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# "We're All Stuck Here for a While": Law and the Social Construction of the Black Male\*

D. Marvin Jones\*\*

*I am an invisible man. No, I am not a spook like those who haunted Edgar Allan Poe, nor am I one of your Hollywood-movie ectoplasms. I am a man of substance, of flesh and bone, fiber and liquids—and I might even be said to possess a mind.<sup>1</sup>*

*One of the greatest inventions of the twentieth century is the African-American male—"invented" because black masculinity represents an amalgam of fears and projections in the American psyche which rarely conveys or contains the trope of truth about the black male's existence. Ralph Ellison deemed the African-American male invisible. In fact, the African-American male is a number of things, invisible and overinterpreted among them.<sup>2</sup>*

*While the private lives of black men in the public eye . . . have been exposed to glaring media visibility, it is the "invisible men" of the late-capitalist underclass who have become the bearers—the signifiers—of the hopelessness and despair of our*

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\* See *A Plea For Calm: Rodney King Speaks Out*, N.Y. TIMES, May 2, 1992 at A6. Following the acquittal of the policemen who brutalized him, wheel chair bound Rodney King made a televised plea for calm:

People I just want to say, you know, can we all get along?  
Can we all get along? Can we stop making it, making it  
horrible for the older people and the kids? . . . [S]etting  
these fires and things, it's just not right . . . [W]e're all  
stuck here for while. Let's try to work it out. Let's try to  
work it out. Let's try to work it out.

*Id.* (emphasis added).

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<sup>1</sup> RALPH ELLISON, *INVISIBLE MAN* 3 (1972).

<sup>2</sup> Thelma Golden, *My Brother*, in *BLACK MALE: REPRESENTATIONS OF MASCULINITY IN CONTEMPORARY ART* 19 (1994) [hereinafter *BLACK MALE*].

*so-called post-Modern condition. Overrepresented in statistics on homicide and suicide, misrepresented in the media as the personification of drugs, disease and crime, such invisible men, like their all-too-visible counterparts, suggest that black masculinity is not merely a social identity in crisis. It is also a key site of ideological representation, a site upon which the nation's crisis comes to be dramatized, demonized, and dealt with . . . .*<sup>3</sup>

## Preface

As a black male, I have tried to come to grips with why, unless I'm wearing a suit, whites generally will not sit beside me on the train. Why, when I walk down the street lined with cars, I am treated to a symphony of automatic door locks going off, and why I cannot catch a cab in New York. I see myself in the vignette told about Miles Davis who, living in a predominantly white neighborhood, was reduced to having to telephone the police to warn them whenever he went out. I see myself in the experience of Al Joyner, an Olympic bronze medalist who no longer drives in Los Angeles because of police harassment. I see myself in the experience of Earl Graves, ivy league graduate, elegantly dressed businessman, publisher of *Black Enterprise Magazine*, being stopped and frisked, briefcase in hand, by policeman searching for a criminal described only as a black man with short hair.

I am haunted by the story of Mr. Stuart, who recounted how a black man in a rumpled jogging suit robbed him and his wife, killed her, shot him and escaped in the darkness. After a serious manhunt for the man in the rumpled jogging suit, he was later revealed to be a fiction made up by Mr. Stuart to cover his own murder of his wife. Susan Smith told a similar story about a black man, wearing a watch-cap, who hijacked her car and kidnaped her two small children. It turned out the black male kidnapper in the watch cap was a cardboard cut-out of a bogey-man. The real kidnapper, Susan Smith, invented the mysterious black man to hide her own Medea-like murder of her children.

Why were Mr. Stuart or Susan Smith believed?

It may have something to do with what Jesse Jackson said: he feels relieved when he finds walking in his Chicago neighborhood that

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<sup>3</sup> BLACK MALE, *supra* note 3, at 19 (quoting Kobena Mercer, *Engendered Species: Danny Israel and Keith Piper*, 30 *Artforum* 75 (Summer 1992)).

it is a "white man" that is walking behind him. Apparently, in the words of Cecil Taylor, we are as males black even to ourselves.

I experience these narratives not merely as familiar, troubling anecdotes, but as memory. I remember Miles and Al Joyner and Earl Graves. I remember also Emmet Till and the Scottsboro Boys. I remember walking behind others and sensing their fear. I remember these stories as stories both about my own identity and about identity as trope.

It cannot be a reaction to me which causes white women to clutch their pocket books. If they knew me they would know that I am chronically, laughably, shy and that I cannot even play basketball. If they knew me they would know how poorly their mythology fits my life. But then, as Ellison has noted, they cannot know me, they cannot see me. Myth is that which erases both history and lived experience. My father's life, Earl Graves' life, my own life as a person, are each a single erasable page: the plimplisest of Derrida, on which what we have written, what I have written is erased. On that page is imprinted an "already read text" about a figure, a black male figure always wearing a watch-cap, always walking behind people, always causing fear.

## I. INTRODUCTION

Black males comprise perhaps six-percent of the U.S. population<sup>4</sup> but almost 45.3% of the population in U.S. prisons and jails.<sup>5</sup> Moreover, a recent sentencing study indicating that one-third of all black men between the ages of twenty and twenty-nine are in jail, on probation, or parole at any given time<sup>6</sup> is only a statistical hint of

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<sup>4</sup> AFRICAN AMERICANS: A STATISTICAL SOURCE BOOK (1990).

<sup>5</sup> ANDREW HACKER, TWO NATIONS: BLACK AND WHITE, HOSTILE, UNEQUAL 180 (1992).

<sup>6</sup> Ironically, black males in the United States are incarcerated at a rate four times that of black males in South Africa: 3,109 per 100,000, compared to 729 per 100,000. The statistic that 33% of black men in their twenty's are in jail, on probation or parole compares with that of five percent for black women, just under seven percent for white men, and 1.5% for white women. The figure is 12.3% for Hispanic men in their twenty's and 2.2% for Hispanic women. See Lori Montgomery, *Justice System Ensnarers More Young Blacks*, DENV. POST, Oct. 5, 1995, at A-O2.

Anecdotally, in some urban areas where blacks predominate in population this disparity intensifies: 42% of all black males aged 18 to 35 in the District of Columbia in 1991 were either in jail, on probation or parole, awaiting trial, or being sought on arrest warrants on any given day. (Similarly, in Baltimore, the figure was 56% of black males between the ages of 19 and 35.) Jason DeParle, *42% of Young Black Males Go Through Capital's Courts*, N.Y. TIMES, Apr. 18, 1992, at A1.

a larger sociological truth: incarceration is a routine experience for poor black males in urban areas.

Two Harlem Hospital doctors—Harlem here becomes a metaphor for black communities nationally—have calculated that the life expectancy for black men there is shorter than that of men in Bangladesh.<sup>7</sup> Nationally the homicide rate for black males is 140 per 100,000: seven times the rate of their white counterparts, four times the rate of their female counterparts.<sup>8</sup> Moreover, such superabundance of death among black males is directly related to environmental factors.

While in one sense these are “free” acts, performed of personal volition, when they become so widespread, they must also be seen as expressing a despair that suffuses much of their race. According to Andrew Hacker: “These are young men who do not know whether they will live another year, and many have given up caring.”<sup>9</sup>

The unemployment rate in America for black males is noticeably higher than that of black females and more than twice as high as that of white males.<sup>10</sup> At least with respect to white males, this

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<sup>7</sup> Bob Herbert, *Who Will Help the Black Man*, N.Y. TIMES, Dec. 4, 1994, § 6, at 72, 74.

<sup>8</sup> More specifically, with respect to race/sex disparities vis-a-vis the risk of being a victim of violent crime, a Washington Times article provides the following statistics:

In 1985, the lifetime risk of being a homicide victim was 1 in 179 for white men, but 1 in 30 for black men; it was 1 in 495 for white women, but 1 in 132 for black women. In 1987, murder was the 12th leading cause of death in the United States, but was the leading cause of death among young black men aged 15 to 24, accounting for 42 percent of all deaths in that group. In 1990, the rate of violent crime victimization was 40 per 1,000 blacks and 28 per 1,000 whites. Robbery victimization rates from 1979 to 1986 were 7 per 1,000 white men, but 18 per 1,000 black men.

Bruce Fein, *Penitentiary Mythologies—Jordan Slaying Example*, WASH. TIMES, Aug. 18, 1993, at F1.

<sup>9</sup> See Hacker, *supra* note 6, at 218. See also Elizabeth A. Gaynes, 20 *FORDHAM URB. L.J.* 621, 625 (1993).

<sup>10</sup> As Professor Lisa Kelly notes, “In 1992, African-American men nationally suffered an unemployment rate of 15.2%. African-American women fared marginally better with a 13.0% unemployment rate. These rates contrasted sharply with white unemployment rates for the same period: 6.9% for white males and 6.0% for white females.” Lisa Kelly, *If Anybody Asks You Who I Am: An Outsider's Story of the Duty to Establish Paternity*, 3 *AM. U. J. GENDER & L.* 247, 251 n.14 (1995).

disparity has persisted since shortly after world War II.<sup>11</sup> This unemployment rate does not include those who have never worked, or given up seeking work: 46% of black men between the ages of sixteen and sixty-four are simply not in the labor force.<sup>12</sup> According to Glen

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<sup>11</sup> David E. Bernstein, *Roots Of The 'Underclass': The Decline Of Laissez-Faire Jurisprudence And The Rise Of Racist Labor Legislation*, 43 AM. U. L. REV. 85, 131-32 (1993). Bernstein notes that the ratio of black to white unemployment has been two to one since 1954. His data does not initially disaggregate for sex. Similarly, the NAT'L ADVISORY COMM'N ON CIVIL DISORDERS, 1968 REPORT 1 (1968) notes that the unemployment rates of blacks were more than twice as high as for whites in 1967. When sex specific studies were done in the 1970s by the United States Commission on Civil Rights, the commission noted, without making intra-group comparisons between black males vs. females, that the unemployment rate for blacks of both sexes increased from almost twice to close to three times the unemployment rate of white males. U. S. COMM'N ON CIVIL RIGHTS, SOCIAL INDICATORS OF EQUALITY FOR MINORITIES AND WOMEN 86 (1978). Martha Chamallas, *Evolving Conceptions of Equality Under Title VII: Disparate Impact Theory and the Demise of the Bottom Line Principle After Chamallas*, 31 UCLA L. REV. 305, 368 (1983). The impact of de-industrialization of the economy, which eliminated many jobs available with little education is that, at least since the early eighties, black men have been especially marginalized:

Since the mid-1970s, the . . . employment position of black males has declined significantly as the economy has shifted from manufacturing to a service economy . . . . Panel Study of Income Dynamics (PSID) data indicate that 20 percent of black males between 20 and 29 years of age reported no earnings from work in 1985 compared to 9 percent in 1973. This percentage is undoubtedly even higher today.

John W. Handy, *Community Economic Development, Some Critical Issues*, 21 REV. OF BLACK POLITICAL ECONOMY, 41, 51-55 (1993). See also Paul E. Lee, *A New World Order In New Jack City: Strategies For Remedying Economic Discrimination*, 23 U. WEST L.A. L. REV. 79, 81 (1992) (finding that: "Between 1973 and 1987 the percentage of employed black men with a high school diploma, who earned less than \$12,000 increased from 15.8 % to 36.5%."). See also ISAAC SHAPIRO AND ROBERT GREENSTEIN, *SELECTIVE PROSPERITY, CENTER ON BUDGET AND POLICIES PRIORITIES* (1991).

Summarizing these trends, Roger Wilkens explained: "Because of the globalization of the economy and the resulting de-industrialization of the United States, particularly in the inner cities, an ever-widening pool of black men with limited skills is finding it harder to enter the world of work." Roger Wilkens, *Time On Their Hands*, N.Y. TIMES, Oct. 18, 1992 § 7, at 9 (citing MITCHELL DONEIER, *RACE, RESPECTABILITY AND MASCULINITY* (1992)). See also Daniel Goleman, *Black Scientist Studies the Pose of the Inner City*, N.Y. TIMES, Apr. 21, 1992, at C1 (explaining that: "Most progress among blacks is due to advances among women, which masks the problems of black men."). See also Sonia Nazario, *Odds Grim for Black Men In California, Study Shows Group's Prospects Eroding*, WASH. POST, Dec. 12, 1993, at A23 (noting a 1993 California State Assembly commissioned study identifying unemployment ratios of about two to one with respect to black males vs. Asian and white males).

<sup>12</sup> As recently as 1985 Derrick Bell noted that 4 million of 8.8 million black men between the ages of 16 and 64 are either unemployed, out of the labor force, in prison, or of undetermined status in the labor force. See Bell, *Foreword: The Civil Rights Chronicles*, 99

Loury, only 5% of the category of male professional, managerial or technical workers were black, as compared to 10% for black women in the corresponding female category.<sup>13</sup> Black women outnumber black men in college by three to two, and in graduate school by almost two to one.<sup>14</sup> Among recent college graduates, with one to five years on the job, Black men (\$11.26 per hour) not only earned significantly less than white men (\$12.85 per hour), but less than white women (\$11.38 per hour) and black women (\$11.41 per hour).<sup>15</sup>

Generally, these patterns are understood using the paradigm of racism as a lens. But the paradigm, in a word, does not jive. I suggest it is related to the peculiar duality of being a black male. In the first instance, racism as a paradigm does not explain and cannot explain the economic inferiority of black men vis-a-vis black women. But the simplicity and incompleteness of racism as an explanation is most powerfully suggested by the fact that black men, while perhaps not the endangered species cliché are a group for whom—outside of the realm of basketball, boxing or entertainment—society increasingly has no place. According to Andrew Ross: "The social obsolescence of black male youth has been quite systematic. Institutions of social warfare, like the drug industry, the gun industry, the prison industry, and the education industry, have all converged as if to terminate a common prey."<sup>16</sup>

What is hidden by the one dimensional lens of racism, is sexual identity or gender<sup>17</sup> as a facet of the problem. Just as race and gender

HARV. L. REV. 4, 11 (1985). See also David Luban, *Difference Made Legal: The Court and Dr. King*, 87 MICH. L. REV. 2152, 2160 n.22 (1989). See also D. Marvin Jones, *No Time For Trumpets: Title VII, Equality, and the Fin De Siecle*, 92 MICH. L. REV. 2311, 2354 (1994); D. Marvin Jones, *The Death of The Employer: Image, Text and Title VII*, 45 VAND. L. REV. 349, 351 (1992).

<sup>13</sup> Statement of Glenn C. Loury to House Judiciary Committee, from FEDERAL NEWS SERVICE, Dec. 13, 1995.

<sup>14</sup> Brian Gregory, *The Invisible Men: Ratio of Black Males Attending College Dwindles*, BOST. GLOBE, March 31, 1996, at A1.

<sup>15</sup> James Patterson, *An Overdue Focus on Black Men*, INDIANAPOLIS STAR, Oct. 21, 1995, at A10.

<sup>16</sup> Andrew Ross, *The Gangsta and the Diva*, in BLACK MALE, *supra* note 3, at 162.

<sup>17</sup> By "gender" we refer not to sex but to "the impact of culture upon one's biological construction." Francisco Valdez, *Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of "Sex," "Gender," and "Sexual Orientation" in Euro-American Law and Society*, 83 CAL. L. REV. 3 (1995).

Generally, and as used here, "gender" signifies the social or cultural dimensions derived from and determined by sex, which include attire, grooming, and other aspects of physical appearance as well as behavioral mannerisms or personal dispositions relating to hobbies, careers, intimacies, and other social aspects of human personality and interaction. See WILLIAM G. DOTY, *MYTHS OF MASCULINITY* 16 (1993). "Gender is not something neutral but has been

are intertwined in the construction of black male identity,<sup>18</sup> so are racism and patriarchy associated with the marginalization of black males. This intersection, so visible in statistical comparisons between black males and their white or female counterparts, is ironically invisible in the discourse of equality.<sup>19</sup>

While much has been written about the problems of black males, little if any attempts to conceptualize the extent to which the subordination of black males flows from a mythology associated with the intersection between race and gender. We have a name for race but no name for the racialization of male identity. The discursive problem is a twist on the blind men in the cave with the elephant. As in the familiar story, we are the blind men and women there discursively with the elephant. But when we bump into the elephant our problem

experienced as a complex aspect of a historic and economic system of . . . repression . . . Not just description, but proscription, not just observational analysis but demands for moral and behavioral changes." *Id.*

Thus the notion of gender has been a mechanism for maintaining a hierarchy with white males at the top:

For those of us who live enmeshed in that system which is, of course, shaped by the root problem and its related conceptual errors, to be human, sexed, and uniquely individual at once is virtually impossible. Both generic and the particular are formed/informed/deformed by the hierarchy that made some males into Man and the rest of us into failed men, deviants, primitives, saints or whores.

*Id.* at 16. If we locate the problem of black males at the intersection between race and gender, understanding the notions of inferiority implicit in the concept of non-white identity, we discover that the universe of "failed men, deviants, primitives" applies powerfully not only women but to black males as well.

<sup>18</sup> It is commonplace of the literature in this area to recognize that masculinity is not an objective category: "The issue is more complicated when we recognize that we have no access to pure nature, that any natural behavior has been shaped by human culture." *Id.* at 17. Thus, "What might seem a transcendent, [timeless] masculine ideal such as men's physical strength, turns out to be quite recent, established only a few decades ago and indeed it replaced the earlier predominant idea of the sensitive caring male whose primary role was to serve and improve the social order." *Id.* at 30.

<sup>19</sup> A major theme of the scholarship of women of color in the academy has been the invisibility of black women to historical discourse. See, e.g., ALL THE WOMEN ARE WHITE, ALL THE BLACKS ARE MEN, BUT SOME OF US ARE BRAVE: BLACK WOMEN'S STUDIES (GLORIA T. HULL, et al. eds., 1982). Black men confront a similar obscurity, the conventional wisdom seems to be: "Gender is a problem of women or those who are gay, therefore gender cannot be a problem for black men." In a society that is both racist and patriarchal the subordination of black men is driven by and legitimated not only by the idea that the black male is sub-human but *concomitantly* by the idea that the black male is not a man.



is not that we perceive the elephant differently, from different points of contact, but that we bump into the elephant without 'seeing' an elephant is in the cave at all. It is not merely that we have no idea how the elephant looks as a whole, we have no paradigm, no discursive vocabulary in which we could examine with our mind's eye our observations of the phenomenon into which we keep bumping.

The experience of gender for black males is an experience of being "shut out of the world" by a dualistic structure of myth in which the black male's gender, as well as his race, is deeply woven in the warp and woof of otherness. The black male experiences his gender as something in opposition to white male norms concerning gender. This to say that one experiences one's manhood or maleness as absence or lack. Thus James Baldwin could write:

[T]here was something which all black men [hold] in common, something which cut[s] across opposing points of view, and place[s] in the same context their widely dissimilar experience . . . What . . . black men [hold] in common [is] their ache to come into the world as men.<sup>20</sup>

Similarly, W.E.B. Dubois in his great work, *The Souls of Black Folk*, wrote:

Between me and the other world there is an unasked question: unasked by some through feelings of delicacy; by others through the difficulty of rightly framing it. All nevertheless flutter 'round it. They approach me in a half-hesitant sort of way . . . [H]ow does it feel to be a problem? Then it dawned on me with a certain suddenness that I was different from the others; or like mayhap in heart and life and longing, but shut out of their world by a vast veil. . . . One ever feels his two-ness—An American, a Negro; two souls, two thoughts, two unreconciled strivings; two warring ideals in one dark body. . . . The history of the American, a Negro is the history of this strife—this longing to attain self-conscious manhood. . . .<sup>21</sup>

For both Baldwin and Dubois, manhood is more than a

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<sup>20</sup> JAMES BALDWIN, *NOBODY KNOWS MY NAME: MORE NOTES OF A NATIVE SON* 28-29 (1961).

<sup>21</sup> W.E.B. DUBOIS, *THE SOULS OF BLACK FOLK* 7-9 (John Edgar Wideman ed., 1990) (1903).

metaphor for both personhood and equality, for the ability of black men to stand on an equal plane with their white counterparts. Implicit in their reading of racism is that black males, unlike white males, are less than men:

African-American men understood that their purported lack of manhood legitimized their social and political disenfranchisement . . . Frederick Douglass said that his first overt resistance to a whipping, as a sixteen-year-old slave, "revived within me a sense of my own manhood." . . . David Walker complained in 1828 that "all the inhabitants of the earth (except however, the sons of Africa) are called *men* . . . But we . . . and our children are *brutes*!! and of course are and *ought to be* SLAVES. . . "During the civil war, 180,000 black men enlisted in the Union army, despite unequal and offensive treatment, because they understood that enlisting was their most potent tool to claim that they were men. . . ."22

Yet, despite the explicit use of manhood as the holy grail to be sought after consciously, the problem was categorized under the heading as race. In actuality, the problem is located at the intersection of race and sexuality. The problem of race is in the foreground in context. It is in the foreground because both writers write from the standpoint of a society so patriarchal that the equality of man and man was all that was conceivably relevant. (There is an echo of the patriarchal notions articulated in *Bradwell v. Illinois*<sup>23</sup> in both the

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<sup>22</sup> GAIL BEDERMAN, *MANLINESS AND CIVILIZATION: A CULTURAL HISTORY OF RACE AND GENDER IN THE UNITED STATES (1880-1917)* 20-21 (1995). Bederman's point was dramatized in on the silver screen. In the film *Glory*, Denzel Washington portrays a civil war soldier on the eve of a battle—a suicide mission—to take Fort Wagner. Within a scenario of almost certain death Denzel's character searches for and finds one transcendent value—not God, not Family—which justifies all sacrifice. Amidst the clapping of his regiment, in a deep, spiritual moment of reflection, Denzel's character delivers a soliloquy which echoes Dubois: "We might die tomorrow . . . But it don't much matter now . . . Cause we men, Ain't we?"

<sup>23</sup> The Court in *Bradwell* says,

The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood. The harmony, not to say identity, of interests and views which belong or should belong, to the family institution is repugnant to the idea

passage of Dubois and the passage of Baldwin). There is no conscious inquiry into gender as a problem, indeed the terms for this discussion are not yet present in our discursive life. Yet, however implicit, however inaccessible, to the consciousness of the writers themselves, the significance of gender as a dimension of the black male's inferiority is clear from the Freudian use of the metaphor of "manhood" as the very ideal for which black males "strive."

The notion of "manhood" is one which changes over time and which may vary somewhat from one class to another. However, I identify two sources of the idea. One source is the tacit understanding embedded in the language of what it means to be a subject. Another source is the discourse<sup>24</sup> of civilization.

### A. *As Subjectivity*

The man is he who possesses the phallus. But the phallus is less a reference to a sex organ than to authority: "Manhood" is a construct defined in terms of power relationships. The person who has the phallus has the power. One is most a man when one is in control, when one is able to impose the will of oneself on the other.<sup>25</sup> Thus, the

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of a woman adopting a distinct and independent career from that of her husband . . . . It is true that many women are unmarried and not affected by any of the duties, complications, and incapacities arising out of the married state, but these are exceptions to the general rule. The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator. And the rules of civil society must be adapted to the general constitution of things, and cannot be based upon exceptional cases.

83 U.S. 130, 141-142 (1873).

<sup>24</sup> By discourse I mean the ideas and social practices which operating in tandem create a sense of what is true, perhaps even self-evidently true.

<sup>25</sup> According to Fred Phel:

[White maleness is defined by] . . . desire for . . . control of nature; desire for recognition via domination . . . The kind of person who could have these desires turns out to be characteristically modern, western and male: an intersubjectively impoverished individual locked into a variety of combative stances, seeking dominance in relationships, mastery over nature, and absorption of differences.

phrases "I wear the pants," or I am "the man" of the house, are instances in which manhood is a reference to power and control. The notion that the police are "the man" points to a similar knotting together of notions of power and gender: Indeed "manhood" and the authority to make decisions<sup>26</sup> are concepts that reference each other so implicitly that each relies on the other for meaning. Our notions of power are gendered. Our notions of gender are anchored in existing power relations in the social world.

The signifying chain continues with the person who has the phallus being the subject as well. The term "subject" is a term whose meaning changes from one philosophical tradition to another.<sup>27</sup> Here, I use the term subject to describe one side of the equation in relationships of power. The subject in this sense is the "I" who thinks, speaks and is empowered<sup>28</sup> to impose his/her will on objects. "That is, the subject defines itself by encountering that which it perceives as different from it, the Other, and by enunciating that difference. It can authorize tyranny over those who are different to the extent that it views them as objects . . . rather than as subjects."<sup>29</sup>

FRED PHEIL, *Guerrillas in the Mist: Wild Guys and New Age Tribe*, in WHITE GUYS 217 (1995).

<sup>26</sup> A corollary of the notion of masculinity as linked to controlling and deciding is the link between masculinity and rationality. As Doty notes, quoting Victor Seidler in REDISCOVERING MASCULINITY: REASON, LANGUAGE AND SEXUALITY, emotions-Eros-originate outside of the male personality, which is associated with logos. Emotions originate in the feminine. Thus, men do not naturally love but are smitten by arrows fired by a cherubic, proto-feminine figure: Cupid for example. DOTY, *supra* note 18, at 18. Rational man learns to subdue or master these externally originating drives.

<sup>27</sup> The subject in legal theory traces its lineage to the phenomenology of Descartes: *Cogito Ergo Sum*—I think therefore I am. Michaelman refers to this entity as the liberal subject "in charge of its own thoughts and actions the spontaneous author of plans and doer of acts inspired by its own cognitions, calculations and desires." Frank Michaelman, *The Subject of Liberalism*, 46 STAN. L. REV. 1807, 1809 (1994). The subject typically refers to the individual, but can also be a reference to a governmental entity, perhaps a legislature. In Lacanian psychoanalysis the subject is not a real person but figure which represents the individual consciousness in its development and relation to language.

<sup>28</sup> Thus, I identify a subject which matches the description of what Michaelman denominates as the "liberal subject." My claim that blacks are excluded from the realm of subjecthood because of their gender collides with the postmodernist tendency to denounce the liberal subject as false and constructed. Cf. Michel Foucault, *What is An Author*, in THE MICHEL FOUCAULT READER 101 (1984); Pierre Schlag, *The Problem of the Subject*, 62 COLO. L. REV. 489 (1991) (noting, as postmodernists tend to do, that the subject is a rhetorical fiction). Schlag's perspective is liberating within a discourse about formalism. For purposes of social theory and understanding the power relationships by which people are oppressed, the subject is authentic or true.

<sup>29</sup> EMILE BENVENISTE, PROBLEMS IN GENERAL LINGUISTICS 225-26 (1971). Historically, in law, those others have included colonial peoples, natives, slaves, disenfranchised minorities, and women.

In a patriarchal society those who are privileged to speak and to treat those as different, as objects, are males.<sup>30</sup>

A patriarchal society creates a signifying chain in which male gender is interlinked with subjectivity. One becomes a subject by becoming a man. But how does one become a man?

### *B. Manhood and the Discourse of Civilization*

Paradoxically, manhood is also about obedience. One is also most a man when one is obedient to the name of the father.<sup>31</sup> The

<sup>30</sup> As Catharine MacKinnon writes:

Objectification in marxist materialism is thought to be the foundation of human freedom, the work process whereby a subject becomes embodied in products and relationships. Alienation is the socially contingent distortion of that process, a reification of products and relations which prevents them from being, and from being seen as, dependent on human agency. But from the point of view of the object, objectification is alienation. For women, there is no distinction between objectification and alienation because women have not authored objectifications, they have been them . . . .

CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* 124 (1989).

<sup>31</sup> This statement is a synthesis of my reading of Lacanian Psychoanalysis. The question is how to define masculine subjectivity. One must become a subject: according to Lacan, the infant experiences himself initially without subjectivity or power, utterly dependent on his mother who becomes the "omnipresent other."

Before the reign of Law, Mother (the "primordial Other") appears as the "phantom of the Omnipotence"; the subject depends totally on its "whim," on its arbitrary (self-) will, for the satisfaction of its needs; in these conditions of total dependence on the Other, the subject's desire is reduced to the demand for the Other's love—to the endeavor to comply with the Other's demand and thus gain its love.

The infant succeeds in achieving subjectivity only through a "contract" of sorts in which the infant accepts the father's name in exchange for obedience to the father's statutes.

For the son, the origin of law and the creation of subjectivity and intersubjectivity is also, as in Hegel, a result of exchange. For the male child, this is seen as the father who threatens to take away his penis. The incest taboo is the origin of law, language, and culture. It is this repression which makes us into human beings. If the son

"name of the father" is alternatively Hegel's "Objectivity" or norms of "civilization." Thus, notions of manhood are intimately associated with certain codes of behavior, like the code of honor in chivalry or the code of the West.

For the black male, identity becomes a contradiction. If manhood is associated with autonomy and power, black males tend to be powerless.

[O]ne must also consider the social contradiction and hoax inflicted on black men, which originates in the very definitions of self-worth and manhood in our society. It has come to be a cruel joke that in a culture driven by media fantasies of sex, violence, and power; a culture where material wealth is the highest measure of self-worth; a culture that defines "manhood" by the ability to provide economic survival for one's self and family—in this culture, the very means of achieving "manhood" are systematically and institutionally kept out of the grasp of all too many black men.<sup>32</sup>

Thus, Fanon could write that paradoxically blacks are constructed as oversexed, their bodies becoming equated with a penis, and that at the same time they are seen as eunuchs, already castrated by society:

One is no longer aware of the Negro but only of a penis; the Negro is eclipsed. He is turned into a penis. He is a

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submits to the Law-of-the-Father, the Name-of-the-Father will recompense him by allowing him to adopt the father's name. . . . The Other is no longer a figure of full omnipotence: what the subject obeys is no longer the Other's will but a Law which regulates its relationship to the Other - the Law imposed by the Other is simultaneously the Law which the Other itself must obey.

Edward S. Casey & J. Melvin Woody, *Hegel, Heidegger, Lacan: The Dialectic of Desire*, in 6 INTERPRETING LACAN 75 (Joseph Smith & William Kerrigan eds., 1983). My colleague Johnathan Simon argues Lacan has taught us that the father is only a metaphor for the more general normalizing power which he describes as the "Phallus." Jonathan Simon, *Power without Parents: Juvenile Justice in a Postmodern Society*, 16 CARDOZO L. REV. 1363, 1426 (1995). See also JACQUES LACAN, *On a Question Preliminary to Any Possible Treatment of Psychosis*, in ECRITS: A SELECTION 179 (Alan Sheridan trans., W.W. Norton Co. 1977).

<sup>32</sup> Ed Guerrero, *The Black Man on Our Screens and the Empty Space in Representation*, in BLACK MALE, *supra* note 3, at 184.

penis . . . (Like the woman, the black man's different body could be said to pose a castrative threat to the white man, but like her, the social order poses him as already castrated.)<sup>33</sup>

Black males are thus deprived of the cultural privilege that the phallus represents.

If maleness refers to a certain discipline or obedience, black males are perceived as congenitally disobedient and lawless. This is true because of how white male ideas about manhood distinguished between man—read civilized man—and savage. As Gail Bederman writes:

By about 1890, the discourse of civilization had taken on a very specific set of meanings . . . Civilization denoted a precise stage of human racial evolution—the one following the more primitive stages of "savagery and barbarism" . . . Savage men were emotional and lacked a man's ability to restrain their passions. Savage men raped women instead of protecting them . . . . Manliness . . . dealt with moral achievements which only the most civilized men could attain . . . . Civilization thus constructed manliness as simultaneously cultural and racial. White men were able to achieve perfect manliness because they had inherited the capacity from their racial forebears.<sup>34</sup>

It follows that for the black male gender is often a source of inferiority rather than privilege. Understanding the gender of the black male as a source of inferiority rather than privilege depends on looking closely at the opposition between the black male and their white counterparts with respect to these patriarchal norms. As many black female scholars have noted<sup>35</sup> in speaking of the intersection

<sup>33</sup> FRANTZ FANON, *BLACK SKIN, WHITE MASKS* 170 *et seq.* (1967).

<sup>34</sup> BEDERMAN, *supra* note 23, at 29.

<sup>35</sup> For example, according to Prof. Kimberle Crenshaw:

[W]omen of color are frequently the product of intersecting patterns of racism and sexism, and these experiences tend not to be represented within the discourse of either feminism or antiracism. Because of their intersectional identity as both women and of color within discourses that are shaped to respond to one or the other, women of color are marginalized within both.

between race and sex in the context of black women, we all have multiple identities which shift according to the context in which we find ourselves.<sup>36</sup> It is true, that as between black males and black females, that the black male participates in the privilege and power of being male.<sup>37</sup> The Million Man March resonated both in a cry for

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Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1243-44 (1991). Similarly, Professor Angela Harris wrote:

We are not born with a "self," but rather are composed of a welter of partial, sometimes contradictory, or even antithetical "selves." A unified identity, if such can ever exist, is a product of will, not a common destiny or natural birthright. Thus, consciousness is "never fixed, never attained once and for all.

Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 584 (1990). See also Celina Romany, *Black Women And Gender Equality In a New South Africa: Human Rights Law And The Intersection Of Race And Gender*, 21 BROOK. J. INT'L L. 857 (1995); Judy Scales-Trent, *Black Women and the Constitution: Finding Our Place; Asserting Our Rights*, 24 HARV. C.R.-C.L. L. REV. 9 (1989); Margaret E. Montoya, *Law and Literature: Mascaras, Trensas Y Grenas: Unmasking The Self While Unbraiding Latina Stories And Legal Discourse*, 17 HARV. WOMEN'S L.J. 185 (1994).

<sup>36</sup> Thus, Margaret Montoya noted a schism within herself: Having a Chicano identity vis-a-vis her identification with the community which nurtured her and an increasingly Anglo identity vis-a-vis the community with which she became associated with through education and professional life. She quotes David Gomez:

My Anglo-white experiences at school so completely conflicted with my Mexican-brown experiences at home that I rejected one for the other only to find that I couldn't fully participate in either. I became a withdrawn person living on the periphery of the white world and wanting to have less and less to do with the brown world.

DAVID F. GOMEZ, SOMOS CHICANOS: STRANGERS IN OUR LAND 9 (1973).

Similarly, she experienced a female self in tension with her ethnic self:

The Chicano movement had been limited by my gender, while in the women's movement it had been limited by my ethnicity. I drew power from both movements—I identified with both—but I knew that I was at the margin of each one.

Montoya *supra* note 36, at 188.

<sup>37</sup> Thus, Kristal Zook worries,

But by exalting the persecutions of black men, the narrative elevates their particular truths to the mythical status of universal black reality . . . . When the names



justice and an uncritical marginalization of black women. The objectification of black females resonated throughout the Clarence Thomas debacle,<sup>38</sup> and resonates a recurring theme in much of rap music.<sup>39</sup> Similarly, Marlon Riggs has pointed out the hegemony of

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Rodney King, O. J. Simpson, Mike Tyson, Marion Barry and even Clarence Thomas become symbolic, like "Scottsboro," black women are left without a way to talk about how some of the Scottsboro "boys" (accused of raping two white women) actually did commit acts of violence and murder against their girlfriends and wives.

Kristal Zook, *A Manifesto of Sorts for the Black Feminist Movement*, N.Y. TIMES, Nov. 12, 1995, § 6, at 86-88.

The focus on the particularity of black male identity is not a gesture toward a new chauvinism, but the dismantling of the archetypical chauvinism of white male hegemony, an assertion of particularity as an oppositional enterprise. As Angela Harris has stated "[I]n order to energize legal theory, we need to subvert it with narratives and stories, accounts of the particular, the different, and the hitherto silenced." Harris, *supra* note 36, at 615.

Moreover, I wonder if a partial answer to this is not the revision of the paradigm of the problem. If we can reconceive black male identity as mirroring the intersectionality of black female identity we can find bridges between the black male experience and the experience of black women. Neither the story of Celie in *THE COLOR PURPLE* nor the story of Doughboy in *Boyz in the Hood*, neither that of Anita Hill nor that of Rodney King represent a universal narrative. They are in their particularity instances of the master narrative that race and gender intersect to multiply identities and create a tangled hierarchy. This "tangled hierarchy", configured as an M.C. Escher drawing, is one in which the meaning of identity is "inconsistent" across a range of contexts.

<sup>38</sup> As Davis and Wildman have written:

Justice Thomas controlled this symbol of race. In claiming he was the victim of a high-tech lynching, Justice Thomas claimed he was being accused because he was African American. Yet his accuser was also African American. The inconsistent treatment of the symbol "Black" as applied to Hill and Thomas revealed that the symbol was gendered. In this struggle, the symbol Black equaled male.

Professor Anita Hill became, somehow, "de-raced" and partially erased . . . in a stunning sleight of hand, he managed to convince all involved, including the Senate, that white racism, rather than a Black woman, had accused him of harassment. Thus, race became something Professor Hill did not have. In an ironic twist of fate she became "Yale-educated female law professor" to Justice Thomas's lynched Black man.

Adrienne D. Davis and Stephanie M. Wildman, *The Legacy of Doubt: Treatment of Sex and Race in the Hill-Thomas Hearings*, 65 S. CAL. L. REV. 1367, 1379-81 (1992).

<sup>39</sup> While I recognize the misogyny of Gangsta Rap, it is essential that we put the bigotry of rap music in the context of the bigotry found in and drawn from American culture for which

patriarchal norms within the black community and as between black heterosexual males and gay black males. Spike Lee's naming of his black male protagonist as Bleak in *Mo' Better Blues*, a man torn between two women, speaks eloquently to the morally precarious sexual politics characteristic of so many black males.

In the dyad between black women and black men, black males often participate as privileged actors. However, in the dyad between black males and white males the black male becomes the object. The plane of "manhood" is, in the end, a segregated space in which the black male is relegated to the periphery, to the psychological ghetto of the marginalized other.

The purpose of this paper is to map the terrain of this segregated space.

In Part II, *The Prism of Myth*, I explore how myths about the black male are like a two sided coin. On one side we find racial mythology. I try to show that on the flip side of our racial myths we find myths about the black male's gender. I then try to interweave discussions of recent cases to show how, in our legal culture, race and gender are mutually entailed as the lens through which black males become objects, as metaphors for social problems, and as proper

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Rap is merely a mirror.

[I]s gangster rap the most powerful form of expressing misogyny in American culture? I would argue, no. The most visible form of misogyny certainly happens to be gangster rap. But the attack upon young, vulnerable black men as the most powerful exemplars of misogyny in American culture contradicts what we know to be the truth. What we know to be the truth is that misogyny and sexism are tried and true American social and political ideals and traditions that have to be challenged. They not only have to be challenged in gangster rap, they've got to be challenged in the Senate, they've got to be challenged in the Congress, in the synagogue, in the temple, in the church, and the nuclear family. Misogyny and sexism are spread out in our culture. To pretend that Snoop Doggy Dog is the most powerful exemplar of this tradition is to deny history. And let me add this—that Snoop Doggy Dog is not simply talking about [misogyny]. He said, "Woked up, jumped out my bed. I'm in a two-man cell with my homey, Little Half Dead. Murder was the case that they gave me. Dear God, I wonder, can you save me?" There is a cry for redemption.

*The MacNeil/Lehrer NewsHour* (PBS television broadcast, June 5, 1995).

targets for violence and social control.

The stories of black males subordinated as a result of, *inter alia*, their gender or sex have been around in texts—the Rodney King case, the Bernard Goetz case, and the O.J. Simpson case—for quite some time. Like the letter in the familiar story the gender piece has remained hidden in plain sight. To find it one must forsake the sentence as a unit of inquiry. We look through the magnifying glass not merely of language, but of the word as unit of analysis. More specifically the epithets used by the white power structure—particularly lawyers—to describe and in fact “to other” the black males involved are vehicles of storytelling in this context.

My work hopefully will make “the invisible men of late twentieth century capitalism” a little more visible to legal discourse: “An oppressed group must at once shatter the self-reflecting world which encircles it and, at the same time, project its own image onto history. In order to discover its own identity as distinct from that of the oppressor, it has to become visible to itself.”<sup>40</sup>

## II. PRISM OF MYTH

*Rodney King is perhaps the apex in a series of current dramas about black men. Willie Horton, the Clarence Thomas/Anita Hill affair, Magic Johnson's AIDS confession [sic], the O.J. Simpson debacle—all gave real-life corollaries to the myths.*<sup>41</sup>

*Black men are densely mythogenic, the object of layered fictions produced by others. Like other mythogenic people—Gypsies, Jews—the legend of the Black man outruns and awaits him through the course of his journey. “What does it feel like to be a myth?” DuBois might have written, instead of “to be a problem?”<sup>42</sup>*

As John Edgar Wideman has noted, the black man can only perceive his identity through the window of certain myths deeply embedded in culture.<sup>43</sup> Similarly, he can only be perceived in society and more particularly in law through these self-same myths. Ellison

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<sup>40</sup> MACKINNON, *supra* note 31, at 84 (quoting SHEILA ROWBOTHAM, *WOMAN'S CONSCIOUSNESS, MAN'S WORLD* 27 (1973)).

<sup>41</sup> Golden, *supra* note 3, at 23.

<sup>42</sup> Clyde Taylor, *The Game*, in *BLACK MALE*, *supra* note 3, at 169.

<sup>43</sup> See DUBOIS, *supra* note 22.

focused on this problem using the metaphor of the black man as invisible.

What renders the black male invisible to others and perhaps to himself are two myths: a myth I call the myth of African other and a myth I refer to as the curse of Ham.<sup>44</sup>

<sup>44</sup> Professor Angela Harris has questioned this. She asks, in response to an advance draft of this piece, whether or not, by linking the image of the black male to time-worn myths, I am framing the question in universal terms, fixing it as a static thing determined for all time.

Certainly, it is true that part of the reason for the obsolescence of the black male is in response to a contemporary context of technological change. The present image of the black male is intimately linked to these conditions. Nonetheless, while the permutations of the black male figure are a function of economic and political context, the source of the construction itself is in language and myth.

I would call popular culture as my witness. Note that black men in films seem to reflect one of three archetypes. The first is the black man as "sidekick." Tanto in the *Lone Ranger* series and Poncho in *The Cisco Kid* are the model for this genre, in my view. In this genre the male of color plays a critical and often lifesaving role in the film; the character is typically memorable, heroic, brave, an excellent fighter, human, and often endearing. Yet traditionally the sidekick is always inferior, the moon to the white hero's sun.

Contemporary examples include *Independence Day 4*, *Lethal Weapon I and II*, *Die Hard With a Vengeance*. The "text" of these recent films is that race doesn't matter and that blacks and whites can bond through shared experiences. According to the text, race simply correlates roughly with the culture or ethnic flavor of the character, not with any notion of value or worth. In *Lethal Weapon*, Danny Glover actually is portrayed as a "Bill Cosby" with a detective badge, exposing Mel Gibson's Riggs to the healing pleasures of home and family. At the same time, Mel Gibson's domesticated detective is "teamed" with and becomes bonded to Rigg's killing machine character.

The black man seems to receive from the white man's hands not only the capacity for effective violence, but something like virility itself . . . a story that also includes the proto-sexual healing, feminine healing, insofar as Murtaugh manages to curb Rigg's most excessively male tendencies towards self-destructive behavior by bringing them back to the pleasures of the hearth.

PHEIL, *supra* note 26, at 13.

According to Pheil's reading of these films, black men lose racial identification, but only by recoding race as gender. The black men become subjects but only as the morphologically darker half of a fighting "couple."

A similar notion is developed in the second set of movies in which the black actor plays a character, typically a man of action, who as a character is neither black nor white in his attitudes and values. This is the *Universal Man* genre. Sidney Poitier pioneered this genre in films like *Guess Who's Coming to Dinner* and *In the Heat of the Night*. Bill Cosby's long running television series is an 1980s permutation with a family spin. Contemporary examples include Denzel Washington, the nineties Sidney Poitier, in *Philadelphia*, *The Pelican Brief* and in *Crimson Tide*.

The main idea is that the black man plays a role in which he has no connection or reference to history or social conditions. Ellison, in *THE INVISIBLE MAN*, introduces us to Clifton Todd, someone who had been involved in the movement but then decides to "step out of history"

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to become an obscure doll salesman. There is an echo of Clifton Todd in all these films. Thus, the universal black man never mentions race or racial history—he has stepped out of it—and in the big tent of America never experiences discrimination. No one seems not to notice or care that Denzel Washington is “sleeping” in the same room with Julia Roberts throughout the Southeast U.S.

Further, the Universal Man, like Clarence Thomas, merely happens to be black in physiognomy: He shares the values and conforms to the values of white America. This “new, improved” black male is a fitting symbol for an age in which colorblindness has made its ascendancy in law.

It also reflects notion of white culture as messianic. The universal black man speaks like, dresses like, has a family oriented life style like, his white counterparts. According to the text of the movie he is culturally neutral. But this is only as “flesh colored band-aids” were neutral. The sub-text is here is a black man who is fully assimilated: culturally white. As Etienne Balibar writes:

the assimilation demanded of [blacks in Britain and France] before they can become “integrated” into the society in which they already live . . . is presented as progress, as an emancipation, a conceding of rights. And behind this situation lie barely reworked variants of the idea that the historical cultures of humanity can be divided into two main groups, the one assumed to be universalistic and progressive, the other supposed irremediably particularistic and primitive.

Etienne Balibar, *Is There A Neo-Racism?* in RACE, NATION, AND CLASS: AMBIGUOUS IDENTITIES 17, 2021 (Etienne Balibar & Immanuel Wallerstein eds., Chris Turner trans., 1991).

What is more troubling is that the universal black male has only two dimensions. Denzel, unlike his white counterpart, is neutered: he has no sexual agency. Thus, he does not and cannot get the (white) girl, Julia Roberts, as Brad Pitt would. He also has no quirky individuality, no humor. He is cardboard. Both his sexuality and his race have been erased. If the black sidekick exchanges his masculinity for racial identification with the dominant group, the universal man does the reverse: he surrenders all racial identification for masculinity, albeit a masculinity of a formal or paper sort, without potency or authority in the realm of sex.

The third genre is the black man as arch villain. The arch villain appears as Wesley Snipes in *Demolition Man*, a bandoleered, new-wave-coiffured bad guy who threatens a vegetarian, docile world with new levels of mayhem. He appears, as in *Judgment Day*, as a black engineer who invents a device which ends up with robots taking over the world. These images reflect a contemporary ambivalence about the role and worth of black men, vacillating between a picture of us as Tanto or as Lucifer, alternatively suggesting he/they lack either brains or character.

Perhaps we have moved from biological inferiority to cultural inferiority, from being stigmatized as an inferior order of human life in absolute terms, to being stigmatized more relatively: We are capable of becoming subjects, friends, sidekicks, another Denzel, if we can subdue our dense, threatening, animalistic sexuality. We have progressed from the “beast rapist” of *Birth of A Nation*, to cardboard, two dimensional characters fashioned in the image of white males. Our progress or salvation, however, depends finally on the dubious proposition that we can, in real life, step out of our cultural or sexual selves: only then can we as black males be men.

The theme that runs through the subtext of all these films is that to be black and male is to be always lacking. This is a theme as old as the curse of Ham.

I suggest that while current conditions may work variations on old themes, the permutations of black “masculinity” appearing on our screens has its source in the collision

*A. The Myth of the African Other: The Construction  
of the Black Male as a Mere Body*

Heroditus, wrote that Africa was populated by the "headless" men with eyes in their chest. Similarly Hegel wrote:

In general it must be said that [African] consciousness has not yet reached the contemplation of a fixed objective . . . the fixed objectivity is called God, the Eternal, Justice . . . The Africans have not yet reached the recognition of the general . . . what we name religion, the State, that which exists in and for itself - in other words all that is valid- is not yet at hand . . . thus we find nothing other than man in his immediacy: that is man in Africa. As soon as Man appears he stands in opposition to nature; only in this way does he become man .

. . .<sup>45</sup>

The erasure of the native African man's subjectivity to some extent occurred by virtue of his association with Africa. There was a deep association of Africans as beings, with Africa as a territory. Territory in turn is distinguished from civilization. The identification of Africans with animals flowed from an identification of Africans with territory to be explored and, of course, conquered. The colonialist eye/I saw Africans, as part of a panorama of landscape:

The natives were Africa in flesh and blood . . . [The various cultures of Africa, the mountains, the trees, the animals] were different expressions of one idea, variations upon the same theme. It was not a congenial heaping up of heterogeneous atoms, but a heterogeneous up heaping of congenial atoms, as in the case of the oak leaf and the acorn and the object made from oak.<sup>46</sup>

In this packing of Africans into nature the "natives" lost all subjectivity and were again a void waiting to be filled (to be "civilized" by Europeans.)<sup>47</sup> There is here what Jan Mohammed calls a

between the black male's gender and the perennial mythology of race.

<sup>45</sup> G. W. F. HEGEL, *DIE VERNUNFT IN DER GESCHICHTE*, 216 (5th ed., 1955).

<sup>46</sup> CHRISTOPHER MILLER, *BLANK DARKNESS* 18 (1985).

<sup>47</sup> *Id.*

metonymic displacement, in which the part, the land/nature, stood for the whole. In this metonymic process, "all specificity and difference" was transformed into a single magical essence in the colonial imagination. It follows that blacks/Africans are part of nature rather than human culture because Africa is nature—an uncivilized place—and African identity, like that of the flora and fauna of Africa, are absorbed in the idea of Africa itself.

The construct of blacks as associated with the nature, the pre-rational, the African, is in itself a racial image. However, the implication for black men of being without higher consciousness, the power to think and make decisions,<sup>48</sup> is that black men lack a critical component of what it takes to be whole as man. In a similar vein, Bell Hooks argues that the image of "nature" in the West is feminine and the conjunction of blacks with nature resulted in a feminizing of "black men."<sup>49</sup>

The equation of black men with body, nature, the feminine appears in the rhetoric of nineteenth-century white male abolitionists. In a celebrated 1863 speech before the American Anti-Slavery Convention, white abolitionist Theodore Tilton urged masculine white males to let go the fear of their black counterparts: 'In all those intellectual activities which take a strange quickening from the moral faculties—processes which we call instincts, or intuitions—the Negro is superior to the white man—equal to the white woman. The negro race is the feminine race of the world.'<sup>50</sup>

It is less, I think, that black men are portrayed in the mythology of the West as women than as non-men. Masculinity or maleness in the black man is truncated. Again for me, the image

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<sup>48</sup> The inability to think or make decisions is first of all implicit in the notion of blackness. Thus, De Gobineau, an early and influential pioneering theorist concerning the notion of race, could state that as "black does not reflect" so the black man was unreflective or unable to think properly. See MILLER, *supra* note 48, at 31.

The inability to think is also anchored in the social context of the late twentieth century as the process of deindustrialization has unmistakable asymmetrical effects on black males as opposed to both white males and black females as well. Black men are increasingly powerless economically, becoming the human equivalent of jetsam and flotsam washing up on, if not the shore, the corners of urban America: increasingly jobless, increasingly illiterate in the essential language of technology.

<sup>49</sup> See Bell Hooks, *Feminism Inside: Toward A Black Body Politic*, in BLACK MALE, *supra* note 3, at 127-40.

<sup>50</sup> *Id.* at 131.

which emerges from this is that black men, the headless who have eyes in their chest, are bodies without minds. Cleaver, in his 1960s book *Soul on Ice* referred to this image as the myth of the super masculine menial:

The chip on the Supermasculine Menial's shoulder is the fact that he has been robbed of his mind. In an uncannily effective manner, the society in which he lives has assumed in its very structure that he, minus a mind, is the embodiment of Brute Power. . . . He doesn't run, regulate, control, or administer anything. Indeed, he is himself regulated, manipulated, and controlled by the Omnipotent Administrators.<sup>51</sup>

But the black male is not merely imagined as inferior, he is mere body and as such becomes a mere object. The black male cast as supermasculine menial is essentialized:

[There is here] . . . a very familiar, widespread, and stable form of "othering." The people to be othered are homogenized into a collective "they," which is distilled even further into an iconic "he" (the standardized adult male specimen). This abstracted "he"/"they" is the subject of verbs in a timeless present tense, which characterizes anything "he" is or does not as a particular historical event but as an instance of a pre-given custom or trait . . . . Through this discourse, encounters with an Other can be textualized or processed as enumerations of such traits.<sup>52</sup>

### PROJECTION

The black body is a site of projection. Whites have historically projected their own *Id* based desires upon the black body, to associate it with uncontrolled passion.

Medieval European accounts of Africa had portrayed the men as libidinous, and the view persisted among slavery's defenders in America. This perspective was not merely incidental to whites' perceptions of blacks; it was

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<sup>51</sup> ELDRIDGE CLEAVER, *SOUL ON ICE* 171 (Laurel 1991) (1968).

<sup>52</sup> Mary Louise Pratt, *Scratches On The Face of the Country; Or What Mr. Barrow Saw In The Land Of the Bushmen* in HENRY LOUIS GATES, *RACE, WRITING, AND DIFFERENCE* 139 (1985).



fundamental, and it was closely connected with a view of white men's need for self-control. From the beginnings of slavery in America, whites associated control over blacks with the struggle between Reason and Nature inside themselves, and their need to control "the blackness within."<sup>53</sup>

The black male, in his super-masculinity becomes in turn a source of anxiety, a threat to the white woman because of this lack of a higher consciousness and self-restraint. The prototypical image of the black man is as a criminal: consider Willie Horton,<sup>54</sup> for example, as an image which knots together the idea of sexual outlaw and outlaw, the lack of sexual discipline and savageness. The allegorical extension of myth reduces the black male to a highly sexualized body whose otherness and dangerousness derives from his excessive animalistic drives. In a patriarchal society in which white males are the dominant group,<sup>55</sup> the black man/the black body becomes dense

<sup>53</sup> WINTHROP D. JORDAN, *WHITE OVER BLACK: AMERICAN ATTITUDES TOWARD THE NEGRO*, (1550-1812) 436-437 (1968).

<sup>54</sup> In his 1988 campaign, candidate George Bush ran television ads accusing his opponent, Governor Dukakis, as being soft on crime. The ads prominently flashed the face of Willie Horton, a black face, and proceeded to use Willie Horton's black face as a symbol in a political narrative which appealed to race.

The content of this political narrative and its symbolism is most succinctly capsulized by Professor Regina Austin:

Horton, a convicted killer who raped a white woman and stabbed her fiance while on furlough from a Massachusetts prison, figured prominently in political ads supporting presidential candidate George Bush when he ran against Massachusetts Governor Michael Dukakis. Willie Horton symbolized the threat that black males, aided by white liberal politicians, pose to innocent whites. Playing on racial fears, the ads' signifying was not limited to the criminal element; every black man was a potential Willie Horton, rapist and murderer.

Regina Austin, *Beyond Black Demons & White Devils: Anti-Black Conspiracy Theorizing & The Black Public Sphere*, 22 FLA. ST. U. L. REV. 1021 (1995).

What is most interesting about this episode of public racism was that it was ostensibly invisible to the Bush campaign itself. Although Bush campaign censured the ads, after 28 days, the committee (the PAC which sponsored the ads) allegedly received unofficial word that the campaign was "thrilled" with what they were doing. *Id.* Similarly, mainstream political analysts saw no evil: "On CBS's "Face the Nation" yesterday, political analyst William Schneider said Bush has not conducted what could be called a "racist campaign." *Id.*

<sup>55</sup> As my colleague Jonathan Simon has stated:

Paternalism is often defined as an exercise of control

with projected libido, something to be repressed and controlled.<sup>56</sup> Moreover, it is not a facet of the discourse of civilization to parse this mind body dualism into gendered categories: that this sexual dimension—the body—is understood as belonging to the feminine side of life, with manliness—located in the mind—focused on controlling that which is base or animalistic.

### METONYMY

In tandem with the projection of white fears onto the black male is a metaphorization of the black male in which the part stands for the whole. In this context let us recall the Rodney King case.

After being stopped for failing to yield, Rodney King found himself surrounded by over twenty armed Los Angeles Police officers,<sup>57</sup>

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over an individual that purports to be implemented in the interests of that individual, either overriding or filling in for unreliable or nonexistent individual [needs] . . . But the phrase "paternalism" helps remind us that parental power in our culture has always been marked by gender domination.

Simon, *supra* note 32, at 1372.

<sup>56</sup> As has noted modern literature has been a crucial site or re-production of this mythology:

Great Western literature, from Othello on, has perpetuated this image. Among the most offensive of the modern works is William Styron's, *The Confessions of Nat Turner*, in which he converted Turner from a religious zealot and antislavery rebel into a "sexual pervert," driven by his obsession with "beautiful white girls with golden curls." "Even white friends of black equality perpetuate this image, recasting it into a purportedly more positive light as the "good barbarian." Thus Jack Kerouac and Norman Mailer wrote wistfully and romantically of black sexuality. Mailer wrote of the black man who "subsisted for the Saturday Night Kicks, relinquishing the pleasures of the mind for the more obligatory pleasures of the body, and in his music . . . [giving] voice to . . . the infinite varieties of joy, lust, languor, growl, cramp, pinch, scream and [the] despair of his orgasm."

Andrew E. Taslitz, *Patriarchal Stories I: Cultural Rape Narratives In The Courtroom*, 5 S. CAL. REV. L. & WOMEN'S STUD. 387, 456 (1996).

<sup>57</sup> See Seth Mydans, *The Police Verdict*, N.Y. TIMES, Apr. 30, 1992, at H1 ("two dozen officers were present"). See also Tracey Wood & Sheryl Stolberg, *Patrol Car Log In Beating*

several of whom proceeded to beat him "half to death"<sup>58</sup> while he is lying defenseless on the ground. King was hit between fifty-three and fifty-six times by officers wielding their batons. The bones holding his eye in its right socket as well as those at the base of his skull were broken.<sup>59</sup> In addition to "clubbing him wildly" one officer, Tom Briseno, "stomped on King's head."<sup>60</sup>

The question before the jury was simply whether the force used to subdue Rodney King, up to fifty-six baton blows, which included blows to the head, and the stomping on King's neck, nearly all of which occurred while he was unarmed and prone on the ground, was reasonable. The jury, however, found none of the officers guilty.<sup>61</sup> Three of the policemen were acquitted outright and the jury hung on the others.<sup>62</sup>

Many were surprised at the result, given the availability of a film which depicted with brutal clarity the helplessness of King and the brutality of the officers. Again, however, black men, including film depiction, can be viewed through the window of racial myth.

In the Rodney King case, the rhetorical strategy of the defense lawyers was to overlay the film of Rodney King being beaten with implicit references to this mythology.

When these officers were first put on trial in Simi Valley, and when the jury came back with its "not guilty" verdicts, what metaphorization of the black male body had to have been put in place that called upon a (white)-constructed national historical memory, a code in which African-Americans are nonetheless perfectly literate?<sup>63</sup>

King was eliminated as a subject by his reduction to an aggregation of body parts: by being constructed as a body.

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*Released*, L.A. TIMES, Mar. 19, 1991, at A1 (noting 11 officers were under investigation for merely standing around while King was being beaten).

<sup>58</sup> See Tracy Wood and Faye Fiore, *Beating Victim Says He Obeyed Police*, L.A. TIMES, Mar. 7, 1991, at A1.

<sup>59</sup> Wood & Stolberg, *supra* note 58, at A1.

<sup>60</sup> *Id.*

<sup>61</sup> See Mydans, *supra* note 58, at H1.

<sup>62</sup> *Id.*

<sup>63</sup> Elizabeth Alexander, *Can You Be Black and Look at This: Reading the Rodney King Verdicts*, in BLACK MALE, *supra* note 3, at 93.

This reduction of King to the status of a mere body was accomplished as his image, prone, at the unfortunate end of a half dozen nightsticks was frozen into freeze frames and disassociated from the film as fluid sequence of action. As the defense lawyers froze the frames and pulled each out of context this allowed for a shift of focus from the action, and its moral significance to the image of the black body on the screen. Each of King's gestures of helplessness and pain were redescribed in the snapshots as aggressive moves.<sup>64</sup> An arm pulled back to avoid being hit was "cocked," a leg raised to get up to avoid being stomped was "coiled." The implicit imagery here is that the black man's body contains explosive power, like a gun or steel spring, ready to shoot out.<sup>65</sup>

This rhetoric relies upon the immense sexual energy packed into the black body within our racial myths. The black body is associated with nature, instinct.<sup>66</sup> Nature is wild, dark, threatening, and, of course, feminine.

Braided in with what is on first blush a racial image are dense metaphorical references to the "potency" of the black male: it is the peculiar property of the black male to be viewed as sexually explosive. The analogy of King's body to a gun—hence the "cocked" arm—or a snake—hence the "coiled" leg, are images which draw their power from sexual myths about black males *qua* black males. The underlying narrative is one of the need for the black man's sexuality to be controlled as the feminine dimension of white males themselves—their instincts, their emotions—need to be controlled. The construction of King as a body, a black "male" body, invoked both racial and sexual imagery and the double legitimation of conquering both nature and projected, unconstrained, sexual desire.

The agency of myth here is in the first instance to provide a lens for representing the black male in so distorted a way, that vicious aggression against him seems defensive, and therefore natural and

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<sup>64</sup> Here, I echo the observations of Professor Williams, "King's body helplessly flopping and twitching in response to the rain of blows, became . . . a "cocked leg" . . . a bullet of a body always aimed, poised, about to fire itself into deadly action . . . and "who could fail to be touched by the inventive whimsy of that police paramedic who described King, hog tied and admittedly choking, as "belligerently spitting" blood. Patricia Williams, *The Rules of the Game*, in *READING RODNEY KING, READING URBAN UPRISING* 52-53 (1993).

<sup>65</sup> *Id.*

<sup>66</sup> CORNEL WEST, *RACE MATTERS* 85-86 (1993). See generally JORDAN, *supra* note 54 (discussing the notion of a natural racial hierarchy in post-revolutionary American thought).

inevitable. Interwoven into this distorted picture—i.e., the black man as mere body—is a concomitant distortion of moral responsibility. A core premise of liberal thought is that individuals are responsible for what they do, not who they are. However, the process of metaphorization involved here allows for black males like Rodney King to be held responsible for their victimization independent of any action on their part. They are held responsible in the first instance not for what they have done, but on the basis of *what they are* as bodies without minds, without the subjectivity necessary to find proper relationship to the objective rules of society. They are held responsible *for what they might do*.<sup>67</sup>

Here again King's body was appropriated. The decisive move here is to conflate behavior and the black male body. At least two social scientists have endorsed this conflation.

The biological factors whose traces we see in faces, physiques, and correlations with the behavior of parents and siblings are predispositions toward crime that are expressed as a psychological trait and activated by circumstances. The existence of biological predisposition means that circumstances that activate criminal behavior in one person will not do so in another . . . that . . . crime . . . may . . . reflect *constitutional* factors.

As I stated in a previous conversation,

These *constitutional* factors are of course the biological traits of size and color. These traits in turn (size/color) are posited as predictors of criminality. Thus, Rodney King was "of a size and shape and skin color correlated with a propensity to behave violently." It was the notion of King as being of a dangerous kind which was mobilized by lawyers speaking of "the likes of Rodney King." King's size and color and the bogus predictability associated with those factors were used

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<sup>67</sup> I am reminded here of a poem by Langston Hughes,

[A] tall white woman /  
 In an ermine cape /  
 Looked at the black and  
 Thought of rape.

to create a structure of responsibility associated not with acts done but those which might be. "King's responsibility extends not only to what he does, but to who he is in [a] constitutional sense. His body might be said to have informed on him to the police."<sup>68</sup>

This meronymy—the black male is a mere body—is a gendered image as well as a racial one: The black man's sexual potency stands in a similar opposition to white manhood as his own sexuality. Both must be "controlled" if the white male is to validate his own manhood.

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<sup>68</sup> Thomas L. Dumm, *The New Enclosures: Racism in the Normalized Community, in* READING RODNEY KING: READING URBAN UPRISING 182 (Robert Gooding-Williams ed., 1993).

MAP OF ANTINOMIES<sup>69</sup>

<b>Masculine</b>	<b>Proto-Masculine</b>
Man	Boy
Servant	Woman
<b>Proto-feminine</b>	<b>Feminine</b>

The hierarchy of gender is further articulated by a display of what is inchoate in the hierarchy. The role of the servant is subsumed in the gender assigned to the woman. Thus, for a "man" to play the role of servant is to relegate the man not merely to a subordinate role but a feminine one.

A similar image figured prominently in the O.J. Simpson case: The trial of a black man accused of killing both his white ex-wife and her friend Ron Goldman.<sup>70</sup> Such events are, through our collective historical memory, associated synchronically with slave rebellions and diachronically with urban riots as recent as the one in which Reginald Denny was assaulted.<sup>71</sup>

This violence has welled up as a kind of reservoir of anxiety, barely below the surface. This reservoir of anxiety reposes deeply within our unconscious, that is within language. The O.J. Simpson case was, in a sense, the drill which penetrated our surface composure

<sup>69</sup> See PHEIL, *WHITE GUYS*, *supra* note 26. The chart is adapted from his analysis of gender as it is constructed in modern films.

<sup>70</sup> *People v. Powell*, BA 035498.

<sup>71</sup> Marc Lace & Shawn Hubler, *Rioters Set Fires, Loot Stores: 4 Reported Dead*, L.A. TIMES, Apr. 30, 1992, at A1 (finding that "[i]n gruesome scenes recorded by the TV news helicopters, an 18-wheel truck was stopped in the intersection, its driver, identified as Reginald Denny, dragged from the cab and beaten by the mob.") Denny recovered, but his assailants, Damian Williams and Henry Watson, were acquitted of most charges. Carla Rivera, *Majority Say Denny Verdicts too Lenient*, L.A. TIMES, Oct. 26, 1993, at A1.

and allowed the contents of the reservoir to bubble up to the surface. O.J. Simpson was translated into a symbolic figure, a vehicle for our racial mythology.<sup>72</sup>

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<sup>72</sup> The process of myth-making extended not only to O.J. but to the jury which acquitted him. For the dominant majority in this country the case unfolded as a classic story of jury nullification by a predominantly black jury. "A jury of munchkins decided it was payback time for past injustices. The case won't go away because too many African Americans have turned Simpson into an icon." See Paul Wasserman, *Letter to the Editor, O.J. Feels The Heat*, TIME, Dec. 23, 1996, at 8. At least one law professor agrees. See W. William Hodes, *Lord Brougham, the Dream Team, and Jury Nullification of the Third Kind*, 67 U. COLO. L. REV. 1075 (1996); William F. Buckley Jr., *The O.J. Verdict Deserves Protest: Outcome Says Nothing about Justice, Speaks Volumes on Race Relations*, ARIZ. REP., Oct. 10, 1995, at B5 ("It is simply undeniable that the black majority believed him innocent because he was black."); Mona Charen, *A Triumph for Black Racism*, BALT. SUN, Oct. 10, 1995, at 11A ("Only a nation of fools would lull itself into believing that this was not a racially motivated and a racist verdict."); Linda Chavez, *Race, Not Justice, Wins Out in Verdict*, USA TODAY, Oct. 4, 1995, at 15A (asserting that a black jury, letting race overwhelm reason, set Simpson free as retribution for racism in the past, thus perverting justice.); Susan Estrich, *The Simpson Case; Not the Facts: Having a Jury Rule on Social Problems*, L.A. TIMES, Oct. 1, 1995, at M1 (arguing the jury was incited by an unscrupulous Cochran to ignore the facts and rise up against racism).

Professor Lassiter, responding to these pronouncements, has aptly stated,

The assumption of a Black solidarity more powerful than a sense of justice is both specious and the stuff of divisive demagoguery. The puerile explanation that Black jurors voted their race and not the facts applies with equal inanity possibly to explain White America's rejection of the verdict of not guilty based on its racial identification with the murder victims who were White.

Christo Lassiter, *The O.J. Simpson Verdict: A Lesson in Black and White*, 1 MICH. J. RACE & L. 69, 80-81 (1996).



Thus, the Simpson case unfolded less as a search for truth,<sup>73</sup> than as an effort to validate the mythology the relevant actors brought to the case. This departure into mythic thinking is underscored by the fact that the acquittal<sup>74</sup> of Mr. Simpson has had an inverse effect on

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<sup>73</sup> I have commented on the "evidence" in this case elsewhere, stating that we seem to have stepped into:

a looking glass world where there is no clear boundary between courtroom drama and soap opera, or between tabloid gossip and witness testimony. Judgments are made to depend on a defendant's "spooky looks", whether a dog barked, and what the defendant supposedly dreamed. Evidence appears and disappears. Leaks from shadowy police sources claiming that they found an entrenching tool used by Mr. Simpson and a bloody ski mask that he had worn appeared in print as authoritative inside information. Later we learned that these incriminating items existed only in the realm of the imagination. The door between official truth and fiction swings both ways. In June 1994, two socks found in Mr. Simpson's bedroom were examined jointly by defense and prosecution experts and found unremarkable. In August, the prosecution "discovered" . . . [O.J.'s] blood on the socks . . . . Because the police inexplicably delayed calling the coroner for twelve hours, no effective determination of time of death could be made. Yet the time had to be fixed within a small window to exclude an O.J. Simpson alibi. So the Prosecution has a witness testify that he heard a dog's "plaintive wail." A dog. In *Silver Blaze*, Sherlock Holmes once solved a case [using a dog]. But at least Holme's deductions did not require us to read into a dog's bark a specific statement about sorrow and loss. Personification aside, Lassie aside, can one attribute human emotions to a dog's bark in the night? Was the dog wailing at murder or at the moon. For a while I wondered if the prosecution would attempt to bolster the wailing dog by calling Old McDonald as an expert on animal sounds.

D. Marvin Jones, *The Queen of Hearts Would Love O.J. Trial*, NAT'L L.J. May 6, 1995, at A19.

<sup>74</sup> Despite the acquittal, and increasingly since the civil trial, the O.J. prosecution has enjoyed an overwhelming popular consensus. While the record continues to be rich in this consensus, it is for many scholars, factually impoverished. See DONALD FREED & RAYMOND P. BRIGGS, *KILLING TIME: THE FIRST FULL INVESTIGATION* (1996). Freed, an historian, and Briggs, a computer scientist, argue a computer model of the time lines accepted by the prosecution and the defense, indicates that Simpson did not have the chance to commit the murders. Summarizing his argument Freed stated, "If the timeline excludes Simpson but the blood evidence includes him, the question one must ask is which of these could have been tampered with." *Timelines Are Still A Key To Justice In Simpson Case*, PR NEWSWIRE available in WESTLAW, Nov. 26, 1996. According to Lassiter:

what is becoming an increasing consensus that Simpson is guilty.

There were two interpenetrating narratives, each invoked by the rhetoric of the prosecution in characterizing the defendant. O.J. Simpson was alternatively portrayed as a Dr. Jekyll or a Mr. Hyde—a time bomb waiting to explode. He went from beaming father, hugging his son and watching a dance recital, from regular guy eating a hamburger at McDonalds with Kato Kaelin, to a demented double murderer. He became Bella Lugosi in blackface, who virtually decapitated two innocent people, walked through pools of blood,<sup>75</sup> then

When the press politicizes cases, three results are preeminent. First, the trial, in reality, begins to operate on a social theme larger than the matter under charge. Second, the adversarial system, which is designed to achieve neutral and dispassionate judicial prosecution of wrongdoing in accordance with law, is converted into an instrument for a politically motivated prosecution on the larger social issue, which the press begins to trumpet. Third, the public outcry leads to a political subjudicial disposition of the trial against a disfavored minority on the larger social issue. Elements of these three factors were present in the O.J. Simpson case to an oppressive degree.

Lassiter, *supra* note 71, at 94.

<sup>75</sup> This was in a real sense a case about blood. For most observers, particularly members of the majority group, the DNA evidence was received as conclusive. Thus, when DNA experts testified that the chances were seven billion to one of someone by chance matching the blood drawn from Simpson and the blood "found" at the scene, this was received as placing the issue of Simpson's guilt reasonably beyond the realm of the debatable. In the wake of the DNA "evidence," some observers characterized those skeptics as "kooks" and people who believe that Elvis is still living.

This enormously popular view conflates statistical probability and many layers of assumption. The statistical probability assumes a great deal about what was actually present at the scene, about the integrity of collection procedures, and about the absence of human error at the relevant labs. That these foundational assumptions were in many instances contradicted by the prosecution's own evidence, that the DNA results were highly questionable, and that the popular view is unfounded, are thoughtfully argued by William Thompson:

[W]hile the prosecution account of the DNA evidence is well understood, the defense account is not . . . . Although the defense account of the DNA evidence was not as simple or straightforward as the prosecution's, it was coherent and complete, and it had considerable factual support . . . Ignorant condemnations of the jury, and straw man arguments that ridicule Simpson's defense by mischaracterizing it, have been standard fare in media commentary . . .

It was frequently suggested, for example, that the defense account of the DNA evidence required a "massive

nonchalantly showed, and resumed his composure to the extent that no one noticed a problem with his demeanor on his plane trip to Chicago.

This story itself suggests both an explosion of rage, an abnormal paroxysm of fury beyond the physical and moral limits of the average person, and an hysterical calmness up to the point of the explosion. Metaphor is transposition of the name.<sup>76</sup>

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conspiracy" in which dozens of people were involved in fabricating evidence or that it required a series of highly improbable laboratory errors or coincidental matches between DNA profiles. These suggestions are so wide of the mark as to be embarrassing . . . . How many conspirators are required by the defense theory of the DNA evidence? In the author's opinion, one or perhaps two would be sufficient.

William C. Thompson, *DNA Evidence in the O.J. Simpson Trial*, 67 U. COLO. L. REV. 827 (1996).

Thompson explains the gap between perception of the evidence and the evidence in terms of observers unable to distinguish between observations and the preconceptions they bring to the process:

Why was media coverage of the defense theories so inadequate and, indeed, misleading? . . . . Competent reporters should not have needed Barry Scheck's closing argument to see the significance of Simpson's DNA in the victims' reference tubes. Competent commentators should not have needed Barry Scheck's help to understand that the defense needed no "massive conspiracy" to explain the evidence . . . . The real problem with the news coverage may have arisen from the atmosphere in which the press covered the trial, which was collegial and yet intensely competitive. The reporters spent much of their time in "Camp O.J." comparing impressions and (in the author's humble view) developed a massive case of group-think . . . . Well before the defense presented any evidence, the consensus had swung heavily and permanently toward guilt. Herd mentality led the reporters to view the trial through prosecutorial lenses and to trust and rely on the press briefings provided by the district attorneys office while viewing the defense with skepticism.

*Id.* at 842-43.

<sup>76</sup> Aristotle's deceptively simple characterization was that metaphor consists in giving the thing a name that belongs to something else: the transference being either from genus to species, or from species to genus, or from species to species or on grounds of analogy. All metaphors are as such on their face what Ryle called "category mistakes." See GILBERT RYLE, *THE CONCEPT OF MIND* 16 (1949). The significance of this seeming mistake is that metaphors have as their ambition a redescription of reality:

In transposing the name or attribute of a time bomb for the name of O.J. Simpson, it named O.J. Simpson as explosive by nature, subject to go off without warning. These are attributes both of a time bomb and the black male body which is always and already explosive. The explicit metaphor of the time bomb in the O.J. Simpson case operated like the implicit metaphor of the gun in the Rodney King case. Both tapped into the reservoir of fear the figure of the black male body has been constructed to contain. From the moment the time bomb epithet was uttered, O.J. Simpson the individual became invisible. The focus shifted to a brooding fevered speculation about O.J.'s physical prowess. The trial became, like Rodney King's case, a meditation on what a big black body like O.J. Simpson's was capable of. Even liberal observers fell prey to this powerful imagery. Thus, famed lawyer-writer Scott Turow found O.J. guilty in significant part because of his physical potential, "[O.J. Simpson was] a member of the relatively small class of human beings capable of murdering two persons at once and of wielding a knife with sufficient power to virtually decapitate someone."<sup>77</sup> The fact that Simpson is forty-six and suffering from arthritis seems not to enter the picture.<sup>78</sup>

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In giving to the genus the name of species . . . and vice versa one simultaneously recognizes and transgresses the logical structure of language . . . it involves taking one thing for another by a sort of calculated error . . . to affect just one work, the metaphor has to disturb a whole network by means of aberrant attribution . . . metaphor destroys an order only to invent a new one, and the category mistake is nothing but the complement of the language of discovery . . . metaphor bears information because it 're-describes reality'.

PAUL RICOEUR, *THE RULE OF METAPHOR: MULTIDISCIPLINARY STUDIES OF THE CREATION OF MEANING IN LANGUAGE* 21-22 (Robert Czerny trans. 1977).

<sup>77</sup> Scott Turow, *Simpson Prosecutors Pay for their Blunders*, N.Y. TIMES, Oct 4, 1995, at A21.

<sup>78</sup> There is here a parallel between the O.J. trial and the trial depicted in the fictional work *TO KILL A MOCKINGBIRD*. The pattern here and in the work of fiction is the continual and irrational refusal to act on the evidence in the record. In *TO KILL A MOCKINGBIRD*, the jury ignored evidence concerning Tom's loss of the use of his left arm that would have proven his inability to have choked Mayella with both hands, or to have delivered the blows which must have been delivered by a left-handed person. There is a Scottsboro connection as well on the same point: Similar injustice is apparent in the Scottsboro record when the jury found Haywood Patterson guilty despite a physician's testimony that Patterson's accuser, Victoria Price, bore no physical marks of rape. The jury further disregarded testimony of Ruby Bates, Victoria Price's companion, in which she stated that both women had lied about being raped. The linchpin that connects these remarkably similar cases is the power of myth to transport the observer away

## *ESSENTIALISM*

The time bomb metaphor shifted the focus of the trial from the empiricism of what an individual did or did not do to the essentialism of what a particular black male's physicality gave him the potential to do. "Essence" connotes the idea that one does not merely happen to be a black male, but that a certain quality or character, particularly of dangerousness, is associated with that status. The effect of the time bomb epithet to tie together the idea of dangerousness with the "essence" or a character of black men was suggested by one black male athlete who commented on the trial. Walter Payton, a former football player, stated: "I get the feeling that some people look at us as if we're [all] time bombs just waiting to explode."<sup>79</sup>

The problem of course is not Darden but language, the great reservoir of social experience.

It's wrong to think that the unconscious exists because of the existence of unconscious desire, of some obtuse . . . animalistic . . . desire that rises up from the depths . . . and has to lift itself to the higher level of consciousness. Quite on the contrary, desire exists because there is unconsciousness, that is to say, *language* which escapes the subject. . . and because there is always, on the level of language, something which is beyond consciousness. . . .<sup>80</sup>

The . . . unconscious is therefore not so much that dark inner reservoir of desire and instinct which used to be our image of the Freudian *id*, occasionally breaking into the realm of consciousness or insinuating its way there through the disguises of dreams. Rather, it is an absolute transparency, an order which is unconscious simply because it is infinitely vaster than our individual minds, and because they owe their development to their positions within it.<sup>81</sup>

Within the collective unconscious of American life, within a

from the real world to the realm of essences. See HARPER LEE, *TO KILL A MOCKINGBIRD* (1960).

<sup>79</sup> *The O.J. Simpson Case: Prominent Blacks Discuss Race, Sex, Crime and 'The Case of the Century'*, EBONY, Sept., 1994, at 29, 34.

<sup>80</sup> FREDERICK JAMESON, *THE PRISON HOUSE OF LANGUAGE* 138 (1972) (quoting TZEVTN TODOROV, *QU'EST-CE QUE LE STRUCTURALISM* 252-53 (1968)).

<sup>81</sup> *Id.* at 137-38.

language in which the black male has been so densely mythologized, black men like O.J. are easily appropriated as the personification of certain problems. The prosecution sought to make O.J. Simpson a symbol of the domestic abuser.<sup>82</sup> Their success in doing this, far from legitimating their rhetoric as non-racial, further supports my thesis. It is now possible to say, for example, "he O.J.'d me" as a shorthand for particularly cruel forms of domestic violence.<sup>83</sup>

But how is it possible that O.J. as a black man can become a symbol for a crime in which that only a minority of black men participate? O.J. Simpson, who was indeed guilty of domestic battery, is no more fitting a symbol for domestic violence than Willie Horton was for murder. The fiction is that if we can get the O.J. Simpsons and the Willie Hortons, then society, particularly white women, will be safe. This demonizes black men and bestows upon white men a halo they do not deserve. The issue is not O.J. Simpson nor Willie Horton, though they as figures are joined at the hip. It is the use of particular black males as a catharsis for society's fears; to suggest that the stereotypes and myths are "true": to construct black men as bodies without mental control, as walking instances of Mt. Vesuvius.

### B. *The Curse of Ham*

The other interpenetrating image of black men is the image of the black man as a beast. I trace this to a narrative called the curse of

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<sup>82</sup> The prosecution's tacit premise was, of course, that a person who commits an act of domestic violence is likely to murder. Interestingly, aside from the problem of making an individual black male a symbol of a national social problem, there is the rub that there is only a speculative connection between spousal abuse and murder. As Dr. Lenore Walker, a pioneer in the field of domestic violence has stated,

Well, that's where science comes in. We really have no data, Cliff, that would tell us that a battered woman is more likely to be . . . . killed by a man who batters, than is a woman who's not battered. Conservatively, 2.5 million women in America are battered every year. Between 1,200 and 4,000 of them are killed, a small percentage. And even though we know there is a risk, what you can't do is go backwards and say which woman will be killed or which partner will be the one to kill.

Clifford D. May, *Science vs. Advocacy Battered Women's Advocate Raises Eyebrows Over Role in Simpson Case*, ROCKY MTN. NEWS, Feb. 5, 1995, at 84A.

<sup>83</sup> Paul Vitello, *My Husband's Going to O.J. Me*, NEWSDAY, Oct. 2, 1994, at A7.

Ham. In the biblical account, after the flood Noah plants a vineyard and becomes drunk.<sup>84</sup> One of Noah's three sons, Ham, looks upon his drunken father in his nakedness and tells his brothers. Ham's brothers cover up their father without looking. When Noah awakes he realizes Ham's transgression and curses Ham's son, saying that he will be "servant of servants."

What the connection is between the curse on Ham's descendants and blackness is not clear from the biblical text itself. Winthrop Jordan theorizes that the missing "is supplied by contemporaneous Talmudic and Midrashic sources contained such suggestions as that 'Ham was smitten in his skin' and that Noah told Ham 'your seed will be ugly and dark skinned.'<sup>85</sup>

In Freudian terms, the story of Noah and Ham refers not to an historical event, but a universal conflict between son and father. Ham, by gazing upon his father's nakedness, challenged the authority of the father in the realm of sexual knowledge. There is an unmistakable connection between knowledge and power. Ham in seeking knowledge of the father himself, sought to usurp this authority/knowledge for himself. This is the symbolic equivalent of Oedipus doing away with his own father and appropriating that which his father carnally knew—in the case of Oedipus—his mother. One could also argue that the father represents moral authority particularly in the realm of sexual conduct. The myth of Ham is related intimately to the

<sup>84</sup> And Noah began to be a husbandman, and he planted a vineyard:

And he drank the wine, and was drunken; and he was uncovered within his tent. And Ham, the Father of Canaan, saw the nakedness of his father and told his two brethren without.

And Shem and Japeth took a garment, and laid it upon both their shoulders, and went backward, and covered the nakedness of their father; and their faces were backward, and they saw not their father's nakedness. And Noah awoke from his wine, and knew what his younger son had done to him. And he said, Cursed be Canaan; a servant of servants shall he be unto his brethren.

*Genesis* 9: 20–25.

<sup>85</sup> As Jordan astutely notes these myths draw together, in what I call a "signifying chain," blackness, sin, and sexuality. JORDAN, *supra* note 54, at 18 (noting that one rabbinical source states that "Ham and a dog had sexual relations on the ark. Therefore Ham came forth dusky . . ."). See 2 JACOB NUESNER, *GENESIS RABBAH, THE JUDAIC COMMENTARY TO THE BOOK OF GENESIS*, NEW AMERICAN TRANSLATION 33 (1985).

construction of black men as beasts.

Subsequently, historical contact between blacks and Europeans helped to knot together more tightly the image of black men and beasts. A Dutchman named Struys reported in 1677 having seen a black man with a tail "one foot long."<sup>86</sup> And the French as late as 1851 referred to Africa as a land of Niam-Niams or "men with tails."<sup>87</sup> Black men as beasts were particularly so in sexual terms. Richard Jobson reported in 1623 African men were "furnisht with such members as are after a sort burthensome unto them." Another Seventeenth Century writer wrote that African men had "large Propagators."<sup>88</sup>

Notice that in this mythology of the racial construct, the link between blackness and animalness is intertwined again with exaggerated or caricatured images of maleness. As a beast, the black male is by his nature a danger to moral or civilized authority. The black male is a moral and sexual outlaw who is congenitally incapable of the obedience to the father. As such, the black male is a contradiction as man. To be "man as man," obedience is an essential virtue. Lacking this moral virtue, the capacity for obedience is cast out of the ontological category of man altogether and put into the category of beast.

Again in the Rodney King case this imagery was put to use:

The Court-TV-produced videotaped condensation of the first, Simi Valley trial<sup>89</sup> reveals the ways in which freeze-framing distorted and dehistoricized the narrative logic of the beating. It also displays how a language of black male bestiality and hypervirility, along with myths of drug abuse and "superhuman strength," were deployed during the trial. King was described as: "buffed-out" "probable ex-con," "bearlike," "like a wounded animal," "aggressive," "combative," and "equate[d] . . . with a monster." Closing defense statements continually named a "we," in a construction dependent upon the non-black racial composition of the Simi Valley jury.

Similarly, the O.J. Simpson case unfolded as a case less about

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<sup>86</sup> See FRANCIS DE CASTELNAU, RENSEIGNEMENTS SUR L'AFRIQUE CENTRALE ET SUR UNE NATION D'HOMMES A QUI S'Y TROUVERAIT, D'APRES LE RAPPORT DES NEGRES DU SOUDAN, ESCALVES A BAHIA (1851).

<sup>87</sup> *Id.*

<sup>88</sup> JORDAN, *supra* note 53, at 34.

<sup>89</sup> "The 'Rodney King' Case: *What the Jury Saw in California v. Powell*, 1992, (Courtroom Television Network, 1992) (courtroom language cited is from this videotape).



evidence, (the glove that didn't fit was emblematic of the quality of evidence against Mr. Simpson), than as a narrative about a Dr. Jekyll-Mr. Hyde figure: "[O]n the outside he was the Hertz rent-a-car spokesman; on the inside, he was a beast."<sup>90</sup> "Beast" is a term that is used to locate a black man within two historical or political narratives: Of Bigger Thomas smothering an innocent white woman while she slept; of the slave, Denmark Vesey or Bussa rising up to kill innocent whites. The trope of "Beast" is the rhetorical thread which knits together the contemporary moment with the historical moment of the political narrative itself. It Resonates with images from *Birth of a Nation*,<sup>91</sup> and with its past use by the white Camellias, the Jay Hawkens, the white vigilance committees and the Klan to refer to black men suspected of offending white women. This historically charged term was in fact the epithet chosen by Christopher Darden to describe Mr. Simpson. This was the same term used by the media to describe Mike Tyson prior to Mike Tyson's trial at a time when he should have been presumed innocent—for the rape of Desiree Washington.<sup>92</sup> This rhetoric put O.J. Simpson at the scene, not of a murder but of his old "hood" in the Portobello projects. At the scene of a drama—played and replayed in the fevered racial fantasies of white America—in which the black male that everyone trusted, shows himself still wild and untamed: a gorilla hiding behind a Heisman trophy or Harvard law degree.<sup>93</sup>

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<sup>90</sup> See Jones, *supra* note 76.

<sup>91</sup> A 1915 film by D.W. Griffith presenting a Ku Klux Klan view of blacks as savages. One might be forgiven for characterizing this film as the original "Boys in the Hood."

<sup>92</sup> There were many stories about the rape trial titled "Beauty and the Beast," with Tyson cast as Beast. Many writers saw Tyson as a primitive atavism, someone who was not a man at all. Thus, one commentator writes:

Tyson is an imposing villain, for he seems beyond evil or humanity—soul-free. Look for the black heart beneath the black stare, and find the creepiest thing: nothing. Punishment without guilt . . . Purged of moral compunctions, Tyson is what scholars of the blood sport call a pure fighter. This is atavistic manhood, stripped of all weapons but fists, guile and will. A man-beast-machine: hunter, warrior, conqueror, terminator.

Richard Corliss, *In Judgment of Iron Mike*, TIME, Feb. 10, 1992, at 77 (emphasis added).

<sup>93</sup> Life imitates fiction here. The anxieties left over from the era of slavery seem to bleed through in the O.J. case into our supposed modernity in a manner that uncannily mirrors their depiction by Melville:

The beast metaphor served to caricature Simpson as a "man." It located O.J. Simpson on the wrong side of story about manhood and "civilization." To say that Simpson was a beast was to invoke the dichotomy between civilized men—read white men who protect women, and primitive males who, lacking manly self-control, rape them. Concomittantly, it assumes that men follow a code which psychoanalysis traces to the notion of the "name of the father."

The story of domestic violence within the trial was the symbolic equivalent of rape. The pattern of abuse spoke to women as a story about abusers as inchoate murderers, but it spoke to white males as a story about Simpson as a sexual outlaw. It portrayed Simpson as a male unable to control himself around women, unable to follow the code of manliness, unable to be obedient to the name of the father. The evil here is not so much that Nicole was dominated—from the patriarchal point of view one must dominate women—it is simply no longer correct to hit [white] women—but that the domination occurred by brute force rather than through the ordinary mechanisms of hierarchy and the privilege white males have built into society. This disobedience required that Simpson be placed outside of the realm in which white males could empathize or identify with him. Simpson was like Ham, not like one of us. Like Ham, Simpson was cast out of the family, the family here being the brotherhood of men—read white men—into the category of non-man or animal. As such Simpson was a threat to all white women lest they fall prey to his uncontrolled, animalistic passion. In this narrative, there is no feminism or empathy with Nicole's abuse, but the same deeply patriarchal motives which animated the lynching of black men like Emmet Till.

It follows that the object of the prosecution, given the narratives it deployed, was less to protect white women than to hold

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The deepest exploration in the fiction of the period of whites' anxieties concerning the characters of slaves is Herman Melville's novella, *BENITO CERENO* (1855)—in particular, the depiction therein of the credulous American, Captain Delano. At the critical moment in the story, "scales" drop from Delano's eyes and he comes to see the central figure, Babo, not as the loyal and attentive slave he had pretended to be, but as a murderous rebel, whose "countenance, lividly vindictive, express[ed] the centered purpose of his soul."

up Simpson as a symbol of black males: as a failed man, O.J.'s symbolic function was to demonstrate the power and supremacy of white males; to show "who is the real man."

The figure of the black man as beast was even more visible in the Bernard Goetz case. This case provides a striking instance on the facility of myths to mediate between the presence of black men and the perceptions of them. What is striking about the Goetz case is that he premeditated the murder and maiming of several black male youths, videotaped a bold, self-satisfied confession, and was nonetheless acquitted.

Witnesses and police on the scene stated that Goetz shooting each "methodically,"<sup>94</sup> injuring two of the victims in the back.<sup>95</sup> Goetz would later confess, on videotape, that "he calmly drew a pistol from his belt and shot at each of four teenagers."<sup>96</sup> As Goetz himself stated, he shot them while they were running away: "[T]hey trapped themselves. The two from left to right, they had nowhere to go. . . . The two on my left, they tried to run through the crowd and of course they had nowhere to run, because the crowd would stop them and I . . . got em."<sup>97</sup> When he discovered that the fourth man, laying on a bench was not bleeding, he said "You seem to be all right, here's another."<sup>98</sup> The man, Darryl Cabey, is permanently paralyzed from the waist down.<sup>99</sup> In his confession Goetz also stated "I know this sounds horrible, but my intention was to murder them, . . . to make them suffer as much as possible."<sup>100</sup>

The beast figure appeared in the trial when Defense Attorney Barry Slotnick alternatively referred to the victims as "Savages" and

<sup>94</sup> See David E. Sanger, *Callers Support Subway Gunman*, N.Y. TIMES, Dec. 25, 1984, at A1.

<sup>95</sup> The two shot were Barry Allen, 18, and Darryl Cabey, 19, who suffered a severed spine as a result. See Robert D. McFadden, *A Gunman Wounds 4 On the IRT Train, Then Escapes*, N.Y. TIMES, Dec. 23, 1984, § 1, at 1.

<sup>96</sup> *Goetz Checked, Then Fired Another Round*, N.Y. TIMES, Mar. 3, 1985, § 4, at 6.

<sup>97</sup> *You Have To Think In A Cold Blooded Way*, N.Y. TIMES, Apr. 30, 1987, at B6.

<sup>98</sup> *Id.*

<sup>99</sup> Dennis Hevesi, *Goetz Confronts Victim In Court In Suit Hearing*, N.Y. TIMES, Sept. 27, 1990, B2.

<sup>100</sup> Kirk Johnson, *Goetz Account of Shooting 4 Given On Tape*, N.Y. TIMES, Apr. 30, 1987, at B1.

"a wolf pack."<sup>101</sup> Implicit in this is also a racial great chain of being. The moral of the story is that it is natural for whites to subdue the animals who threaten social order. Similarly, in his confession, faced with the apparent fact that the black youths made no overt threats, Goetz retreated into metaphor. He said that the black youths stood around him and had "shiny eyes."<sup>102</sup> He went on to say they looked at him like a cat toying with a mouse.<sup>103</sup>

The rhetoric is not only racialized but gendered because it relies on a notion of black males as "uncivilized," wild in opposition to all that is civilized. Man is civilized. The black male other is not and is not yet a "man." Also, man is rational, while the beast is a creature of passion which is the antithesis of "masculinity." The racial image projects the animalness of whites, the beast within themselves onto a suitable external object.<sup>104</sup> The "gender image" through the discourse of "civilization" projects "primitiveness." There is a synergy between these two images of dangerousness: man, the objective, must control the black male. The suitability is enhanced by cultural alterity. The youths were the gangstas of rap music, ghetto dwellers who were alien in dress and language and looks, to Goetz and the whites on the jury as African other. This naturalizes the practice of targeting such youths for violence. Their dangerousness is associated through an implicit essentialism both with their race and their gender.

### NEGATION

The function of knotting together the black male and the interlinked images of the body and bestiality is negation of black males as an autonomous subject. As a non-subject, a dehumanized essence, he appears in contemporary terms as monster, nightmare, gangsta, a gorilla in the mist. It is the very presence of his swaggering, gold chains, braided hair, studied fierceness—attributes which are categorically associated with black males irrespective of class—of a racialized masculinity in proximity to white male hegemony which itself creates disequilibrium. He is not merely a non-subject but in his

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<sup>101</sup> Margot Hornblower, *Jury Exonerates Goetz In 4 Subway Shootings: New Yorker Convicted of Weapons Possession*, WASH. POST, June 17, 1987, at A1.

<sup>102</sup> David C. Anderson, *Crime Peril? Or Paranoia? At Last the Goetz Case can Yield Answers*, N.Y. TIMES, § 4, Apr. 26, 1987, at 30.

<sup>103</sup> *You Have To Think In A Cold Blooded Way*, *supra* note 97.

<sup>104</sup> See D. Marvin Jones, *Darkness Made Visible*, 82 GEO. L. J. 437 (1993).

opposition and challenge to normal (white) masculinity he is the anti-subject, or in constitutional terms the anti-citizen.

He is quintessentially available for suspicionless stops, for duty as scapegoat or proxy for other more complex social problems, and to absorb arrests pursuant to profiles for crime.<sup>105</sup> For example, The Public Defender's office surveyed turnpike traffic from 9 a.m. to 4:15 p.m. for a week in December 1988. Of the 1,634 vehicles observed seventy-seven or four-point-seven percent of the total were occupied by black people and had out-of-state plates.

This picture of typical weekday traffic was compared with the 271 arrests for contraband from February to December 1988 that were referred to the Public Defender's Office.

Dr. Naus said of the 271 arrests, 226 involved blacks, 28 involved whites and 17 involved people of Hispanic origin. In 210 of the arrests the cars had out-of-state license plates. In a court brief, Dr. Naus said the difference between the typical traffic pattern and the rate of arrests of blacks from other states "is dramatically above thresholds used to establish *prima-facie* evidence of racial discrimination."<sup>106</sup>

While the statistics do not mention black males, anecdotal evidence suggests that the face associated with the statistics is that of black males:

State police used racial profiles to target black motorists during traffic stops along the New Jersey Turnpike, a former trooper testified Monday. Kenneth Wilson said he was trained to look for black motorists during his 2-1/2 years stint as a

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<sup>105</sup> We would note that while black males are disproportionately subject to the official violence of stop and arrest, women are disproportionately subject to discipline as well, but of another kind:

An obvious explanation for why men [applied to our context-black men] are at a greater risk of being under criminal justice control, but one that is often missing in the power-based theories, is that because women are subject to heightened forms of informal social control via relations to men and children, they are less likely to be subject to formal social controls.

FRANCES HEIDENSOHN, *WOMEN AND CRIME* 163-95 (1985).

<sup>106</sup> Joseph F. Sullivan, *New Jersey Police Are Accused of Minority Arrest Campaigns*, N.Y. Times, Feb. 19, 1990, at B3.

trooper. Wilson, 30, of Willingboro, said the racial profile was used for potential drug arrests. "I was taught to look for young, black males," said Wilson, who is also black. "I applied it all the time, as much as possible."<sup>107</sup>

While not rigorously scientific, a study conducted by an electronic magazine is noteworthy:

To illustrate how African-Americans are harassed, ABC's television program 20/20 placed staff employees in two expensive cars and had them park in front of a restaurant in a predominantly white neighborhood at 3:30 a.m. The white male employees were placed in one car and the black male employees were placed in the other car. In moments, police approached the car with the black males and warned them that "people would say they look suspicious." However, the white males were passed by more than 15 times by police officer without being approached or questioned.<sup>108</sup>

Moreover, in Los Angeles County, which keeps a computerized gang file, forty-seven percent of the county's young black men are considered gang members, although nearly half of those tracked (forty-four percent) had no previous arrest record.

### C. Transparency

Armed with this understanding, we can see why metaphor is nevertheless thought to be distorting. Because conceptual metaphor is cognitively entrenched and operates without reflection, reductionism comes easily; we may come to think that understanding really does have all the entailments of grasping. Thus . . . we may come to see the world as composed of discrete, mind-independent bits of reality (the objectivist fallacy) or treat abstract ideas as if they were somehow concrete and real (the fallacy of reification). Both are errors of conflation, in which we mistake one of many possible relations for an identity (or equation).<sup>109</sup>

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<sup>107</sup> ASSOCIATED PRESS, *Blacks Targeted, Ex-Trooper Says*, REC. N. N.J. Dec. 1994, at S11.

<sup>108</sup> *Presumed Guilty*, ABC News, 20/20 Nov. 6, 1992.

<sup>109</sup> Steven L. Winter, *Death is the Mother of Metaphor*, 105 HARV. L. REV. 745, 759 (1992) (book review).

[W]hile metaphors can be abused in many different ways, the most serious and interesting danger is that a given metaphor or its allegorical extension may be transformed into myth. . . . [M]yth results when the mask, lens filter, or construing subject is mistaken for or equated with the subject construed. By suppressing those aspects of the principal subject which are not amenable to the subsidiary subject . . . to exert an undetected influence on the principal subject, the difference between the two referents of the metaphorical sign focus tends to be lost altogether. The metaphor is turned into, not only a literal truth, but *the* literal truth about the principal subject in question.<sup>110</sup>

Liberal notions that the axis of inquiry should be from the standpoint of the individual—that legal penalties should bear some relationship to individual wrong doing—do not apply. Black males are relegated to a parallel moral universe in which the morphological characteristics of race and sex are the limits of their individuality. Thus, Sir Paul Condon, Police Commissioner for the City of London could write recently:

It is a fact that very many of the perpetrators of mugging are very young black people, who have been excluded from school and/or are unemployed. I am sure I do not need to spell out the sensitivity of dealing with this crime problem, which is of course much more than just a police problem.<sup>111</sup> The letter included statistics showing that "more than 80 percent of muggings are by young black males."<sup>112</sup>

Thus, black males were indicted by the Police Commissioner of London himself as the predominant source of street crime. While the Police Commissioner did add that he did not believe that race caused crime, he felt that society had a particular responsibility to "grasp the nettle" of the problem.

The letter was addressed to forty black leaders including

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<sup>110</sup> Steven L. Winter, *The Metaphor of Standing and the Problem of Self-Governance*, 40 STAN. L. REV. 1371, 1387 (1988) (quoting Berggren, *The Use and Abuse of Metaphor*, 16 REV. METAPHYSICS PHIL. Q. 236, 244-45 (1962-63) (emphasis in original)).

<sup>111</sup> Duncan Campbell, et al., *Met Chief Says Young Blacks Do Most Muggings*, GUARDIAN, July 7, 1995.

<sup>112</sup> *Id.* See also Lynda Lee Potter, *Some People Are So Evil They Should be Locked Away Forever*, DAILY MAIL, July 11, 1995, at 9.

members of Parliament. The letter was not addressed to leaders of the poor, or unemployed workers, or governmental bodies for poor neighborhoods. It was addressed to blacks: the moral equivalent of an indictment on black males. The letter is presented as a statement of "forbidden truth." It is rather a masterpiece of social construction, of mythmaking using statistics as "thick description."<sup>113</sup> By saying that most of the crime is attributable to black males, it indelibly knots together the black male and crime as if the qualities of being male, black, and young, despite Condon's apology, were themselves criminogenic. Trevor Phillips, Chairman of the Runnymede Trust, an independent think tank on race relations, summed up well the effect of Sir Paul's comments: "It seems to be dangerously inflammatory and opens every black male to becoming an object of fear."<sup>114</sup>

The pseudo-observations of Sir Paul Condon are echoed by the former Mayor of New York:

Today, most whites, myself included, would feel very uncomfortable in a totally black neighborhood, *particularly at night*. . . . In New York City, 57 per cent of those in prison are black and 35 per cent Hispanic. According to Department of Justice statistics, 45 per cent of violent crimes are committed by black males, who are only 6 per cent of the population. And black males aged 15 to 24, who are 1 per cent of the population, are responsible for at least 19 per cent of the murders. . . . [U]nless the cancer is identified you cannot treat and remove it.<sup>115</sup>

Of course, the race/gender connection is no more predicative of who is likely to commit a crime, than is Italian nationality for who is likely to be a member of the mafia. Through the distorting prism of myth, it is a tiny minority of blacks who are committing violent crimes.<sup>116</sup> Thus, to those who assert that reducing the black crime rate

<sup>113</sup> CLIFFORD GEERTZ, *THE INTERPRETATION OF CULTURES* 3-30 (1973). The idea is that we assume a one to one relationship between description—read interpretation—of phenomena and phenomena that exist within our cultural ethos. As the workman's tool becomes part of his arm, so do the mechanisms of interpretation and the underlying value assumptions which ground our interpretations. See WILLIAM S. HAMRICK, *AN EXISTENTIAL PHENOMENOLOGY OF LAW: MAURICE MERLEAU-PONTY* 138 (1987).

<sup>114</sup> See *supra* note 113.

<sup>115</sup> Ed Koch, William F. Buckley, *Blacks, Jews, Liberals, and Crime: Is the Black-Crime Problem a Crime Problem, or Is it a Poverty Problem, or an Education Problem?*, *NAT'L. REV.*, May 16, 1994, at 34 (emphasis added).

<sup>116</sup> In the U.S., the blacks arrested for violent crime constituted only 1% of the black



is the best way to fight racism, Ellis Cose responds that the assertions "seem not only absurd but fundamentally unfair, for they suggest that bias against an entire race, if not exactly sanctioned, is acceptable because of the sins of a relative few."<sup>117</sup> I identify this as a problem of "transparency." Blacks really are invisible as individual persons. This is also again an instance of metonymy: the part—the fraction of black males committing violent crime stands for the whole.

The disproportionate number of black males arrested for these crimes is only relevant if race/gender were independent of environmental factors like poverty and joblessness. If it is true that blacks are disproportionately poor and disproportionately jobless, then it is more likely that Sir Paul and others ought to be evangelizing about economic rather than racial factors.<sup>118</sup>

What is happening here is that the myth of the black male as archetypical criminal, as Willie Horton, is compressed rhetorically so tightly with observations that they merge into one. The myth which is the operative ingredient of fear remains visible, and the black male individual—even if he is dignified and upper class—becomes transparent, or in Ellison's terms invisible.

The quintessential instance of transparency, the fallacy in Sir Paul Condon's thinking, is illustrated by the merging of myth and black males in the context of hailing cabs: A few blocks from the tomb of Abraham Lincoln, a notice posted at Lincoln Yellow Cab Company's headquarters made it clear that even getting a taxi can be a question of race.

Effective immediately Do not pick up any black males unless you feel it is safe . . . . If you do not feel safe with the way they look, Do not pick them up! There has been too many robberies lately, and they have all been by BLACK MALES. The sign, posted on a bulletin board visible to customers, came down Wednesday shortly after an Associated Press reporter asked about it. . . . The issue of cab drivers being unwilling to pick

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population and 1.7% of black males, even though blacks comprise 45% of total arrests. Dorothy Gilliam, *Crime Through Race-Tinted Lens*, Dec. 4, 1993, at D1.

<sup>117</sup> *Id.*

<sup>118</sup> The larger campaign here, for which Sir Paul and Mayor Koch are perhaps unwitting footsoldiers, is the oxymoronic effort to say that "the stereotypes are true." Perhaps the most systematic effort at this is represented by the works of DINESH D'SOUZA, *THE END OF RACISM: PRINCIPLES FOR A MULTIRACIAL SOCIETY* (1995); DINESH D'SOUZA, *ILLIBERAL EDUCATION: THE POLITICS OF RACE AND SEX ON CAMPUS* (1991). See also RICHARD HERRNSTEIN AND CHARLES MURRAY, *THE BELL CURVE* (1994).

up minorities has arisen before, most often in big cities. Last fall, former New York Mayor David Dinkins, [who is black], said a cabbie snubbed him by driving no more than twenty yards farther to pick up a white fare.<sup>119</sup>

Thus, implicitly David Dinkins and, by analogy, Denzel Washington,<sup>120</sup> Bill Cosby, Bryant Gumbell, Derrick Bell, and I, are all equally likely robbers of taxi-cabs and legitimate objects of fear. On the other hand, taxi-cab drivers should feel relieved if it is Jeffrey Dahmer, Timothy McVeigh, or a skin head who, smiling, gets into the cab. Given this phenomenon of transparency, black males do not have to "act" as individuals to frighten whites, nor "act" as individuals to "provoke" violent and often fatal attacks.

One of the most notorious incidents was that involving Yusef Hawkins:

A 16-year-old black youth was shot to death Wednesday night in an attack by 10 to 30 white teen-agers in the Bensonhurst section of Brooklyn, the police said. The whites, the authorities said, were lying in wait for black or Hispanic youths who they thought were dating a white neighborhood girl. But the victim was not involved with the girl, the police said, and had come to the predominantly white neighborhood with three black friends to look at a used car . . . The victim of the attack, Yusef Hawkins of the East New York section of Brooklyn, was shot twice in the chest and died shortly afterward at Maimonides Medical Center. A companion

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<sup>119</sup> *Taxicab Company Removes Advisory Notice on Blacks*, ORANGE CO. REG., Nov. 2, 1995, at A12 (emphasis added).

<sup>120</sup> A JET article noted:

Earning \$10 million a movie in Hollywood doesn't mean anything when it comes to trying to get a cab in Manhattan, NY, according to Academy Award-winning actor Denzel Washington. "A Black man in Manhattan trying to get a cab, shoot, doesn't matter what you do for a living" Washington recently said in the October issue of *Vanity Fair*. The versatile actor continued by saying, "Now, if they happen to recognize you, yeah, but me with new sneakers on, and a hat, you know, facing uptown? Ha ha. Ha ha."

*Denzel Washington Says Even Rich Black Men Can't Catch a Cab in New York*, JET, Sept. 25, 1995, at 34.

suffered a slight graze wound, possibly from a bullet.<sup>121</sup>

Brooklyn had previously been the site of other racial assaults. In December 1986, a mob of whites in Howard Beach, Queens, attacked an beat three black men, eventually causing the death of one of them, Michael Griffith.<sup>122</sup> Also in 1986, a black man was beaten to death in the Coney Island section of Brooklyn after his bicycle ran into a car driven by six whites.<sup>123</sup> And, in 1982, Willie Turks, a black New York City Transit Authority employee, was beaten to death without provocation by fifteen to twenty whites, in the mostly white Gravesend section of Brooklyn.<sup>124</sup>

The significance of being a myth is that not only are black males the quintessential targets of both state sponsored and private violence, but in the aftermath of this violence, justice itself is racialized. Racialized justice is justice based on visceral reactions, bodily characteristics, and myth. Racialized justice, is enough for an entity which is "not like us" and outside of the realm of an authentic subject, and it often makes little sense. In 1983, Michael Stewart was arrested by New York City Transit Police for allegedly drawing graffiti in the subway. He was beaten in police custody and later died.

In 1977, a police officer was found not guilty by reason of insanity in the shooting death of an unarmed fifteen-year-old black boy. The defense contended that the officer's insanity was an "organically caused . . . rare form of an epileptic psychomotor seizure" and "amnesia." The officer had no medical history of epilepsy or mental breakdown.<sup>125</sup>

Faulkner tells a story about Joe Christmas, a man who looked white but whose mother was believed to be black.<sup>126</sup> Christmas journeys to a Southern town where his racial identity is hidden for a while. He lives with a white woman with whom he has a sexual affair. Later the woman is killed. For a while no one suspects Joe. Joe's

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<sup>121</sup> *Ralph Blumenthal, Black Youth is Killed by Whites; Brooklyn Attack is Called Racial*, N.Y. TIMES, Aug. 25, 1989, at A1.

<sup>122</sup> *See CHARLES J. HYNES & BOB DRURY, INCIDENT AT HOWARD BEACH* (1990).

<sup>123</sup> JOHN DESANTIS, *FOR THE COLOR OF HIS SKIN: THE MURDER OF YUSUF HAWKINS AND THE TRIAL OF BENSONHURST 18* (1991). *See Also* Marcia Chambers, *Six Transit Officers Indicted in Death in Graffiti Arrest*, N.Y. TIMES, Feb. 22, 1985, at A1.

<sup>124</sup> DESANTIS, *supra* note 123, at 17.

<sup>125</sup> Jennifer Dunning, *Officer Torsney Acquitted as Jury Rules Him Insane in Killing of Boy*, N.Y. TIMES, Dec. 1, 1977, at A1.

<sup>126</sup> WILLIAM FAULKNER, *LIGHT IN AUGUST* (1932).

apparent whiteness creates a bond of empathy between himself and the community. But when it is discovered that Joe is black, immediately the bond of empathy between Joe and the whites in the town is broken and the townsfolk assume he is the woman's murderer. Joe became Othello and his slain mistress Desdemona.

Why does Jesse Jackson say he feels relieved when he finds it is a white man walking behind him? Why does the London police chief believe that black men, not poor men or unemployed men, but black men, like me, are the primary reason for violent crimes? Why was Earl Graves arrested? I think it is because we as black men are all Joe Christmas. We are all at the same time O.J. Simpson. We are all Mike Tyson. We are all Willie Horton. We are all black youths in the subway car of America. We are trapped not by a man with a nickel-plated gun, but by mythology which draws on the dual aspect of our identity as black males to portray us as the proper targets of official violence and control.