

11-2016

# A New Southern Strategy of Multigroup Oppression: A Response to Standard White by Michael Morris

Richard Delgado

Jean Stefancic

Follow this and additional works at: <http://scholarship.law.berkeley.edu/clrcircuit>

---

## Recommended Citation

Delgado, Richard and Stefancic, Jean, "A New Southern Strategy of Multigroup Oppression: A Response to Standard White by Michael Morris" (2016). *The Circuit*. 91.  
<http://scholarship.law.berkeley.edu/clrcircuit/91>

This Article is brought to you for free and open access by the California Law Review at Berkeley Law Scholarship Repository. It has been accepted for inclusion in The Circuit by an authorized administrator of Berkeley Law Scholarship Repository. For more information, please contact [jcera@law.berkeley.edu](mailto:jcera@law.berkeley.edu).

# California Law Review Online

---

Vol. 7

September 2016

---

Copyright © 2016 by California Law Review, Inc.

## A New Southern Strategy of Multigroup Oppression: A Response to *Standard White* by Michael Morris

Richard Delgado\* & Jean Stefancic\*\*

*Building on a recent review essay by Michael Morris, Delgado and Stefancic show how conservative strategists marshal regional animus against Latinos to improve GOP electoral prospects and set one minority group against another to the detriment of both.*

|   |    |
|---|----|
| Introduction: Freaks and Losers .....   | 50 |
| I. The New Southern Strategy .....  | 52 |
| II. Interracial Politics and Prearranged Contention Between Outgroups .....         | 55 |
| A. Playing One Group Against Another .....  | 56 |
| 1. The New Southern Strategy .....  | 57 |
| 2. Part One of the New Southern Strategy: Strict Border<br>Enforcement .....        | 60 |
| 3. Part Two: Cutting Welfare to Near-Zero .....                                     | 61 |
| 4. Part Three: Deportation and Self-Deportation .....                               | 62 |
| B. Why the Strategy Works: Southern Dreams and a Theory of<br>Cultural Memory ..... | 63 |
| III. Judicial Review and Multigroup Oppression .....                                | 66 |
| Conclusion.....   | 67 |

---

DOI: <http://dx.doi.org/10.15779/Z38VZ8K>

\* John J. Sparkman Chair of Law, University of Alabama School of Law.

\*\* Professor and Clement Research Affiliate, University of Alabama School of Law.

## INTRODUCTION: FREAKS AND LOSERS

In a pathbreaking review essay published in the print edition of the *California Law Review*, Michael Morris takes issue with the prevailing conception of white normativity in progressive legal thought.<sup>1</sup> According to this conception, whiteness operates as a normative benchmark or ideal that places white habits, practices, and norms on a pedestal and then demands that minorities measure up.<sup>2</sup> Progressives rightly criticize this practice as one-sided and unfair. We should strive to be more ecumenical in our standards and tastes, they say, so that everyone enjoys an equal opportunity to succeed.

Morris points out, however, that whiteness operates even more subversively than this standard view contemplates, so that broadening our standards, while commendable, will do little good.<sup>3</sup> Rather than placing whites and white practices invariably at the end of a straight-line scale of increasing merit, we more often subconsciously locate them at the midpoint of a continuum of frequency of appearance.<sup>4</sup> Groups on either end of this continuum emerge as freaks or losers—occupants of two kinds of purgatory, corresponding, roughly, to Asians (superior in math and the violin) on the one hand, and African Americans and Latinos (dull but musical and athletic), on the other.<sup>5</sup> Relaxed, well-balanced whites, who occupy the center portion of the continuum, end up equated with being the most predictable, familiar, and normal—that is, the most human.<sup>6</sup> Those falling outside this group are either subhuman—animals—or freakish automatons.<sup>7</sup>

Morris suggests that we abandon this way of thinking as inconsistent with our national ideals as well as the needs of a rapidly diversifying society.<sup>8</sup> This effort will require more than merely making a place for alternative performances, such as learning to appreciate African American literature or Latino music and cooking. Instead, we will need to reconsider the very baseline that we use to judge people and cultures other than our own.<sup>9</sup>

We believe that Morris is correct and that casting aside white hegemony is considerably harder than we like to believe it is.<sup>10</sup> Yet his analysis, which

---

1. See Michael Morris, *Standard White: Dismantling White Normativity*, 104 CALIF. L. REV. 949–52 (2016). This view, which Morris critiques, we will sometimes refer to as “the standard view.”

2. *Id.* at 949–51 (explaining this standard view).

3. *Id.* at 950–51.

4. *Id.* at 951, Figure 1.

5. *Id.* at 951.

6. *Id.* at 950.

7. *Id.* at 950–54 (explaining and illustrating this typology).

8. *Id.* at 956–74; see also Jason Horowitz, *Immigration Advocates in Philadelphia See Affirmation in Pope’s Visit*, N.Y. TIMES (Sept. 25, 2015), <http://www.nytimes.com/2015/09/26/us/immigration-advocates-in-philadelphia-see-affirmation-in-popes-visit.html> (noting that the pope, during a recent visit to the United States, chided the country for falling short of its national ideals).

9. Morris, *supra* note 1, at 950–52, 972.

10. That is, all we need to do is broaden a few of our tastes.

begins by breaking society down into a normal group and all the rest, has the additional virtue of shedding light on how the dominant group can play subordinate groups against each other, entrenching its own position while running little risk that the outgroups will notice and resist what it is doing.<sup>11</sup> In particular, two of Morris's outlier groups—Latinos and African Americans—emerge not only as errant children who must learn to try harder (or in the case of Asians, not so hard). They emerge, instead, as losers one of whose purposes is, on occasion, to wage war with each other, thus shoring up the position of normal, well-adjusted whites, who are, in this view, the only ones who are fully human and normal.<sup>12</sup> White normativity, as Morris reconceives it, thus enables us to see how a large, norm-setting group can manipulate its competitors and postpone a day of reckoning.

A celebrated film illustrates the general mechanism that we have in mind: *The Last of the Mohicans*.<sup>13</sup> The film opens with the final three survivors of a dying Native American tribe—Uncas (played by actor Eric Schweig), his father Chingachgook (played by real-life activist Russell Means), and adopted brother Hawkeye (played by award-winning actor Daniel Day Lewis)—making a long, spirited dash through the forest, leaping nimbly over logs and splashing through creeks. It turns out that the three are hunting a deer, which they dispatch quickly and bloodlessly as the opening credits run. Before hauling off their prey, however, they thank the spirits of the forest for their bounty and apologize to the animal for taking its life for food. The viewer learns from this that the three are skilled outdoorsmen, physically fit, and spiritual all at the same time—entirely admirable, but far from the normative middle-of-the-road lives of the stuffy British officers whose cause they later misguidedly champion.

As the movie unspools, the viewer also learns that the three live in precarious times. In 1757, the British and the French occupied roughly the same territory<sup>14</sup> in the newly colonized continent, with both sets of conquerors disputing ferociously (the evil French) or in more civilized fashion (the British) with the Native Americans and each other for territorial rights. Both brothers, Hawkeye and Uncas, are on good terms with the British, including their commanding officer and his two daughters, Cora and Alice, who are on their way to join their father at Fort George. When the daughters and their party, under the command of dashing British major Heyward, are led into an ambush by Magua, a conniving Native American scout, whose Huron friends kill the entire party except Heyward and the two women, Chingachgook and his sons ride to their rescue. After dispatching the treacherous Hurons, as befits their

---

11. See *infra* Parts I and II.

12. See *infra* Part II.A.

13. (Morgan Creek Productions 1992). Based on the novel by James Fenimore Cooper, the movie is set during the French-Indian wars of the 1750s.

14. Namely, the Adirondack region in upstate New York.

nature, they set out to guide the three survivors to the safety of Fort George. As with the opening chase sequence, this takes a long time and supplies the main element of suspense for the movie. After several close calls with hostile Native Americans and natural disasters, Cora begins to bond with Hawkeye, whom she decides is even braver and more dashing than the British captain, who has by then fallen in love with her. Upon reaching Fort George, the party finds it under siege by the French, which leads to even more adventures, narrow escapes, and a further double cross by the scheming Magua, who shows up just in time to frustrate the two young lovers and turn Cora over yet again to the Hurons. In Romeo and Juliet fashion, Cora decides she is star-crossed and commits suicide rather than submit to a life as a prisoner of the savage tribe. Chingachgook fights Magua to the death, and the movie closes much as it began, with Uncas and Hawkeye mourning their father's death in a highly spiritual forest ceremony. He, Chingachgook, was the last of the Mohicans. The moral that the movie seeks to drive home is that the Native American wars were not so much a struggle of good (represented by the British colonists) versus evil (the French and their savage allies), but a complex contention among several parties for land, love, spirituality, and honor. A skeptical viewer might conclude that the Mohicans and Cora got the worst of it on each of these scores but one—spirituality.<sup>15</sup> Even the evil Hurons fare badly.

Were the Brits “playing” the Mohicans, deploying them first against their longtime rivals, the Hurons, and later, against the hated French? We think so and that it is an old strategy. Consider now a modern revival of it that is playing out in national politics.

## I.

### THE NEW SOUTHERN STRATEGY

In 1968, Richard Nixon and the Republican Party deployed a political strategy that secured him the presidential election and came to be known as the Southern strategy.<sup>16</sup> This scheme, which as we shall see, is a variation on the one the young British officer deployed over two centuries earlier, rested on inviting working-class whites, particularly in the South, to abandon the Democratic Party and its traditional constituents, some of whom Nixon and his followers painted as welfare-loving moochers indebted to big government for largesse and a monthly welfare check.<sup>17</sup> Employing images such as the

---

15. See also Leti Volpp, *The Indigenous as Alien*, 5 U.C. IRVINE L. REV. 289 (2015) (noting that a different ideology—the myth of a nation of immigrants (“melting pot”)—enabled society in effect to erase the Indians from our official nation-building history).

16. See, e.g., Rick Perlstein, *Exclusive: Lee Atwater's Infamous 1981 Interview on the Southern Strategy*, NATION (Nov. 13, 2012), <http://www.thenation.com/article/exclusive-lee-atwaters-infamous-1981-interview-southern-strategy/>.

17. *Id.* For modern incarnation, see Elizabeth Beshear, *Palmer: If Obama Wants Debt Limit Hike, Welfare Recipients Must Go to Work*, YELLOWHAMMER NEWS (Oct. 14, 2015), <http://www.yellowhammernews.com/politics-2/palmer-if-obama-wants-debt-limit-hike-welfare->

Cadillac-owning welfare mom who had baby after baby in order to boost her monthly handout, the Republicans succeeded in turning the tide against liberal figures such as John F. Kennedy and Lyndon Baines Johnson who backed civil rights and the legacy of the New Deal.<sup>18</sup> In the South, many whites deserted the Democratic Party and joined that of Lincoln's, where they remain to this day.<sup>19</sup> Many of the issues that the Republican Party used to dislodge them from their former affiliation—forced busing, opposition to the Voting Rights Act and section five preclearance provisions, and affirmative action—are the same ones that buoy them up today.<sup>20</sup>

The coalition is troubled, however, by decreasing numbers as the country's population ages and diversifies.<sup>21</sup> Conservatives are thus putting into operation a new version of this strategy, designed to take advantage of the very growth in minority numbers that is threatening conservative hegemony.<sup>22</sup> The new version turns on exploiting the very different fears and vulnerabilities of Latinos and African Americans—the main outgroups in Michael Morris's

---

recipients-must-go-to-work/ (implying that many welfare recipients are able-bodied and should go to work); Charles M. Blow, *Jeb Bush, 'Free Stuff' and Black Folks*, N.Y. TIMES (Sept. 28, 2015), <http://www.nytimes.com/2015/09/28/opinion/charles-m-blow-jeb-bush-free-stuff-and-black-folks.html> (noting that this attitude persists today); Paul Krugman, *Slavery's Long Shadow*, N.Y. TIMES (June 22, 2015), <http://www.nytimes.com/2015/06/22/opinion/paul-krugman-slaverys-long-shadow.html> (noting that for some conservatives the disdain for social welfare programs stems from a fear that they will merely benefit blacks—and a few poor whites—an attitude that is a residue of slavery).

18. See Perlstein, *supra* note 16; Beshear, *supra* note 17 (discussing some of the imagery that Nixon's party deployed). *But see* Bryce Covert, *We All Get Free Stuff from the Government*, N.Y. TIMES (Oct. 8, 2015), <http://www.nytimes.com/2015/10/08/opinion/we-all-get-free-stuff-from-the-government.html?em> (pointing out that we all benefit from various forms of government aid and subsidies and are, in that sense, welfare recipients not much different from “the boogeyman of the welfare queen out of a trumped up story about a woman who supposedly lived large off benefits without putting in a day's work”). Conservative lawyers played a part in rolling back the gains of the civil rights era, as well. See Christopher W. Schmidt, *Litigating Against the Civil Rights Movement*, 86 U. COLO. L. REV. 1173, 1203–05 (2015); Anders Walker, *A Lawyer Looks at Civil Disobedience: Why Lewis F. Powell Jr. Divorced Diversity from Affirmative Action*, 86 U. COLO. L. REV. 1229 (2015).

19. Some term these defectors “Dixiecrats” (persons from the South—Dixie—who deserted the Democratic Party because it was too liberal), although the term originated earlier and so is technically an anachronism when used in connection with Nixon's followers. See *Dixiecrat*, ENCY. BRITANNICA, <http://www.britannica.com/topic/Dixiecrat> (noting that the term describes a 1948 splinter group, the Dixie Democratic Party. Composed mostly of Southerners disgusted with civil rights and federal regulations in general, the splinter group separated from mainstream Democrats under the leadership of Strom Thurmond).

20. See *infra* text and notes 48–49 (discussing the salience of these issues in conservative politics then and now and noting how today's revival of the Southern strategy features familiar themes from the earlier version: blaming minorities for all social ills; castigating recipients of social welfare programs; and demonizing immigrants and new citizens for their alleged failure to assimilate and fit in. A new element today is a whipped-up fear of terrorism).

21. See Rosa Kaminsky, *Rand Paul's Young Voter Strategy*, NAT. SPECTATOR (March 11, 2014), <http://spectator.org/articles/58205/rand-paul%E2%80%99s-young-voter-strategy> (discussing how Republicans must cultivate the youth vote and minorities, otherwise it will lose strength because of an aging white population).

22. See *infra* Part II.

“loser” category—with the aim of retaining political power during the 2016 presidential election and beyond. As with *The Last of the Mohicans*, these groups occupy uneasy positions near one end of a continuum with whites in the center. And just as the Mohicans ended up betrayed and decimated, their alliance with the British availing them little, Latinos and African Americans today find themselves at the epicenter of a clever three-stage strategy that promises to disempower each in turn.

This strategy, which we outline in greater detail below, gains special resonance in the South owing to a little-known period early in that region’s history when, in order to stave off Yankee supremacy, the region launched a coordinated campaign to invade much of the Caribbean and Latin America with a view to establishing as many as twenty-five new states, which would naturally be pro-slavery.<sup>23</sup> The poor impression of Latin American and Latino people that Southern editors, political leaders, and ordinary people cultivated during this period embedded itself in Southern memory and folk wisdom, ready for revival when Republican operatives found a use for it beginning around 2005. We discuss this little known expeditionary period shortly, as well, and show how it set the region up for a new round of anti-immigrant hysteria that is working to the detriment of its economy and growing cosmopolitanism.

A concluding Section suggests a modification in the approach to judicial review that courts apply to racial classifications when a powerful majority oppresses—or even favors—one minority group with a view to controlling another.<sup>24</sup> In particular, the judiciary at times will need to consider applying strict scrutiny to a group, noncitizen Latino immigrants, whom the plenary power doctrine ordinarily divests of substantive protection.<sup>25</sup> Like the Native American half-brothers in *The Last of the Mohicans* who ended up betrayed and unprotected by their former British allies, both blacks and Latinos can end up worse off when whites, particularly in the South, deploy the strategy that we describe. Judges and progressive people alike should be on the lookout for the strategy and, when it appears, doctrines should expand to permit judges to examine it with a skeptical eye.<sup>26</sup>

---

23. See *infra* Part II.B.

24. See *infra* Part III.

25. See *Chae Chan Ping v. United States*, 130 U.S. 581, 603 (1889) (explaining why Congress has sole power in this arena).

26. We hasten to note that the strategy that we describe, *infra*, is not a simple case of dual oppression—that is, of a dominant group using overwhelming force to subjugate first one minority group, then another, or even both simultaneously. This would not only be easy to spot, it could easily backfire by driving the two groups into each other’s arms to combat the force that is keeping both down. Nor is it tantamount to the well-known, conventional “divide and conquer” strategy in which a hegemonic party plays one smaller group off against another, hoping to weaken them both and secure its own position. Kanu Iheukumere, *We Are Poverty: ‘Being Mary Jane’ Shows How False Divisions Thwart the Cause of Social, Economic Justice*, HUFFINGTON POST (Oct. 29, 2015), [http://www.huffingtonpost.com/kanu-iheukumere/we-are-poverty-being-mary\\_b\\_940992.html](http://www.huffingtonpost.com/kanu-iheukumere/we-are-poverty-being-mary_b_940992.html) (noting that “the crabs-in-a-barrel mentality this scenario evokes says a lot about how marginalized

II.  
INTERRACIAL POLITICS AND PREARRANGED CONTENTION BETWEEN  
OUTGROUPS

*The Last of the Mohicans* turns out to be a metaphor for contemporary politics, when two substantial groups, “losers” in Morris’s classification, and powerful whites vie for places in the sun. Just as happened during America’s colonial period, white elites today manipulate two weaker groups, first one, then the other, to its advantage. And in the South, the strategy plays out on a receptive stage. As with the Mohicans, weakened by wars and European diseases, Latinos in the opening years of the twenty-first century fell under the sway of tyrannical laws enacted by the Southern states and discriminatory social practices and publicity.<sup>27</sup> These misfortunes struck the South as right and deserved for historical reasons that, until now, have not been brought to light.<sup>28</sup>

For Morris, whiteness reigns supreme because our conceptual system deems it normative, not just racially, but across the board. Using a recent book by Ian Haney López as his springboard,<sup>29</sup> he shows how most authorities consider that our system deems whiteness a normative ideal—the standard of excellence. Whites stand apart, with most other groups arrayed below them on a spectrum of achievement and ability, the darkest on the bottom. For Haney López, as well as other authors, all thoughtful people should disavow this mindset, since it is unfair and demeaning to outsider groups and apt to give whites an undeservedly high opinion of themselves.

For Morris, this view misses a little-known but much more subversive feature of whiteness. It enables us to imagine, in the back of our minds, that we and our fellow humans lie along a normal distribution or bell curve. Those who occupy the middle region—who are well-adjusted citizens, just like us—are normal and fully human. Those who fall in the lower tail of the curve are subhumans—losers—while those at the upper end, who are superior to us in some important way, are nonhumans and freaks.

For Morris, then, our conceptual system neatly divides humanity up into at least three groups.<sup>30</sup> Those in the middle region are the well-adjusted whites. Since society adores the middle class, they occupy the most favored position

groups can be pitted against one another when they face the same issues—access to opportunity. It underscores many of the issues faced by those trying to fight poverty . . . because . . . social constructs . . . distract communities of interests . . . from working together to achieve a common goal.” Blacks, in short, can easily see Latinos as competitors, and vice versa).

Instead, it is a sequential strategy that employs different forms of political jiu-jitsu to the two groups *at different times*, employing different rhetoric and justifications and appealing to a different sector of whites each time. *See infra* text and notes 36–37.

27. *See infra* text and notes 41–42 (describing these laws).

28. We bring these earlier periods to light in Part II.B. *See infra* text and notes 65–89 (describing this earlier period).

29. IAN HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* (10th Anniv. ed. 2006).

30. *See supra* text and notes 3–6 (describing this classification).

and are in turn the most human.<sup>31</sup> Those who differ from whites, especially if they are minorities and look different from the norm, end up marked as nonhuman.<sup>32</sup> Those in the lower regions, who perform poorly on standardized tests of mental ability and scholarly achievement, are the African Americans and Latinos.<sup>33</sup> And those in the upper region, who perform better, are the Asians, diligent drudges who spend inordinate hours studying, practicing the piano and violin, and racking up perfect math scores on the SAT.<sup>34</sup> To the extent that this subconscious model of social relations finds a home in the minds of lawyers, judges, and other establishment figures, the road to equality will be rocky for groups at either extreme of the distribution, particularly those—the losers—at the lower end.

#### A. *Playing One Group Against Another*

We agree with Morris and identify an additional and even more troubling reason for rejecting this conception of race relations, namely how it enables conservative policymakers to play the outsider groups against each other, establishing relations that may seem to favor one, but in reality disadvantage both, even though they may not appreciate it at the time.<sup>35</sup> Conservatives may well succeed for the very reason that Morris points out—we see these groups virtually as animals that we may treat in any way we want—plus a second reason rooted in history: In a renewal of Richard Nixon’s Southern strategy, political operatives, particularly in the South, summon up memories of historical oppression to enable white manipulation to appear natural and

31. See *supra* text and note 6.

32. *Id.*; see also Colin Dayan, *THE LAW IS A WHITE DOG: HOW LEGAL RITUALS MAKE AND UNMAKE PERSONS* (2013) (discussing the trajectory of personhood over time in the eyes of the law).

33. See Dayan, *supra* note 32.

34. *Id.*; see also AMY CHUA, *THE BATTLE HYMN OF THE TIGER MOTHER* (2011) (describing the upward-striving Asian mother who enforces high academic standards and endless hours of practicing the piano or violin).

35. See, e.g., Iheukumere, *supra* note 26. Occasionally, two or more “loser” groups will stand together against the forces that are visibly oppressing them both, particularly if the oppression would strike any observer as roughly the same, emanating from the same source such as a very visible enemy that oppresses each group simultaneously and in the same fashion. *Id.*; see also Susan Eaton, *Black-Latino Coalitions Block Anti-Immigrant Initiative in Mississippi*, RP&E J. REIMAGINE, <http://reimaginerpe.org/18-2/eaton> (discussing the host of Southern anti-immigrant laws and a black-white coalition that formed to oppose them). More commonly, however, the groups will struggle in isolation, particularly if the oppressing group succeeds in convincing one that the other is at fault for their predicament (“the Mexicans are taking your jobs”). See, e.g., Susy Buchanan, *Tensions Mounting Between Blacks and Latinos Nationwide*, SO. POVERTY L. CTR. (July 27, 2005), <https://www.splcenter.org/fighting-hate/intelligence-report/2005/tensions-mounting-between-blacks-and-latinos-nationwide> (noting a host of racist comments by blacks against Hispanics, fights in school cafeterias, and resentment over immigrants who seem to the blacks to be jumping ahead in line); see also Jose A. DelReal, *Trump Woos Women and Minorities by Pitting One Group against Another*, WASH. POST (Aug. 29, 2016), [https://www.washingtonpost.com/politics/trump-woos-women-and-minorities-by-pitting-one-group-against-another/2016/08/29/04a6b3c4-6a30-11e6-8225-fbb8a6fc65bc\\_story.html?hpid=hp\\_hp-top-table-main\\_trumpdiver-0635pm%3Ahomepage%2Fstory](https://www.washingtonpost.com/politics/trump-woos-women-and-minorities-by-pitting-one-group-against-another/2016/08/29/04a6b3c4-6a30-11e6-8225-fbb8a6fc65bc_story.html?hpid=hp_hp-top-table-main_trumpdiver-0635pm%3Ahomepage%2Fstory).

desirable to one of the two outgroups<sup>36</sup> and some working-class whites. These tacticians are beginning to employ a version of this strategy today in hopes of winning the next election.

This approach consists of three parts whose connection is subtle and not always obvious. One reason is that it pits two groups against each other for the benefit of a third, so that the interactions are often complex. But the antagonism created by the strategy operates sequentially so that its entire trajectory is not readily visible at one time, at least not in its early stages. As we write—early 2016—the strategy is well under way. Yet few seem to have noticed its onset, much less identified its contours.

### 1. *The New Southern Strategy*

As the name implies, the Southern strategy has southern roots and is likely to achieve its fullest flower in that region. Although anti-Latino sentiment, a key element in the plan, is not exclusive to the South and has broken out in places such as Hazelton, Pennsylvania,<sup>37</sup> only the South is witnessing anything like its full development.

One reason is that the South has long been one of the regions with the lowest percentage of foreign born people, or immigrants.<sup>38</sup> In Alabama, for example, the Latino population stands at around 4 percent, close to the bottom among U.S. states.<sup>39</sup> Thus, when the region experienced a rapid rise in Latino immigrants from south of the border, many of them undocumented, beginning around 1995, attracted by the mild climate and plentiful opportunities for work on farms, construction sites, restaurants, meat processing plants, and furniture factories, the business community welcomed them but others looked on with a mixture of curiosity and alarm.<sup>40</sup>

---

36. The historical oppression that we explore here is that against Latinos in the South. As will become plain, this oppression is reviving now and portends worse times even for African Americans ahead. See, e.g., A.J. Delgado (no relation), *Black Americans, The True Casualties of Amnesty: Democrats Throw Black Voters Under the Bus*, NAT. REV. (July 9, 2014), <http://www.nationalreview.com/article/382338/black-americans-true-casualties-amnesty-j-delgado> (warning that liberal Democrats are scheming to sacrifice black wellbeing to curry favor with Latinos). For the rhetorical aspect of this movement, see Deborah Weissman, *The Politics of Narrative: Law and the Representation of Mexican Criminality*, 38 *FORDHAM INT'L L.J.* 141 (2015).

37. See Michael Powell & Michelle Garcia, *How Pa. Town Put Illegal Immigrants on Notice*, WASH. POST (Aug. 22, 2006), <http://www.washingtonpost.com/wp-dyn/content/article/2006/08/21/AR2006082101484.html> (describing how, uniting behind a mayor and town council who opposed immigrants and immigration, the town of Hazleton enacted a series of practices designed to make life difficult for Spanish-speaking newcomers). This sentiment, of course, has been in effect in the Southwest for centuries.

38. For the low representation (generally 5 percent or less) of the foreign born in the Southern states, see *The Foreign-Born Population of the United States*, U.S. CENSUS (May 2012), <https://www.census.gov/prod/2012pubs/acs-19.pdf> (observing the year 2010 and the corresponding map).

39. See *Demographic Profile of Hispanics in Alabama, 2011*, PEW RES. CTR., <http://www.pewhispanic.org/states/state/al/>.

40. See, e.g., Weissman, *supra* note 36, at 180–81.

Popular opinion trumped business self-interest, however, resulting in the passage of anti-immigrant statutes in several states, beginning around 2006, so draconian that the conservative federal judiciary struck most of them down.<sup>41</sup> The negative social attitudes that led to their enactment survived, however, and plague the group even today.<sup>42</sup> Some public hospitals, for example, continue to ask foreign-looking people if they have papers and to deny them treatment if they do not.<sup>43</sup> And when a few cities and towns adopted informal policies of

---

41. A typical Southern statute allowed the police to demand to see the papers of anyone they detained who looked Latino; prohibited an undocumented person from obtaining a driver's or any other kind of state license; prohibited anyone from giving one a job or offering aid, even a ride; and required school authorities to ascertain the immigration status of the family of any child who appeared to be the son or daughter of an immigrant. See Eaton, *supra* note 35 (discussing the host of anti-immigrant laws that sprang up in Southern states during this period); Howell Raines, *The Dream World of the Southern Republicans*, N.Y. TIMES (July 12, 2015), <http://www.nytimes.com/2015/07/12/opinion/sunday/will-demographics-transform-southern-politics.html> (same). *Arizona v. United States*, 132 S. Ct. 2492 (2012), spelled the beginning of the end for all these laws, except for the "show your papers" provision. See *Judge Signals End to Challenge of Ariz. Law*, TUSCALOOSA NEWS (Sept. 6, 2015), at 3A (noting that an Arizona judge allowed this last provision to stand). Social attitudes and practices remained unchanged however. See Jonece Dunigan, *Award Winner: Hispanic Community Still Reeling from Immigration Law*, DECATUR (AL) DAILY NEWS (Nov. 2, 2015), [http://www.decaturdaily.com/news/lawrence\\_county/award-winner-hispanic-community-st](http://www.decaturdaily.com/news/lawrence_county/award-winner-hispanic-community-st). The laws led to a great deal of unlawful profiling of Latino-looking people. See Editorial Board, *Wrongly Profiled and Deported*, N.Y. TIMES (Oct. 24, 2015), <http://nyti.ms/1NXiTPd>. Alabama's law was one of the harshest; Diane McWhorter, *The Strange Career of Juan Crow*, N.Y. TIMES (June 17, 2012), <http://www.nytimes.com/2012/06/17/opinion/sunday/no-sweet-home-alabama.html> (noting that it was the "toughest in the nation" and criminalized "a whole class of human beings"). Alabama's law converted into felons even those who helped the state. *Id.* Since Alabama only had a Latino population of 3 to 4 percent, the only purpose "seems to be the id-gratification of tribal dominance." *Id.* It even encouraged school authorities to check on schoolchildren. *Id.* The law cost the farm industry millions of dollars. See David Weigel, *Alabama Tried a Donald Trump-Style Immigration Law: It Failed in a Big Way*, WASH. POST (Aug. 22, 2015), [https://www.washingtonpost.com/politics/alabama-tried-a-donald-trump-style-immigration-law-it-failed-in-a-big-way/2015/08/22/2ae239a6-48f2-11e5-846d-02792f854297\\_story.html](https://www.washingtonpost.com/politics/alabama-tried-a-donald-trump-style-immigration-law-it-failed-in-a-big-way/2015/08/22/2ae239a6-48f2-11e5-846d-02792f854297_story.html).

42. See, e.g., John Sharp, *Alabama Has Seen a Decline in its Spanish Speaking Population*, AL.COM (Oct. 18, 2015), [http://www.al.com/news/mobile/index.ssf/2015/10/why\\_alabama\\_has\\_seen\\_a\\_decline.html](http://www.al.com/news/mobile/index.ssf/2015/10/why_alabama_has_seen_a_decline.html) (noticing that the "mean[ness]" that found expression in the Alabama anti-immigrant law did not disappear when the courts struck it down and has a "continued impact") The author describes a woman who was denied water service in an Alabama town after being told that to have water service turned on, she needed a state driver's license or state identification. *Id.* According to a local clergyman, "many Alabamans on hearing this story said 'Oh, good, this law was more effective than we thought it was.'" *Id.*; see also Dunigan, *supra* note 41 (same).

43. For example, even after Alabama's House Bill 56 was struck down, local authorities (even in emergency-care hospitals) continued asking Latino-looking people if they could produce documents proving legal status and denying them service if they could not. Tamika Moore, *Anti-Immigrant Law Still Affecting Access to Hospitals*, AL.COM (Oct. 31, 2015), [http://www.al.com/news/index.ssf/2015/10/anti-immigrant\\_law\\_still\\_affec.html#incart\\_river](http://www.al.com/news/index.ssf/2015/10/anti-immigrant_law_still_affec.html#incart_river). Other businesses and state offices were doing the same. Robert Lovato, *Juan Crow in Georgia*, NATION (May 26, 2015), <http://www.thenation.com/article/juan-crow-georgia/> (same). Thus, even though the original blatantly offensive anti-immigrant statutes are no longer in effect, in the minds of hundreds of police chiefs, patrolmen, and local officials the statutes live on. These operatives continue to hold the

de-emphasizing enforcement of federal immigration laws that merely made the immigrants afraid to report crimes to the police, federal and state authorities passed laws threatening to cut off financial aid to the cities.<sup>44</sup> Other immigrants shrank from public engagement and lived their lives in the shadows.<sup>45</sup>

Since much of the South is a relatively poor agricultural region, this response might seem counterintuitive, since the immigrants were by and large law-abiding, hard-working, pious, and willing to perform labor so arduous that few natives wanted to do it.<sup>46</sup> They consumed relatively few social services, and the few they did use were more than offset by the value of their work and tax contributions.<sup>47</sup> A few towns and cities in other parts of the country

---

belief that a Mexican appearance and deferential manner (which they see as evasive) allow them to take action—make an arrest, detain, or call the immigration authorities.

44. See Allie Yee, *Efforts to Build Trust between Immigrants, Police under Political Attack in the South*, INST. FOR SO. STUDIES (Oct. 29, 2015), <http://m.southernstudies.org/2015/10/efforts-to-build-trust-between-immigrants-police-u.html>; see also Eaton, *supra* note 35 (describing some of these sanctuary-type policies).

45. See Dunigan, *supra* note 41 (quoting a local businessman who lost many clients that way). Recently, the flow of immigrants has slowed. See *Immigrants from India, China Outpacing Mexicans Coming to U.S.*, LATIN POST (Aug. 29, 2015), <http://www.latinpost.com/articles/75572/20150830/india-china-outpacing-mexico-in-immigration-to-the-u-s.htm>.

46. See, e.g., Max Ehrenfreund, *More Immigrants Could Mean Slightly Lower Wages in Blue-Collar Jobs*, WASH. POST, (Jan. 6, 2015), <http://www.washingtonpost.com/news/wonkblog/wp/2015/01/065/more-immigrants-could> (noting that immigrants generally improve the economies of the regions where they settle and create more jobs than they take); Giovanni Peri, *The Effect of Immigration on Productivity: Evidence from US States* (Nat'l Bureau of Econ. Research, Working Paper No. 15507, 2009), <http://www.nber.org/papers/w15507> (same); Editorial Board, *Europe Should See Refugees as a Boon, Not a Burden*, N.Y. TIMES (Sept. 18, 2015), [http://www.nytimes.com/2015/09/19/opinion/europe-should-see-refugees-as-a-boon-not-a-burden.html?\\_r=0](http://www.nytimes.com/2015/09/19/opinion/europe-should-see-refugees-as-a-boon-not-a-burden.html?_r=0) (noting that this is generally true, not just in the United States); see also Harold Meyerson, *Why Stop at Deporting Mexicans? Go after the Irish, too*, WASH. POST (Oct. 7, 2015) (noting that “[t]he immigrant crime wave that right-wing media and many Republican politicians rail about, then, is either a figment of their imaginations or an article of faith that . . . they seek to instill or inflame in their followers”); John M. McDonald & Robert Sample, *Don't Shut the Golden Door*, N.Y. TIMES (June 19, 2012), <http://www.nytimes.com/2012/06/20/opinion/the-beneficial-impact-of-immigrants.html> (same); Julia Preston, *Immigrants Fitting Into U.S., Report Says*, N.Y. TIMES (Sept. 22, 2015), <http://www.nytimes.com/2015/09/22/us/newest-immigrants-assimilating-as-well-as-past-ones-report-says.html> (noting that immigrant men eighteen to thirty-nine were incarcerated at about one-fourth the rate of American men in that age group). The low crime rate of Latino immigrants should not be surprising. Most hail from small village that are socially cohesive and Catholic. Everybody knows everybody else, and anyone who commits an antisocial act is an instant pariah. See Weissman, *supra* note 36, at 143–44, 153, 165 (noting that the border cities have lower crime rates than the United States at large), 164–68 (describing fear of the swarthy Mexicans as a “moral panic” with very little foundation in reality).

47. For the net benefit that immigrants confer to the region where they settle through their labor and taxes, see Pamela Constable, *For Illegal Immigrants with Babies, the Anchor Pulls in Many Directions*, WASH. POST (Sept. 21, 2015), [https://www.washingtonpost.com/local/social-issues/for-illegal-immigrants-with-babies-the-anchor-pulls-in-many-directions/2015/09/20/d5d7a2f0-570d-11e5-b8c9-944725fcd3b9\\_story.html](https://www.washingtonpost.com/local/social-issues/for-illegal-immigrants-with-babies-the-anchor-pulls-in-many-directions/2015/09/20/d5d7a2f0-570d-11e5-b8c9-944725fcd3b9_story.html).

mounted protests against immigrants around this time but few as harsh as those that took place in the South.<sup>48</sup>

Two reasons explain the negative reaction, both rooted in history, one national and the other regional. The national reason has to do with revival of the so-called Southern strategy, which former president Richard Nixon and his party used to secure his election in 1968.

In this strategy, Republicans played on public fears of civil rights protesters, antiwar demonstrators, and hippies. This persuaded many working-class whites, especially in the South to desert the Democratic Party, their long-time home, and join the Republicans.<sup>49</sup> The resulting coalition, reinforced by conservative middle-class whites and captains of industry, secured the election of Richard Nixon and formed the backbone of Republican political strength for many decades.<sup>50</sup>

## 2. Part One of the New Southern Strategy: Strict Border Enforcement

That strength is waning, however, as the country's demography shifts and the percentage of minorities, who usually vote Democratic, grows.<sup>51</sup>

48. See *supra* text and note 37 (citing one small town in Pennsylvania that made national headlines for this reason).

49. Although many describe the Nixon-backed schism as the advent of the Dixiecrat movement, it actually began a few decades early. See *Dixiecrat*, *supra* note 19.

50. *Id.*; see also Krugman, *supra* note 17; Nicholas Lemann, *The Price of Union: The Undefeatable South*, NEW YORKER (Nov. 2, 2015), <http://www.newyorker.com/magazine/2015/11/02/the-price-of-union> (noting that “the Democratic Party was for decades an unlikely marriage of the white South . . . and blue-collar workers in the North” but that today “the South became for the Republican Party what it had previously been for the Democratic Party, the essential core of a national coalition. The South is all over this year’s Republican Presidential race”). Nixon’s strategy as well as the contemporary version that we trace stemmed from the same roots. Southern planters (and their allies in New England cotton factories) wanted a society based on commodity agriculture and slave labor. It required no civic culture or town meetings (as New England’s did) but centered on “the proud planter in his great pillared house.” Mark Stoll, *From the Folks who Brought You the Civil War: The Political Legacy of Slavery*, HUFFINGTON POST (Sept. 6, 2015), [http://www.huffingtonpost.com/mark-stoll/from-the-folks-who-brought\\_b\\_8097294.html](http://www.huffingtonpost.com/mark-stoll/from-the-folks-who-brought_b_8097294.html). The hallmarks of such societies were weak governments, low taxes, little regulation, and a strict hierarchy based on color. *Id.* Richard Nixon’s strategy was made for such a society, which quickly adopted it and took over the Republican Party, as well. *Id.* Recently, it found a friend in the Tea Party, which promotes a very similar program of libertarian economics; voter suppression for blacks; underfunded public schools, services, and state parks; and weakened environmental protections. *Id.* (positing that under the Tea Party’s influence, America is becoming more southern).

51. See McWhorter, *supra* note 41 (quoting a southern senator: “[W]hen their children grow up . . . they vote for Democrats”); *Extremist Files: Peter Brimelow*, SO. POVERTY L. CTR. (2015), <http://www.splcenter.org/get-informed/intelligence-files/profiles/peter-brimelow> (discussing the views of former editor at Forbes magazine and columnist at National Review). Brimelow warns that increasing Latino numbers will soon mean that “the GOP would no longer be able to compete in presidential elections because the racial makeup of the electorate would be changed by non-white immigration.” See *id.* He also points out that “the way to win is to get white votes . . . If (Republicans) did that, even without actually cutting off immigration, they could continue to win national elections for quite a long time.” *Id.* Increasing Latino numbers must worry Republican operatives and voting

Accordingly, GOP operatives are retooling Nixon's tactic into what we call the "new Southern Strategy" which operates as follows. First, it includes heavy emphasis on immigration restriction as well as stronger border enforcement.<sup>52</sup> Immigrants recently have been mostly Latinos, who vote with the Democrats, so keeping them out or deporting them reduces the number of potential Democratic voters. Accordingly, conservatives in Congress and state houses have been amping up restrictionist laws and measures and reinforcing the border with Mexico.<sup>53</sup> They even convinced a few African Americans and working-class whites to go along on the theory that the Mexicans were taking jobs that, by rights, ought to go to real Americans.<sup>54</sup> As will be seen, however<sup>55</sup> that is a serious tactical error.

### 3. *Part Two: Cutting Welfare to Near-Zero*

But keeping immigrants out also helps pave the way for the second part of the strategy, namely cutting welfare benefits, which many Republicans would

---

theorists for yet another reason. The Latinos rarely settle in the black part of town. Hence, the usual Republican remedy—gerrymandering, drawing voting-district lines so as to pack minority voters into a single district—would not work.

52. *E.g.*, Michael Tomasky, *Trump*, N.Y. REV. BOOKS (Sept. 24, 2015), <http://www.nybooks.com/articles/2015/09/24/trump/>; Mary Troyan, *Sessions' Views on Immigration, Trade Amplified by Trump*, MONTGOMERY (AL) ADVERTISER (Sept. 11, 2015), <http://www.montgomeryadvertiser.com/story/news/2015/09/11/sessions-views-immigration-trade-amplified-trump/72095058/?from=global&sessionKey=&autologin=>. Immigration restriction plays well in the South because the region has a history of "bombastic" figures like George Wallace, who railed against blacks and integration and was very popular. *See* Harold Kopolowitz, *Why is Donald Trump So Popular in Alabama?* AL.COM (Aug. 28, 2015), [http://www.al.com/news/index.ssf/2015/08/why\\_is\\_donald\\_trump\\_so\\_popular.html](http://www.al.com/news/index.ssf/2015/08/why_is_donald_trump_so_popular.html); Timothy Egan, *Not Like Us: An Old Refrain*, N.Y. TIMES (July 10, 2015), [www.nytimes.com/2015/07/10/opinion/not-like-us.html](http://www.nytimes.com/2015/07/10/opinion/not-like-us.html) (discussing the new Republican emphasis on the evils of immigrants and immigration). For a classic example of Southern anti-segregationist rhetoric, see George Wallace, "Segregation Forever" *Speech*, GENIUS, <http://genius.com/George-wallace-segregation-forever-speech-annotated>.

53. *See supra* text and note 41.

54. They are not. Immigrant settlement in a region creates new jobs and wealth. *See supra* text and note 46–47 Roger Loewenstein, *The Immigration Equation*, N.Y. TIMES (July 9, 2006), <http://www.nytimes.com/2006/07/09/magazine/09IMM.html> (discussing the work of University of California, Berkeley, labor economist David Card); Weissman, *supra* note 36, at 178 (discussing the baseless fear that immigrants might be taking "black jobs"). For more on increasing tensions between blacks and browns, see Buchanan, *supra* note 35 (discussing accusations, school fights, and even robberies of Latino newcomers by young black men who believe that the immigrants will hesitate to report them to the police). Some blacks fed the rumor that Latinos "come to this country for the public service benefits available to them because of the Civil Rights Movement"—that is, are free riders—that others will not patronize black businesses, that Latinos declared a population war on blacks to surpass them in numbers by the year 2000, and that they "are deliberately trying to 'push blacks off the upward ladder of success.'" *Id.*; *see also* A.J. Delgado, *supra* note 36 (charging that Democrats, who favor immigration, are sacrificing black interests and jobs); Jeff Sessions, *America Needs to Curb Immigration Flows*, WASH. POST (April 9, 2015), [https://www.washingtonpost.com/opinions/slow-the-immigration-wave/2015/04/09/c6d8e3d4-dd52-11e4-a500-1c5bb1d8ff6a\\_story.html](https://www.washingtonpost.com/opinions/slow-the-immigration-wave/2015/04/09/c6d8e3d4-dd52-11e4-a500-1c5bb1d8ff6a_story.html) (same).

55. *See supra* Part III.

like to reduce to as near zero as possible.<sup>56</sup> They consider that welfare saps one's initiative and is bad for the recipient's character.<sup>57</sup> In their view most welfare recipients are moochers who could work but prefer to stay at home or hang out with their friends.<sup>58</sup> Many conservative Republicans think that African Americans participating in the Supplemental Nutrition Assistance Program (SNAP), the new name for the federal food assistance program, prefer to drive old Cadillacs, eat steak bought with food stamps, play loud music, and have baby after baby to increase the monthly check.<sup>59</sup>

But conservatives cannot eliminate welfare entirely unless the Mexicans are gone.<sup>60</sup> Otherwise the blacks and a few low-income whites would be unable to find work and face starvation. This is where immigration enforcement enters a second time.

#### 4. Part Three: Deportation and Self-Deportation

For the African Americans, who otherwise would face starvation, to find work, Mexicans have to be first chased out of the workforce. The low-level jobs the immigrants have recently held, like picking crops and doing household work for white people, are unattractive to many African Americans because they carry overtones of slavery.<sup>61</sup> But for many whites, particularly in the

56. For Republicans' disdain for welfare programs, see Eduardo Porter, *The Republicans' Strategy to Ignore Poverty*, N.Y. TIMES (Oct. 27, 2015), <http://www.nytimes.com/2015/10/28/business/economy/a-strategy-to-ignore-poverty.html>.

57. See, e.g., Nicholas Kristof, *Inspiring, But Not for President*, N.Y. TIMES (Nov. 1, 2015), <http://www.nytimes.com/2015/11/01/opinion/sunday/ben-carson-is-inspiring-but-not-for-president.html> (quoting a Republican candidate for president who warned that "government benefits can breed dependency").

58. *Id.*; see also Eduardo Porter, *A Party's Strategy to Ignore Poverty*, N.Y. TIMES (Oct. 20, 2015), <http://www.nytimes.com/2015/10/28/business/economy/a-strategy-to-ignore-poverty.html> (noting that it is practically an article of the conservative faith that welfare saps initiative, is poor policy, and should be hard to get).

59. See Eduardo Porter, *The Myth of Welfare's Corrupting Influence on the Poor*, N.Y. TIMES (Oct. 20, 2015), <http://www.nytimes.com/2015/10/21/business/the-myth-of-welfares-corrupting-influence-on-the-poor.html> (noting that conservatives such as Charles Murray of the American Enterprise Institute blame welfare for evils ranging from high youth unemployment—after all, why work when you can relax at home or on the streets with your friends—and illegitimacy, and deem it a "narcotic, a subtle destroyer of the human spirit." The poor need to learn "to swim or sink"). Their "underlying argument [is that] poor people will never act responsibly, get a job and stay in a family unless they are thrown into the swimming pool and left to struggle with little support from the rest of us." *Id.*

60. See Koplowitz, *supra* note 52 (implying that Southern demagoguery against Latino immigrants and oppressive designs against blacks are linked in the region's collective mind).

61. For these overtones of slavery, see Elizabeth Dwoskin, *Why Americans Won't Do Dirty Jobs*, BLOOMBERG BUS. NEWS (Nov. 9, 2011), <http://www.bloomberg.com/bw/magazine/why-americans-wont-do-dirty-jobs-11092011.html>. See also Donald Weigel, *Alabama Tried a Donald-Trump Style Immigration Law: It Failed in a Big Way*, WASH. POST (Aug. 22, 2015), [https://www.washingtonpost.com/politics/alabama-tried-a-donald-trump-style-immigration-law-it-failed-in-a-big-way/2015/08/22/2ae239a6-48f2-11e5-846d-02792f854297\\_story.html](https://www.washingtonpost.com/politics/alabama-tried-a-donald-trump-style-immigration-law-it-failed-in-a-big-way/2015/08/22/2ae239a6-48f2-11e5-846d-02792f854297_story.html) (quoting Alabama's secretary of state Jim Merrill: "Illegals have stepped up and they've said, 'We'll do that

South, the idea of blacks performing that kind of labor is familiar and desirable, just like the good old days.<sup>62</sup> It also accomplishes what many nativists desire—getting rid of a foreign despised group and returning to a more familiar, more comprehensible social order.

These jobs, however, have held no such meaning for the Mexicans, who perform them eagerly, save their money, and hope to move up sometime, particularly after they learn English.<sup>63</sup> This has caused friction between groups—Latinos, on the one hand, and African Americans and working-class whites, on the other—who otherwise could be natural allies.<sup>64</sup> But the master plan has had no such alliance in mind.

### *B. Why the Strategy Works: Southern Dreams and a Theory of Cultural Memory*

We now come to the second reason previously mentioned. Antipathy toward Latino settlement in the Southern states was easy to whip up because it has roots in a much earlier period, namely the ten years leading up to the Civil War, roughly 1850 to 1860.<sup>65</sup> The South was concerned about the future of its economic and class system, and for good reason. Most of the country's growth

work' . . . But some of those jobs used to be performed by people in the lower economic strata of our communities. We want to make sure that every American who wants to work has a job").

62. See, e.g., John Archibald, *Protest over Racial Symbols Opens Eyes in Alabama*, AL.COM (Sept. 27, 2015), [http://www.al.com/opinion/index.ssf/2015/09/is\\_jefferson\\_county\\_stuck\\_in\\_t.html](http://www.al.com/opinion/index.ssf/2015/09/is_jefferson_county_stuck_in_t.html). Many in the South hold idealized views of this period, considering it a moment of high culture, glory, and honor. See EUGENE GENOVESE, *THE SOUTHERN TRADITION* (1994) (discussing nostalgia for the old times); see also McWhorter, *supra* note 41 (noting that the spate of anti-immigrant laws often contained exclusions for “domestics, observing the plantation hierarchy of ‘house Negroes’ and ‘field hands’”). Often this hankering for the past breaks out into the open. See Associated Press, *Jefferson County Murals Should Be Preserved, Historians Say*, AL.COM (Sept. 30, 2015), [http://www.al.com/news/birmingham/index.ssf/2015/09/jefferson\\_county\\_murals\\_should.html](http://www.al.com/news/birmingham/index.ssf/2015/09/jefferson_county_murals_should.html) (noting that murals on an Alabama courthouse depicting black field hands picking cotton—while white men on horses watched them—and others working next to trains and smokestacks had many supporters); *Alabama NAACP Branch Calls to Remove Courthouse Murals*, TUSCALOOSA (AL) NEWS (Sept. 25, 2015), at A1 (same).

63. See Richard Delgado and Jean Stefancic, *Southern Dreams and a New Theory of First Amendment Legal Realism*, 65 EMORY L.J. 303 (2016) (noting that Southern employers like the immigrants' strong “work ethic.” Employers say they are not like workers who arrive late and full of excuses, cut corners on the job, or have an attitude problem); Cameron Smith, *Looking for a Job in Alabama? Here's the Formula for Success*, AL.COM (Oct. 7, 2015), [http://www.al.com/opinion/index.ssf/2015/10/looking\\_for\\_a\\_job\\_in\\_alabama\\_h.html](http://www.al.com/opinion/index.ssf/2015/10/looking_for_a_job_in_alabama_h.html); Weigel, *supra* note 41 (noting that the illegals have “stepped up” and said, “We’ll do the work,” but that others “want to make sure that every American who wants to work has a job”).

64. See Weigel, *supra* note 41 (discussing American accusations that Mexicans are taking our jobs). Black fears of disappearing jobs may be well founded, but not because the Latinos are taking them. See Patricia Cohen, *Public-Sector Jobs Vanish, Hitting Blacks Hard*, N.Y. TIMES (May 24, 2015), [http://www.nytimes.com/2015/05/25/business/public-sector-jobs-vanish-and-blacks-take-blow.html?\\_r=0-](http://www.nytimes.com/2015/05/25/business/public-sector-jobs-vanish-and-blacks-take-blow.html?_r=0-).

65. Part II.B summarizes an earlier analysis of this period. See Delgado and Stefancic, *supra* note 63.

was taking place in the North, so that the political balance would soon tip.<sup>66</sup> The writing was on the wall. For the foreseeable future, most new states and cities would be northern or western, and free of slavery.<sup>67</sup>

The South would soon find itself outnumbered in Congress, the Senate, and even the presidency if a certain young upstart from Illinois who looked like he might run one day, did.<sup>68</sup> Southern slaveholders, politicians, business leaders, and visionaries thus hit upon an audacious plan.<sup>69</sup> They would equip private military expeditions to invade and conquer new territories in Latin America and the Caribbean, with a view to creating up to twenty-five new states, which would of course be under Southern control and pro-slavery.<sup>70</sup>

The idea swept the South, firing enthusiasm in practically every quarter. Southern editors, writers, poets, and songwriters extolled the bravery of these private commandos.<sup>71</sup> College students dropped out to join.<sup>72</sup> The region was aflame with excitement. Citizens paraded in their honor, held balls, and sounded cannon to mark their departure.<sup>73</sup> Rich merchants and plantation owners donated lavish sums to fit them out with the latest uniforms and guns and to equip their ships.<sup>74</sup> Everyone was sure that the leisure loving, indolent Latinos in places like southern Mexico, Nicaragua, and Cuba would welcome American leadership with open arms.<sup>75</sup> Soon our generals would be sitting in the governor's palace issuing edicts and collecting taxes, and of course reinstating slavery which most of these countries had long since repudiated.<sup>76</sup> The South and its way of life—plantation farming—would be saved from the Yankees. Time would stand still; culture and refinement would be saved.

66. *Id.* at 325; ROBERT E. MAY, *THE SOUTHERN DREAM OF A CARIBBEAN EMPIRE, 1854-1861* 10–11 (1973).

67. Delgado and Stefancic, *supra* note 63, at 325–26 (discussing the fear that gripped the region); MAY, *supra* note 66, at 10–11.

68. For example, Abraham Lincoln.

69. See Delgado and Stefancic, *supra* note 63, at 326–30 (discussing the early stages of the plan); ROBERT E. MAY, *MANIFEST DESTINY'S UNDERWORLD: FILIBUSTERING IN ANTEBELLUM AMERICA* (2004).

70. Delgado and Stefancic, *supra* note 63, at 326 n.132, 337; MAY, *supra* note 66, at xi, 9–11, 111.

71. Delgado and Stefancic, *supra* note 63, at 326–33 (discussing some of the figures who whipped up public excitement); MAY, *supra* note 69, at 68–73; MAY, *supra* note 66, at 4–8.

72. Delgado and Stefancic, *supra* note 63, at 329; MAY, *supra* note 69, at 77, 275; MAY, *supra* note 66, at 3.

73. Delgado and Stefancic, *supra* note 63, at 329; MAY, *supra* note 69, at 74–76.

74. Delgado and Stefancic, *supra* note 63, at 329 (describing how some wealthy backers climbed on the bandwagon); MAY, *supra* note 69, at 257–59; MAY, *supra* note 66, at 3–10.

75. See Delgado and Stefancic, *supra* note 63, at 330–31; MAY, *supra* note 66, at 4; AMY GREENBERG, *MANIFEST MANHOOD AND THE ANTEBELLUM AMERICAN EMPIRE* 84–135 (2005) (noting that this popular misconception often had a sexual element; Latin American women supposedly eagerly awaited the arrival of virile North American men who would court them more ardently than the lazy, siesta-loving native men in the region).

76. See Delgado and Stefancic, *supra* note 63, at 331 (citing the case of Nicaragua); MAY, *supra* note 66, at 4–5.

Most of the Latin American countries fought back vigorously, proving that they were not so indolent after all.<sup>77</sup> But one expeditionary leader named William Walker, who led a well-armed contingent of Southern youth into Nicaragua, succeeded in conquering that country, which he ruled as president for one year, establishing English as the national language and relegalizing slavery, before an indignant coalition from the neighboring countries defeated his forces and executed him.<sup>78</sup> Other expeditionaries cast envying eyes on Yucatan,<sup>79</sup> Honduras,<sup>80</sup> Haiti,<sup>81</sup> Panama and Ecuador,<sup>82</sup> and even Cuba and Central and South America.<sup>83</sup> Many went so far as to raise armies, charter ships, and set off.<sup>84</sup>

The expeditionary period ended with the onset of the Civil War. But the attitudes that the South formed toward Latino people during this period remained ingrained in Southern culture in literature and myth.<sup>85</sup> Thus, when beginning around 1995 substantial numbers of brown-skinned Spanish-speaking immigrants appeared in the region looking for work, many Southerners were outraged. By rights, many of them must have thought, we should have been there—in their country running their show, not they here—setting up restaurants and cantinas, striding down the sidewalk, parking their cars on the front lawns of their houses, playing those damn guitars, and eyeing our women.

And so it is that many Southerners dislike seeing so many Mexicans in their towns, even if they are contributing to the economy and keeping out of

77. See Delgado and Stefancic, *supra* note 63, at 331; MAY, *supra* note 66, at 77–110, 131 (describing how some of the expeditions met fierce resistance).

78. See Delgado and Stefancic, *supra* note 63, at 331–33; GREENBERG, *supra* note 75, at 41, 151; MAY, *supra* note 69, at 23–64; MAY, *supra* note 66, at 77–110, 112, 131; see also MICHAEL O'BRIEN, *CONJECTURES OF ORDER: INTELLECTUAL LIFE IN THE AMERICAN SOUTH 1819-1860*, 210 (2004).

79. See CHARLES H. BROWN, *AGENTS OF MANIFEST DESTINY: THE LIVES AND TIMES OF THE FILIBUSTERS* 28–30, 57, 67, 449 (paperback ed. 2012).

80. See Delgado and Stefancic, *supra* note 63, at 351; MAY, *supra* note 66, at 9 (mentioning the neighboring Mexican state of Yucatan).

81. See Delgado and Stefancic, *supra* note 63, at 333, 336; MAY, *supra* note 66, at 6–8.

82. See Aims McGuinness, *In Defense of the Isthmus: Fighting against Filibusters in Panama City 1856*, 29 *MD. HISTORIAN* 7 (2005).

83. See Delgado and Stefancic, *supra* note 63, at 331–34; MAY, *supra* note 66, at 10–11, 149.

84. *E.g.*, Delgado and Stefancic, *supra* note 63, at 330–33; MAY, *supra* note 66, at 46–110.

85. See Delgado and Stefancic, *supra* note 63, at 334–36 (explaining how films, literature, songs, tales, roadside stands, and other cultural vehicles kept alive the story of the indolent Latino dressed up in ridiculous garb, snoozing under the nearest tree or cactus). The South's poor opinion of Latin America and Latin Americans emerged at many key points over the intervening century, including the Spanish-American War (1898), Bracero Program (1942–64), Operation Wetback (1954), and opposition to immigration reform in 1964–65. *E.g.*, Ted Widmer, *The Immigration Dividend*, *N.Y. TIMES* (Oct. 6, 2015), [http://www.nytimes.com/2015/10/06/opinion/the-immigration-dividend.html?ref=opinion&\\_r=0](http://www.nytimes.com/2015/10/06/opinion/the-immigration-dividend.html?ref=opinion&_r=0) (describing this opposition); Brandon Moseley, *Zeigler Defends Speech to Secessionist Group*, *ALA. POLIT. RPTR.* (Sept. 22, 2015), <http://www.alreporter.com/archives/2015/146-state/8272-zeigler-defends-speech-to-secessionist-group.html> (reporting same attitude widespread even today).

trouble.<sup>86</sup> And it is also why one of the two political parties, which harbors no great love of blacks, wants to show the Mexicans the door first, and has even convinced a few blacks and working-class whites that they should go along,<sup>87</sup> even though it is becoming increasingly obvious that the architects of the plan do not mean well for them and plan to turn to them when they get through fixing the Mexican problem.<sup>88</sup>

That is one reason, among others, why outgroups need to work in concert rather than attempt to seize small advantage vis-à-vis each other. It is also a reason why we need to understand how and why society draws racial lines as it does, with whites at the center. Morris shows how this happens and how occupying the center is often more advantageous than squatting at the top.<sup>89</sup> He also shows how two outgroups can easily find themselves marginalized as subnormal—virtual animals and nonhuman—suitable only for such manipulation as will enable the more numerous whites to defend their position, all with the clearest possible consciences.<sup>90</sup> Indeed, as the country's demography tips, whites' central position will only strengthen—the hallmark of a useful strategy.<sup>91</sup> Now under way, especially in the South, the consequences of the new strategy for African Americans, Latinos, and even for many working-class whites, will be as sobering as the slow shift that its predecessor movement portended for American politics in general during and just after the Nixon reign.

### III.

#### JUDICIAL REVIEW AND MULTIGROUP OPPRESSION

When a powerful bloc such as whites oppresses a single minority group such as blacks, the case for heightened scrutiny is both clear and familiar.<sup>92</sup> But when such a bloc oppresses one weak minority group in order to pave the way

---

86. See *supra* text and notes 46–47 (documenting the low rate of crime commission and strong work ethic of the newcomers).

87. See Eaton, *supra* note 35 (noting the usual view is that blacks and Latinos are caught up in a “zero sum game,” in which they are in competition for the same jobs). In this view, the Latino immigrants take black jobs, adding to their plight; see also Elizabeth Beshears, *Trump and Sessions Huddle in D.C., Discuss Stopping “Global Elite’s” Trade and Immigration Policies*, YELLOWHAMMER NEWS (Sept. 10, 2015), <http://yellowhammernews.com/politics-2/trump-and-sessions-huddle-in-d-c-discuss-stopping-global-elites-trade-and-immigration-policies/> (reporting that the two leaders blame Latino immigrants for black plight); Eaton, *supra* note 35 (describing a few settings in which the two groups see the fallacy in this view, perceive their common predicament, and cooperate against a political and economic system that oppresses them both).

88. This is, of course, what we call our three-step Southern plan.

89. See *supra* text and notes 2–7 (explaining this typology).

90. See *supra* text and notes 2–9.

91. An example is in South Africa during apartheid.

92. See *United States v. Carolene Products*, 344 U.S. 144, 158 n.4 (1938); *Hirabayashi v. United States*, 320 U.S. 81 (1943); *Korematsu v. United States*, 343 U.S. 214 (1944) (developing and applying a theory of strict scrutiny in cases of majoritarian oppression of small, powerless groups unable to fend for themselves in the give-and-take of politics).

for oppressing another, courts can resort to no readymade, familiar basis for applying strict scrutiny. This is especially so when the first group is fair game, as undocumented immigrants are, courtesy of judicial abstention and the plenary power doctrine.<sup>93</sup> Sometimes, however, with the first group out of the way, a serious—and planned—downturn in a second group’s fortunes will set in ineluctably, as it will with African Americans once the Latinos are gone. An added virtue of this scheme is that the hegemon who stage-manage it can easily persuade the two groups that it is the other group that is responsible for their predicament, not they.

To avoid this result and preserve democracy, courts should strictly scrutinize multigroup oppression that takes a form such as the one we have been describing. *United States v. Carolene Products Co.*<sup>94</sup> and the two Japanese wartime internment cases<sup>95</sup> suggest that majoritarian oppression that is not easily correctible via the political process is a prime candidate for judicial reversal. It would seem that the three-step procedure that is now proceeding<sup>96</sup> would classify easily for it. With Mexican numbers lowered, conservatives in federal and state offices will find it easier to compel African Americans to take repellant jobs that remind them of slavery, because they will have no other alternative.<sup>97</sup> Financiers, captains of industry, and chambers of commerce will oppose mass deportation, as they do now. The country’s economy will dip, just as predictions would hold it would.<sup>98</sup> But conservative power is apt to strengthen just as that of the two “loser” group weakens into the foreseeable future.

#### CONCLUSION

The United States, and the South in particular, needs a gestalt shift. In a famous drawing by M.C. Escher, the viewer sees fish swimming to the left. But if someone prompts her or him to look at the drawing differently, the viewer sees birds flying to the right. What one sees in the picture—birds or fish—depends on one’s expectations and on how one sees the background, dark ocean or light sky.

Much the same is true of the current political scene.<sup>99</sup> One can look at immigrants as fish that are too small or caught out of season and must be

---

93. See *Chae Chan Ping v. United States*, 130 U.S. 581 (1889) (explaining the origin of the plenary power doctrine).

94. 344 U.S. at 158 n.4.

95. See *Hirabayashi*, 320 U.S. at 81; *Korematsu*, 343 U.S. at 214.

96. See *supra* Parts II–III.

97. See *supra* text and note 61.

98. See *supra* text and notes 46–47 (observing that immigration benefits the economy of regions where the immigrants settle).

99. See Editorial Board, *A Plan to Save Refugees and Europe’s Open Borders*, N.Y. TIMES (Sept. 11, 2015), <http://www.nytimes.com/2015/09/11/opinion/a-plan-to-save-refugees-and-europes-open-borders.html> (noting that Europeans see the stream of refugees from Syria and Lebanon trying to

thrown back into the water. Or one can look at them as birds that are flying from one nesting area to another, bringing the new area the benefit of their songs, seeds, and color. An old strategy enables those who detest birds and find them noisy and dirty to keep them out. Those who take the contrary view need to spot current revivals of this strategy or they are apt to find a world with few songs, seeds, or color. Morris's critique shows that our conceptual system lends itself, and predisposes some of us, to make this mistake but enables others to take a more moderate, and welcoming, view of diversity.

---

reach their shores in one of two ways: as a threat and as fellow humans in need of a helping hand, representing "the infusion of youth and energy that an aging Europe needs").