
Richard Delgado
University of Alabama - School of Law, rdelgado@law.ua.edu

Jean Stefancic
University of Alabama - School of Law, jstefancic@law.ua.edu

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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.

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* 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. 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. 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. 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. 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. 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. Those falling outside this group are either subhuman—animals—or freakish automatons.

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. 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.

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

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.
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. 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. 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. Employing images such as the 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. In the South, many whites deserted the Democratic Party and joined that of Lincoln’s, where they remain to this day. 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.

The coalition is troubled, however, by decreasing numbers as the country’s population ages and diversifies. 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. The new version turns on exploiting the very different fears and vulnerabilities of Latinos and African Americans—the main outgroups in Michael Morris’s “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. 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. 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. 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.

23. See infra Part I.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 (noting that “the crabs-in-a-barrel mentality this scenario evokes says a lot about how marginalized 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).
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.27 These misfortunes struck the South as right and deserved for historical reasons that, until now, have not been brought to light.28

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,29 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.30 Those in the middle region are the well-adjusted whites. Since society adores the middle class, they occupy the most favored position and are in turn the most human.31 Those who differ from whites, especially if they

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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).
30. See supra text and notes 3–6 (describing this classification).
31. See supra text and note 6.
are minorities and look different from the norm, end up marked as nonhuman.\textsuperscript{32} Those in the lower regions, who perform poorly on standardized tests of mental ability and scholarly achievement, are the African Americans and Latinos.\textsuperscript{33} 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.\textsuperscript{34} 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.\textsuperscript{35} 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 desirable to one of the two outgroups\textsuperscript{36} and some working-class whites. These tacticians are

\textsuperscript{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).

\textsuperscript{33} See Dayan, supra note 32.

\textsuperscript{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).

\textsuperscript{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://reimagineerc.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-latino-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-fbb8a6f6c65bc_story.html?tid=hp_hp-top-table-main_trumpdivder-0635pm%3Ahomepage%2Fstory.

\textsuperscript{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
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, 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. In Alabama, for example, the Latino population stands at around 4 percent, close to the bottom among U.S. states. 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.

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. Some public hospitals, for example, continue to ask foreign-looking people if they have papers and to deny them treatment if they do not. And when a few cities and towns adopted informal policies of 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.\textsuperscript{44} Other immigrants shrank from public engagement and lived their lives in the shadows.\textsuperscript{45}

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.\textsuperscript{46} 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.\textsuperscript{47} A few towns and cities in other parts of the country mounted protests against immigrants around this time but few as harsh as those that took place in the South.\textsuperscript{48}

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 longtime home, and join the Republicans.49 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.50

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.51 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.52

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. 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-infonned/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 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,
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. 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. As will be seen, however 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 like to reduce to as near zero as possible. They consider that welfare saps one’s initiative and is bad for the recipient’s character. In their view most welfare recipients are moochers who could work but prefer to stay at home or hang out

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/2095058/; from global&sessionKey=&autologin=. Immigration restriction plays well in the South because the region has a history of “bombastic” figures like George Wallace, who nailed against blacks and integration and was very popular. See Harold Koplowitz, 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; 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 (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. 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/c6d8c3d4-dd52-11e4-a500-1c5b1d8f6a_story.html (same). 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-ignore-poverty.html. 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”).
with their friends. 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.

But conservatives cannot eliminate welfare entirely unless the Mexicans are gone. 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. But for many whites, particularly in the South, the idea of blacks performing that kind of labor is familiar and desirable, just like the good old days. It also accomplishes what many nativists desire—getting rid of

58. Id.; see also Eduard 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-corupting-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. Id.

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/2015/08/22/2ae239ad-48d2-11e5-846d-42792854297_story.html (quoting Alabama’s secretary of state Jim Merrill: “Illegals have stepped up and they’ve said, ‘We’ll do that 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.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 state 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
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. 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. 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. The South was concerned about the future of its economic and class system, and for good reason. Most of the country’s growth was taking place in the North, so that the political balance would soon tip. The writing was on the wall. For the foreseeable future, most new states and cities would be northern or western, and free of slavery.

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. Southern slaveholders, politicians, business leaders,
and visionaries thus hit upon an audacious plan. 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.

The idea swept the South, firing enthusiasm in practically every quarter. Southern editors, writers, poets, and songwriters extolled the bravery of these private commandos. College students dropped out to join. The region was aflame with excitement. Citizens paraded in their honor, held balls, and sounded cannon to mark their departure. Rich merchants and plantation owners donated lavish sums to fit them out with the latest uniforms and guns and to equip their ships. Everyone was sure that the leisure loving, indolent Latinos in places like southern Mexico, Nicaragua, and Cuba would welcome American leadership with open arms. 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. 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.

Most of the Latin American countries fought back vigorously, proving that they were not so indolent after all. 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

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 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.
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).
executed him. Other expeditionaries cast envious eyes on Yucatan, Honduras, Haiti, Panama and Ecuador, and even Cuba and Central and South America. Many went so far as to raise armies, charter ships, and set off.

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. 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 trouble. 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, 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. 88

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. 89 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. 90 Indeed, as the country’s demography tips, whites’ central position will only strengthen—the hallmark of a useful strategy. 91 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. 92 But when such a bloc oppresses one weak minority group in order to pave the way 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. 93 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 hegemons who stage-manage it can easily persuade the two groups that it is the other group that is responsible for their predicament, not they.

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).
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. and the two Japanese wartime internment cases 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 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. 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. 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. One can look at immigrants as fish that are too small or caught out of season and must be 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.

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 refuges from Syria and Lebanon trying to 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”).