded and useful conceptual framework in the context of a multicultural country and world. He cites three myths which inform the traditional view of human rights: 1) that rights exists only as individual claims against the state; 2) that political and civil rights should have priority over economic and cultural rights; and 3) that they are natural or "God-given." Challenging each of these designated myths, he poses rights as a political process of empowerment of people and relationships of power within and between groups.

Karenga—Introduction

Finally, Ron Schmidt provides “A Selected Bibliography on Race/ Ethnicity and Public Policy in the United States.” This selected bibliography includes nine areas of public policy: 1) general and group-specific overviews; 2) civil rights; 3) voting rights; 4) affirmative action; 5) political economy; 6) education; 7) language and culture; 8) urban policy; and 9) immigration. It is well-structured and inclusive and offers a valuable selection of essential public policy literature in the area of race and ethnicity.

—Maulana Karenga
Guest Editor

**You can't make
sense of America
without
understanding Asian
Pacific Americans.**

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A New Look at the Old "Race" Language: Rethinking "Race" and Exclusion in Social Policy

ChorSwang Ngin

California State University, Los Angeles

This essay is an examination of the use of the notion "race" current in American social science literature and public discourse. It argues that the current assumptions of "race" are mistaken and lead to misunderstanding and misdirected social policy. A rethinking of the notions of "race" requires making a paradigmatic shift of the old categories of "race" and "race relations" to a new language that rejects "race" as a descriptive and an analytical category. It examines the processes through which "racist" social policies are enacted against Asian immigrants in contemporary Southern California.

INTRODUCTION

The "race" language in contemporary scholarly and media discourse in the United States is most ubiquitous. Major media headlines after the Los Angeles riots included "Race and Rage" (*U.S. News and World Report*), "Rethinking Race and Crime in America" and "Beyond Black and White" (*Newsweek*), "Why Race Still Divides American and its People" (*Time*) and more recently, "Blacks vs Browns" (*Atlantic Monthly*). In the aftermath of the riots, academics and journalists analyzed the riots as though it were a matter of "race relations": first it was a problem between blacks and whites, then between blacks and Koreans, and then between blacks and Latinos, and back to blacks and whites as public attention focuses on the Reginald Denny incident as the case goes to trial.

The intent of this paper is not to attempt to grasp the meanings and the causes of the earth-shaking events in Los Angeles, but to deconstruct the worn-out vocabulary of "race" and "race relations" and the narrow framework that has dominated academic writing, official governmental practices, and discourse on social relations. To

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engage in a serious discussion of “race” in America, we must begin with an examination of the mistaken assumptions of the old language of “race” and “race relations.” How are these categories used, by whom, and for what purpose? If African Americans are “black” and European Americans are “white,” where do the multitudes of other Americans who are neither “black” nor “white” fit in? The issue here is not a call for proportional representation for Asian Americans, Latinos and Native Americans as “yellow,” “brown,” and “red,” even though this has been the mainstay of ethnic politics in the United States. At issue here is the dominant theoretical paradigm that employs the idea of “race” in the categorization of people, the structuring of social relations, and as an analytical and explanatory variable. The author argues for a rejection of the use of the terms “race” and “race relations,” and to suggest that “racialization” is the more appropriate process structuring social relations.

Muddles in the “Race” Language

In everyday and academic discourse, the terms “race” and “ethnicity” are used interchangeably and add to much confusion over which is “race” and which is “ethnic” in the designation of populations. In the US tradition, the terms “race,” “ethnic,” and “minorities,” have been employed throughout as analytical categories to describe and “explain” these groups. In academic discourse, this usage is exemplified by the works of both the ethnicity-based theorists and the race-centered writers. For example, the ethnicity-based theorists use the term “ethnic” to refer to the early European immigrants who became “American” after one or two generations, and who had the opportunity of equal participation in the social and civic life of “mainstream” population. Thus they regard Blacks, Asians, Latinos and Native Americans as “ethnic” groups based on the belief that through assimilation, these groups are able to achieve the same integration as whites.¹

Within this debate, the term “racial” has been defined by the race-centered theorists to refer to a group of people who share certain phenotypical characteristics. “Racial” groups are assumed to have experienced a history of persistent and systematic exclusion, subordination, and discrimination in American society even after several generations. Thus, Asian Americans, Latinos and Native Americans, like African Americans, are defined as “racial” groups, based on their history of exclusion, subordination, and discrimination.²

However, no sustained intellectual engagement has taken place on this debate, and no uniform consensus has been reached on the definitions of these terms. Most academic writing and printed media use one or the other or both terms, without clarity and without specificity. University courses, text book titles, and conference

panels are replete with titles such as “Race and Ethnic Studies,” “Race and Ethnic Relations,” “Perspectives on Race and Ethnic Issues” and the “intersection of ‘Race,’ ‘Ethnicity,’ ‘Class’ and ‘Gender.’”

This muddle in the academic language is also reflected in official governmental practices. The 1980 Census, for example, listed fifteen groups in the “race” item in the questionnaire: White, Black, American Indian, Eskimo, Aleut, Chinese, Filipino, Japanese, Asian Indian, Korean, Vietnamese, Hawaiian, Samoan, Guamanian, and Other. Even though the Census Bureau claimed that the concept “race” as used did not denote any clear cut scientific definition of biological stock,³ by categorizing groups as “races,” the Census Bureau was in fact suggesting that *each of the listed groups including “whites” were “races”* (my emphasis). The classification of peoples of Mexico, Central America and Latin America is even more complicated. Because the Census uses a “white” and “black” category, Latinos were moved back and forth from a “white” or “ethnic” (“persons of Spanish mother tongue”) category in the 1930 Census to a “black” or “racial” (“other nonwhite”) category in the 1940 Census. In the 1950 and 1960 Censuses, the ambiguous category of “white persons of Spanish surname” was used. In 1970, the classification was changed to “white persons of Spanish surname and Spanish mother tongue.” Then in 1980, Mexican Americans, Puerto Ricans, along with other Central and Latin Americans with diverse national origin, came to be classified as “non-white Hispanic.”⁴

In the 1990 Census, populations in the United States were again categorized by “race.” The four major “races” were white, black, American Indian (including Eskimo or Aleut), and Asian or Pacific Islander. Data on the Hispanic origin population were based on a separate question, and thus “Hispanic persons may be of any race.”⁵

In media discourse on social relations, “race” was again the major framework. A special *Los Angeles Times* report on the riots was entitled “Separate Lives: Dealing with Race in L.A.” The problem in Los Angeles was one of “race relations.” And a poll on residents’ impressions of Los Angeles and the spring’s event was framed in terms of,

“How would you rate race relations in Los Angeles?”

“Do you think race relations in Los Angeles are getting better or worse?” “Would you approve or disapprove if someone in your family married a person of a different racial or ethnic background?”⁶

This dominant framework employed in academic debate and public discourse on social relations has been identified as the “race relations” paradigm by Robert Miles in *Racism and Migrant Labour: A Critical Text*, (1982).⁷ His critique of the “race relations” paradigm together with a significant number of other British and European

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writers, have further advanced the theoretical shift away from this paradigm. Yet, this literature is largely unknown to American writers. It is in response to the need to move beyond the old "race" language that Miles's argument against the use of "race" and "race relations" will be described in substantial detail here. Multiple strands of the scholarship in the post-"race relations" paradigm are not the object of this paper. What follows is Miles's discussion of the sociological construction of the notion of "race," its theoretical extension to "race relations," and its reproduction in scholarly analysis.

"Race" as a Sociological Construct

Central to Miles's work is the notion of the generation and the reproduction of the idea of "race" as a social and ideological construct. Miles noted that the meaning of the term "race" has changed over time. It used to mean lineage or common descent when it first entered the English language in the sixteenth century.⁸ With European colonial expansion and colonization, contacts with non-Europeans increased. This contact was structured by competition for land, introduction of private property, demand for labor, and the perceived obligation of conversion to Christianity. Miles posited that European ideas of the foreigners were based on the representation of the Others generated in the context of a stronger European economic and military force. During the eighteenth century, with the scientific assertion of the existence of different biologically constituted races, the term "race" came to mean discrete categories of human beings, based on phenotypical differences, and ranked with psychological and social capacities. This idea of "race" as discrete and fixed subdivisions of the human species, each with variable cultural characteristics and capacities for civilization, was later refuted with the emergence of the science of genetics. However, this scientific discourse on "race" did not replace earlier conception of the Other: the idea of "races" as biological types persisted even though proven false by the weight of scientific evidence. Why isn't the scientific reconception of "race" not reflected in everyday discourse? Miles maintained that an understanding of the continuing reference to phenotypical features suggested that "factors other than the development of biological sciences were fundamental to the formulation of the notion of 'race' and its continuing reproduction." This use of "race" to refer to phenotypical variation, which is given social recognition, which in turn structured social interaction, is what Miles referred to as the "social construction of race."

Therefore, based on this historical understanding of the concept of "race," Miles argues that "race" cannot be used descriptively to classify people in society nor can it be used for either analytical or explanatory purposes; "race" itself is an ideological category that requires explanation. Thus, Miles has carefully avoided the ambiva-

lent employment of the term “race” except when he refers to its use by other writers. Following Miles, several British writers have also carefully placed the term “race” within inverted commas.⁹

From “Race” to “Race Relations”: A Conceptual Transition

In extending his argument against the use of “race,” Miles argues that the conceptual transition from the social category of “race” to “race relations” is based on the legitimation given to the belief that “human species consists of several distinct ‘races.’” This “race relation” is then objectified as an area of study. Thus, he stated, the very term “race relations” can only mean that “races” have social relations, one with another. So, for relations to occur, “race” must exist. Indeed, they “exist” in the sense that human agents believe them to exist, but uncritically to reproduce and accord analytical status to these beliefs is nevertheless to legitimate that process by giving it “scientific” status.¹⁰

Conceptual Conflation: The Use of “Race” as Analytical and Explanatory Categories

Miles’s unequivocal rejection of the category “race” as having any descriptive and analytical value allowed us to ask a number of questions pertaining to its use in the United States: First, what descriptive purpose might the classification of people as “Asian,” “Hispanic Non-white,” “Black” and “white” “races” serve? Second, what purpose might a classification of populations by “races” serve? Third, how was the notion of “race” employed in social analysis?

To ascertain the descriptive value of a group of people classified as “Asian/Pacific,” I will first examine the composition of the population labeled as such, as is the practice in the Census. Asian/Pacific American in fact comprises the multitudes of people whose ancestral countries span half the globe between Longitude 60° east in the western reaches of Pakistan, to Longitude 120° west in the eastern reaches of Polynesia. This region comprises a most diverse human population. The population classified as Asian/Pacific American includes at least fourteen distinct groups: Chinese, Filipino, Japanese, Asian Indian, Korean, Vietnamese, Laotian, Thai, Cambodian, Hmong, Pakistani, Indonesian, Hawaiian, and people from the Pacific Islands of Micronesia and Polynesia. Each of these groups is further divided along linguistic, dialectal, religious, class and generational differences. The latter refers to the number of generations a population has been in the United States. Finally, a group of Asian/Pacific Americans, the Hawaiians, are not even foreigners at all, but are native to the United States. Yet, these divergent groups are enshrined in the US Census as one single “racial” group: Asian/

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Pacific Americans. If geographical contiguity is the criteria for categorizing Asian/Pacific Americans, absent from this category are the European Australians, New Zealanders and white Russian immigrants in this country. Obviously, criteria other than geographical boundary within Asia plays a part in the categorization.

The use of racial characteristics, either real or imagined, as grounds for inclusion and exclusion of immigrants to the United States is well-known to ethnic studies scholars. The federal law of 1790, for instance, had reserved naturalized citizenship to “whites” only. It provided the basis for excluding Chinese, Japanese, Filipino, Asian Indian and Korean immigrants from citizenship. When confronted with contradictions in the “whites only” provision, “racial” justifications were invented to preserve “white” hegemony. The denial of Asian Indian immigrants from naturalized citizenship serves to illustrate the point. Earlier this century, Asian Indian immigrants in the United States were recognized by students of ethnology of that period as Caucasians, the same “racial” stock as whites, but the Indians were “not white,” and were therefore denied naturalized citizenship. The argument put forth by the Asiatic Exclusion League was that “the people of the United States were ‘cousins,’ far removed from the Hindus of the northwest provinces.” The “forefathers” of white Americans “pressed to the west, in the everlasting march of conquest, progress and civilization,” while “the forefathers of the Hindus went east and became enslaved, effeminate, caste-ridden and degraded.” The Western Aryans became the “Lord of Creation,” while the Eastern Aryans became the “slaves of Creation.”¹¹

The use of “color logic” to exclude “non-whites” was clearly to “confer the privilege of citizenship upon a class of persons.”¹² In this and other instances, the resistance and the challenges arising from the subjugated populations’ protests against unjust laws and practices came to be referred to as “race relations.” For most sociological writings in “racial and ethnic studies”, the effort was to identify the violence against immigrant and minority populations, the historical and social structures in which “race relations” predominate, and the assimilability of immigrant and minority populations. Thus, it is not surprising that colonial situations are the locations where “race relations” are to be found.¹³ In the multiethnic urban situations of today, it is again the “race relations” between whites and blacks, blacks and Koreans, Cambodians, and Latinos, and so on, that came to dominate social discourse, and not the underlying protest against problems of exclusion by one group on the other.

The use of “race” as an analytical and explanatory category is most extensive in social analysis. Ubiquitous sociological statements in the newspapers such as “Crime: 1 of 4 Young Blacks in Jail or in Court Control,”¹⁴ and “Blacks Can Face a Host of Trying Conditions in Getting Mortgages,”¹⁵ are examples of the use of “race” as analyti-

cal and explanatory categories. It is not surprising also to see comparisons between “Asians” and “Latinos” on high school test scores, “Asians and whites” on college admissions, “blacks” and “Latinos” on employment opportunities, and so on. Each of these “racial” groups is then given determinate value in affecting the outcome of the sociological finding. To elaborate with another example from the newspaper, a special report in the *Orange County Register*, entitled “The Color of Justice,” made the following claims: “A white, black, and a Hispanic are accused of the same crime. In California, the white person is more likely to get a light sentence or get off scot-free” and “race plays a bigger part than money (in an accused’s ability to win plea-bargaining).”¹⁶ In this formulation, “race” is conceived as an active agent, or a subject that in itself affects the criminal’s court outcome. It is, however, not “race” that affects court decisions, for there is not such a real phenomenon. What affects court outcome is a decision by the judge, the jury, and the public defendant to plea-bargain or not to plea-bargain with the criminal defendant, on the basis of a belief about the supposed social correlates of a certain complex of physical attributes. It is that belief of the judge, the jury, and the public defendant or private attorney about their criminal defendants that warrants analysis as an instance of racism.

“Race Relations” or Racialization

The employment of the idea of “race” in structuring social relations should be more appropriately termed “racialisation.” Writing in *Racism*, Miles refers to this alternative concept as

Those instances where social relations between people have been structured by the signification of human biological characteristics in such a way as to define and construct differentiated social collectivities. . . .

The concept therefore refers to a process of categorisation, a representational process of defining an Other (usually, but not exclusively) somatically.¹⁷

Three characteristics are attached to the notion of racialization. First, “racialisation entails a dialectical process of signification. Ascribing a real or alleged biological characteristic with meaning to define the Other necessarily entails defining Self by the same criterion.” Thus, “the African’s ‘blackness’ reflected the European’s ‘whiteness’; these opposites were therefore bound together, each giving meaning to the other in a totality of signification.” Second, the concept of racialization should take into account “the emergence of the idea of ‘race’ and its subsequent reproduction and application.” Third, “the racialisation of human beings entails the racialization of the processes in which they participate and the structures and institutions that result.” That is, in racialized societies, institutions

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and political processes, both formal and informal, are necessarily also racialized. An example of a racialized society would include a political process where demands are made that certain “racial” groups be represented in position of power or be given special privileged status.¹⁸ In the United States, this process is commonly known as the politics of entitlement, fought at city halls, and schools boards, and other offices for “equal representation” of the “races.”

Racialization and Social Policy

The notion of “racialization” set forth in Miles’s writing—the representation and definition of the Others based on the signification of human biological characteristics—is particularly useful in understanding European American discourse on the non-European immigrants and natives alike. Until recently, discourse on Native Americans, African Americans, Latinos and Asian Americans was largely dependent upon phenotypical representation and evaluation. Both color and physical appearance were given social significance. By reason of their color and physical features, these populations were perceived as bearers of diseases, as endangering European American morals and “racial” purity. This discourse based on “race” provided the ideological context, in part, for the enactment of past restrictive immigration laws and discriminatory policies. Social policies towards Asians, for example, were codified as laws: the federal law of 1790 limited naturalized citizenship to “whites” only, the 1882 Chinese Exclusion Act singled out Chinese on a “racial” basis, the National Origins Act of 1924 totally prohibited Japanese immigration, while permitting an annual entry of 17,853 from Ireland, 5,802 from Italy, and 6,524 from Poland.¹⁹

Even though fewer phenotypical characteristics are employed in contemporary discourse of immigrant groups in formal legislative policies, the racialization process continues to inform many group practices and individual actions. I would include as instances of racialization in California the “hate crime” against minorities, the vandalism, “racial” slurs, and hateful mail directed at immigrant institutions, churches and individuals, and racialized code words such as “welfare queen,” “Willie Horton,” “immigrant,” “illegal alien,” “model minority,” *inter alia*.

This process of racialization not only depended on defining others based on their skin color and other phenotypical characteristics, but also increasingly, cultural attributes. Six ethnographic examples from Los Angeles and Orange Counties in Southern California will serve to illustrate this racialization process taking place. This will form the basis for a discussion that is grounded in the multiple processes of racialization, declining economic position of the United

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States, the indigenous populations’ attempt at defining the local imagined community, and the formulation of social policies on immigrants today.

The first example occurred early in the spring of 1989. When a group of South Vietnamese military veterans from the city of Westminster in Orange County applied for a permit to hold a parade, the parade permit was denied. Justification given by the City Council was that the closing of a major street to traffic at the heels of another major festival would result in complaints from motorists. However, it was the remark of Councilman Frank Fry accompanying the denial that caused an outcry from the Vietnamese community. Councilman Fry told the military veterans, “If you want to be South Vietnamese, go back to South Vietnam!”²⁰

Westminster, home to “Little Saigon” has the largest number of Vietnamese and Vietnamese Chinese businesses. There have been many incidents of resentment and opposition to the Vietnamese presence. Letters were received by the City Council opposing the granting of licenses to Asian businesses and freeway signs directing motorists to “Little Saigon” have been repeatedly defaced.²¹ Vietnamese Chinese real estate developers from Westminster were barred from an adjacent city for fear that they might change the character of the downtown landscape.²²

The second anti-immigrant incident selected here involved the beating of a college-bound Chinese American youth by a group of “skinheads” in Fullerton in Orange County. In the summer of 1991, while the youth was talking with his white friends at a park, they were questioned about their views on race and then beaten; the Chinese American youth was badly bludgeoned and his friends suffered bruises. The “skinheads” were later arrested and prosecuted. While the case was going to court, members of the Fullerton Chinese American Cultural Association wrote their political representatives to ask for a speedy trial. The response from their congressional representative, former Congressman Dannemeyer, was that the attack was the result of the Chinese American’s refusal to “adopt local custom, language and culture.” It was the group’s promotion of its cultural identity—the “hyphenated Americans” (Chinese Americans, African Americans, and the like)—that brought on the attack.²³

In another anti-immigrant instance, a Japanese American Community Center in Norwalk, Los Angeles County, was vandalized and spray-painted with “Japs Go Home” and other hateful writings on the walls in November 1991. The center had been in existence for sixty years and was used for language classes and cultural activities.²⁴

In the next example, a Chinese family living in an apartment in Alhambra in Los Angeles County was told to remove Chinese New

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Year decorations over the family doorway that the family had put up for their Chinese New Year celebration. The Housing Board's argument was that the paper banner violated the housing code.

In another anti-immigrant gesture, the County Fire Departments of Hacienda Heights in San Gabriel Valley, Los Angeles County and Garden Grove in Orange County repeatedly threatened two Buddhist temples with closure and fines because of "fire hazard," "parking code" and other violations as a result of complaints from neighbors. These two temples, one grand and one modest, were both serving the growing Asian populations in the region; the Hacienda Heights temple serving Chinese Buddhists, and the Garden Grove temple serving Vietnamese Buddhists.²⁵

The final example selected is the banning of vendors from the streets of Los Angeles, and Anaheim and Santa Ana, in Orange County. The street vendors, mostly of Mexican and Central American origin, sell anything from oranges to flowers to stuffed animals. Los Angeles has an existing ordinance banning street vending, whereas Anaheim and Santa Ana are adopting new ordinances to ban street vending. Complaints and charges against street vending claimed that the vendors create a "disgusting" look of a "Third World" city.²⁶

To understand current antipathy towards certain social groups, I would argue that it is the result of categorization of immigrants and foreigners based on their physical features (skin color, primarily) and cultural characteristics. Past signification of immigrants, by ascribing them with real or alleged biological or cultural characteristics, are available as part of American culture for reinterpretation, given the existence of certain stimulus. Thus, the targeting of a Chinese American youth for attack is an instance where the youth's physical difference was signified by the group of "skinheads." As in all instances of "racial hate crime," the victims are targeted solely for their phenotypical difference. Indeed, this signification based on what Takaki labeled "racial uniform" pre-dated the Chinese presence in America.²⁷

Former congressman Dannemeyer's conservative response to the Chinese American Cultural Association represented his failure to see the action of the "skinheads" as violence against signified and racialized groups. Instead, he perceived the Chinese Americans as promoting cultural separatism, and he believed it was this "hyphenated-American" identity that was causing divisions within American society. The attack on expressions of "cultural" practices noted earlier—the prohibition of a Chinese family from using Chinese New Year decorations, the Vietnamese veterans from holding a parade and the Mexican vendors from selling in the streets of Los Angeles, Anaheim and Santa Ana—are attacks on those who are perceived as

different. The presence of the immigrants and their cultural activities are regarded as leading to the balkanization of American society.

In the contemporary US, the “stimulus” that leads to the “renewed” attack on Asian immigrants can, in part, be attributed to the decline of the United States as an economic power, particularly its economic position vis-a-vis Japan. Much of the political debate on “What’s wrong with the economy?” focuses on Japan’s unfair trade practices and acquisition of American companies and landmarks. Negative imagery of Japan in the form of “Japan bashing” is articulated by both the indigenous population and the politicians, and often reproduced through political legitimation.

Violence against racialized populations can also be seen as attempts to define the character of the local imagined community. The vandalism of the Japanese American Community Center is an instance of defining Japanese Americans as not part of the local Norwalk community. The representation that Buddhist temples are “problems,” and that city streets with Mexican street vendors are creating a “Third World” appearance are indeed local attempts at checking the erosion of a perceived American imagined community.²⁸

An examination of the social policy towards immigrants and other minorities suggests that they are in the form of pronouncements and ordinances made at city council meetings, decisions and enforcements made by housing boards, fire marshals, and those who have power over the daily routines of minorities, based on the complaints of the local populations. The sentiments expressed in these pronouncements and formulations are widely and broadly shared by a cross-section of the population, including politicians in high politics. The creation and the sustaining of antipathy towards minorities is an attempt by politicians to win credit from their constituencies. They must “constantly appeal to, or create, a public ‘common sense’ which supports their legislative program, including policies that sustains inequality.”²⁹ For instance, in a campaign ploy of the 1988 presidential campaign, the image of a black criminal walking out of prison was used to decry the political opponent’s leniency towards prisoners, and the images of a black hand taking away a white hand’s paycheck was deployed in a conservative Republican’s bid to reverse affirmative action practices. This signification of African Americans as the “problem” in American social and political discourse is articulated by politicians in high office, and is reproduced to reinforce a common sense notion of the representation of African Americans. Antiracist social policy contextualized with an understanding of these interconnections demands vastly different strategies from those calling for multicultural celebration.

CONCLUSION

To engage in a serious discussion of "race," we must reject the employment of "race" as an analytical and explanatory category, and the notion of social relations between groups as "race relations." Instead, drawing on a recent trend in British scholarship, I argue for a paradigmatic shift to examining racialization as the process structuring social relation. The significance of employing this theoretical approach is its application in examining racialization within and between groups: for instance, the racialization of recent Southeast Asian immigrants by more established Asian Americans, the racialization of Central and Latin Americans by Mexican Americans, and the racialization of one ethnic group by another ethnic group, regardless of "color." The paradigmatic shift would also broaden the scope of analysis to include the changing political economy, immigration, nation formation, and the rights and responsibilities of participants in this "community of fate."

Analysis of racialization also exposes the mechanisms by which instances of racism are created and reproduced. This will redirect antiracist social policy from cultural celebrations to mutual representation and signification.

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Institutionalized Discrimination in the Legal System: A Socio-historical Approach

Michael Hodge
Georgia State University

Kevin E. Early
Oakland University

Harry Gold
Oakland University

Despite many of the social, political, and economic changes of the 1960s, discrimination is still prevalent in the United States. Increasingly, evidence of discrimination can be seen in our nation's courts, institutions of higher education, in public policy decisions, and every social, political and economic institution. The question of how this can be in these days of ethnic and cultural diversity has aroused considerable interest among social scientists, as well as among the general public. One area that has been the target of considerable research is the criminal justice system. Wilbanks¹ has suggested that it is a "myth" that the criminal justice system is racist and discriminates against blacks and other minorities. This paper argues to the contrary. It is suggested that Wilbanks has inappropriately applied a microlevel analysis to a macrolevel phenomenon. Examining the historical-structural nature of the legal systems points to great disparities in the status quo of US jurisprudence.

INTRODUCTION

This paper seeks to explain, through socio-historical analysis, the continuing persistence of high levels of institutionalized discrimination in the American criminal justice system, in the light of apparently decreasing levels of self-reported racial prejudice. Indeed, it is

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one of our key arguments that the conventional view that prejudice always precedes and accompanies the development of established patterns of discrimination is not adequate to account for the discrepancy between high levels of discrimination in the legal system at the same time that measurable levels of prejudice have been substantially reduced. Macro-social theories of institutional discrimination suggest that while prejudice and discrimination often occur together, it is also true that they may emerge, persist, or disappear independently of one another, and it is one of the purposes of this paper to explain and illustrate why this is so in the criminal justice system.

Thus, by focusing on macro-sociological forms of social control exercised by legal institutions rather than on micro-sociological expressions of prejudice, we reject arguments by Wilbanks and others that reductions in prejudice or the existence of some type of "mythical racism" are indicators of parallel reductions in the discrimination of blacks and other minorities.

A second key argument which closely follows the first is that a covert but pervasive form of racism has continued to infiltrate the American criminal justice system which negatively impacts blacks and other minority groups disproportionately compared to whites. This lack of access to desirable legal outcomes for many minority group members continues in spite of decreasing levels of reported prejudice. To support this argument, a broad theoretical framework will be utilized to explain the concept of institutionalized discrimination and how this can be applied to the socio-historical analysis of the social control functions of law as they apply to minorities.

To argue that a social pattern, such as discrimination, has become institutionalized is to argue that it has become a stable and widely accepted pattern of behavior in a society so fully internalized by a substantial portion of the population that it is rarely questioned or criticized. Generally speaking, when institutionalization has occurred, the resulting modes of organization include the following elements: 1) they serve real functions or perceived needs; 2) they provide a guiding set of values; 3) they consist of a cluster of social roles and expectations; 4) they produce a coordinated network of social groups (primary groups, voluntary associations, bureaucracy, etc.); and 5) they involve the entire community in this network of values, roles, and groups.² Since such patterns, once established, are difficult to change, they often persist well beyond their original purposes. Thus, whatever the original causes (prejudice, economic exploitation, social control, etc.), institutional discrimination tends to persist at a level independent of the prejudices or motives of individual actors. Nevertheless, it is important to understand the genesis of structural problems such as institutionalized discrimination, especially when they run counter to our democratic ethos. This is the task of the remaining parts of this paper.

Law and Social Control

Law as a form of social control has been tagged by some as the attempt of powerful groups to maintain their status and position. Roucek, for example, has pointed out that every society is characterized by divergent groups, with subgroups having their own value systems, folkways, mores, ideologies, and patterns of behavior varying from or conflicting, to some degree at least, with the dominant culture.³ It is the dominant or more powerful groups that get their interests transformed into law. The law is directly at odds against the interests of the less powerful subordinate group (minority) within a society. Under this system, discrimination becomes inevitable. In order for the more powerful, elite groups to maintain control, they must make a concerted and systematic effort to deny minority or less powerful groups access to resources (such as power). However, some authors have argued that racism and discrimination have been “washed-out” of the system, for the most part. Wilbanks, for example, writes that the “perception of the criminal justice system as racist is a myth.” He further suggests that the facts of social science research support this contention. Recent surveys, such as the NRC report *A Common Destiny* (1989) which indicate that the old style negative attitudes have faded significantly and individual levels of prejudice have declined, seem to support Wilbanks’ contentions. However, this report indicts the criminal justice system for the vast disparities in areas such as arrest, conviction, and imprisonment rates—all of which are much higher for blacks (as a proportion of their population) than for whites.⁴ Some earlier writers have stated that there still remains the deeply rooted racism of 350 years of apartheid-like jurisprudence.⁵

The Traditional View:

Prejudice as the Precursor to Discrimination

One of the most well established views of discrimination suggests that prejudice is the antecedent to discrimination. This once dominant perspective of discrimination highlights prejudice and intolerance as the causes of discriminatory actions. For instance, one of the most influential works in race relations was written by Gunnar Myrdal in 1944. His book, *An American Dilemma*, tied racial discrimination closely to racial prejudice. Myrdal defined race prejudice as “the whole complex of valuations and beliefs which are behind discriminatory behavior on the part of the majority group.”⁶ Katz and Braly established the first empirical links between prejudice or racial attitudes and discrimination. They concluded that “prejudicial attitudes are emotional responses against the target group.”⁷ Henri Tajfel described prejudice using a cognitive social psychological theory of intergroup relations, suggesting that the more different or

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“out” a group is from the primary or “in” group, the more likely discrimination against that “out-group” is to occur. His studies added further support for the “prejudice leads to discrimination” hypothesis.⁸ Additionally, Allport wrote that:

Attitudes which result in gross oversimplification of experience and in prejudgments are of great importance in social psychology. . . . They are commonly called biases, prejudices, or stereotypes. The latter term is less normative, and therefore, on the whole to be preferred.⁹

These micro-sociological theories pit individual values against the superordinate virtues of the American creed. (Just as a reminder: the American creed is based on the notion that “all men are created equal. . . and are endowed with certain inalienable rights”). As Myrdal stated in 1944, it is still true today that there are discrepancies in the stated policy of the United States and its actions. Burkey maintains that this is especially visible in areas of racial discrimination and public policy.

In an attempt to explain this conflict between the social values of the American creed and individual departures from these norms, as well as social policy, social analysts developed the prejudice causes discrimination mode. Historically, proponents of this approach have been able to find empirical support for its major contentions. Even some of the more recent studies have used the same basic paradigm. For example, studies examining police behavior with minorities have tried to impose a “prejudice leads to discrimination” framework on the results. However, while these studies do indeed indicate discriminatory practices, the individual levels of prejudice for these officers was not at sufficient levels to support the prejudice-discrimination model.

Lundman et al., for instance, in their replication of Black’s and Riess’ 1970 study of police conduct with respect to juveniles, found that there was no evidence of police selection of juveniles for involvement in encounters by reference to race.¹⁰ Put simply, the police did not appear to single out those juveniles with which they had contact based on the race of these youths. The same type of evidence has been shown with respect to judges, juries, social workers, and the like.¹¹

Some current social science research, Lundman, Sykes and Clark, for example, indicates that individual levels of prejudice appear to have decreased over the last fifty years. In fact, the levels of professed prejudice are low enough that discrimination should have decreased to a much lower level than it has—if it were only a matter of individual prejudices that led to discriminatory practices. The basic finding in these studies points out that, for the most part, people or individuals are not overtly prejudiced or racist. W.J. Wilson indicated

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that individual prejudices have decreased dramatically since the 1930s and 1940s. What is experienced in contemporary society is a “system” that produces inequitable outcomes that result in disadvantaged people bearing the brunt of social and legal injustices.¹²

Pluralistic Conflict View

The most disadvantaged in our society seem to experience the most vicious injustices. There are a lot of reasons that can be suggested for these inequities. For instance, most neo-conservative perspectives take a laissez-faire approach resulting in a type of “blame the victim” syndrome. That is, the persons who frequent the criminal justice system must have done something to warrant their poor treatment. However, the present essay imposes a pluralistic conflict perspective onto these issues. The historical biases of the majority or more powerful groups within this society have deeply infiltrated the legal system (as well as other institutions such as the educational system, the health care system, etc.). It is these powerful few who get laws legislated that represent the interests of these few and powerful groups. In essence, then, the few powerful elites maintain control vis-a-vis the legal system.

Support for this observation is given by well documented evidence that the disproportionate number of minorities that are disadvantaged and tend to be concentrated in the urban ghettos of our cities are at a loss to change their life situations or even wage an argument for change (Wilson, 1987). These people have been negatively systematized to such a degree that they inevitably are under an extra burden to achieve equity and justice. Leonard Beeghley describes the condition of these disadvantaged persons as analgesic—the people have become “numb” from failed attempts at obtaining the “American dream.” They have fallen into what can appropriately be labeled learned helplessness. The discrimination is so systematized and ingrained that it is self sustaining. The analgesic behaviors are such that these people are brought into contact with the justice system more often than other groups in our society.¹³

Elliot Liebow supports these contentions in his ethnography, *Tally's Corner*, in which he qualitatively demonstrated that the behaviors, while considered deviant by the majority society, are adaptive and functional “in the situation” in which these disadvantaged people are found.¹⁴ In other words, the more disadvantaged persons in our society are seen as behaving outside the bounds of acceptability. By definition, then, these behaviors are in conflict with the “normal” actions (more accurately, norms) of the majority society. As previously mentioned the norms and values of the more powerful, dominant groups are expressed in the laws of the society. And, in order to maintain control, that is, to maintain power and position, the enforcement of the laws is brought to bear upon these

disadvantaged persons.

In direct opposition to the assertions above, Wilbanks suggested that these same studies¹⁵ provide evidence that racism and discrimination are no longer present in the criminal justice system. We hesitatingly accept the social psychological evidence that prejudice has declined significantly over the last few decades. In fact, recent survey data indicate that whites' negative attitudes toward blacks have decreased substantially.¹⁶ However, conditions such as the disproportionately greater number of black males represented in the prisons and on death row attest to the fact that there are major discrepancies in the application (and legislation) of the law.¹⁷ The fact that the great majority of jurors are still white males demonstrates the egregious discrepancy of black and white differences in the justice system. For example, new-conservative commentators conspicuously overlook the fact that only two percent of the legal profession was black in 1965 and that rate has not changed in the 1980s¹⁸; whereas, blacks' representation in prisons is about four times their representation in the general population.¹⁹

An approach more oriented to group conflict and structural sources of racial inequities provides a more parsimonious and effective viewpoint on the differentials between blacks and their white counterparts with respect to the criminal justice system. It is to this issue that we now turn.

A History of Social Control and Discrimination

Dominant values and beliefs (social mores), as well as prominent structural arrangements (used to support implementation of the mores), are typically codified into explicit laws.²⁰ These laws are then enforced by the state. And, once codified and enforced, the law bestows legitimacy on these institutional arrangements, thereby making them resistant to change.²¹ Beliefs about black Americans followed this same sort of progression. (However, the codification of negative beliefs into formalized law does not account for all of the discrimination observed against black Americans. At least some of the racial oppression can be seen as uncoded but nonetheless enforced).

By the early 18th century most of the South had a broad legal framework of slavery that was codified into laws and codes of conduct. There was a major distinction made between white servants and black slaves. Slaves and their offspring were consigned to servitude for life. This distinction is important because it creates an atmosphere where white indentured servants are made to feel superior to black slaves because the whites could potentially work themselves into freedom whereas blacks did not have this opportunity.

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This very blatant action against blacks is one of the critical discrepancies that became ingrained into the more subtle discriminatory practices pervasive today.

Continued early inculcation of a superiority-inferiority dichotomy was further enhanced by the development and use of slave codes. Virginia was one of the earliest colonies to enact slave codes which were adapted from earlier codes of the Caribbean states. The codes of Virginia then became the model for most of the slave codes of the other states. Illustrating the constraints on the liberties of blacks were conditions such as: slaves were not able to leave the plantation without written permission, slaves were not permitted to associate with free blacks or whites, no hint of insolence was tolerated and blacks were not permitted to look directly at a white person. Any of these "offenses" was dealt with swiftly and harshly. Accepted reprimands for violation of any of these rules included whipping, branding, and/or maiming. (As recently as the late 1960s, there were federal reports of lynching and burning of blacks for "more serious" violations).²² These codes were enforced by local sheriffs and courts as well as by the military. On or near plantations, such laws were enforced by slave owners, slave managers, and poor whites. Punishment was almost always administered without the benefit of trial or due process of any kind to the benefit of the accused.²³

It can be seen from the aforementioned discussion that there appears to be a spiraling effect in operation. As the slave population grew there were more and more slave codes issued and these codes served to reinforce stereotypical beliefs and, in turn, these stereotypes legitimated the necessity of enacting and enforcing these types of laws. Recent empirical evidence supports this notion of the vicarious reinforcement of beliefs. Brigham, for example, in discussing the development of stereotypes, implied that stereotypes develop a type of member validation thus reinforcing the belief system that the stereotype fostered. The stereotype is therefore supportive of the person's social "reality" and the person sees the stereotype as accurate regardless of how inaccurate physical reality may demonstrate.²⁴

Societies have arsenals of controls that are remarkable in their scope, variety and nuance. The kinds of control that emanate from a stratification system (such as American democracy) range from the subtleties of etiquette, complement, and earnest advice to deprivation, torture and chains.²⁵ Law is a very formidable social control agent. Law as structure can be seen as the codification of the desires of the majority (or more powerful) over the desires of the minority (or less powerful). Law as process can be seen as the enforcement of the majority desires over those of the minority. Law can be the framework for guarantee of human rights, but it may also be used to restrict

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and deny basic human liberties. Social control through law can be very effective even when it is directed toward control of a population or subpopulation; this is what occurred historically with respect to black people. Control of blacks was deemed so critical that it was written into the Constitution and into laws of the various states. As Wolf suggested, there is a division and inequality in the acquisition of power and prestige. As part of that structure, social control ensures the maintenance of the system.

The Constitution, as the major document legitimating the system of laws, stated that blacks were to be considered as three-fifths of a white man and therefore were not entitled to the same guarantees as full citizens. Until the time of the Civil War, the Constitution supported the slave economy of the United States (after all, it was written by slave owners). This fact may at first appear trite because the intent of the Constitution superseded any individual prejudices. Incorporating statements of stratification forever established the justification for differential treatment of non-white, non-property holders. John Hope Franklin wrote that

it was doubtless the view of Jefferson and many of his contemporaries that blacks were inferior to whites, and this had much to do with their inability or their unwillingness to take any significant steps against slavery.²⁶

Franklin's statement indicates how the attitudes of a few influential people were transformed and transmitted through generations and the legacy of those attitudes are impacting race relations today.

The Civil War was the critical event that caused the demise of the institution of slavery. In 1866 the Thirteenth Amendment to the Constitution was ratified forever abolishing slavery. However, in reaction to the 13th Amendment, southern states enacted "black codes" or "Jim Crow" laws restricting the rights of "free" slaves and segregating blacks from participation in public life, politics, and legal institutions. While differing from state to state there were several commonalities among the codes restricting black access to legal rights: (1) Blacks could not vote; (2) they could not serve on juries; (3) they could not testify against whites.

In order to combat these southern codes, Congress took control of the Reconstruction efforts. Congress divided the South into military districts to ensure adherence to Congressional mandates. The Fourteenth and Fifteenth Amendments were ratified in 1868 and 1870, respectively. The threat of nonadmission and restrictions on who could vote in ratification elections resulted in state constitutions that opened opportunities for blacks in politics, jobs and schooling. These reforms in the South were soon followed by the Civil Rights

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Acts of 1875, which outlawed northern Jim Crow practices.

Changing state and national political conditions, such as the Radical Republicans losing control of Congress and losing the presidency by 1880, however, worked against Radical Reconstruction. In the 1890s the Supreme Court legitimated the re-emergence of Jim Crow practices. The Court declared the Civil Rights Act of 1875 unconstitutional, thereby condoning the denial of blacks access to public facilities. And, in 1896 (*Plessy v. Ferguson*) the Court ruled that segregated facilities for blacks and whites were not in violation of the Thirteenth and Fourteenth Amendments. Justice Brown delivered the majority opinion of the Court:

The object of the 14th Amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based on color. . . . Laws permitting, and even requiring their separation . . . have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power . . .

It should be clearly understood that these decisions were reflections of the attempts of the powerful majority to maintain control and status quo. From this pluralistic perspective, the laws merely functioned to serve the concerns of the more powerful interest groups.

The outline above indicates that there are deep rooted conditions that work against equal attainment of desired and valued outcomes by minority groups. The law guarantees "equal" justice for all citizens. As previously mentioned, justice seems to fall unfavorably upon the minority groups of this country. Blacks disproportionately make up the prison population across the country. This is not too surprising when we consider evidence such as black teenagers between eleven and seventeen years of age are seven times more likely to be arrested than their white counterparts.²⁷ Wilbanks suggested that racism in the criminal justice system is a myth. To the contrary, the mystery is how he fails to deal with great disparities in the justice system.

There is no myth or mystery that the criminal justice system is discriminatory against blacks and other minority groups. The problem evades discernment when individualistic models are applied to a structural, institutionalized condition. An institutionalized discrimination approach can provide a structural analysis and give a more realistic account of the nature of discrimination in the criminal justice system. This structural model provides the framework by which the justice system and laws are seen in their historical contexts. It is in these historical contexts that the institutionalization of

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negative beliefs and traditions about blacks and other minorities has been fostered and legitimated. In the following section, institutionalized discrimination is discussed as a framework for developing a better understanding of the nature of the disparities within the criminal justice system.

Social Science and Institutionalized Discrimination

Now that the socio-historical context has been examined, the framework for a model of institutional discrimination can be discussed. Throughout the history of black people in America, oppressive acts by agents of social control, such as the educational and legal systems, for example, have been encountered. As previously discussed, these agents have not only been involved in the enforcement of discriminatory laws, but they have been the laws themselves. For example, the three-fifths rule of the Constitution, the one-eighth blood line determining race, the "black codes" of the South and the Jim Crow practices of the North all denote very concerted efforts to control the social, economic, political and educational advancement of black people in this country.

Within the last 150-175 years, blatant *de jure* sources of social control and segregation of blacks have been all but eradicated. There is no more legal segregation of housing, education and public accommodations. Instances of these types of blatant discrimination are even viewed with some amount of public disdain. These obvious, forthright attempts to deny blacks and other minorities access to equal treatment and opportunities have been replaced by a more subtle, invidious type of discrimination. While certainly preferable to slavery and perhaps preferable to "old-style" overt racism, this type of discrimination nonetheless has its roots firmly grounded in the attitudes of nearly three centuries of slave/slave-owner mentalities. The laws have moved from saying that blacks are not allowed to live in certain areas to dubious interpretations of the fair housing laws or redlining by realtors. They have also moved more recently to legal maneuvering to undermine the principles of affirmative action legislation. Formation of "intellectual white rights advocacy groups" can be seen on college campuses in direct opposition to the spirit of restitutive legislation. Recently, in Miami, Affirmative Action set-aside programs have been challenged in the courts by white contractors alleging "reverse discrimination."²⁸

While Wilbanks would not consider these activities overtly racist or discriminatory, they are, at the very least, counterproductive and the outcomes are decidedly discriminatory. The individuals involved in these actions may or may not be prejudiced or racist; but, the ramifications of their actions perpetuate a discriminatory system. Hence, the socio-historical aspects of discrimination in the United States suggest that the institutions themselves discriminate by the

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very nature of the system upon which the institution was established.

The notion of institutionalized discrimination²⁹ encompasses the socio-historical aspects of the contemporary American legal system, as well. That is, the pervasiveness of ideologies that suggest the notion of the inferiority of blacks, which are intrinsically intertwined into the fabric of the society, is reflected in the laws that are instituted and enforced. Institutionalized discrimination provides a valid explanation of the notion of interest groups being able to codify their beliefs into law over less powerful groups. Hence, the legal system discriminates in order to maintain the status quo of the more powerful interest groups.

Feagin and Feagin pointed out an interesting condition when investigating the notion of discrimination. They noted that individual discrimination is not a necessary and sufficient condition to the operation of institutionalized discrimination. Institutionalized discrimination can be defined as the denial of desired and valued outcomes (whether intentional or unintentional) which systematically or consistently singles out a group or subgroup of the society.³⁰ As previously mentioned, the more different and the more identifiable a group is, the more likely that group is to be discriminated against by the more powerful or by the majority.³¹ Feagin and Feagin wrote that "discrimination here refers to actions or practices carried out by members of dominant groups, or their representatives, which have a different and negative impact on members of subordinate groups."³² Institutionalized discrimination, then, is the imposition of the ideals and mores of dominant groups through the workings of the system of legal bureaucracy in the United States.

The criminal justice system most certainly can be classified as a bureaucracy. As previously stated, there are great disparities in the rates of blacks versus whites in the prison system. Bridges and Crutchfield state:

Over the past decade, racial and ethnic disparities in imprisonment have provoked national concern. While blacks and other racial minorities constitute a relatively small share of the general population, they make up a very large share of federal and state prison populations.³³

In 1982, the "Bureau of Justice Statistics" reported that blacks made up 12 percent of the U.S. population and 48 percent of the prison population.³⁴ What accounts for numbers that are greater than what chance occurrences could explain? One of the possibilities lies within the institutionalized discrimination found in the legal system. A re-examination of Clark's (1978) study using an institutionalized discrimination model may provide a more finely tuned result than previously obtained. This new analysis may demonstrate that while prejudice on the part of individual police officers may not be

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indicative of their selection for involvement with black youths over white youths, there may be the subtle department "folk wisdom" that black youths are inherently destructive and a threat so they must be picked up at the least bit of suspicion. Feagin and Feagin describe this condition as direct institutionalized discrimination.

Feagin (1989) also notes that this type of discrimination has recently been referred to as subtle discrimination that is not as blatant as the "door slamming" variety of the not-too-distant past.³⁵ Fitting Clarke's data to this analysis produced an entirely different conclusion. Actions of this type of discrimination are carried out continually or routinely by a large number of individuals guided by the rules of a large scale organization or bureaucracy where they have internalized the discriminatory behavior as acceptable. Feagin and Feagin point out that this type of institutionalized discrimination can be shaped by informal unwritten rules as well as more formal laws. They point out that both types of rules are often embedded in a bureaucratic system, such as the legal system.

If an individual police officer were asked if he or she is prejudiced against black youths, the response would not doubt be absolute denial of any such attitude. However, as can be seen from the above hypothetical analysis, individual beliefs contribute minutely to the overall discriminatory actions. The systems approach of institutionalized discrimination offers the more robust explanation of questions of inequality in the legal system of this country. This explanation would not be possible if the traditional prejudice-leads-to-discrimination model were applied. Other instances of "hidden" racism, sexism, ageism and discrimination may be overlooked without a sufficiently powerful model that can be applied.

CONCLUSION

There is discrimination in the criminal justice system. It is not a myth. It is seen in the disparities in rates of arrest and actual arrests, the length of sentences and the greater disproportion of blacks comprising the prison population and death row candidates. The parasitic nature of institutionalized discrimination has equally infested other components of the legal system. For example, the percentage of black lawyers has remained around two percent for the last several decades. Furthermore, the percentage of black law students hovers around five percent. These discrepancies are part of the historical stance of the laws with respect to blacks in this country.

Much social research has used a prejudice-leads-to-discrimination model. This body of research has found that individual levels of prejudice are no longer sufficient to warrant charges of discrimination in the legal system. It was argued here that the use of an individualistic model was inappropriate and that a structural analysis

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would serve to discern the more subtle forms of discrimination prevalent in today's society.

Historical evidence of the founding documents of this republic indicate the deeply ingrained nature of racism and the importance attached to race and skin color. Three hundred years of apartheid-like treatment based on an ideology of innate superiority has left whites in America in a privileged position regardless of the class status in which they find themselves. It is automatically assumed that blacks have some propensity to commit crime and perpetrate violent actions. This "myth" is supported not only by popular media depictions, but within the scholarly press as well. Racism and discrimination are real in the lives of black Americans. The basic guarantee of equal treatment of law is not extended equally in the criminal justice system. The façade of equal treatment is the mythology of the criminal justice system when applied to black Americans.

John Hope Franklin probably states the conditions of race and ethnic relations in this country best. He wrote:

The remarkable thing about the problem of racial equality is the way it has endured and remained topical. It was discussed in the taverns and meeting places of eighteenth-century Williamsburg. It became an obsessive preoccupation of Americans in the nineteenth century. It was discussed at the 1976 meeting of the American Association for the Advancement of Science.³⁶

Now, it is current in the headlines of newspapers across the nation. It is one of the top priorities of the Supreme Court to rule on the legitimacy and constitutionality of Affirmative Action legislation. The virus may have been dormant for the decades of the 1960s and the 1970s but it is now more virulent than ever before and deserves much attention. The implications of this strategy are far reaching. Research designed to test these implications is necessary to establish the generalizability of this model to other institutions as well as the legal system. It is hoped that this essay encourages more critical evaluation of the levels of analysis to be used as well as more critical evaluation of the usefulness of theories related to discrimination.

NOTES

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¹⁹Jaynes and Williams, 1989.

²⁰R.D. Schwartz, "Law and Normative Order," in *Law and the Social Sciences* eds. L. Lipson and S. Wheeler (New York: Russell Sage Foundation, 1982), 13-99.

²¹J.H. Turner, R. Singleton, Jr. and D. Musick, *Oppression: A Socio-History of Black-White Relations in America* (Chicago: Nelson-Hall, 1984).

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²³G.D. Sandefur and M. Tienda, *Divided Opportunities: Minorities, Poverty and Social Policy* (New York: Plenum Press, 1988).

²⁴J. C. Brigham, "Racial Stereotypes: Measurement Variables and the Stereotype-attitude Relationship," *Journal of Applied Social Psychology* 2,1 (1972): 63-76.

²⁵C. Wolf, "Social Class, Status, and Prestige," In *Social Control for the 1980s: A Handbook for Order in a Democratic Society*, ed. J.S. Roucek (Westport, CT: Greenwood Press, 1978).

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³⁰Feagin and Feagin, 21.

³¹Tajfel, 1969.

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Local Control of Nineteenth Century Public Policy and the Ethnic Working Class in New England's Mill Towns

Paul R. Dauphinais
Salem, West Virginia

This essay, using census material, newspaper reports, and other primary sources, examines the impact of local control of public policy on ethnic working class in nineteenth century New England. Research on New England's ethnic groups often focuses on large textile centers dominated by outside interests such as Fall River, Massachusetts or Manchester, New Hampshire. Corporate interests in these cities displayed a disproportionate influence of public policy often serving corporate, not public, interests. The focus of this study, Fitchburg and Worcester, Massachusetts, exhibited well diversified economies controlled by local interests. Local control led public policy in a direction more beneficial to the local population, particularly the ethnic working class. As a result these two cities saw significantly more ethnic cooperation in all facets of life and much less ethnic tension which was so prevalent in the textile cities.

Irish confetti greeted many a French-Canadian immigrant to industrial New England in the nineteenth century. This was not a warm show of affection for new immigrants. Irish confetti was the name given to bricks thrown by Irish workers at new arrivals who threatened their jobs in the local mills.¹ In most cases greetings of this type were in the great spindle cities of the region such as Lowell, Fall River, or other textile producing centers. More often than not, the textile mills were the single largest employer of the local population. In Fall River, Lowell, and Lawrence, Massachusetts; Manchester, New Hampshire; and Woonsocket, Rhode Island, 60% or more of the respective local workforces were directly involved in textile production.²

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Local industrial structures represent a major factor in influencing community formation and resultant public policy. By focussing on the larger “spindle cities” of New England, researchers have taken certain variables as constants. Susan Hirsch writes, “[t]he relationship between specific individuals, local industries and perceived communities offers the best keys to determining the effects of industrialization on the lifestyle and values of workers and on the class and status structures.”³ Immigrants in nineteenth century spindle cities exhibited high rates of ethnic concentration. Textile centers, dominated by an industry which suffered from wild market swings, evidenced ethnic hostility both on the shop floor and in the streets as thousands of immigrants sought a limited number of jobs. This implies that relations between ethnic groups were always tense. However, the distinctive monoindustrial economic structures of textile centers are not necessarily found in other areas of New England. To suggest that different ethnic groups would naturally be hostile to each other is misleading. Diversified industrial cities in New England have been largely ignored, and the ethnic experience in these areas requires examination.

North American immigrants were forced to contend with an urban society still in flux and to compete for jobs in limited markets with U.S. citizens and earlier arrivals.⁴ In monoindustrial centers the dominant industry held a disproportionate influence of public policy. As the most important economic entity, and often the very reason for a city's existence, a dominant company could easily control a city council and mayor for its own purposes. This led to policies which benefitted the corporation and its stock holders, but did little to improve living conditions for ethnic workers, often acting to their detriment and leading to inter-ethnic conflict. Public policy then, by benefitting a corporate interest, served only those involved with the company and not other citizens. Hence, those not connected with the company came to feel slighted and turned inward to compensate for the social inequality forced upon them by the dominant company.

New England's spindle cities have several striking similarities. Most importantly by the end of the 1860s, and throughout the remainder of the nineteenth century, the textile industry, controlled from Boston, dominated these cities. Employment opportunities, river access, and real estate were no longer under local control. Although there were several companies producing textiles, they were all under the aegis of the Boston Associates with interlocking directorates.⁵ Industrial needs of absentee owners took precedence over the urban living conditions of the local workforce.⁶ Corporations attempted to force municipal development in a direction which

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would profit the company by controlling land and water rights. The control of land and water allowed these manufacturers to veto further development in New England's cities as water power could be made unavailable or prohibitively expensive.⁷ They also attempted, and often succeeded, in stifling the growth of other industries so they could control the local labor force. As corporations sold their boarding houses, urban conditions quickly deteriorated in these cities.⁸ Since these companies encouraged housing speculation, house lots became quite expensive and gave rise to the tenements, sometimes called three-deckers, so prevalent in nineteenth century New England mill towns.

The low pay of the textile factories, coupled with high rents and housing shortages, caused ethnic ghettos. Limited residential choice forced immigrants to congregate in areas with low land values. The arrival of new immigrants brought ethnic tension from job competition in the mills and wage reductions during recessions. Social inequality forced immigrant groups to turn inward for ethnic autonomy to overcome the inequality in the larger society. The industrial structure, and the public policy advocated by the corporation involved, drove each city's public policy to benefit the dominant economic entity, which was rarely cognizant or concerned with the local situation.

Worcester and Fitchburg, Massachusetts, the focus of this study, are not so easily identified as large mono-industrial centers of textile production. Both are located in central Massachusetts, in nearly the geographical center of New England. Worcester was a diversified industrial center without water power, natural resources or a maritime location, an "improbable industrial city." In fact, until the 1930s, Worcester was the largest manufacturing city in the US not located on a navigable waterway.⁹ The city was a national center for the making of boots and shoes, machinery, and fabricated metal products. Fitchburg, located thirty miles north of Worcester, is an urban center of lesser importance. Like Worcester, it developed a highly diversified economy with no single industry dominating the city. Fitchburg's industrial base consisted of small locally run woolen and paper mills, chair factories, and machine shops until 1880. After 1880 large cotton mills were built and the paper and machinery making industries greatly expanded. As noted by one contemporary New Englander, "To the manufacture of cotton and woolen goods, the industrial cities of Lowell, Lawrence, [and] Fall River . . . owe their advancement and prosperity; while by many and varied mechanical industries, Worcester, . . . Fitchburg, and other enterprising places, have attained the prominence they now hold."¹⁰ Since neither was dependent on a single industry or corporation, a diversity of occupa-

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tions were accessible to immigrants. More importantly, since there was no dominant concern, public policy evolved under local control and had a much different effect on the ethnic population.

Worcester began to host immigrants in the late 1820s, who in most cases settled on the east side.¹¹ By the 1890s Worcester was the eleventh largest shoe making center and fourth largest metal machinery producer in the United States, with a value of manufactured goods made surpassing that of Lowell, or Fall River.¹² Industrial beginnings were small scale. In 1890 there were 996 companies located in Worcester, with an average work force of under twenty-two employees. Even the city's largest employer, the boot and shoe makers, engaged less than one quarter of the total work force and was the only industrial sector to average over one hundred workers per company.¹³ With most endeavors small shops, there was no great corporate grip on development. As a result, there was some scrutiny of street, water, and sewer system improvements so that the public, not private or corporate interests, benefitted. Worcester's efforts toward municipal development were centered on managing anticipated economic growth, but not at the expense of its citizens. This is not to say that influential companies or individuals did not try to influence city government for their own purposes, but with no domineering company, mayors and the city council were able to curtail public support for large developmental schemes that would profit only a few.¹⁴ Worcester offered "special facilities for mechanics with small means to prosecute their labor, to run machines, or carry on processes of their own invention, or to ply trades of which they [were] masters."¹⁵

Fitchburg, like Worcester, was not dominated by a single corporation. The land for industrial development was locally owned and industrial sites bought in small plots from local owners¹⁶ Paper mills, which needed water for processing and waste disposal as well as power, were in the area as early as 1796 and continued to multiply at a steady pace. Alvah Crocker, a local entrepreneur, bought his first mill site in West Fitchburg in 1826. In 1834 he was forced to buy the entire river valley in the western portion of town so he could build a road. After buying the land he gave the necessary roadway to the city and built other mills along the river in West Fitchburg. In all, seven paper mills were constructed between 1839 and 1864.¹⁷ Crocker "identified his interests with those of Fitchburg. Naturally public minded, he saw that whatever would increase the wealth, the population, or the business facilities of his adopted town, would benefit each individual."¹⁸ Metal work had its beginnings in 1832 when Abel Simonds began manufacturing scythes in West Fitchburg. The company moved to Main Street in 1868 when it expanded into saws and other cutting tools. In 1838 Salmon and John Putnam

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founded the J & W Putnam Company to make machine parts. In 1858 they reorganized into the Putnam Machine Company producing special machinists and railroad tools. After 1845, when Fitchburg was connected to Boston via railroad, the machinery industry took off. The shops were producing machine tools, steam engines, railroad tools, machine knives, and screen plates used in paper mills.¹⁹ Although Fitchburg was a small city, its industry did not consist entirely of minor local shops. At various times Fitchburg supplied all the paper for the *New York Times*, the *Saturday Evening Post*, and the *Ladies' Home Journal*. Cyrus McCormick was buying sickles from the Fitchburg company of Aldrich and White starting in the 1840s and continued to do so until the end of the century.²⁰

Unlike large corporations local industries would buy from each other, and strengthen the local economy. A local man, D.F. McIntire, established the Fitchburg Lumber Company in 1868. Besides being the owner he acted as the president and manager of the company and employed fifty men within a year. The planer used by this lumber company was made in Fitchburg by the Rollstone Machine Works which employed forty to fifty men. When Crocker and Co. expanded in 1859 the five boilers for the new mill were made by the D.M. Dillon Company of Fitchburg and the paper machines by the Union Machine Company of the same city. The building of this mill also stimulated the city's construction trades. The machinery shops further developed specialized items such as automatic shut off steam engines and special drill rigs used to drill tunnels.²¹

Since Fitchburg was not dominated by a single industry or corporation, local policy sought to advance the interests of the city and not those of a particular interest group. In 1870 the issue of quality drinking water was a major item. Some industrialists in the city wanted systems instituted which would benefit them over others. The final decision by the city council created a highly equitable and inexpensive system of holding ponds to collect rain water, something that had already been done in Worcester. During an 1873 controversy concerning the local sewerage system, city council member E.P. Lang stated "the Nashua River must be used to rid the city of its sewerage. If the paper or woolen mills complain because the sewers empty into the Nashua River, they must seek redress in the courts."²² Within weeks a more healthy system of underground piping using water from the river was devised.²³ Some of the first new lines were laid in areas densely populated by immigrants from Ireland and Quebec, and not in the fashionable districts which housed the well-to-do native population.

By 1875 several precedents had been set. First local industrialists reinvested in the area. Heywood's chair factory expanded, and other companies retooled, using local suppliers and labor. Second, there

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was also a loyalty of worker to company which the employer reciprocated. In May of 1873, only months before the "Panic of 1873," Putnam Machine Co. employed 315 men, many of whom had been with the company over twenty-five years. By November, when the effects of the panic first touched Fitchburg, Putnam had lost fifteen men through normal attrition, and even though business was slowing, did not cut its workforce, although it did go to an eight hour day for a few weeks. In fact no company in Fitchburg laid off employees in the fall of 1873 when companies in New York fired 300 workers. The city continued to lay new sewer lines in different areas of the city.²⁴ Finally, residence in Fitchburg was not based on ethnicity, but rather on occupation. There was more occupational segregation than ethnic segregation.²⁵ These patterns led to greater integration in a number of activities.

This type of economic development and the accompanying public policy led to significantly altered relations between the native population and immigrants as well as between members of different ethnic groups. In Fitchburg immigrants from Ireland and Quebec played on the same baseball teams with long time residents of the city. There were also other important types of cooperation.

Brought in to work on railroad construction, Irish, and other Roman Catholics, soon wanted mass celebrated. The first substantiated report of Catholic mass being said in the city was in 1845 by a Fr. Monahan. Fr. Monahan (Irish) and Fr. Zepherin Leveque (from Quebec) attended to the area's Catholics. These two priests were essentially itinerant, going from town to town administering to a widely dispersed congregation.²⁶ St. Bernard's Church was planned in the late 1840s with subscriptions taken in the early 1850s. This church, which began as the "Shanty Cathedral," was, and still is, predominantly Irish, although some French such as Peter Beaulieu and his son Peter, Jr. were both listed as early contributors.²⁷ When the cornerstone of the new church was laid in the late 1850s it was "blessed by Rev. M.W. Gibson (the area missionary), Rev. Messrs. LeClerc of Canada, J. Boyce of Worcester, O'Brian and Williams of Boston."²⁸ In Fitchburg the French and Irish clergy as well as the populace cooperated to establish the first Catholic Church in the city. Neither group had been favored in city improvements, hence neither felt disadvantaged.

By the 1870s the French-Canadians of Fitchburg desired their own parish. Although few in number, these people were of sufficient means to support a separate parish. The Irish opposed this new parish as they believed that it would be unable to support itself. Yet in 1876 the French organized Immaculate Conception Church with a French-speaking Irish priest officiating until 1877 when Fr. Clovis Boudouin arrived. Although organized as a separate parish, Immaculate Conception held masses in the basement of St. Bernard's until a new

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church could be built. Until the new edifice was completed Fr. Boudouin conducted all business from St. Bernard's and recorded baptisms and marriages there.²⁹

West Fitchburg's Catholic community composed of French and Irish, some distance away, had difficulty getting to church, particularly in the winter months, and asked for a church of their own. The Archbishop of Boston bought land in West Fitchburg on Mt. Vernon Street to establish Sacred Heart parish in 1878. The church and school building were completed the following year and was a mixed Irish-French parish. A new parish, St. Joseph's, entirely French-Canadian, was formed in 1890 and church construction began in that year on land donated by John Daniels. By the end of the year the basement was completed and masses were being celebrated. The following year the school was completed. The church and rectory were fully done in 1900.³⁰

In many immigrant destination the building of the parish school was often postponed several years, yet in Fitchburg they began immediately. This proved to be a problem in later years. By the 1890s the Fitchburg school board demanded public school attendance for all children in the city. Frank Roberge, enrolled his daughter in St. Joseph's school and refused to comply with the board's wishes. He was brought to court, found guilty of truancy and fined. The pastor of St. Joseph's hired lawyers and appealed the case in Superior Court where the conviction was upheld in 1892. The priest immediately appealed to the Massachusetts Supreme Court. The high court overturned the earlier decision and stated the parochial schools could operate if they taught the subjects mandated by law. After this decision, proceedings against two other Fitchburg men for the same charge were dropped. At the turn of the century all the Catholic parish schools in Fitchburg were certified by the state.³¹

The first lasting French-Canadian society in Fitchburg was the Saint Jean-Baptiste Society formed in 1869. With a chapter in nearly every city with French-Canadians, this society was one of the most important institutions formed by this ethnic group, and essential for affirming the French-Canadian identity. The membership in many places was heavily laden with professionals such as physicians, lawyers, writers, and numerous well-to-do French-Canadians such as grocers.³² In the spindle cities this elite dominated the Franco-American institutional life.³³

Unlike Lowell, Manchester, or other spindle cities, the Saint Jean-Baptiste Society of Fitchburg was not elitist. The 1873 president, Paralait Allen, was a twenty-seven year old painter. The secretary was a physician, Dr. J.E. Gendron, but the treasurer was J. E. Pereault, a moulder. Ward officers included a forty-four year old machinist, a woolen mill operative of twenty-seven, and a twenty-five year old laborer. The majority of the society's membership were young

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working men. While they lived in various sections of Fitchburg, these men established a single strong national society.³⁴

Although there was a trend for democratic ethnic solidarity among French-Canadians in Fitchburg, this issue did not overshadow the need for cooperation between other ethnic groups. The Saint Jean-Baptiste Society attended the Catholic fair given by the Irish of St. Bernard's en masse in 1873. In 1880 the mixed parish of Sacred Heart collected \$225 for the relief of Ireland's poor.³⁵ The economic welfare of the city's working-class ethnic population may have encouraged participation by all groups.³⁶ The working class membership of societies coupled with no competition on the shop floor encouraged cooperation unlike the elitist led institutions in the spindle cities which tended to focus inwards. By the end of the 1880s the French community was becoming incorporated into the larger community of the city. The Ste-Anne in Aid Society gave a party at city hall to raise funds in 1889. The "old folks" wore traditional Canadian costumes to liven the festivities, while the Irish women of the city helped during the party. Seven hundred people were present for the festivities.³⁷ Fitchburg did not have ethnic turf marked out as did other cities with large numbers of immigrants. The apparent lack of hostility in Fitchburg may be due to dispersed ethnic residential patterns and the absence of job competition in a single industrial sector.

Fraternal societies in Worcester started to finance a church. Initially established in 1853, Worcester's Saint Jean-Baptiste Society was specifically created to build a church. This chapter had fifty members. This group was short lived, experienced a quiet death in 1855, and reappeared in 1868.³⁸

When the society reemerged in 1868, the officers were representative of the working class. Although the president was a doctor, the vice president was Joseph Marchessault, a thirty-two year old blacksmith. The secretaries included a shoemaker, an armorer, and a blacksmith. By 1871 doctors and lawyers were absent from the list of officers in this organization. The president, mason P.L. Paquette, remained active in the society's affairs for many years. Joseph Marchessault continued as the vice president, and other officers included shoe makers, car builders, and a printer. Broad, community-wide involvement in this society exemplified the group's 1874 trip to Montreal for Saint-Jean-Baptiste day. Members filled thirteen railroad cars on the Canada bound train.³⁹

This city also saw substantial cooperation between ethnic groups in institutional life. The Irish supported the orphanage established by French nuns, since children of both nationalities received help from the nuns. Irish pastors helped to raise funds to support the expansion of the nuns' services. Even the small Armenian commu-

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nity forming in the 1890s gave food to the orphanage. The French were also active in the predominantly Irish organization, The Ancient Order of Foresters. This benevolent association helped sick or unemployed workingmen who were members. Some French-Canadians, like J. Vaudriel, a factory foreman, were involved with the Foresters early in the 1880s, becoming dues paying members. Vaudriel may have joined the Irish chapter, since as a foreman, he was acquainted with these men from experience at work. The first French-Canadian chapter, Cour L.J. Papineau, formed in 1893; other French chapters were formed in 1896 and 1902. The groups took their rules and organization from their Irish predecessors, and the state-wide hierarchy, controlled by the Irish, approved their charters. In spite of the development of French chapters, French-Canadians still maintained a small presence in the older Irish chapters. This may be due to accruing benefits which occurred as length of membership in a chapter increased. In this case and others, ethnicity was not the single driving force in institutional affiliation.⁴⁰

Naturalization clubs were another important French-Canadian social institution in Worcester. These clubs were established to increase the political strength of French-Canadians and to dispel the image of industrial interlopers taking work away from Americans.⁴¹ The first French-Canadian naturalization club in the city was established in 1874, the year they were first encouraged by the national French-Canadian convention. This club started in Ward 3 and began with 107 members. In its first year it naturalized seventy-two French-Canadians. To join, those applying had to be accepted by a majority of the regularly attending members. New chapters formed in Wards 4 and 5 in 1886 and Ward 6 in 1887. The church supported these societies as the curé of Notre-Dame was the president of the Ward 3 club in 1886. Two years later he was still listed as the president, although it was now an honorary post. Like the membership of other societies, membership in these naturalization clubs cut across class lines, and working-class leadership was pronounced. There was but a single physician among the officers and executive councils of these clubs in 1890. Over 60 percent of the officers and committee members came from the working-class. Shoemakers, carpenters and blacksmiths comprised nearly one half of these upper level officials. Among these men was J.G. Vaudriel, Secretary of the Ward Three Club and president of the Saint-Jean-Baptiste-Society in 1890. At a special naturalization session in 1889, ten French, seven Irish, three German, three Swedes, and two English were sworn in.⁴²

The Foresters also formed Canadian chapters in Manchester, NH, although several years later than Worcester. The paternalistic nature of Amoskeag may have retarded the growth of this working man's relief group. Additionally, while the Worcester chapters were admin-

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istered out of Boston by the Irish, Manchester's *Ordre des Forestiers Independents Cour Lafontaine*, established in 1898, was part of the Canadian order based in Ottawa. The structure of Manchester's French-Canadian community may have made it more desirable to affiliate with an Anglo-Canadian group rather than with Irish-Americans. Poorly paid mail operatives, not experiencing the economic success of workers in Fitchburg and Worcester, may have felt less allegiance to societies run by other ethnic groups in the United States.

The economic success of immigrants in Fitchburg and Worcester was due to the economic structure of these cities. This structure, based on an articulated economy, provided a variety of jobs for immigrants through industrial diversity. The variety of available jobs eliminated, to some extent, ethnic competition on the shop floor as ethnic populations sought work in different economic activities.

In Fitchburg and Worcester, Irish and French supported each other's institutions without rancor, unlike the major textile centers, where the influence of the dominant company swayed public policy and forced ethnic groups to contend for limited numbers of jobs. Importantly, the Irish and French clergy supported the other's bazaars and church functions.⁴³ The economic structure of Fitchburg and Worcester, by creating an atmosphere fostering interaction, may not have accelerated assimilation, but influenced the acceptance of ethnic differences and minimized tension between groups.

Public policy in Fitchburg and Worcester was affected by economic structure. In the textile centers public policy served corporate interests and the wealthy native born population and ignored the ethnic working class. Unlike New England's textile centers, local control of public policy in Fitchburg and Worcester served the public and not interests outside of the city. Additionally, the diversified economies of these two cities did not allow a single local industrial concern to dominate public policy formulation and implementation.

The ethnic experience in New England's mill towns was shaped by both economic structure and public policy. The more well known experience of Lowell, Fall River, and other nineteenth century textile cities is well documented: ethnic tension, lack of access to public services, and ethnic ghettos. Cities of this type had similar and distinct economic structures with public policy controlled by external interests. Fitchburg and Worcester had economies and policies controlled by local interests who saw the ethnic working-class as valued members of society. Public policy was led in directions quite different from the corporately controlled textile centers. City improvements benefited the ethnic working-class and the general population, not just corporate interests. Public policy was aimed at

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managing future growth as well as current problems. There was, in turn, greater cooperation between ethnic groups in many respects.

The economic structure of a given locality, by influencing the direction of public policy, creates a new venue for the ethnic population. Less direct economic dominance by a single entity leads to decreased competition between ethnic groups. The ethnic community, while becoming a strong influence in the life of its members, focuses less inwardly as a response to perceived social inequality, and seeks a greater measure of accommodation with the larger community and with other ethnic groups. In an atmosphere where ethnic groups are not looked down on, but are valued members of the community, each community will seek to retain its customs, traditions, language, and religion, but will not seek to further its own ends over those of other extractions. Because the policy undertaken by the city did not favor any one group cooperation, not contention, became the accepted norm.

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⁴³Weil, 1989, notes that the clergy in large French-Canadian centers often fueled ethnic tension. This was not the case in Fitchburg and Worcester.



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Setting Sun: Popular Culture Images of the Japanese and Japanese Americans¹ and Public Policy

Mary Young
College of Wooster

The negative, stereotypical depictions of the Japanese and Japanese Americans in American popular culture in the first half of the twentieth century were of great importance in the promulgation of the Asian Exclusion Act of 1924, the internment of Japanese Americans following the bombing of Pearl Harbor and the subsequent dropping of atomic bombs on Hiroshima and Nagasaki. The American public had been adequately prepared to accept inaccurate representations of Japanese and Japanese Americans; therefore, there was little public outcry against these actions.

In order to reach this conclusion, it was necessary to research American social and cultural history, popular fiction, movies, magazines and newspapers which characterized the Japanese and Japanese Americans. The research revealed uniformly negative portrayals which may have been crucial factors in the public policy decisions which affected them.

Shintara Ishihara, the author of *The Japan That Can Say No*, has accused the United States of racial prejudice against the Japanese. The idea of "Japan-bashing" is not new within United States society. By the end of the nineteenth century, negative images of the Japanese and Japanese Americans were firmly in place. How the images of the Japanese and Japanese Americans were reinforced in the popular culture during the two greatest periods of anti-Japanese agitation, post World War I and after Pearl Harbor, and the affect on public policy will be examined in this paper.

In 1882 the Chinese Exclusion Act banned Chinese immigration until 1892 and prohibited naturalization of those Chinese already in

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the United States. Although the act singled out the Chinese, it did not prohibit the immigration of other Asians. Unaffected, the Japanese continued as before the Chinese Exclusion Act. The only exceptions were those implemented by the Gentlemen's Agreement of 1907 between the United States and Japan in which Japan voluntarily limited Japanese immigration. Because of their small numbers, the Japanese were initially no threat to United States society and because they were in general farmers and small businessmen, they did not threaten the laboring class. They possessed all the attributes that Euro-Americans wanted in immigrants: hard working, intelligent and law-abiding. Yet, according to their detractors, they were racially unassimilable and hopelessly alien in their religion and culture. They were loyal only to imperialist Japan; they were dangerously efficient economic competitors. Also, they had low standards of living, a high birth rate, and "vile" habits. But Henry A. Millis in *The Japanese Problem in the United States* (1915) defined the problem as one of "cockiness."

Those who begin in an inferior economic position should remain in it . . . The Japanese have pride in their race and are anxious to be regarded as equal to any other race. They are neither cringing nor servile.²

And, Congressman Richmond P. Hobson accused the Japanese immigrants of being "soldiers organized into companies, regiments and brigades."³

These negative characteristics combined with the 1905 defeat of Russia by Japan, which shattered the legend of European racial invincibility and tore aside the veil of prestige that draped European civilizations,⁴ induced Dennis Kearney, of Chinese exclusion fame, and others to begin agitation against the Japanese. Also in 1905, an Asian Exclusion League was formed which targeted the Japanese. Later in the year inflammatory articles appeared in the *San Francisco Chronicle* with the headlines designed to provoke anti-Japanese emotion: "*BROWN MEN ARE AN EVIL IN THE PUBLIC SCHOOLS*," "*JAPANESE A MENACE TO AMERICAN WOMEN*," "*BROWN ASIATICS STEAL BRAINS OF WHITES*."

The California legislature following the anti-Japanese trend introduced between 1905 and 1911 approximately twenty pieces of legislature condemning the Japanese. One particular piece of legislation offered in 1910 forbade Japanese the use and ownership of power engines, the employment of Euro-American females, the inheritance of land, and raised the standard fishing fee of \$10.00 per year to \$100.00.⁵

In 1913, the California legislature passed the Alien Land (Webb-Heney) Act which restricted landownership to those eligible for

citizenship. Japanese were denied the right to purchase land and could lease agricultural property for a period of only three years. This was not because the Japanese ruined valuable land; quite the contrary, it was because they took land which was considered valueless by Euro-Americans and consistently produced larger yields on smaller acreage. This type of anti-Japanese legislation extended to every state with a significant Japanese population.⁶

In 1922 the post-World War I United States Supreme Court condemned the Japanese as undesirable in the Takao Ozawa decision which declared that foreign born Japanese should be kept in a permanent alien state. Many times the Japanese were defeated in the courts. Court battles do not attract headlines but are as detrimental as other forms of injustice. Harry Kitano points out in *Japanese-Americans: The Evolution of a Subculture*, that there “never were any equivalents to the Chinese massacres, or the ‘zoot-suit’ riots against the Mexicans during World War II, or to the many Negro lynchings in the South.”⁷ On the other hand, Herman Masako has documented several instances of anti-Japanese violence. The Japanese were targets of racial violence in 1909 in Berkeley, California, where Japanese residents were assaulted by Euro-American bigots. And, again in 1921 “several hundred white men rounded up fifty-eight Japanese laborers in Turlock, California, and boarded them on a train with a warning never to return.”⁸

These acts of terrorism continued sporadically throughout the 1920s and 1930s perhaps because during the period following World War I “racism went over the top”⁹ with an increase in anti-Japanese sentiment. Historian Roger Daniels lists several reasons why anti-Japanese sentiments became prevalent at this time. Among the reasons was a disenchantment with things foreign. This disenchantment was caused by the success of Bolshevism in Russia and rising domestic radicalism. In an effort to explain the growing radicalism, two very influential books were published: Lothrop Stoddard’s *Rising Tide of Color against White World Supremacy* (1920) and Madison Grant’s *The Passing of the Great Race* (1926).

Both Grant and Stoddard believed that Bolshevism under Semitic leadership combined with Asian members from some unnamed country would overwhelm Western Europe and eventually the United States. To prevent this, territorial “dikes” should be established which would maintain ethnics of color in certain geographical regions. The conclusion drawn by Grant and Stoddard was that the major Asian nation which would join the Bolsheviks to invade European territories would be Japan.

The negative characteristics of the Japanese established by Europeans and Euro-Americans (unassimilability, low standard of living,

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high birthrate) plus the fear of invasion equalled "the Yellow Peril." Oddly, a German autocrat, Kaiser Wilhelm II, is credited with coining the catch phrase that articulated the fear of an inundation of Western nations by Asians. He used the expression "Yellow Peril" (*gelbe gefahr*) to stir the fear of Russians about the possibility of a new Mongol invasion from the East.¹⁰ These negative images of the Japanese were present in all phases of the popular culture.

Popular literature was one of the many vehicles which promoted agitation against the Japanese. The primary stereotypes of the Japanese and Japanese Americans in this "Yellow Peril" literature can be classified as follows: the comical servant, sinister villains, the asexual detective, militaristic despots and docile hordes of followers of the emperor.

One of the works of fiction which combined many of these stereotypes is Jack London's short story, "The Unparalleled Invasion." This work envisions a fictionalized world of the future [1976] in which China under the leadership of Japan and using Japan's Western technology menaces the world. China is threatening the world not with her use of the Japanese technology but with "the fecundity of her loins." To check this menace, the Western nations resort to germ warfare to wipe out the Chinese nation.

In "The Unparalleled Invasion" the Japanese militarize China in order to make it a threat to the West. In 1909, Homer Lea had published *The Valor of Innocence* (reissued following Pearl Harbor) which chided the United States for lacking sufficient preparation to fight the soon to be Japanese military machine. The book relates in great detail an approaching war with Japan seizing the Philippines and landing on the Pacific Coast. *The Valor of Innocence* quickly became very popular among both scholars and the general public. Fiction and non-fiction similar to "The Unparalleled Invasion" and *The Valor of Innocence*, the works of Grant and Stoddard, and an anti-Japanese West coast press established the negative images of the Japanese in the second decade of the twentieth century.

One of the primary contributors to the negative image of the Japanese in popular fiction during the 1920s was Wallace Irwin. Irwin, the creator of Mr. Togo, the Japanese house boy whose "diaries" were serialized in *Colliers* beginning in 1907, stereotyped the Japanese as bucktoothed, bespectacled, wily, arrogant, unscrupulous, dishonest, and verbose. Carey McWilliams makes clear in *Prejudice. Japanese Americans: Symbol of Racial Intolerance* that

it was Irwin who invented the stereotyped speech of the Japanese-American . . . It was Irwin who coined all the funny parodies on the use of Japanese honorifics, such as "Honorable Sir," and the "so sorry, please."

Thereafter people saw, not the Japanese immigrants,
but the stereotype “Jap.”¹¹

As a result of his Mr. Togo stories, Irwin was considered an expert on the Japanese. “Consequently, he was sent by the *Saturday Evening Post* to California in 1919 to investigate the ‘Japanese question.’”¹² From this investigation he produced an anti-Japanese novel, *The Seed of the Sun* (1921), in which the Japanese farmers dispassionately force their wives and children to labor in the fields. The Japanese farmers work long hours existing only on a bowl of rice so that they can wrest land from the Euro-American farmers. They are following the dictates of the Japanese Emperor who has charged them with the task of subjugating the Americans by acquiring their land and intermarrying with their women. According to an official dispatch addressed to the Japanese settlers:

They cannot check our peaceful progress in this land or in any other where our divine Emperor has sent us to toil in his name. If they build laws to wall themselves about and exclude us, we will tear down those laws or dig under them. In America we are already inside, and we shall remain for the glory of the Emperor.

Small as we are in numbers here, let us see to it that our race shall increase . . . While the Emperor permitted it, it was well that you brought wives from the homeland—young wives, and fertile. And now it is more important that we marry into this American stock. Prove your race equality in the blood of your children. Choose white women if you can. Where this is not practicable, marry negroes [sic], Indians, Hawaiians.

Do not fear that our race shall be lost in such a mingling of blood. The blood of Japan is immortal . . . Even unto the tenth generation Japanese with blond hair and blue eyes will still be Japanese, quick with the one God-given virtue—loyalty to empire and the Emperor.¹³

The Japanese are in the United States with a mandate from the Emperor to subvert United States society and democratic institutions.

Another popular novel of this period is Peter B. Kyne’s *The Pride of Palomar* (1921). Kyne tells the story of a Japanese potato baron, Okada, and his machinations to acquire prime agricultural land in California. The Japanese are depicted as coming in shiploads and those that are already present are breeding so rapidly that they might soon overtake the Euro-American population of California. The

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Japanese, who are characterized as subhuman, should be denied citizenship as they are “unwanted, different . . . and the purveyors of half-truths.”¹⁴ Here, again, the Japanese are depicted as rapacious, scheming and untrustworthy with no sense of fair play and, above all, no affection for their wives.

Overall Kyne follows the standard formulae of the time in presenting the Japanese as unassimilable, treacherous and acquisitive. Kyne, similar to Wallace Irwin, was influential among national leaders. He “is credited with having inspired a symposium on the “yellow peril” that drew such participants as Edna Ferber, Rupert Hughes, the presidents of Yale and Harvard, and two state governors.”¹⁵

Gene Stratton-Porter, the third writer which will be considered from this period, was a very popular writer of books for young people. Her book, *Her Father's Daughter*, was number eight on the best seller list for 1921. The novel describes the activities of older Japanese citizens who are sent to United States high schools as students to absorb the best of Western technology and education as part of a long range program of world domination. The Euro-American teenage protagonists must thwart and expose the mission of the Japanese.

All three books follow the basic reasoning of Grant and Stratton that the world's people of color will unite and attempt to defeat the European or European derived peoples. Somehow Japan will be the nation which will coalesce the different groups into one. Therefore, the United States must not be lulled into a false sense of security for the growing menace of Japan should and must be checked.

Popular literature was not the only medium responsible for shaping the image of the Japanese during this period. Movies also contributed to the presentation of the Japanese as a growing danger within United States society. One of the earliest examples of the anti-Japanese cinema is the 1916 production of *Pearl of the Army*, in which “peerless, fearless Pearl White saves the Panama Canal from Oriental spies.”¹⁶ Perhaps the most offensive movie from this period is *Patria* from the International Film Service Corporation which was part of the Hearst conglomerate.

Patria was not only anti-Japanese but also anti-Mexican. The ten-part serial showed the efforts of the Japanese to invade the United States with the support of Mexico. The movie was so lurid in its presentation of the Japanese that in 1916 President Wilson requested the withdrawal of the movie for its biased content that was intended to increase animosity toward the Japanese.

A third movie exhibited by the American Legion throughout California at this time was titled *Shadows of the West*. All the charges ever made against the Japanese were in this film.

The film showed a mysterious room fitted with wireless apparatus by which a head Japanese ticked out prices which controlled a state-wide vegetable mar-

ket; spies darted in and out of the scenes; Japanese were shown dumping vegetables into the harbor to maintain high prices; two white girls were abducted by a group of Japanese men only to be rescued at the last moment by a squad of American Legionnaires.¹⁷

Other movies of similar types were popular through out the nineteen-twenties.

All of these activities, movies, books and sensational journalistic articles led to the March 15, 1924 passing of the Immigration Exclusion Act which stated that all immigrants “ineligible for citizenship” were denied admission to the United states. This act limited all immigration to the United States, but *prohibited* all immigration from Japan.

With the exclusion of the Japanese from the United States, the problem of the Yellow Peril was apparently solved. But by 1930, Japan was a real competitor in the world market; California apparently felt threatened to the extent that again anti-Japanese measures were introduced into the state legislature. But California was not alone in the growing anti-Japanese posture. In 1934 mobs attacked the Japanese in Arizona and the Hearst press, again, began to editorialize against “inequitable Oriental competition sapping the economic life of America and retarding economic recovery.”¹⁸

The anti-Japanese agitation continued into the late 1930s with the publication of a very inflammatory book, Solomon Cruso’s *The Last of the Japs and the Jews* (1931). Again set in the future, Japan has disappeared completely and all United States’ Jews have perished proving their loyalty and patriotism. Turkey, China and India, over-populated Asian nations, are now the superpowers.

It was also the decade of the thirties when an unusual fictionalized Japanese appeared, Mr. Moto. Earl Derr Biggers, the creator of Charlie Chan, had died. Publishers searching for another Asian detective commissioned John P. Marquand, the winner of the 1937 Pulitzer Prize for *The Late George Apley*, to create such a character; Marquand created Mr. Moto.

In 1937, the efficient, patriotic, humble Japanese secret agent, Mr. Moto, was introduced. Mr. Moto “is an intriguing figure in American popular culture of the late 1930s, representing a rational antidote to the entirely negative stereotype of the subhuman monkey men and militarists—capable of killing for his country as well as dying for it, but desiring to do neither.”¹⁹ In the physical characterization of Mr. Moto, however, little had changed. He recalls an earlier character, Mr. Togo. Similar to Mr. Togo, Mr. Moto (played in the movies by Hungarian-born Peter Lorre) is a small, bespectacled, tricky, arrogant martial arts expert. He is extremely verbose in impeccable English in contrast to Charlie Chan’s pidgin English; but Mr. Moto remained essentially inscrutable. During World War II, the

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Mr. Moto series went into hiatus only to return in 1965 with Henry Silva as Mr. Moto. However, Silva's Mr. Moto in *The Return of Mr. Moto* was so atrocious that Mr. Moto has not been seen since.

With the attack on Pearl Harbor and the subsequent declaration of war on Japan, the United States' public had been adequately prepared to view the Japanese as subhuman militarists. Therefore, the government had few detractors in its relocation of thousands of Japanese Americans. The relocation was an easily accomplished task in view of the decades of anti-Japanese propaganda.

The propagandists of the United States and its Western Allies continued the perpetuation of negative images of the Japanese, routinely using images of animals, reptiles and insects to convey the nature of the Japanese. It is understandable that propaganda of the coarsest kind would be directed against the enemy during wartime, but the depiction of the Japanese was monstrous. While the image of the "good" Germans was kept separate from the image of the Nazis, no such separation was allowed the Japanese.

The overriding image of the Japanese was animal: "monkeys, baboons, gorillas, dogs, mice, rats, vipers and rattlesnakes, cockroaches, vermin . . ." ²⁰ with the additional images of lesser men, primitive children and madmen. Songs, movies, cartoons and a wide variety of academic and popular writing contributed to the images.

Movies with the advantage of appealing to more senses were the most insidious form of propaganda masquerading as entertainment. "The American public was to be taught that . . . the Japanese people were equally to blame for tolerating and cooperating with its leaders . . . It was the government who outlined for Hollywood the six basic patterns for pictures related to the war . . ." ²¹ Therefore, all Japanese and Japanese Americans on the screen became synonymous with treachery, imperviousness to pain and a disregard for human life in movies such as *Wake Island* (1942), *Secret Agent of Japan* (1942), *Little Tokyo, USA* (1942), and *Across the Pacific* (1942). But "the most terrifying and incendiary product Hollywood ever would produce dealing with the Japanese" ²² was *The Purple Heart* (1944). The movie was a presumed expose of military Japan's uncivilized and vengeful trial and execution of eight captured American pilots. Its main purpose was to "depict for the American audience the savagery . . . sadism [and] sub-human quality of the enemy." ²³ Later movies produced during the war years continued the portrayal of the Japanese as cruel and inhuman or emphasized the alleged fifth-column aspects of the Japanese in the United States.

Movies were not the only medium engaged in the anti-Japanese campaign. In cartoons the bucktoothed Japanese became a standard feature. Bugs Bunny was recruited in the campaign against the Japanese in "Bugs Bunny Nips the Nips."

Song writers raced to see which tune would be first on the charts. A seemingly unending variation on the theme was produced: "A Jap is a Sap," "The Japs Haven't Got a Chinaman's Chance," "Mow the Japs Down," "We're Gonna Find a Fellow Who Is Yellow and Beat Him Red, White, and Blue," and "Oh, You Little Son of an Oriental."²⁴

These attitudes carried over into the language with the creation of new slang terms. John Dower writes in *War Without Mercy* (1986) that many references to the Japanese were simply initials, "the LYBs, the little yellowbellies." Other terms were used including "slants," "squints," "slopes," and "gooks."

Editorial cartoons intensified the imagery of the Japanese as simian. While Hitler was consistently depicted as human, the Japanese were pictured swinging from trees or as "Louseous Japanicas," a pernicious vermin which had to be exterminated. When all else fails as in a *Chicago Tribune* (1941) editorial cartoon, the Japanese were portrayed as a danger to Euro-American women. The cartoon "evoked . . . the sexual fears underlying Yellow Peril and anti-'colored' sentiments . . . in the poster of a Japanese soldier carrying off a naked white woman."²⁵

Consequently, the use of the atomic bomb on the Japanese cities of Hiroshima and Nagasaki faced little public outcry. Again popular culture images had been used to justify public policy. The decades between the end of World War II and the 1980s were concerned with rebuilding Japan and concomitantly the images of the Japanese and Japanese-Americans. The new image of Japanese-Americans, and indeed all Asians was the "model minority."

However, by 1990, a cover story of *Fortune* magazine was entitled "Fear and Loathing of Japan." The article stated, "suddenly the Japanese have become the people it is okay to hate . . . Japan bashing has been going on for a decade or so, but lately the intensity has reached stunning proportions . . ."²⁶ Out of this allegedly new Japan-bashing seemingly comes new stereotypes.

The new stereotypes of the Japanese and Japanese Americans are simply the old ones rewritten. The media is once again touting the Japanese as acquiring large tracts of prime United States' real estate while ignoring larger purchases by the British (who have been the largest investors in the United States), Canadians, West Germans, the Hong Kong Chinese, and the Dutch. Japanese businessmen are accused in the media of "white slavery" and a television movie picks up the theme: *Girls of the White Orchid* (1981) starring Jennifer Jason Leigh and Ann Jillian. *Black Rain* (1989), a motion picture starring Michael Douglas, is accused by *Newsweek* of Asia-bashing.

Reality has intruded into the ideal state of the "model minority," thus conflicting with the reality of life in the United States. A reality

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in which Vincent Chin is murdered in Detroit because he is mistaken for a Japanese; anti-Asian violence in San Marino, California, and in Texas; a bucktoothed, bespectacled Japanese soldier in the rock duo Milli-Vanilli's "Don't Forget My Number" music video or on a recent television program "The Nasty Boys," the Japanese arms dealer is referred to as the "cat eater." And John McLaughlin using the derogatory epithet "Jap" on his PBS program "The McLaughlin Group."²⁷

Just as every institution was used to uphold, justify and legislate the enslavement of Africans in the United States, so too were similar efforts exerted to oppress and circumscribe the Japanese and Japanese Americans. Inflammatory characterizations in academic writing, popular fiction, movies, magazines and newspapers contributed to the overall images of the Japanese and Japanese Americans as unassimilable and undesirable aliens. With the creation of these images, anti-Japanese governmental action could be warranted. Intense periods of anti-Japanese propaganda were followed by equally intense periods of governmental activity. Public policy decisions based on these cultural images have been used to justify the denial of land ownership, the Asian Exclusion Act, the internment of Americans of Japanese ancestry as enemy aliens and the atomic bombings of Hiroshima and Nagasaki. Close examination of the periods of heightened anti-Japanese agitation suggests a connection between the development of negative stereotypes and public policy. Therefore, it is difficult not to conclude that in order to manipulate the American public, unsavory images of a group are, first, widely disseminated. Soon afterward, there is a great public outcry against that group, which initiates public policy decisions.

NOTES

¹No distinction is made here between Japanese and Japanese American as no such distinction was made by the American government, or within American society.

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³Carey McWilliams. *Prejudice. Japanese-Americans: Symbol of Racial Intolerance* (Boston: Little, Brown and Company, 1945), 32.

⁴Lothrop Stoddard. *The Rising Tide of Color against White World Supremacy* (New York: Blue Ribbon Books, 1920), 154.

⁵Harry H. L. Kitano. *Japanese-Americans. The Evolution of a Subculture* (Englewood Cliffs, NJ: Prentice-Hall, Inc., 1969), 26.

⁶Louisiana, 1921; New Mexico, 1922; Idaho, Montana and Oregon, 1923 and Kansas, 1925.

⁷Kitano, 26.

⁸Herman Masako. *The Japanese in America. 1843-1973*. (Dobbs Ferry, NY: Oceana Publications, Inc., 1974), 10, 15.

⁹Roger Daniels. *The Politics of Prejudice. The Anti-Japanese Movement in California and the Struggle of Japanese Exclusion* (Berkeley: The University of California Press, 1977), 67.

¹⁰Robert A. Wilson, and Bill Hosokawa. *East to America. A History of the Japanese in the United States* (New York: William Morrow and Co., In., 1980), 135.

¹¹McWilliams, 44.

¹²Elaine H. Kim. *Asian American Literature: An Introduction to the Writings and Their Social Context* (Philadelphia: Temple University Press, 1982), 3.

¹³Wallace Irwin. *Seed of the Sun* (New York: George H. Doran Company, 1921), 233.

¹⁴Peter B. Kyne. *The Pride of Palomar* (New York: Cosmopolitan Book Corp., 1921), 206.

¹⁵Kim, 4.

¹⁶Bernard F. Dick. *The Star-Spangled Screen. The American World War II Film* (Lexington, KY: The University of Kentucky Press, 1985), 230.

¹⁷McWilliams, 60.

¹⁸McWilliams, 70.

¹⁹John W. Dower, *War Without Mercy: Race and Power in the Pacific War* (New York: Pantheon Books, 1986), 344.

²⁰Dower, 81.

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²¹ Colin Shindler, *Hollywood Goes to War: Films and American Society, 1939-1952* (London: Routledge and Kegan Paul, 1979), 40.

²²Eugene Franklin Wong. *On Visual Media Racism. Asians in the American Motion Pictures* (New York: Arno Press, 1978), 156.

²³Wong, 157.

²⁴Dower, 81, 162.

²⁵Dower, 189.

²⁶Lee Smith, "Fear and Loathing of Japan," *Fortune* (February 26, 1990): 51.

²⁷"The McLaughlin Group," PBS Television, broadcast in St. Louis, MO, on February 25, 1990.

When All the World's A Stage: The Impact of Events on News Coverage of South Africa, 1979-1985

Stanley O. Gaines, Jr.
Pomona College

David C. Roberts
Psychological Corporation

Donald J. Baumann
Texas Department of Protective
and Regulatory Services¹

A time series analysis was used to investigate: (1) whether a significant increase in news coverage of South Africa occurred during the critical years of 1979 -1985; (2) whether the geographic origin and/or sociopolitical impact of events, rather than deaths *per se*, caused the increase; and (3) the manner in which the increase occurred. Results indicated that two symbolic events (i.e., a series of riots in twenty-one South African townships, internal to South Africa; and the awarding of the Nobel Prize to Bishop Desmond Tutu, external to South Africa) cumulatively were responsible for a significant rise in news coverage of South Africa. The relationship of these symbolic sociopolitical events to the forces that shape short-term news headlines and long-term social change in general, including the imminent demise of apartheid in particular is discussed.

INTRODUCTION

Although the South African policy of apartheid, built largely upon the edifice of racial separation, has existed since 1948,² civil unrest and violence in that nation escaped the attention of many American journalists prior to the 1980s. Since the early-to-mid 1980s, however,

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South Africa appears to have become a routine feature of daily news reports. But has news coverage actually increased in an objective sense? If so, what factors are responsible for such an increase? Furthermore, what can we learn about the forces that shape short-term news headlines and long-term social change, using South Africa as a vehicle for exploration?

Clearly the media can influence public perception and events.³ But the way in which the media themselves are affected by events can influence public perception, and exactly *how* the media are affected is unclear. For example, it is possible that in the case of South Africa, increases in the number of deaths due to civil unrest have led to increases in American news coverage. On the other hand, deaths in and of themselves may not be sufficient to influence the media in a lasting fashion. Related to this latter point is that although periodic large-scale eruptions of violence and deaths in South Africa can be traced back to the early 1960s⁴ intensified media interest seems to be more recent in origin. If this is true, then aspects other than the sheer number of deaths resulting from those events must have been responsible for the violence as well as the current surge of interest in South Africa.

An alternative to examining only the relationship between news coverage and violent deaths is to explore the nature of the events that underlie these phenomena. News coverage is not a hit-or-miss endeavor and deaths do not occur without a reason. Whether in South Africa or any other country, both must be related in some way to a more fundamental cause: Prominent events. Some important aspects of those events are easily discernible, whereas others may be less obvious.⁵ Both the obvious and not-so-obvious aspects may be essential in understanding the impact of events on the mass media. Moreover, events do not occur in a psychological vacuum. Events that come to the attention of the public (i.e. "outstanding" events) receive "special" psychological attention and evaluation, thus providing a basis for future expectations and beliefs.⁶

The more obvious aspect of an event is its geographic origin. Events can be either external or internal to the borders of the nation under media scrutiny. Consider external events: Media attention may focus on these events because they are played out on the "world stage." With regard to South Africa, the United Nations has consistently called for sanctions since the early 1960s⁷, private anti-apartheid groups have been galvanized throughout the world⁸, and some observers have gone so far as to assert that Communist infiltrators have attempted to dismantle the system of apartheid.⁹ Now consider events internal to South Africa. The media may focus on these events because they stand out in stark contrast to a backdrop of events that occur in most other nations and because they underscore

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the uniqueness of the policy of apartheid. Such contrast effects, which are well-documented in the psychophysical literature,¹⁰ are also evident in broader social phenomena, such as judgments of facial expressions or physical attractiveness¹¹, criminal acts,¹² and especially attitudes.¹³ Contrast effects generally require no more than a simple comparison between two sets of stimuli and occur when one set of stimuli comes to be perceived as more different in terms of extremity (but not functional relation) from the set of stimuli against which the initial set is to be judged.¹⁴ For example, South African policy can be compared with the policy of most Western nations¹⁵; through that comparison, the sheer power and size of the white minority in South Africa and the absence of its parallel even on the continent of Africa itself is made more visible.¹⁶ More specifically, when the largest interracial church in South Africa allows interracial marriages and civil disobedience, the comparison to current policy in the United States can be made, and the relative permissiveness of such a church becomes more newsworthy through such a comparison.

Unlike the geographic origin of a potentially newsworthy event, the sociopolitical impact of that event is rather nonobvious. Events within the sociopolitical domain may be characterized as related overtly to public policy, or the events may be symbolic in nature. We may distinguish between policy-related and symbolic events as follows: During a public policy event, an organization may express a specific goal or plan. The aforementioned church decree is an example of a public policy event. It also illustrates the fact that some forms of policy are symbolic—they have “cultural significance and the capacity to excite or objectify a response.”¹⁷ However, not all symbolic events are related to policy. For example, Black South Africans remember the riots that occurred in the Soweto township by symbolizing the anniversary of the riots via demonstrations. In either case, American media coverage may increase.

So far, we have discussed the relatively independent impact of geographic origin and sociopolitical impact upon American media coverage of South Africa. As shown in Figure 1, they can also be considered in combination. That is, the geographic and sociopolitical aspects of an event together may magnify the effect of the event upon the news media. In addition, multiple events within or between categories may intensify this magnification. The events listed in Figure 1 represent each of these possibilities and were identified in the present study on the basis of their relationship in time with potential increases in U.S. coverage of South Africa.

FIGURE 1

Classification of Major Events Occurring
Between January 1, 1979 and October 30, 1985

Sociopolitical Impact	Geographic Origin	
	Internal to S. Africa	External to S. Africa
Policy	Event 4: Church decree 3/21/83	Event 1: U.N. Sanctions 3/7/81
	Event 5: Constitution vote 11/2/83	
Symbolic	Event 3: Soweto Anniversary 6/17/82	Event 2: Reagan-Botha meeting 5/14/81
	Event 6: Township Riots 9/15/84	Event 7: Tutu's Nobel Prize 9/16/84

Some types of events would be expected to increase news coverage to a greater extent than would other events. For instance, external events might gain more media attention than events occurring within South Africa because of the restrictions that South African censorship historically has placed on the accessibility of internal events.¹⁸ Furthermore, since American journalists frequently assume that their readers have little interest in events occurring outside the United States,¹⁹ those journalists may not cover internal South African events surviving censorship on a regular basis. For example, the 1983 Constitutional Vote guaranteeing rights to all except Blacks in South Africa may receive relatively less press coverage than the 1981 Reagan-Botha meetings initiated by, and held in, the United States. American journalists may also attend more to purely symbolic, rather than to policy-oriented events; those journalists might dismiss the practical value of many policy changes as “merely cosmetic.”²⁰ Symbolic events, however, may prove quite effective in spurring coverage; the urgency and drama of such events, reminiscent of the emotionally charged Civil Rights Era that the United States underwent a generation ago, may be of particular interest to American journalists.²¹ Moreover, such symbols may be potent because they are personal and evoke a readiness to respond in the community.²² Consider again the Reagan-Botha meeting in light of its symbolic value or, more dramatically, Bishop Tutu’s 1984 Nobel Prize contrasted with the Constitutional vote.

In the present study, data on the events, deaths, and articles related to South Africa were subjected to an interrupted time series analysis.²³ Three major hypotheses regarding American news coverage of South Africa were explored: First, a significant increase in the

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number of stories per observation period was expected, during the time span (1979 to 1985) under consideration. Second, the geographic origin and sociopolitical impact of events, rather than absolute number of deaths resulting from those events, were expected to emerge as factors in this increased news coverage. Finally, external symbolic events were expected to account for the onset of increased coverage.

METHOD

The data in the present time series analysis consisted of 2,089 articles concerning South Africa and 643 deaths reported in those articles. These data were collected from the *New York Times Index*, a biweekly compilation of abstracts of all articles that have appeared in the daily *New York Times*. The tabulation of articles was based on the number of abstracts appearing in the *Index* under the heading "South Africa" within each two-week interval in the time series. The tabulation of reported deaths was based upon a count of the number of deaths reported in the abstracts. (Secondary reports and references to deaths reported in previous abstracts were excluded from tabulation.) This procedure provided data on the number of articles and deaths during two-week intervals beginning with January 1, 1979 and ending with October 30, 1985. This procedure allowed us to determine whether deaths or types of events were more important in triggering a rise in the number of articles. A scatterplot of each series (i.e., number of articles over time and number of deaths over time, respectively) was inspected and may be obtained by request from the authors of the present study.

Intervals at which the pattern of the series showed the most dramatic change were identified and these intervals were compared to the times at which the possible abrupt changes or interruptions occurred. Seven events (listed in Figure 1) corresponding to abrupt changes in the data patterns were retained for analysis. The seven-year time series was composed of 162 observations, with twenty-nine preceding the first interruption, and twenty-four following the last interruption. This procedure allowed us to test the premises that (1) a genuine increase in news coverage about South Africa had occurred, (2b) increases in the number of deaths over time led to increases in the number of news articles over time, and (3) geographic and sociopolitical events, both singly and together, were responsible for the rise in news coverage.

RESULTS

The data were analyzed with the ARIMA procedure on the Statistical Analysis System (SAS).²⁴ Unexplained error or "noise" associated with each time series analysis was identified, diagnosed, and

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removed. A single model subsequently was generated with the major geographic and sociopolitical events (see Table 1) as predictors, the number-of-deaths time series as the covariate, and the number-of-articles time series as criterion. Results showed that not only did news coverage increase significantly over time, but one internal symbolic event (i.e., the series of township riots) and one external symbolic event (i.e., Tutu's Nobel Prize) were significant predictors of the increase (t 's with 160 degrees of freedom = 2.18 and 2.37, respectively; for both events, $p < .01$). The number-of-deaths time series, in contrast, did not emerge as a significant predictor of the increase in news coverage over time.

Although it is true that two symbolic events led to an increase in coverage, this does not necessarily mean that the impact of these events was independent or due to their symbolic nature. The fact that the two other symbolic events (i.e., the Soweto anniversary and the Reagan-Botha meeting) were not significant predictors suggests that symbolism is not sufficient in and of itself to account for the increase in news coverage. We also cannot conclude that the two significant symbolic events (the township riots and Tutu's Nobel Prize) independently accounted for the increase. As it turns out, the two significant events occurred in close temporal proximity to each other. These data raise the possibility that either (a) the temporal proximity of the events alone explain the increase in news coverage, or (b) both the symbolic nature of the events *and* the temporal proximity to the events combined to account for the increase in news coverage.

In order to provide a limited test of the importance of the temporal proximity and/or the symbolic nature of the two significant events, we contrasted the township riots and the awarding of Tutu's Nobel Prize against two other events (i.e., the United Nations' sanctions and the Reagan-Botha meeting) that occurred relatively close together in time. We reasoned that if both sets of events (i.e., the "sociopolitical/symbolic" set and the "geographic/external" set) were found to be statistically significant as predictors of the increase in news coverage, then the temporal proximity (rather than the symbolic nature) of the township riots and Tutu's Nobel Prize were responsible for the increase in news coverage.

Results indicated that, like the number-of-deaths time series, the "geographic/external" pair of events was not a statistically significant predictor of the increase in US news coverage of South Africa. However, the "sociopolitical/symbolic" pair of events achieved statistical significance at the .10 level and fell just short of statistical significance at the .05 level ($t(160) = 1.93, p < .06$). These results, together with those reported earlier in this paper, indicate that whether considered separately or together, the township riots and

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Bishop Tutu's Nobel Prize served to predict a substantial rise in American news coverage of South Africa from 1979 to 1985.

DISCUSSION

As we predicted, the number of news articles regarding South Africa increased significantly from 1979 to 1985. Furthermore, in keeping with our predictions, the nature of events (i.e. geographic and/or sociopolitical) rather than the absolute number of deaths resulting from the events, was responsible for the rise in news coverage. However, both internal and external symbolic events emerged as significant predictors of the increase in news coverage; we had expected that only external symbolic events would be significant as predictors. Interestingly, the temporal proximity of the two events (i.e., the township riots and Bishop Tutu's Nobel Prize) is key to the overall rise in US newspaper articles regarding South Africa.

The results of the time series analyses thus indicate a significant, gradual increase in the number of articles published during the time interval under consideration. These results might also be interpreted as evidence that the township riots (an internal symbolic event) may have been necessary for news reports to rise abruptly. Nevertheless, the township riots may not have been *sufficient* to account for a long-term increase in news coverage of South Africa. The initiating condition seems to have been the occurrence in close temporal proximity of a symbolic event played out on the world stage—Bishop Tutu's Nobel Prize. At the outset, we anticipated that knowledge about the nature of events concerning South Africa would yield insight into the forces that shape the news and social change. Some journalists, psychologists, and sociologists²⁵ have asserted that members of the news media and/or other powerful political and economic interest groups control the news. Ostensibly, this control would serve to regulate social change. Clearly though, social movements themselves can and do influence social change.²⁶ But can the events within these movements influence both the media *and* social change?

According to Phillips,²⁷ a two-stage process characterizes the relationship among events, media, and the audience: Events influence the media, and consequently the media influence the audience. Our results concerning the nature of those events suggest how (and hint at why) such a sequential process occurs. Perhaps influence begins with internal symbolic events—events that have meaning to the participants in a struggle. Even though reported duly by the media, however, internal symbolic events are in themselves insufficient because the struggle remains with the participants. In contrast, the struggle becomes universal with the reporting of an *external* symbolic event—an event that has shared meaning for participants

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and onlookers alike. As Ichheiser once noted, "This means that the victims, even though not yet freed from their social bondage, in fact are freed at least psychologically from their moral isolation. For now there is somebody outside their own ranks who sees and understands the whole situation in the same way as it is immediately seen by themselves ."28

Is the process just described unique to post-1970s South Africa, or can the process also be identified as underlying other social change phenomena? Consider the way in which internal symbolic events, such as the Montgomery bus boycott or the march through Selma, Alabama, and an external symbolic event, the Nobel Peace prize, "drew national and world attention to Martin Luther King, Jr. and the civil rights movement"29 in the United States during the 1960s. Just as such symbolic events have been implicated in the generation of media attention and subsequent social change in the United States during the late 1960s, symbolic events relevant to South Africa may have set in motion inexorable forces that eventually will eradicate apartheid in South Africa altogether. Time, as well as future research, ultimately will determine whether or not media coverage of symbolic events, such as the Nobel Peace Prize, actually leads to significant social change in that country.

CONCLUSION

In the years that have passed since the time period that served as the focus for the present study, South Africa has undergone considerable internal change, primarily in terms of public policy. The once exiled leader of the African National Congress, Nelson Mandela, has been freed and subsequently has entered into negotiations with Prime Minister F.W. de Klerk regarding the transition of South Africa from white minority rule to democratic rule. One by one, the major legal pillars of apartheid have fallen as South Africa, isolated increasingly from the rest of the world economy, has found it necessary to confront the inevitable: Inclusion of the majority of its inhabitants in the political process. To be sure, the transition process has been uneven inconsistent and points toward a future fraught with uncertainty.30 Yet change surely has and will continue to occur within South Africa.

By the same token, much of the change related to South Africa since 1985 has been neither policy-oriented nor confined to the geographic boundaries of South Africa. An especially striking example of such external, symbolic change was Bishop Desmond Tutu's promotion to archbishop, thus lending further moral and social legitimacy to the struggle for equality that Tutu, Mandela, and other central figures in South Africa have championed for so long. At stake in South Africa is much more than political reform; indeed, the face

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of South African culture and psyche currently is undergoing a fundamental makeover.³¹

While some observers have called attention to the media coverage of the violence and deaths that continue to grip South Africa,³² few have considered the ways in which the very nature of events has influenced media coverage. In turn, the potential role of the United States in framing the debate over South Africa's future has been underestimated.³³ As such, the question of US news coverage of South Africa takes on added significance as a possible mediator of the impact of current events on the actions of American politicians and civilians towards South Africa itself. It is our hope that theoreticians and researchers throughout the humanities and social sciences address the issue of South Africa and American news media during the years to come, as the social, cultural, political, and economic vacuum created in post-apartheid South Africa undoubtedly will be filled but gradually.

NOTES

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Human Rights and National Minorities in the United States

Charles P. Henry

University of California, Berkeley

Three human rights myths serve to limit the debate over human rights in the United States and bias our perspective in dealing with the human rights claims of citizens from other countries. The first myth is that human rights belong solely to individuals and protect them largely from negative actions by the state. The second myth declares that civil and political rights are primary while economic, cultural, and social rights are secondary. The third myth asserts that the only rights that count are legal in nature and that moral or personal claims are invalid or irrelevant. Even a brief historical analysis reveals that all three myths are just that—myths. The group rights of corporations are protected under the Fourteenth Amendment to the Constitution, economic rights have been upheld over political claims as witness the Supreme Court's *Dred Scott* decision, and legal debates over rights have often obscured the political, personal, and identity questions that many rights arguments revolve around. Only a conception of human rights that views them as the gradual empowerment of people or groups or the deconcentration of power removes them from the realm of an elite debate among experts and allows for cross-cultural comparison and action.

The last 25 years have given rise to an explosion of human rights demands. These demands, in turn, have produced many new laws, organizations, and a library of scholarly works on human rights. In fact, one author refers to a new "human rights industry" that has sprung up. Belatedly, human rights education has emerged in the school curriculum far beyond its usual place as a "current event" or as an "Enlightenment idea." However, in moving to a more central place, human rights has created as much confusion as clarity. Who

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are all of these special interests and how do we adjudicate between their competing demands? What is the relationship between rights and freedoms? Is there a clear-cut answer to the "hate speech" debate? Have demands such as affirmative action somehow gotten away from the more "basic" rights embedded in our Constitution?

In a truly multicultural country and world, we must begin to clear away some of the confusion surrounding human rights in the United States and create a foundation on which we might build a more coherent and equitable conception of human rights. To do this, we must challenge the traditional conception of human rights embraced by the United States government and many scholars and activists in this country. This traditional view of human rights rests on at least three myths. First, it sees rights only as individual claims against state power. There are no rights between the state and groups even though the United States may be the most group-oriented society in the world. Second, partly as a result of history and partly as a result of superpower politics, human rights in the US has come to mean political and civil rights rather than economic and cultural rights. The rise of "third world" claims and the deconstruction of the Soviet Union have made this narrow view of rights increasingly untenable. Third, rights in the US tend to be seen as legal rather than moral or political. That is, if one does not have recourse to legal action then one is seen as not having a right in reality. This legal framework extends to the international arena where all rights are seen as flowing from the United Nations Universal Declaration of Human Rights, however, there is no acknowledged framework for prioritizing these delineated rights.

The traditional way we view these rights in the United States ignores the fact that this country has never been culturally or religiously homogeneous and that its diversity has increased dramatically over the last century. The United States was first a multicultural nation through conquest and then enslavement followed by immigration. Given this history, I believe that the phrase "human rights" is best defined as the newly articulated demands for empowering people who (because of poverty or discrimination) have suffered deprivation or oppression. In a power theory of human rights, demands (or claims) are made by persons, individually or in association with others, to get or keep the power to satisfy felt or perceived needs. Frederick Douglass was asserting such a theory over 100 years ago when he said: "Let me give you a word of the philosophy of reform. The whole history of the progress of human liberty shows that all concessions yet made to her august claims, have been born of earnest struggle. . . . Power concedes nothing without a demand. It never did and it never will."¹ Power (or control) is simply the ability to help cause effects. It is much more than might, or physical force.

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Love, religion, philosophy and law may all be sources of power. Their use combines with other causal factors to produce unintended consequences and by-products. Their legitimacy depends on the depth and breadth of acceptance either through passive consent or active support.²

The first myth, that rights obtain only to the relationship between the individual and the state, helps delegitimize group-based claims. This traditional individualistic view of rights is ironic given that the development of the UN Declaration of Human Rights was grounded in response to the oppression of a group (Jews) by another group (Aryans). Without going into the enormous economic and cultural differences within the US or between the US and any other country, we must recognize that all humans are first and foremost individuals-in-groups. From birth onward, they are social animals. The “self” is linked first with the mother and then with other “others.” It is influenced not only by heredity and the physical environment but also by a cultural environment. Individual dignity and worth are defined largely by multiple social roles and affiliation, that is, by belonging to one or more communities of shared interests—a family, household, gang, neighborhood, association, formal organization, religion, ethnic or national group or even by identifying with a uniform, flag, athletic team or media celebrity. The “rat race” in corporate bureaucracies, as pointed out decades ago in *The Organization Man*, takes place in a collectivist cage.³ The long-term impact of Soviet totalitarianism was the impairment of “a citizen’s ability to act constructively and cooperatively with fellow citizens.” As a Soviet official explained it to Richard Schifter: “I spoke freely to my wife and she spoke freely to me. We did not share our thoughts with any one else.”⁴

An examination of the diplomatic history between Native American peoples and the US government would certainly seem to support the argument that the rights of individuals reign supreme. How else do we explain the nearly 500 broken treaties with American Indian tribes? What motivates government policy to break-up tribes? How can the sovereignty of tribal nations be ignored in legal and moral terms? What role does race play in the group-centered demands of Native Americans and African Americans? Are cultural or biological definitions of race more persuasive in making rights claims? Indeed, claims such as affirmative action and reparations make no sense unless we recognize that government policy did recognize groups rewarding some and punishing others. Perhaps the best example of the legal recognition of groups is the corporation. Moreover, the recognition of the corporation as a “legal person” bestowed upon them economic benefits that were often given priority over the political and civil claims of individuals.

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The legislative history of the post-Civil War Fourteenth Amendment to the Constitution reveals that two members of the committee that drafted the amendment, Representatives John Bingham and Roscoe Conkling, a prominent Republican and successful railroad lawyer, explained that they added the word "person" (in addition to "citizen") not to help former slaves but to help protect "joint stock companies" from the oppression of state or local regulation, expropriation, and "invidious and discriminating" taxes. Under a flood of judicial decisions, the "fictive personality" of state-chartered corporations became one of the fundamentals under the towering structure of corporate law.⁵ Every corporation was thus entitled to all the rights, including due process, at all levels of government, that the constitution granted to mortals. Despite occasional dissents, these rights have long been upheld.

With this due process protection against state government regulation and with massive government aid to corporate collectivities through land grants, protective tariffs and other subsidies, Northern industry expanded rapidly and the US began to emerge as a potential Great Power. All this took place under the ideological umbrella of a weak central government. For decades the Supreme Court declared unconstitutional many laws that limited the rights of large corporations or, as Arthur Schlesinger puts it, to "counter the aggressions of local majorities on the rights of minorities and individuals."⁶ More recently, the US has insisted that the right to private property be a part of international human rights instruments.

The second human rights myth in the United States is that political and civil rights should be given priority over economic and cultural rights. This myth prevails even though the right to private property (which runs counter to the conceptions of land ownership held by the original inhabitants of this country) is certainly an economic right. A recent example of the priority attached to this position comes from the introduction to the State Department's Country Reports on Human Rights Practices for 1990 by Richard Schifter:

In applying these internationally recognized standards, we seek to be objective. But the reports unashamedly reflect the U.S. view that government is legitimate only when grounded on the consent of the governed, and that government thus grounded should not be used to deny life, liberty, and the pursuit of happiness. . . . We have found that the concept of economic, social, and cultural rights is often confused, sometimes willfully, by repressive governments claiming that, in order to promote these "rights," they may deny their citizens the rights to integrity of the person as well as political and civil

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rights. If these basic rights are not secured, experience has shown, the goals of economic development are not reached either. . . . From this premise, that basic human rights may not be abridged or denied, it follows that our human rights policy is concerned with the limitations on the powers of government that are required to protect the integrity and dignity of the individual.⁷

It is certainly true that US human rights policy has been concerned with limiting the powers of government. However, it is a myth that this policy placed individual political and civil rights first. Perhaps the greatest challenge to this myth occurred in 1857 in the *Dred Scott* decision of the US Supreme Court. Dred Scott, a slave, had been taken by his master to live in Illinois, a free state, and later in the Louisiana territory north of 36° 30' in which slavery had been prohibited by the Missouri Compromise of 1820. After his return to Missouri, Scott sued in Federal Court to obtain his freedom on the ground that he had resided in "free territory" and was thus entitled to his freedom (citing English common law). In its decision, the Supreme Court stated that historically blacks "had no rights which the white man was bound to respect" and therefore blacks had been denied citizenship.⁸ Thus, *Dred Scott* lacked "legal standing" before the courts. However, the Supreme Court went beyond denying Scott citizenship rights to assert that congress had no authority to deprive a citizen "from holding and owning property of this kind [slaves] in the territory mentioned in the Compromise or in any place in the United States."⁹ In *Dred Scott* the civil and political rights of blacks in even free states was submerged beneath the economic rights of slave masters to own human property.

The debate over the *Dred Scott* decision illustrates the final myth about human rights—that they are natural or "God-given." Aside from the theological questions this view raises, it also tends to obscure the political context of rights. A top-down view of rights that sees them only as a struggle between the individual and the state artificially separates the public sphere from the private. Every right involves a political and social struggle and these struggles by individuals and groups to control their lives are more than simple protection from the power of a monarch or a centralized government. It is the power of women and children to gain some control over their lives in the family as well as the right of a union to organize. While court decisions or UN Conventions may help legitimate certain rights claims, governments cannot guarantee rights. Only the actual struggle over responsibilities and remedies will determine which among competing claims are met. In this struggle, moral and political norms provide the framework in which legal decisions are made and legislation is passed.

Only by understanding the political context of the human struggle can one explain the failure of the United States to ratify the basic human rights instruments. Throughout the 1950s and 1960s a common theme of the opposition involved the fear that international pressure would force the granting of political and civil rights to national minorities in this country. Thus, the president of the American Bar Association, Frank Holman, could state the following: "I pointed out that if, in driving me from the airport, [someone] had unfortunately run over a Negro child running out into the street in front of him, what would have been a local offense under a charge of gross negligence or involuntary manslaughter would, under the Genocide Convention, because of the racial differential, not be a local crime but an international crime and that [he] could be transported someplace overseas for trial."¹⁰ The long-term success of the forces opposed to ratification of the UN conventions and covenants in the US is at least in part measured by their success in framing the debate over human rights treaties in legal rather than moral terms.

This formalistic approach to rights is complemented by our assumption that rights are public rather than private. Such a distinction is evident when we label violence that occurs in the home "domestic" and thus attach less severe or no penalties to those who perpetrate such acts. The modern women's movement has done much to break down the barriers between the personal and the political. Yet many of these activists are often drawn into abstract debates on rights rather than the substance of specific demands for empowerment. In the case of the Equal Rights Amendment (ERA), for example, the anti-ERA forces mobilized their constituents far more effectively than did their opponents around the politicizing of personal issues. The ERA's abstract nature and indeterminate language lacked the impulse of an urgent issue and left the door open for distorted claims about possible future interpretations by the Supreme Court.¹¹ However, that is not to say that the campaign for ratification was without positive education effects for women and men.

The tendency for the human rights struggles to get caught up in abstract, legalistic arguments hides the moral bases of law which are essential to building mass movements. Martin Luther King's great appeal was as a moral leader and not as a legal scholar or legislator. His appeal to higher "natural law" as reflected in the "Letter from Birmingham Jail" represents the most eloquent statement of the spirit of the civil rights movement.¹²

Yet this appeal to higher law can work both ways as evidenced by the wide-spread disrespect for law and order in the South following the *Brown* decision in 1954. At the same time, there exists in American legal culture a quite different tendency: a desire to regulate

human behavior tyrannically by means of formal laws. Over fifty years ago, Gunnar Myrdal cited this tendency as a remnant of early American Puritanism which was sometimes fanatical and dogmatic and always had a strong inclination to mind other people's business. Thus, according to Myrdal, "[t]o demand and legislate all sorts of laws against this or that is just as much a part of American freedom as to disobey the laws when they are enacted." "America," he says, "has become a country where exceedingly much is permitted in practice but at the same time exceedingly much is forbidden in law."¹³

Myrdal's discussion of these conflicting tendencies in American law helps explain why Americans have come to place so much emphasis on "the letter of the law" as opposed to its spirit.¹⁴ How else can we explain why the federal government is forced to carry out important social legislation like the 1964 Civil Rights Act under the fiction that it is regulating "interstate commerce," or that federal prosecuting agencies punish dangerous gangsters for income tax evasion rather than for the felonies they have committed.

Myrdal contends that the Americans now have a judicial order that runs counter to their basic idealistic inclinations. The American creed as Myrdal delineated it in *An American Dilemma* included liberty, equality, individualism, democracy and rule of law under a constitution. More recently, Samuel Huntington has argued that this American Creed forms the basis for our national identity which is political rather than cultural. In a country as heterogeneous as the United States it is not surprising that our identity would flow from political ideals rather than cultural reality.

This peculiar political identity, however, has a number of consequences. American identity, for example, is defined in normative terms, French identity in existential terms. French political behavior, in this sense, is whatever the French *in fact do* in politics; American political behavior, on the other hand, is what American political ideals say Americans *ought to do* in politics. This external standard by which to judge the legitimacy of American political practice and institutions provides a basis to challenge the status quo.¹⁵

Of course, the problem with the American Creed as a standard of evaluation is that it contains conflicting values. It is not a systematic ideology in the European sense. There is no theory for ordering these values or resolving conflict among them. Hence, we are back to our original questions. Whose rights do we uphold—those who wish to engage in free speech or those who wish to be protected from hate and intimidation? In fact, as our three myths demonstrate, power is the instrument used to resolve conflict.

The political character of our national identity helps explain much of our bias in approaching international human rights. We

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tend to distrust authority, promote individual liberty and political rights over economic equality and group rights. Yet, as we have seen, our idealism has often masked a practice that promotes the rights, including economic rights, of some groups over others. Our tendency to engage in extended legal debates over “the letter of the law” also hides the moral basis of our actions and removes them from the realm of popular discourse.

Many rights are “universal” ideals in the sense of being widely accepted by elites in the world community, although violated in practice and unknown to most people in the world. By focusing on human rights as the gradual empowerment of people or the deconcentration of power, we move away from the conception of rights that views them as a public contract between the individual and the state rather than the private relationships within families or between groups. In the words of Nobel Laureate Ralph Bunche during World War II: “As members of a disadvantaged minority in this society, we must recognize clearly that we are forced to fight on two fronts. We must struggle to win our share of the blessings of life in a democratic society and we must join with the rest of the nation in a whole-hearted fight to preserve the democratic framework and ideals of this society. It is only when the latter fight is won that the former can ever again have real meaning.”¹⁶

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¹⁵Samuel P. Huntington, *American Politics: The Promise or Disharmony* (Cambridge, MA: Harvard University Press, 1981), 30-32.

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Contributors

Donald J. Baumann is project director on a federal grant awarded to the State of Texas Department of Protective and Regulatory Services. He formerly was an assistant professor at the University of Texas at Austin and a visiting professor at Trinity University. He received his Ph.D. in applied social psychology and community psychology from Arizona State University. He has conducted extensive research and published and published numerous articles in the areas of altruism, mental health, the police, and the homeless.

Paul R. Dauphinais received his B.A. in English from Bridgewater State college in 1976. After serving a decade in the US Navy, where he earned his MS from Naval Postgraduate School, he received his Ph.D. in Canadian-American history from the University of Maine in 1991. His main research interest is a comparative examination of the influence of economic structure on local populations.

Kevin E. Early is an assistant professor of Sociology at Oakland University in Rochester, Michigan. He specializes in Criminology and Corrections, Study of Deviance and Social Control, Substance Abuse, and Race Relations. He is the author of *Suicide in the African American Community* (Greenwood Press, 1992).

Stanley O. Gaines, Jr. is an assistant professor in the Department of Psychology at Pomona College, and of the Intercollegiate Department of Black Studies, Claremont Colleges. He received his Ph.D. in social psychology from the University of Texas at Austin, where he was involved in research on gender roles, personality, and close relationships. Currently he is planning research which represents an integration of the fields of ethnic studies and close relationships.

Harry Gold is an associate professor of Sociology at Oakland University in Rochester, Michigan. He specializes in Urban Studies, Political Sociology, and the Study of Work.

Charles P. Henry is currently an associate professor of African American Studies at the University of California at Berkeley. He holds a Ph.D. in political science from the University of Chicago. His two most recent works are *Culture and African American Politics* and *Jesse Jackson: The Search for Common Ground*. He is presently writing a critical biography of Ralph Bunche. Professor Henry also serves as the President of the National Council for Black Studies and is past national chair of Amnesty International.

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Michael Hodge is assistant professor of Sociology at Georgia State University in Atlanta, Georgia. He specializes in racial and ethnic relations. He is currently investigating the cultural resistance of middle class African Americans using in-depth interviews.

Maulana Karenga is professor and chair of the Department of Black Studies at California State University, Long Beach. He is the author of numerous scholarly articles and several books, including the recently expanded and revised second edition of *Introduction to Black Studies*. He is widely known as the creator of Kwanzaa and the Nguzo Saba, and is also chairman of Us Organization and director of the Institute of Pan-African Studies and the African American Cultural Center in Los Angeles.

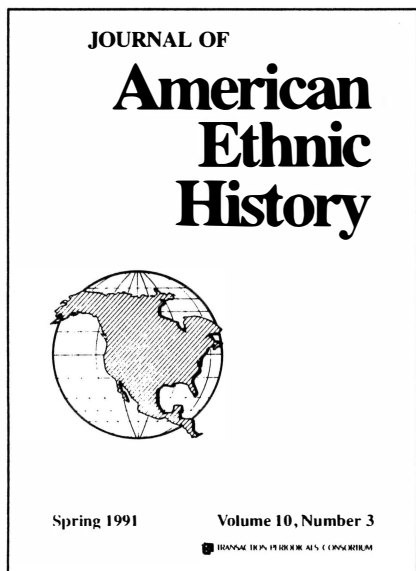
ChorSwang Ngin is a professor in the Department of Anthropology at California State University, Long Angeles. Her current research interest is in the area of ethnicity, racialization, and minority populations as racialized groups.

David C. Roberts is a project coordinator in the Professional Assessment group at the Psychological Corporation. He formerly was a management analyst at the Texas Department of Mental Health and Mental Retardation. He received his Ph.D. in social psychology from the University of Texas at Austin, where he was involved in research on personality, employee perceptions, and job stress.

Ron Schmidt is professor of Political Science at California State University, Long Beach. He has published articles on cultural pluralism and public policy, language policy conflicts in the United States, and Latino politics. He is currently working on a book-length manuscript on "Cultural Pluralism and the Politics of Language in the United States."

Mary Young is an assistant professor of English and Black Studies at the College of Wooster in Wooster, Ohio. She is the author of *Mules and Dragons: Reflections on Popular Culture Images in the Selected Writings of African-American Women Writers and Chinese-American Women Writers* (Greenwood Publishing, 1993).

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