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Foreword: Law In Living Color

Margaret M. Russell[†]

When asked by the editors of the *Asian Law Journal* to serve as guest editors for a special symposium issue on race, law, and film, Professor Margaret Chon and I welcomed the opportunity for a number of reasons. First, the *Asian Law Journal* occupies a singular position among law reviews in its explicit commitment to foster scholarship focusing on the history, experiences, and concerns of Asians in the United States and international legal systems; it is an honor to be associated with such a critically important enterprise. Second, the specific topic of this symposium issue is unique as well; although the broader subject of law and film has been explored in recent years through the innovative work of Professor John Denvir and others,¹ this symposium is the first volume of essays focusing particularly on the analysis of films as a means to understand the role of race in American law. Given the burgeoning interest in interdisciplinary critiques of popular culture in contemporary explorations of race, it seems both timely and illuminating to focus the lens of scholarly analysis on the way in which popular movies depict racial themes in the law. Finally, as we consulted with the *ALJ* editors about the possible themes of and contributors to this project, Margaret Chon and I realized with great excitement that this collaboration presents the fortuitous opportunity for us to work with talented scholars in such fields as critical race theory, queer theory, and feminist theory—and, we hope, to bring their thought-provoking and original work to a new and broader audience of legal practitioners and laypersons, as well as legal scholars and law students.

What, then, is the purpose of a symposium on the theme of race, law,

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1. See, e.g., JOHN DENVIR, *LEGAL REELISM: MOVIES AS LEGAL TEXTS* (1996); Paula C. Johnson, *The Social Construction of Identity in Criminal Cases: Cinema Verite and the Pedagogy of Vincent Chin*, 1 MICH. J. RACE & L. 347 (1996); Charles Musser, *Film Truth, Documentary, and the Law: Justice at the Margins*, 30 U.S.F. L. REV. 963 (1996); Richard K. Sherwin, *Law Frames: Historical Truth and Narrative Necessity in a Criminal Case*, 47 STAN. L. REV. 39 (1994). For interesting perspectives on the reconstruction and distortion of history in popular films, see *PAST IMPERFECT: HISTORY ACCORDING TO THE MOVIES* (Mark Carnes ed., 1995).

and film? One way to begin this inquiry is to consider the medium of film—particularly popular, mainstream, commercial film—as a vital and powerful form of communication. If people in the United States have a common “language,” it is a language of media-driven construction. For better or worse—or, perhaps more accurately, for better *and* worse—we live in a society and an era in which the ubiquity of commercial television and movies has led to a presumed universality of interests, tastes, and values. Despite differences across lines of age, class, race, ethnicity and gender, the common “language” we speak is the medium itself—in all of its exhilarating and vexing visuality, viscerality, and distortion. Do you want to have a finger on the pulse of what “America” is wanting, buying, thinking? Spend some time watching popular movies and television. Are you interested in exploring national fantasies and fears, attitudes and prejudices, mores and morals? Spend some time watching popular movies and television. These influential cultural markers reveal much—not only about the mindsets of their audiences of consumers, but also about the motivations that spawn their production.

In this regard, the usefulness of film in exploring popular cultural attitudes about law and the legal system depends upon the examination of films as texts, tools, and objects of critique. In *Legal Reelism: Movies as Legal Texts*, Denvir frames the question in this way:

How can films be legal texts? Of course films are dissimilar from the normal legal trilogy of constitutions, codes and cases in that they are not primarily produced with an eye to the resolution of legal disputes; but there are also similarities between films and the traditional legal canon. For instance, like other more traditional legal sources, they are cultural artifacts open to warring interpretations both on the descriptive and normative level. Just as a street map of Los Angeles, a David Hockney painting, and a Beach Boys song all are “texts” that can teach us something, different things about Southern California, law reports and *The Godfather* . . . both tell us something, different things, about “the rule of law.” Just as no one would claim that the street map told the whole story, neither should we think that worthwhile insights on law are all contained in law libraries.²

Starting, then, with the premise that films can serve as valuable sources of insights into law and the legal system, one can identify two broad approaches to popular films reflecting law-related preoccupations. The first is an examination of the prototypical “law film”—namely, a movie in which heroic courtroom battles and out-of-court plot developments all revolve around the resolution of A Major Case by a Heroic Lawyer. Examples of this genre abound, from *Adam’s Rib*, *To Kill A Mockingbird*, and *Inherit the Wind* to *Amistad* and the endless stream of John Grisham thrillers such as *The Firm*, *The Pelican Brief*, *The Client*, *The*

2. DENVIR, *supra* note 1, at vii.

Chamber, *A Time to Kill*, and *The Rainmaker*. Films of this genre typically exhibit an almost perversely unrealistic glamorization of the legal profession and legal process as captivating, sexy, grandiloquent, and morally compelling. Even films that satirize lawyers as amoral (*Liar, Liar*) or downright evil (*The Devil's Advocate*) package their critiques by suggesting that law and lawyers are far more scintillating and powerful than they actually are. These "lawyer films" use the legal profession as a stage for a grand morality play. It is usually easy to pinpoint the valorous and the villainous; whatever the path chosen by the particular protagonist involved, the lawyer emerges as the center of the viewer's attention.

A second and subtler approach to the viewing of law-related films focuses not on superstar lawyers or cases, but on less obvious issues of identity, power, and ideology in a broader sociolegal framework. Often, such films are affecting because of what they reveal about the personal stories underlying legal struggles. A film such as *Dead Man Walking*, for example, is a compelling legal "text" about the death penalty not because of legal jargon or trial scenes, but because of its humanizing portraits of the condemned, his spiritual adviser, and the victims' families. In a similar vein, despite their lack of explicitly legal themes, comedies such as *Jeffrey* or *In and Out* might serve as effective complements to a courtroom drama like *Philadelphia* in exploring prevalent attitudes about AIDS or anti-gay bias in the workplace.

Not surprisingly, the introduction of race as a focal point in the analysis of films as legal "texts" deepens and expands the inquiry to an even greater degree. The scarred and painful nature of race relations in this country necessarily renders the "texts" of popular films similarly warped and discomfiting. Writings in this vein, including the articles in this symposium, exhibit several shared substantive and methodological concerns. First, scholars concerned with racial subordination in American law have long recognized the importance of going beyond the literal "legal" framework of courtrooms, cases, constitutions and codes in order to explore popular culture's effects on the rights of racial minorities, the formation of legal doctrine, and the construction of legal institutions.³ In the history of people of color in this country—and not just in "Hollywood" history—the iconic power of Sambo, Mammy, Charlie Chan, the "Oriental Woman," and Tonto speaks volumes about the sway of racial stereotypes in fueling racial stratification and hierarchy. Even today, in the "enlightened" post-civil rights era, these demeaning characters continue to influence popular culture. Bemoaning the present-day dearth of non-stereotypical roles for Asian men, Asian-American actor David Mura ob-

3. See DERRICK BELL, *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE* (1987); Regina Austin, *Sapphire Bound!*, 1989 WIS. L. REV. 539 (1989); Richard Delgado and Jean Stefancic, *Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills?*, 77 CORNELL L. REV. 1258 (1992).

serves:

How little things change. As a boy I watched Mickey Rooney as the Japanese buffoon neighbor in *Breakfast at Tiffany's* and knew I never wanted to be associated with this snarling, bucktoothed creature who shouted at Audrey Hepburn, "Miss Gorrightry, Miss Gorrightry," and panted when she offered to let him photograph her; I identified with John Wayne against the Japs; in *Have Gun Will Travel*, I was a cowboy like Paladin, not the Chinese messenger who ran into the hotel lobby shouting, "Terragram for Mr. Paradin."⁴

Extending these observations to a legal context, scholars of critical theory—including those in this symposium—posit that such stereotypes have profoundly affected the social and legal realities of racial subordination.

A second common theme in examining race and law in popular film—and specifically in these symposium essays—is a recognition that racial subordination may be best understood not as a unitary phenomenon, but rather as a convergence of multiple identities, ideologies, and oppressions across categories of race, ethnicity, class, gender, and sexuality. Whether analyzed in terms of interracial and cross-cultural conflict, the black/white binary, cultural colonization, intersectionality, or cosynthesis—all of which are explored by the writers in this issue—the complexity and resonance of these theoretical concepts warrants fuller attention than is currently accorded them in contemporary legal theory and debate. As the articles in this symposium adroitly demonstrate, popular films—in part because of the immediacy with which they can engage the viewer's empathy and emotions—can provide an ideal and accessible context for examining the application of these ideas.

A third strand of commonality is one of normative stance. The authors featured in this symposium—as well as others who write about race, law, and film—are deeply concerned about racial injustice and strongly committed to its eradication. In addition to research and analysis, these articles contain a compelling mix of political opinion, forthright anger, ironic humor, a sense of outrage, and a plea for justice. In drawing upon racial "reelism" for insights about racial realities, they provide a heartening blend of the theoretical and the pragmatic, the analytical and the activist, the skeptical and the idealist.

In *Both Edges of the Margin: Blacks and Asians in Mississippi Masala, Barriers to Coalition Building*, Professor Taunya Banks draws upon an eclectic array of historical and legal materials to expand upon her inter-

4. David Mura, *Close to Home: How America Unsexes the Asian Male*, N. Y. TIMES, Aug. 22, 1996, at C9. In 1997, Asian-American actor Steve Park circulated over the Internet a three-page "mission statement" decrying Hollywood's stereotypical portrayals of Asians. See Mick LaSalle, *Taking on Hollywood's Asian Take: Actor Steve Park Posts Critique After 'Friends' Epithet*, S.F. CHRON., May 27, 1997, at E2.

pretation of the film *Mississippi Masala* as “a device (perhaps an allegory) for exploring racial identity and coalition-building between communities of color in the United States.”⁵ By paring away and examining the layers of prejudice and group insularity confronted by the interracial couple at the center of the film’s narrative, Banks is able to locate and dissect skillfully the racial and color hierarchy that accorded Asian Indians of the Mississippi Delta a subordinate but relatively privileged “middle position” on a societal ladder of which blacks constituted the bottom rung. Banks concludes her inquiry not with cynicism or despair, but with the hope that blacks and Asians—and other communities of color as well—will find a way to balance the preservation of group cultural identity and the abandonment of group insularity in order to form effective coalitions for racial justice.

In *Dreaming in Black and White: Racial-Sexual Policing in The Birth of a Nation, The Cheat, and Who Killed Vincent Chin?*, Professor Robert Chang critiques the historically-imposed racial positioning of Asian Americans from a quite different, but equally trenchant, perspective. Observing that Asian Americans are often regarded as “interlopers” and outsiders to “the comfortable binary of the black/white racial paradigm in which the black racial subject is produced by and through its opposition to the white racial subject, and vice versa,”⁶ Chang seeks to disrupt the paradigm by probing the anti-miscegenationist subtexts of two 1915 landmark silent Hollywood films, *The Birth of a Nation* and *The Cheat*. In *The Birth of a Nation*, black men are depicted as the loathsome predators threatening the chastity of white women; in *The Cheat*, a Japanese male is the sexual transgressor. Finally, Chang compares Hollywood’s manipulation of these fictional themes to the real-life racial-sexual policing and murder of an Asian American, as revealed in the documentary *Who Killed Vincent Chin?* Like Banks, Chang concludes by urging the rejection of nativistic racism and racial compromises in favor of a world “bursting with color.”⁷

The evanescent line between Hollywood fantasy and reality is further underscored in *Cultural Colonization In the Hollywood Film: The Harlem Debates—Part 2*, in which Professor Dennis Greene cleverly employs the literary device of a fictional “chronicle” to decry and satirize Hollywood’s trivialization of the experiences of people of color. Written in the format of a heated but collegial lunchtable debate between two African-American law professors of divergent political views (perhaps suggesting the duality of the author?), the article features the pointed and witty repartee of progressive Professor Peter Burns and conservative Professor Cyril Lewis.

5. Taunya Lovell Banks, *Both Edges of the Margin: Blacks and Asians in Mississippi Masala, Barriers to Coalition Building*, 5 *ASIAN L.J.* 7, 9 (1998).

6. Robert S. Chang, *Dreaming in Black and White: Racial-Sexual Policing in The Birth of a Nation, The Cheat, and Who Killed Vincent Chin?*, 5 *ASIAN L.J.* 41, 42 (1998).

7. *Id.* at 61.

Characteristic of Professor Burns' views on popular film is the following pronouncement:

[I]f you were to apply an African American political analysis to the business practices, history, and the *depiction* of American history by the motion picture industry, you would find the same pathologically racist dynamics which are evidenced in American society in general. In fact, the racism in motion pictures may be of greater consequence because of the continuing contribution which the film industry makes to American racial conflict.⁸

A typically cynical Professor Lewis rejoinder? “[H]ere I was thinking that you taught law school, not cultural studies.”⁹

Cultural colonization is also a central theme of *Invention, Inversion and Intervention: The Oriental Woman in The World of Suzie Wong, M. Butterfly, and The Adventures of Priscilla, Queen of the Desert*, by Professor Peter Kwan. Through analyses of three quite dissimilar films, Kwan ambitiously deconstructs one of the most enduring of Hollywood stereotypes: the demure, submissive, sexually inscrutable Oriental Woman. Identifying connections between the prevalent subordinating images of Asian women in our culture and the actual exploitation suffered by Asian women everyday, Kwan argues that the Oriental Woman fantasy has a critical role in “justifying violence on the bodies of Asian women as well as normalizing white sexual ‘deviance.’”¹⁰ Kwan links this analysis to various theories of postmodern legal scholarship, including intersectionality, post-intersectionality, and his own concepts of “cosynthesis.”

In sum, these four essays explore popular movies as “texts” about race and law by delving deeply into the unquestioned assumptions and stereotypes that constitute our collective beliefs about the role of race in American society. In so doing, they offer the interested reader innovative visions in several respects: a vision of cinema as a medium for racial communication; a vision of racial differences as a vehicle for coalition; and a vision of law as a discipline “in living color.”

8. Frederick Dennis Greene, *Cultural Colonization In the Hollywood Film: The Harlem Debates—Part 2*, 5 ASIAN L.J. 61, 65 (1998).

9. *Id.*

10. Peter Kwan, *Invention, Inversion and Intervention: The Oriental Woman in M. Butterfly, The World of Suzie Wong, and The Adventures of Priscilla, Queen of the Desert*, 5 ASIAN L.J. 99, 102 (1998).