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## **Critical Race Theory Bans and the Changing Canon: Cultural Appropriation in Narrative**

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CRITICAL RACE THEORY BANS AND THE CHANGING  
CANON: CULTURAL APPROPRIATION IN NARRATIVE

SUSAN AYRES\*

*appropriation is what novelists do. Whatever we  
write is, knowingly or unknowingly, a borrowing.  
Nothing comes from nowhere.*

—Margaret Drabble<sup>1</sup>

*Immature poets imitate; mature poets steal; bad  
poets deface what they take, and good poets make  
it into something better, or at least something dif-  
ferent.*

—T.S. Eliot<sup>2</sup>

*the important questions about cultural appropri-  
ation are the political ones. . . . Politics is generally  
about power: who gets to control the processes for  
allocating scarce resources.*

—Bruce Ziff and Pratima V. Rao<sup>3</sup>

ABSTRACT

Thirty-five states have enacted critical race theory (CRT) bans at the level of elementary and secondary public education, and eleven states have extended these to the university level. One way to resist these attempts to repress a healthy democracy by whitewashing history is through a pedagogy of anti-racism, including literary works. The question of what that would look like involves questions of cultural appropriation, which occurs when one takes from another culture, such as a writer creating a narrative about a character outside of the writer's cultural identity. This Article considers the story of Ota Benga, brought from the Congo to the United States to be

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1. JAMES O. YOUNG, *Epigraph to CULTURAL APPROPRIATION AND THE ARTS* (2010).

2. T.S. ELIOT, *THE SACRED WOOD: ESSAYS ON POETRY AND CRITICISM* 114 (1920).

3. Bruce Ziff & Pratima V. Rao, *Introduction to Cultural Appropriation: A Framework for Analysis*, in *BORROWED POWER: ESSAYS ON CULTURAL APPROPRIATION* 1, 5, 8 (Bruce Ziff & Pratima V. Rao eds., 1997) [hereinafter *BORROWED POWER*].

exhibited at the 1904 St. Louis World's Fair as a pygmy, and in 1906 at the Bronx Zoo. In addition to discussing Benga's physical appropriation for the purpose of demonstrating scientific views about the racial superiority of whites, this Article considers literature about Benga and the literary canon in general, in order to explore the complicated question of when does cultural appropriation harm the insider or marginalized community, such that the work should be deemed a failure or whether it can be recuperated. Literary works that succeed in depicting another culture are important and effective tools for a pedagogy of anti-racism because they offer empathic portrayals and social critiques of racism.

#### INTRODUCTION

##### I. WHAT IS "CULTURAL APPROPRIATION"?

##### II. HARMS OF CULTURAL APPROPRIATION

###### A. *The Broad Debate*

###### B. *Harms to Insider or Marginalized Cultures*

1. *Does the Work Contain (Unconscious) Racist Stereotypes or Rely on Sentimental Melodrama?*
2. *Does the Work Risk Becoming the Dominant Narrative for the Insider Culture? Does It Silence the Marginalized Culture?*
3. *Does the Work Profit from or Exploit the Marginalized Culture?*
4. *Does the Work Exploit the Insider Culture by Revealing Private or Sacred Practices?*
5. *Does the Work Culturally Appropriate Language in a Way That Causes Offense or Misrepresentation?*

##### III. THE APPROPRIATION OF OTA BENGA

##### IV. OTA BENGA IN LITERARY WORKS

###### A. *Individual Poems About Ota Benga*

###### B. *Sequence of Poems About Ota Benga*

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#### CONCLUSION

#### INTRODUCTION

In Colson Whitehead's Pulitzer Prize-winning novel, *The Underground Railroad*, the protagonist, Cora, successfully runs away from the Georgia plantation, where she is a slave, to freedom in South Carolina.<sup>4</sup> In the fictional town of Griffin, South Carolina, Cora

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4. COLSON WHITEHEAD, *THE UNDERGROUND RAILROAD* 63 (2016).

passes as a free woman who works as a nanny and goes to school at night.<sup>5</sup> Her white teacher tells the class of black students, “In North Carolina . . . what we are doing is a crime. I would be fined a hundred dollars and you would receive thirty-nine lashes. That’s from the law.”<sup>6</sup> Ironically, today it is unclear how or whether the history of slavery can be taught in Florida, Tennessee, South Carolina, or one of the thirty-five states that prohibits the teaching of critical race studies.<sup>7</sup> While these statutes vary, and some do not even mention the phrase “critical race theory,” the result could be the same—teaching the novel might be prohibited for raising “divisive concepts.”<sup>8</sup> The work might also be banned on a list generated by a local school board or state legislature.<sup>9</sup>

In the past when I taught *The Underground Railroad*, the state of Texas had proposed, but had not passed, a critical race theory ban at the post-secondary level,<sup>10</sup> so I reminded students that our

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5. *Id.* at 73–74, 83.

6. *Id.* at 83–84.

7. See Terry Gross, *From Slavery to Socialism, New Legislation Restricts What Teachers Can Discuss*, NPR (Feb. 3, 2022), <https://www.npr.org/2022/02/03/1077878538/legislation-restricts-what-teachers-can-discuss> [<https://perma.cc/VW9T-R5JV>]; Theresa Montaño & Tricia Gallagher-Geurtsen, *Yes, Critical Race Theory Should Be Taught in Your School: Undoing Racism in K–12 Schooling and Classrooms Through CRT*, 69 UCLA L. REV. DISC. 84, 86–87 (2022) (discussing controversies at school board meetings and concerns raised by parents about public school courses). For simplicity I am referring to these state bans collectively as critical race theory bans, although not all specifically mention critical race theory.

8. See James Grossman & Jeremy C. Young, *The Integrity of History Education*, INSIDE HIGHER ED: VIEWS (Jan. 23, 2023), <https://www.insidehighered.com/views/2023/01/24/bills-censoring-k-12-teaching-affect-higher-ed-too-opinion> [<https://perma.cc/59LZ-YTB8>]; Juliet Dee, *Do Bans on Teaching “Divisive Concepts” Interfere with Students’ Right to Know?*, 13 J. ACAD. FREEDOM 1, 13 (2022); Hannah Natanson & Moriah Balingit, *Caught In the Culture Wars, Teachers Are Being Forced from Their Jobs*, WASH. POST (June 16, 2022, 7:42 AM), <https://www.washingtonpost.com/education/2022/06/16/teacher-resignations-firings-culture-wars> [<https://perma.cc/9E96-S6NM>].

9. See Erika Hayasaki, *How Book Bans Turned a Texas Town Upside Down*, N.Y. TIMES (Sept. 9, 2022), <https://www.nytimes.com/2022/09/08/magazine/book-bans-texas.html> [<https://perma.cc/8NED-WMGV>].

10. HB 1607 was introduced in January of 2023 and proposed extending the Texas critical race theory ban to public institutions of higher learning. SB 16 passed in the Senate in April 2023 and would ban university faculty from compelling a student to believe that any race, sex, ethnicity, social, political, or religious belief is superior to any other race, sex, ethnicity, social, political or religious belief. See Monica Madden, *Texas Lawmaker Proposes Banning Universities from Teaching Critical Race Theory*, KXAN (Jan. 26, 2023, 7:58 PM), <https://www.kxan.com/news/texas-politics/texas-lawmaker-proposes-banning-universities-from-teaching-critical-race-theory> [<https://perma.cc/Q39F-J398>]; Kate McGee, *Texas Senate Approves Bill Barring Professors from “Compelling” Students to Adopt Certain Political Beliefs*, TEX. TRIB. (Apr. 12, 2023), <https://www.texastribune.org/2023/04/11/texas-legislature-higher-education-political-bill> [<https://perma.cc/6ZHG-DHBD>]. These bills were not enacted into law. See *Unpacking the Legislature: Higher Education*, TEXAS AFT (July 14, 2023, 12:41 PM), <https://www.texasaft.org/government/legislature/unpacking-the-legislature-higher-education> [<https://perma.cc/SE2A-PM6V>].

discussion might be prohibited in one of the states that had extended bans to the college and university level.<sup>11</sup> The university-level ban is sure to be proposed again when the Texas legislature next meets, and Texas may join the eleven other states that have extended these laws to the university-level. It is uncertain how courts will respond to First Amendment challenges to bans in higher education; while a federal judge blocked Florida's college-level critical race theory ban, that challenge and others are making their way through the courts.<sup>12</sup> In the meantime, as Kimberlé Crenshaw remarks, the "moral panic over what has been labeled Critical Race Theory" and the resulting censorship by politicians of "any study of the way that the American legal system sometimes facilitates and reinforces racial inequality," is simply "not a healthy feature of a robust democracy."<sup>13</sup>

In resisting attempts to whitewash history and repress a robust democracy, some educators have focused on a pedagogy of anti-racism, which "highlights, critiques, and challenges institutional racism."<sup>14</sup> One way to promote an anti-racism education is with narrative or stories, including fiction (such as *The Underground Railroad*) and history (such as the *1619 Project*).<sup>15</sup> In that vein, this Article takes an interdisciplinary studies approach to consider the history of and

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11. At the time of this writing, eleven states have passed CRT bans at the post-secondary level. See *CRT Forward Tracking Project*, CRT FORWARD, <https://crtforward.law.ucla.edu> [<https://perma.cc/486W-3PXB>] (last visited Nov. 13, 2023); Grossman & Young, *supra* note 8.

12. The Florida legislation was initially passed as the Stop-WOKE Act, but was enacted as the Individual Freedom Act, which the federal district court characterized as "in line with the State's doublespeak." *Pernell v. Fla. Bd. of Governors of State U. Sys.*, 641 F. Supp. 3d 1218, 1230 (N.D. Fla. 2022) (enjoining the Florida ban at the college level); *ACLU, ACLU of Oklahoma, Lawyers Committee File Lawsuit Challenging Oklahoma Classroom Censorship Bill Banning Race and Gender Discourse*, AM. CIV. LIBERTIES UNION (Oct. 19, 2021), <https://www.aclu.org/press-releases/aclu-aclu-oklahoma-lawyers-committee-file-lawsuit-challenging-oklahoma-classroom> [<https://perma.cc/S4YG-SP6G>] (challenging the Oklahoma ban at the college level).

13. Kimberlé Williams Crenshaw, *This Is Not a Drill: The War Against Antiracist Teaching in America*, 68 UCLA L. REV. 1702, 1715–18 (2022); Tom Ginsburg, *Academic Freedom and Democratic Backsliding*, 71 J. LEGAL EDUC. 238, 238 (2022).

14. Osamudia James, *White Injury and Innocence: On the Legal Future of Antiracism Education*, 108 VA. L. REV. 1689, 1697 (2022); see also Eric Petterson, *The (White) Washing of American History*, 17 FLA. A&M U. L. REV. 1, 2, 13–15, 18, 27, 31 (2022); Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2412–14 (1989) (Delgado contrasts the stories told by "outgroups" with those told by "dominant groups." Stories by "outgroups" can "shatter complacency and challenge the status quo."); Susan Ayres, *Inside the Master's Gates: Resources and Tools to Dismantle Racism and Sexism in Higher Education*, 21 J. L. SOC'Y 20, 20 (2021).

15. The 1619 Project is an example of anti-racism teaching material that incorporates essays on history with creative pieces; it provides materials for secondary and post-secondary education. See *The 1619 Project Law School Initiative*, PULITZER CTR., <https://pulitzercenter.org/lesson-plan-grouping/1619-project-law-school-initiative> [<https://perma.cc/C9Z7-RK86>] (last visited Nov. 13, 2023). It has been banned by some of the new CRT legislation. See Petterson, *supra* note 14, at 2–3.

literature about Ota Benga, an African brought to the United States at the turn of the twentieth century by a missionary and explorer.<sup>16</sup> Benga was treated like property, and was exhibited at both the St. Louis World's Fair and the Bronx Zoo.<sup>17</sup> In 2020, the Bronx Zoo apologized for its "inhumane treatment" of Benga, which the Zoo acknowledged had amounted to "unconscionable racial intolerance."<sup>18</sup>

Literary works that have depicted Ota Benga's life are worth considering because they offer empathic portrayals and social critiques of racism. However, since these works may be viewed as cultural appropriations of Ota Benga's story, it is important to consider what "cultural appropriation" means and what makes it objectionable. Debates about cultural appropriation are not new but tend to flare up with debates over identity politics.<sup>19</sup> In her recent book *Appropriate: A Provocation*, writer and literary critic Paisley Rekdal points out that unlike other types of cultural appropriation, such as of fashion or food, literary appropriation is especially fraught with problems because "literature traffics in memory and history: the two things that most powerfully comprise and contextualize cultural identity. It's also why even the most empathetic writing of race . . . gets particularly tangled . . . To write into these spaces is to tread on someone else's intimate territory."<sup>20</sup> So, while claims of cultural appropriation of fashion and food can become heated,<sup>21</sup> claims of cultural appropriation in literature can become impassioned.

This Article raises questions about how we should evaluate harms in works that are culturally appropriative, and how we should weigh the harms against the benefits of teaching a classic text, such as *To Kill a Mockingbird*, or a modern text, such as *American Dirt*.<sup>22</sup>

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16. See discussion *infra* Part III.

17. See discussion *infra* Part III.

18. Julia Jacobs, *Racist Incident from Bronx Zoo's Past Draws Apology*, N.Y. TIMES (July 29, 2020), <https://www.nytimes.com/2020/07/29/arts/bronx-zoo-apology-racism.html> [<https://perma.cc/BT6W-U2TK>].

19. See Rosemary J. Coombe, *The Properties of Culture and the Possession of Identity: Postcolonial Struggle and the Legal Imagination*, in *BORROWED POWER*, *supra* note 3, at 74–75 (describing Canadian controversy over cultural appropriation in 1992).

20. PAISLEY REKDAL, *APPROPRIATE: A PROVOCATION* 34–35 (2021).

21. See Ligaya Mishan, *What Does Cultural Appropriation Really Mean?*, N.Y. TIMES (Sept. 30, 2022), <https://www.nytimes.com/2022/09/30/t-magazine/cultural-appropriation.html> [<https://perma.cc/J7EU-DQV3>] (discussing claims of cultural appropriation by fashion designer Christian Dior and food magazine *Bon Appétit*).

22. HARPER LEE, *TO KILL A MOCKINGBIRD* (1960); JEANINE CUMMINS, *AMERICAN DIRT* (2018); Phill Johnson, *Efforts to Ban Harper Lee's To Kill a Mockingbird*, in *CRITICAL INSIGHTS: CENSORED AND BANNED LITERATURE* 169, 169–83 (Robert Evans ed., 2019); Robert C. Evans, *To Kill a Mockingbird in Columbus, Indiana: A Community Divided*, in *CRITICAL INSIGHTS: CENSORED AND BANNED LITERATURE* 187–92 (Robert Evans ed., 2019). A related question this Article does not examine is when as scholars, do we cross the line into harmful or exploitive cultural appropriation in our scholarship. See Randall L. Kennedy, *Racial Critiques of Legal Academia*, 102 HARV. L. REV. 1745, 1745 (1989).

For instance, some argue that *To Kill a Mockingbird* “approaches racism from one direction—from an external, white outsider mentality. . . . But what’s lost . . . is the focus on Black humanity and Black complexity.”<sup>23</sup> Jeanine Cummins’ novel, *American Dirt*, about the immigration of an undocumented Mexican mother and son was a bestseller but was denounced by many Latino<sup>24</sup> reviewers as “trauma porn” or as a cultural appropriation filled with racial stereotypes and inaccuracies.<sup>25</sup>

In untangling questions of cultural appropriation, Part I of this Article considers the various and sometimes inconsistent definitions and approaches to cultural appropriation. Part II describes some of the potential harms of cultural appropriation to insider or marginalized cultures. Part III summarizes the narrative of Ota Benga’s life, explaining how he came to be displayed as a Congolese pygmy at the 1904 St. Louis World’s Fair and subsequently in 1906 at the Bronx Zoo. Part IV looks at literary works about Ota Benga, analyzing whether the work is harmful appropriation, and what we gain from studying it. The conclusion considers potential strategies to rehabilitate or recuperate literary works that are denounced as harmful cultural appropriations, but which we might nonetheless find benefits in reading and teaching.

## I. WHAT IS “CULTURAL APPROPRIATION”?

A general definition of cultural appropriation is “taking—from a culture that is not one’s own—of intellectual property, cultural

23. Margo Shear Fischgrund, *Q&A: Should Teachers Still Assign ‘To Kill a Mockingbird’?*, PITTWIRE (July 23, 2020), <https://www.pitt.edu/pittwire/features-articles/qa-should-teachers-still-assign-kill-mockingbird> [<https://perma.cc/6ALE-Q6CC>].

24. This Article uses term “Latino” or “Latinx” except when quoting sources that use alternative terms. I am aware of the debate surrounding these terms. See Paulina Villegas, *How ‘Latinx’ United—and Divided—a Community Seeking to Redefine Itself*, WASH. POST (Apr. 2, 2023, 6:00 AM), <https://www.washingtonpost.com/nation/2023/04/02/latinx-meaning-controversy-culture> [<https://perma.cc/TJ9W-NXEM>]; Sophie Yarin, *If Hispanics Hate the Term ‘Latinx,’ Why Is It Still Used?*, BOSTON UNIV. TODAY (Oct. 7, 2022), <https://www.bu.edu/articles/2022/why-is-latinx-still-used-if-hispanics-hate-the-term> [<https://perma.cc/9MRS-87AC>].

25. See Katie Law, *Jeanine Cummins on American Dirt: ‘I Wrote the Story that Was in My Heart’*, EVENING STANDARD (Mar. 31, 2020), <https://www.standard.co.uk/culture/books/jeanine-cummins-interview-american-dirt-review-a4402526.html> [<https://perma.cc/4FQ9-LTY3>]; León Krauze, *The Problem with American Dirt Is Not Its Author’s Background*, SLATE (Jan. 31, 2020, 1:30 PM), <https://slate.com/culture/2020/01/american-dirt-jeanine-cummins-mexican-experience.html> [<https://perma.cc/65J8-B35C>]; David J. Vázquez, Magdalena L. Barrera & Elena Machado Sáez, *What the New York Times Gets Wrong About the ‘American Dirt’ Controversy*, SALON (Feb. 11, 2023, 10:59 AM), <https://www.salon.com/2023/02/11/what-the-new-york-times-gets-about-the-american-dirt-controversy> [<https://perma.cc/P4WU-XLAX>].

expressions or artifacts, history, and ways of knowledge.”<sup>26</sup> Although not all cultural appropriation is considered harmful, society’s views change over time. For example, when my children were young, they loved the animated Disney film *Mulan* (1998), about a young woman disguised as a male warrior.<sup>27</sup> I encouraged them to watch it because the film was a healthy antidote to tales about Cinderella, Snow White, and other passive princesses living happily ever after. But times change, and society’s notion of cultural appropriation also changes. In 2020, *Mulan* was remade as a live action film to remove some of the sexist and racist stereotypes and cultural inaccuracies in the 1998 version.<sup>28</sup> In discussing cultural appropriation, philosopher James O. Young observes that “old Hollywood Westerns represent Native Americans<sup>29</sup> as cruel and mendacious. Disney’s *Peter Pan* (1953) so grotesquely misrepresents members of North American First Nation cultures that I will not let my children watch it.”<sup>30</sup> Similarly, filmmaker Wes Anderson was charged with culturally appropriating Asian culture in *Isle of Dogs*, allegedly “othering or dehumanizing Asians, borrowing their ‘exotic’ cultures and settings while disregarding the people who created those cultures and live in those settings.”<sup>31</sup>

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26. SUSAN SCAFIDI, WHO OWNS CULTURE?: APPROPRIATION AND AUTHENTICITY IN AMERICAN LAW 9 (Ruth Ann Stewart, Margaret J. Wyszomirski & Joni M. Cherbo eds., 2005).

27. MULAN (Walt Disney Animation Studios 1998).

28. MULAN (Walt Disney Pictures 2020). See Imogene Tomicic, *The Duties of ‘Mulan’ (2020): Addressing ‘Mulan’ (1998) Criticism*, STAN. DAILY (Sept. 3, 2020, 1:36 PM), <https://stanforddaily.com/2020/09/03/the-duties-of-mulan-2020-addressing-mulan-1998-criticism> [<https://perma.cc/2K8E-QYS4>] (pointing out problems with racism and sexism in original film).

29. I am using the terms “Native American” and “indigenous people” to refer to native persons living in the United States and “First Nations” or “Aboriginal” to refer to those living in Canada or Australia, except when I am quoting a source that uses alternative terms. I am aware of the ongoing debate surrounding these terms. See Dacoda McDowell-Wahpekeche, *Which Is Correct? Native American, American Indian or Indigenous?*, OKLAHOMAN (Apr. 23, 2021, 10:24 AM), <https://www.oklahoman.com/story/special/2021/04/22/what-do-native-people-prefer-called/4831284001> [<https://perma.cc/CHJ9-29P8>]; *The Impact of Words and Tips for Using Appropriate Terminology: Am I Using the Right Word?*, NAT’L MUSEUM OF THE AMERICAN INDIAN, <https://americanindian.si.edu/nk360/informational/impact-words-tips> [<https://perma.cc/FH9D-PMMV>] (last visited Nov. 13, 2023); Elizabeth Prine Pauls, *Tribal Nomenclature: American Indian, Native American, and First Nation*, BRITANNICA (Jan. 17, 2008), <https://www.britannica.com/topic/Tribal-Nomenclature-American-Indian-Native-American-and-First-Nation-1386025> [<https://perma.cc/NDD9-BDKH>].

30. YOUNG, *supra* note 1, at 24; PETER PAN (Walt Disney Animation Studios, 1953); see also Ida Yoshinaga, *Disney’s Moana, the Colonial Screenplay, and Indigenous Labor Extraction in Hollywood Fantasy Films*, 6 NARRATIVE CULTURE 188, 188–89, 199 (2019).

31. Kimberly Yam, *Now They’re Using a Dog Movie to Appropriately Asian Culture*, HUFFINGTONPOST (Mar. 26, 2018, 3:41 PM), [https://www.huffpost.com/entry/wes-anderson-isle-of-dogs-appropriation\\_n\\_5ab5244ee4b0decad0498f20](https://www.huffpost.com/entry/wes-anderson-isle-of-dogs-appropriation_n_5ab5244ee4b0decad0498f20) [<https://perma.cc/W2L4-26DF>]; but see Richard Brody, “*Isle of Dogs*” Is a Stylish Revolt Against (American) Political



Young and other theorists investigate what appropriation is and what makes it harmful, and as Rekdal points out, we must remember that appropriation is “an evolving conversation . . . around privilege and aesthetic fashion,” and since “[p]ower . . . [r]ace and gender aren’t static,” we have to ask questions about appropriation “every year, every decade.”<sup>32</sup> My questions about cultural appropriation arise in the context of law and the humanities. For writers brave enough to explore questions about race, especially when they write outside of their subject positions, when does literature cross the line into harmful or exploitive cultural appropriation?

Of course, writers and other artists have always practiced cultural appropriation. Martin Puchner has written a recent history, *Culture: The Story of Us from Cave Art to K-Pop*, which argues for “the value and necessity of cultural appropriation.”<sup>33</sup> One example is Shakespeare, who retold older stories, yet his portrayals of Jews (in *The Merchant of Venice*) and of Moors (in *Othello*) are today considered racist cultural appropriations.<sup>34</sup> Nonetheless, most of us would probably agree that Shakespeare’s “works are still on balance aesthetic masterpieces.”<sup>35</sup> Another example is the ancient writer Terence, who “was brought to Rome as a slave from Carthage so he was an outsider relative to Roman culture which he represented and whose forms he employed. At the same time he appropriated from Greek plays in producing his own Latin works.”<sup>36</sup>

These cultural appropriation examples beg the question of what “appropriation” means and why is it seen as harmful. Popular culture distinguishes “cultural appropriation” from “cultural appreciation,” a distinction which implies all cultural appropriation is harmful.<sup>37</sup> In scholarly works, the broad definition of “cultural appropriation” is “taking—from a culture that is not one’s own—of intellectual property,

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*Madness*, NEW YORKER (Mar. 23, 2018), <https://www.newyorker.com/culture/richard-brody/isle-of-dogs-is-a-stylish-revolt-against-american-political-madness> [<https://perma.cc/BZ7Y-VUBE>] (Brody does not explicitly counter this charge of cultural appropriation, but writes that the Japan in the film is fictitious and doesn’t draw upon Japanese history, doesn’t delve into Japanese politics, doesn’t consider the present-day specifics of Japanese society, but is a stand-in for current-day America.).

32. REKDAL, *supra* note 20, at 4–5.

33. Adam Kirsch, *The Case for Cultural Appropriation: How Humans Hybridize Their Civilizations*, HARV. MAG. (Mar.–Apr. 2023), <https://www.harvardmagazine.com/2023/03/university-cultural-appropriation> [<https://perma.cc/USL2-69W3>]; MARTIN PUCHNER, *CULTURE: THE STORY OF US, FROM CAVE ART TO K-POP* xi–xii, xx–xxiv (2023).

34. YOUNG, *supra* note 1, at 108.

35. *Id.*

36. *Id.* at 157–58.

37. See Tina Charisma, *Cultural Appropriation vs Cultural Appreciation: What’s the Difference?*, BAZAAR (June 30, 2021), <https://www.harpersbazaar.com/uk/culture/a36798089/cultural-appropriation-vs-cultural-appreciation> [<https://perma.cc/4GVP-S8FW>] (The difference for popular culture is: “Are you respecting the culture or ripping it off?”).

cultural expressions or artifacts, history, and ways of knowledge.”<sup>38</sup> However, scholars do not consistently agree on this definition or even on the characteristics of “cultural appropriation.”<sup>39</sup> As one writer points out, “[t]he definition of ‘cultural appropriation’ has been explored for twenty years in legal literature. However, there is no legal standard of cultural appropriation.”<sup>40</sup> The most commonly quoted definition of “cultural appropriation” is from anthropologist Sally Engle Merry, who defines it as “the process by which dominant groups take, and often profit from, the artistic, musical, and knowledge productions of subordinate groups.”<sup>41</sup> Some definitions add that the taking is also done against the will of the subordinate group, or without permission.<sup>42</sup>

Scholars such as Julie Sanders and Paisley Rekdal distinguish “appropriation” from “adaptation.”<sup>43</sup> Sanders, who actually does not see much difference between the two terms, defines “adaptation” as the “reinterpretations of established . . . texts in new generic contexts or perhaps with relocations of an ‘original’ or source text’s cultural and/or temporal setting.”<sup>44</sup> Sanders gives the example of Shakespeare plays that are produced in a different era or place, or analogue works such as recontextualizations of Conrad’s *Heart of Darkness* as the film *Apocalypse Now*.<sup>45</sup> As Sanders notes, feminist revisions of fairy tales or literature, or what Adrienne Rich called feminist re-vision, are adaptations.<sup>46</sup> In contrast to Sanders’ definition of “adaptation,”

38. SCAFIDI, *supra* note 26, at 9.

39. See, e.g., Erich Hatala Matthes, *Cultural Appropriation and Oppression*, 176 PHIL. STUD. 1003, 1003–04, 1009 (2019) (comparing what he labels “the oppression account” from “the intimacy account” of cultural appropriation); Paul Haynes, *The Ethics and Aesthetics of Intertextual Writing: Cultural Appropriation and Minor Literature*, 61 BRITISH J. AESTHETICS 291, 291 (2021) (stating that “[b]oth words in the phrase ‘cultural appropriation’ are ideologically loaded, which is further intensified as they become merged into a single concept.”).

40. Lauren M. Ingram, *Cultural Misappropriation: What Should the United States Do?*, 111 L. J. INT’L TRADEMARK ASS’N 859, 862 (Nov.–Dec. 2021).

41. *Id.* at 862–63 (quoting Sally Engle Merry); see Sally Engle Merry, *Law, Culture, and Cultural Appropriation*, 10 YALE J.L. & HUMAN. 575, 575, 585–86 (1998).

42. See Ingram, *supra* note 40, at 863; SCAFIDI, *supra* note 26, at 9; *Debating Cultural Appropriation*, in RUMBLE: EDUC. MATERIALS FOR THE DOCUMENTARY FILM, <https://teachrocklessonpdf.s3.amazonaws.com/Rumble/Debating+Cultural+Appropriation.pdf> [<https://perma.cc/4VJN-XVGP>].

43. They do not define the terms the same, and in her chapter defining the terms, Rekdal does not always make this clear. Nonetheless, Rekdal’s book is thorough, thought-provoking, and valuable, especially for its intended audience, the creative writer, and its implied audience, the reader. REKDAL, *supra* note 20, at 19–22.

44. JULIE SANDERS, *ADAPTATION AND APPROPRIATION* 24 (2d ed., 2016).

45. *Id.* at 24, 29.

46. *Id.* at 10–12; ADRIENNE RICH, *When We Dead Awaken*, in *POETRY AND PROSE* 182, 183 (Albert Gelpi, Barbara Charlesworth Gelpi & Brett C. Miller eds., 2d ed. 2018) (Rich defines “re-vision” as “the act of looking back, of seeing with fresh eyes, of entering an old text from a new critical direction.”).

Rekdal more broadly defines “adaptation” as using elements of a work such as plot, theme, subject, in a new text, for example, T.S. Eliot’s collage of different texts in his poem “The Wasteland.”<sup>47</sup>

What is the difference between “adaptation” and “appropriation”? Sanders, who considers the two closely related, defines “appropriation” as “frequently effect[ing] a more decisive journey away from the informing text into a wholly new cultural product and domain, often . . . through the movement from one genre to others.”<sup>48</sup> Sanders gives the example of an author appropriating historical events or lives to comment on a contemporary topic, such as Arthur Miller’s *The Crucible*, which portrays the Salem witch trials as an unspoken analogy to the McCarthy Communist hunts.<sup>49</sup> Or, an author may tell the history of the marginalized or disenfranchised, which has not been told before, such as Peter Carey’s *Jack Maggs*, which rewrites *Great Expectations*, and shows its gaps and also “those neglected or mistreated by the Victorian regime, not least those transported to the penal colony of Australia.”<sup>50</sup>

While some theorists distinguish “adaptation” from “appropriation,” others such as Scafidi and Young do not, but simply define “appropriation.” Scafidi follows the basic definition of appropriation given above but adds the driving motivations that outsiders “copy and transform cultural products [of insiders] to suit their own tastes, express their own creative individuality, or simply make a profit.”<sup>51</sup> Other theorists emphasize the power imbalance existing between insiders and outsiders. For example, Rekdal describes cultural appropriation as occurring when “someone with more cultural capital and power has taken the objects, artifacts, and stories of someone with less cultural capital and power without permission and for her own benefit.”<sup>52</sup> Similarly, when someone from the West culturally appropriates from the East, it may be an instance of what Edward Said labels as “Orientalism,” in which “our Western imagination of the East remains limited by the lens of Orientalism that exists to

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47. REKDAL, *supra* note 20, at 20; see T.S. ELIOT, *THE WASTE LAND AND OTHER POEMS* 27 (1922).

48. SANDERS, *supra* note 44, at 35. To confuse matters further, Sanders gives examples of embedded texts that are both an adaptation and an appropriation, such as *Kiss Me Kate* (an adaptation of *Taming of the Shrew*, and an appropriation in its mafia subplot). *Id.* at 38.

49. *Id.* at 177–78.

50. *Id.* at 179.

51. SCAFIDI, *supra* note 26, at 9.

52. REKDAL, *supra* note 20, at 27; see also Ingram, *supra* note 40, at 862–63 (quoting the definition by Sally Engle Merry, *New Direction: Law, Culture, and Cultural Appropriation*, 10 *YALE J.L. & HUMAN.* 575, 586 (1998): “the process by which dominant groups take, and often profit from, the artistic, musical, and knowledge productions of subordinate groups.”).

support our own cultural dominance” by viewing the Orient as “‘the Other’: primitive, violent, irrational, radical, sexually suspect, autocratic, and duplicitous.”<sup>53</sup> Theorists such as Erich Hatala Matthes agree that cultural appropriation is not wrong in itself, but “what makes [it] wrong . . . is the way it interacts with the oppression of certain cultural group members.”<sup>54</sup> In Matthes’ view, only dominant groups can culturally appropriate, and when marginalized groups “use[] the styles of dominant cultural groups . . . such acts are perhaps best described as assimilation rather than appropriation.”<sup>55</sup>

Like Scafidi, Young also applies the basic definition of cultural appropriation in his analysis: “appropriation that occurs across the boundaries of cultures. Members of one culture (I will call them *outsiders*) take for their own, or for their own use, items produced by a member or members of another culture (call them *insiders*).”<sup>56</sup> The boundaries of who is an insider and who is an outsider might be hard to determine and can result in essentialist generalizations, as Matthes argues.<sup>57</sup> He points out that generalizations about insiders and outsiders “depict as homogenous groups of heterogeneous people whose values, interests, ways of life, and moral and political commitments are internally plural and divergent.”<sup>58</sup> These generalizations can also “exclude individuals on the margins of cultural groups.”<sup>59</sup> Because of the problems of essentialism in the categories of insiders and outsiders, and because Matthes sees cultural appropriation as a problem of power, rather than of property, Matthes describes cultural appropriation as “the appropriation of elements of a subordinated [or marginalized] culture by a dominant culture . . . .”<sup>60</sup>

Young describes five categories of cultural appropriation. First, “[o]bject appropriation occurs when the possession of a tangible

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53. REKDAL, *supra* note 20, at 30; EDWARD W. SAID, *CULTURE AND IMPERIALISM* xxiii (1993) (Said does not focus solely on the East and West, but more broadly on the “Other,” on “‘us’ and ‘them’” over time and geography, as the residues of imperialism and colonialism.).

54. Matthes, *supra* note 39, at 1005.

55. *Id.*; see also *BORROWED POWER*, *supra* note 3, at 5–7 (explaining cultural transmission as assimilative when “cultural minorities . . . are encouraged, if not obliged, to adapt or assimilate the cultural forms and practices of the dominant group.”).

56. YOUNG, *supra* note 1, at 5.

57. Erich Hatala Matthes, *Cultural Appropriation Without Cultural Essentialism?*, 42 *SOC. THEORY & PRAC.* 343, 355 (2016).

58. *Id.* (quoting Uma Narayan, *Essence of Culture and a Sense of History: A Feminist Critique of Cultural Essentialism*, 13 *HYPATIA* 86, 88 (1998)).

59. Matthes, *supra* note 39, at 1006.

60. *Id.* at 1005 (quoting Richard Rogers, *From Cultural Exchange to Transculturation: A Review and Reconceptualization of Cultural Appropriation*, 16 *COMMUNIC’N THEORY* 474, 486 (2006)); see also *BORROWED POWER*, *supra* note 3, at 5–7; REKDAL, *supra* note 20, at 27–28 (“Today . . . you and I generally mean that someone White and from the West has taken an object or narrative from someone non-White, and possibly not from the West. In that, the term ‘cultural appropriation’ carries with it the distinct whiff of colonialism.”).

work of art (such as a sculpture or a painting) is transferred from members of one culture to members of another culture.”<sup>61</sup> Second, “[c]ontent appropriation . . . occurs [] [when] an artist has made significant reuse of an idea first expressed in the work of an artist from another culture,” as for example, singing a song or retelling a myth from another culture.<sup>62</sup> Third, style appropriation is a subcategory of content appropriation and occurs when an outsider uses the style of the insider, such as when a non–African American composes jazz or blues, or when “culturally mainstream Australians . . . paint in the style of the aboriginal peoples.”<sup>63</sup> Fourth, motif appropriation is similar to style appropriation, “but only basic motifs are appropriated,” such as when Picasso appropriated African masks into his paintings.<sup>64</sup> Fifth, subject appropriation occurs when an outsider represents “individuals or institutions from another culture,” such as Alexander McCall Smith’s series of detective novels—Smith, who is Scottish, writes in the voice of “Precious Ramotswe, a Botswanan private detective.”<sup>65</sup> Applying Young’s categories, the poems about Ota Benga discussed later in this Article are examples of subject appropriation.

Unlike the morally neutral definitions discussed by Young, Sanders, and Scafidi, Rekdal’s definition incorporates a negative value judgment (i.e., is defined as morally objectionable).<sup>66</sup> Specifically,

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61. YOUNG, *supra* note 1, at 6 (including examples: Lord Elgin’s taking of the Parthenon friezes or buying local art on one’s travels). *See also* Rebecca Tsosie, *Reclaiming Native Stories: An Essay on Cultural Appropriation and Cultural Rights*, 34 ARIZ. ST. L.J. 299, 312–13 (2002) (providing four categories of cultural appropriation: object appropriation, appropriation of sacred symbols for commercial use, appropriation of rituals or songs for New Age religions, and subject appropriation of people and culture in movies, art, and literature).

62. YOUNG, *supra* note 1, at 6 (emphasis omitted) (giving another example of this in the Kurosawa films that borrow and reuse Shakespeare. This category includes what some call “adaptation.”); *see* Tsosie, *supra* note 61, at 312 (giving an example of “acts of non-Indians who appropriate tribal rituals or songs.”).

63. YOUNG, *supra* note 1, at 6; *see also* KJ Greene, *Copyright, Culture & Black Music: A Legacy of Unequal Protection*, 21 HASTINGS COMM. & ENT. L.J. 339, 369 (1998) (noting that until more recently, “because Black artists were not considered acceptable to mainstream (white) audiences, ‘covers’ of black recordings by white artists became commonplace in the recording industry.”).

64. YOUNG, *supra* note 1, at 6; *see also* Tsosie, *supra* note 61, at 312 (giving the example of outsiders who adopt “the sacred Hopi Katchina for use as the symbol of an Arizona Bank or . . . the Zia Sun Symbol for a private business or state entity.”); Angela R. Riley, *The Ascension of Indigenous Cultural Property Law*, 121 MICH. L. REV. 75, 88 (2022) (noting that “in the early 1930s, a flood of counterfeit goods into the United States threatened to decimate struggling reservation economies that largely relied on Indian ‘handicrafts’—such as jewelry . . . rugs, pottery, and others.”).

65. YOUNG, *supra* note 1, at 7.

66. REKDAL, *supra* note 20, at 32; *see* Matthes, *supra* note 57, at 347 (pointing out that definitions of cultural appropriation may include conditions that are either morally neutral or morally objectionable).

Rekdal’s definition of “cultural appropriation” refers to “a work that’s bound up in the production and dissemination of negative, if also unconscious, stereotypes of another group or culture.”<sup>67</sup> In contrast, Rekdal uses “the specific terms ‘subject’ and ‘content appropriation’ [to refer to] works that are attentively influenced by other cultures, or include nuanced non-White or non-Western characters.”<sup>68</sup> So, although Rekdal may be more focused on literary works than are other theorists, it is important to recognize that the theorists do not use the terms consistently. Nonetheless, while most use the general definition of “cultural appropriation” in a morally neutral way, all theorists discuss the ethical harms of cultural appropriation, which the next part considers.<sup>69</sup>

## II. HARMS OF CULTURAL APPROPRIATION

In the United States, there is no protection against cultural appropriation of intangible cultural expressions such as “cuisine, dress, music, dance, folklore, handicrafts, images, healing arts, and language.”<sup>70</sup> So while intellectual property law protects creators and authors through copyright, for instance protecting J. K. Rowling against another who copies the character Harry Potter, intellectual property law does not protect the Congo (or Benga’s tribe) against another who writes about Ota Benga or about indigenous folk songs.<sup>71</sup> As columnist Ligaya Mishana observes, “[c]ultural appropriation doesn’t come down to some quasi-legalistic standard of ‘is this allowed?’”<sup>72</sup> Instead, cultural appropriation is a question of ethics and politics.<sup>73</sup>

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67. REKDAL, *supra* note 20, at 32.

68. REKDAL, *supra* note 20, at 32. In other words, Rekdal’s definition of “subject appropriation” and “content appropriation” is inconsistent with the neutral use of those terms by other theorists.

69. Some make this distinction by contrasting cultural appropriation and cultural misappropriation. See Ingram, *supra* note 40, at 863–64; Alberto Vargas, *WIPO’S Proposed Treatment of Sacred Traditional Cultural Expressions as a Distinct Form of Intellectual Property*, 23 CHI. J. INT’L L. 235, 238 n.1 (2022).

70. SCAFIDI, *supra* note 26, at 21; see also Ingram, *supra* note 40, at 865–66, 871–72 (noting that the United States does have some legal protection for the authenticity of Native American handicrafts, but that’s about it. In contrast, other countries do have legal protection for cultural appropriation.); Tsosie, *supra* note 61, at 300, 314–15 (highlighting that federal trademark law and the Indian Arts and Crafts Act offer some protection, along with the Native American Graves Protection and Repatriation Act).

71. Jacqueline Lai Chung, *Drawing Idea from Expression: Creating a Legal Space for Culturally Appropriated Literary Characters*, 49 WM. & MARY L. REV. 903, 906–07 (2007); see also 17 U.S.C. § 102(a)(1)–(8) (leaving open that copyright law may provide some protections for unique cultural music, dance, images, art and folklore if they meet certain requirements).

72. Mishan, *supra* note 21.

73. Coombe, *supra* note 19, at 93; BORROWED POWER, *supra* note 3, at 8 (“Politics is

However, while cultural appropriation is not illegal in the United States, a work may be criticized as unethical or an artistic failure, depending on how harmful the appropriation is considered to be. For instance, after Oprah Winfrey selected the novel *American Dirt* as one of her Book Club picks, over 140 writers signed an open letter asking her to reconsider her decision, claiming that the novel was a cultural appropriation that “has not been imagined well nor responsibly, nor has it been effectively researched.”<sup>74</sup> Later, some would characterize this criticism as a “witch hunt” and claim that “‘American Dirt’ was essentially held responsible for every instance in which another Latin[x] writer’s book got passed over, poorly reviewed or remaindered.”<sup>75</sup>

This controversy over *American Dirt* shows where disagreements can arise, especially since some writers and artists completely reject the claim that cultural appropriation can ever be harmful. For instance, the writer Lionel Shriver gave a speech in which she (in)famously defended all literary cultural appropriation while wearing a sombrero, claiming it was a passing fad and what fiction writers had always done; Shriver also raised the practical problem of identifying from whom (or what entity) one would request permission to tell a story.<sup>76</sup> Below, I analyze the harms of cultural appropriation by

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generally about power: who gets to control the processes for allocating scarce resources. In the context of cultural appropriation, the resources at issue are the many and varied forms of cultural production, expression, and creation.”). Several theorists describe this gap in Western law as another cultural harm to marginalized cultures. See BORROWED POWER, *supra* note 3, at 15 (“[T]hrough the American or Canadian law of property may fail to prevent certain forms of appropriation, other rule-based systems [of the marginalized culture] are possible . . . .”); Coombe, *supra* note 19, at 91–92 (detailing how First Nations have a different notion of rights than traditional European categories; property is part of the social relationships that include “spiritual relationship with land, customs, and ancestors based on traditions of respect . . . .”); Tsosie, *supra* note 61, at 310, 313–14 (“[E]xisting law fails to reflect alternative conceptions of what should be treated as property or ownership in cultural goods,” which subsumes “Native peoples’ conceptions of sovereignty and rights” and “transform[s] Native cultures into ‘property’”).

74. *Dear Oprah Winfrey: 142 Writers Ask You to Reconsider American Dirt*, LITERARY HUB (Jan. 29, 2020), <https://lithub.com/dear-oprah-winfrey-82-writers-ask-you-to-reconsider-american-dirt> [<https://perma.cc/9RXM-WTDL>].

75. Pamela Paul, *The Long Shadow of “American Dirt,”* N.Y. TIMES (Jan. 26, 2023), <https://www.nytimes.com/2023/01/26/opinion/american-dirt-book-publishing.html> [<https://perma.cc/U3R4-4K8R>].

76. Lionel Shriver, *Lionel Shriver’s Full Speech: “I Hope the Concept of Cultural Appropriation Is a Passing Fad,”* GUARDIAN (Sept. 13, 2016), <https://www.theguardian.com/commentisfree/2016/sep/13/lionel-shrivers-full-speech-i-hope-the-concept-of-cultural-appropriation-is-a-passing-fad> [<https://perma.cc/6ZB2-V8MN>]; see also Gorman Beauchamp, *Open Casket and Cultural Appropriation*, 75 ANTIOCH R. 455, 458–59 (2017) (rejecting what he calls “identity aesthetics: that we are unable to understand the experiences . . . of any identity group other than our own.”); Brian Morton, *All Shook Up: The Politics of Cultural Appropriation*, DISSENT (2020), <https://www.dissentmagazine.org/article/all-shook-up-the-politics-of-cultural-appropriation> [<https://perma.cc/2YBD-F25J>] (focusing

considering the broad debate about categorical rules (all appropriation is either bad or is permitted), and then turn to the more specific harms of appropriation to an insider or marginalized culture.

### A. *The Broad Debate*

Rosemary Coombe labels the two poles in the debate over cultural appropriation as Romanticism (allowing appropriation) and Orientalism (rejecting appropriation).<sup>77</sup> The Orientalist position claims that all cultural appropriation is harmful and wrong as “cultural theft, the theft of voice,”<sup>78</sup> and that only works by insiders can be successful.<sup>79</sup> For example, the musician and poet Amiri Baraka has argued that only African Americans can play the blues, and the Director of the Australian Aboriginal and Torres Strait Islander Arts Board has stated that only people who have lived as Aboriginals can successfully produce Aboriginal art.<sup>80</sup> First Nations have claimed that indigenous stories cannot be told by outsiders “without endangering the authenticity of cultural works.”<sup>81</sup> And a publishing company in Canada announced policy guidelines for an anthology that it would “avoid publishing manuscripts in which the protagonist’s experience in the world, by virtue of race or ethnicity, is substantially removed from that of the writer.”<sup>82</sup>

Others refute the assertion that all cultural appropriation is bound to fail; for instance, Young contends that this exclusivity argument is baseless: “Very little evidence exists for the claim that mastery of an artistic style is linked to membership in a culture but

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on our shared humanity); 17 U.S.C. § 102(a) (author must be identifiable to receive copyright protection).

77. Coombe, *supra* note 19, at 75; *see also* M. Nourbese Philip, *The Disappearing Debate; or, How the Discussion of Racism Has Been Taken Over by the Censorship Issue*, in *BORROWED POWER*, *supra* note 3, at 97 (describing the poles of the debate as that of racism versus censorship).

78. Coombe, *supra* note 19, at 79 (quoting Lenore Keeshing-Tobias, *Stop Stealing Native Stories*, *GLOBE AND MAIL*, Jan. 26, 1990, at A7).

79. YOUNG, *supra* note 1, at 34 (calling this the cultural experience argument).

80. *Id.* at 35; K.J. Greene, *Intellectual Property at the Intersection of Race and Gender: Lady Sings the Blues*, 16 *AM. U. J. GENDER SOC. POLY & L.* 365, 373 (2008) (“one of the most successful white bands of the early twentieth century, the Original Dixieland Jazz Band, took New Orleans Negro music and reduced it to a ‘simplified formula . . . the kind of compressed, rigid format that could appeal to a mass audience.’”) (quoting GUNTHER SCHULLER, *EARLY JAZZ: ITS ROOTS AND MUSICAL DEVELOPMENT* 179–80 (1968)).

81. Coombe, *supra* note 19, at 79; *see also* Riley, *supra* note 64, at 125–26 (noting that disclosing confidential intangible cultural property rights held by indigenous nations can have “devastating consequences” for nations).

82. Philip, *supra* note 77, at 97 (The Press rejected works by white writers who had written about cultures other than their own or who had written in the style of magical realism, because that was “a style pioneered in Latin America.”).



vast amounts of evidence can be marshaled in support of the opposite claim.”<sup>83</sup> Young considers many examples in music (such as successful blues by non–African Americans) and painting (such as Australian “Aboriginal” paintings by non-Aboriginal artists), and makes the point that success requires that “artists must undergo a process of training. . . . [and] repeatedly practice their craft.”<sup>84</sup>

One problem with the Orientalist position is that it assumes that groups have a uniform identity, which raises problems of essentializing, but it also assumes that artists are limited to creating within their identity.<sup>85</sup> As Coombe says of the debate over indigenous stories, “[w]hen [First Nation peoples] specify their unique histories, they are often accused of essentialism, but when they write or paint, their work is often criticized for not being ‘authentic’ or sufficiently ‘Indian.’”<sup>86</sup> The problem is that groups rarely have a static identity.<sup>87</sup> Moreover, when that identity is “conflate[d] . . . with its marginalization and pain,” especially when the literary marketplace “let[s] the narrative of racism and trauma for writers of color prevail,” this identity limits subject matter and themes for a writer of color and becomes a “feedback loop.”<sup>88</sup>

In contrast to the Orientalist position, the Romantic position claims that restrictions on the imagination should be rejected as “cultural censorship.”<sup>89</sup> Some writers, like Shriver, reject the broad

83. YOUNG, *supra* note 1, at 38; *see also* REKDAL, *supra* note 20, at 78–79, 86 (Rekdal does not challenge the rights of artists to depict other cultures and does not believe that all creations outside of one’s subject position are bound to fail.).

84. YOUNG, *supra* note 1, at 40–41.

85. Coombe, *supra* note 19, at 78–79, 88; REKDAL, *supra* note 20, at 42, 49–50, 148–50; Matthes, *supra* note 57, at 355–57.

86. Coombe, *supra* note 19, at 88.

87. Coombe, *supra* note 19, at 75, 88 (discussing the differences within Black culture and within Native peoples); Tsosie, *supra* note 61, at 349–51 (discussing the concerns surround cultural authenticity and identity of Native Americans).

88. REKDAL, *supra* note 20, at 55 (arguing additionally that the problem is exacerbated when “writers outside a marginalized community imagine its trauma poorly, writers from within the community will be spurred to respond . . .”). *See also* Kristina Marie Darling, “America Never Lets You Get Comfortable in Your Own Skin,” a *Conversation with Paisley Rekdal on Her Book, Appropriate*, TUPELO Q. (Mar. 14, 2021), <https://www.tupeloquarterly.com/editors-feature/america-never-lets-you-get-comfortable-in-your-own-skin-a-conversation-with-paisley-rekdal-on-her-book-appropriate-curated-by-victoria-chang/> [<https://perma.cc/HL9J-W3Q9>] (“The first is . . . that the publishing world, and white audiences, come to fetishize narratives of racist trauma written by BIPOC writers . . . . It risks essentializing non-white identity as something that is inherently, perhaps only, tragic and painful in a majority-white system. . . . The other risk . . . [or second objection] is that . . . certain scholars and writers of color have begun to pander to white audiences looking for exactly that performance. Again, when we have so few stories and representations of POC out in the mainstream, our definition of what an ‘authentic’ non-white identity looks like is extremely limited, which allows a lot of white and BIPOC people to perform to an expectation the market has already set.”).

89. Rosemary J. Coombe, *The Properties of Culture and the Politics of Possessing*

claim that all cultural appropriation is wrong or unsuccessful and believe writers should be free to appropriate. For instance, Black British writer, Bernardine Evaristo, who won the Booker Prize, stated that the idea that writers must “stay in your lane. . . is a total nonsense.”<sup>90</sup> Such categorial rules are sometimes seen as resulting in self-censorship that squelches creativity,<sup>91</sup> or in stifling the empathy and understanding of “literature’s implicit promise: that entering into another’s consciousness enlarges our own.”<sup>92</sup> As Coombe explains this Romantic position,

the writer is represented . . . as an autonomous individual who creates fictions with an imagination free of all constraint. . . . Through his labour, he makes these ‘ideas’ his own . . . . Any attempts to restrict his ability to do so are viewed as . . . an unjustifiable restriction on freedom of expression.<sup>93</sup>

The American valorization of freedom of expression results in “a nearly absolute ideal of free speech [in which] Americans fastidiously avoid censorship.”<sup>94</sup>

However, this view is objectionable. The Romantic position that imagination should not be censored, and that cultural appropriation is not objectionable can be seen as “reinscrib[ing] Native peoples as objects of human Culture, rather than authorial subjects in their own right.”<sup>95</sup> Consequently, outsiders, such as “Native peoples discuss

*Identity: Native Claims in the Cultural Appropriation Controversy*, 6 CAN. J. L. & JURIS. 249, 250 (1993); Coombe, *supra* note 19, at 76.

90. Tim Pearce, *First Black Woman to Win Top Literary Prize Says Cultural Appropriation Is ‘Total Nonsense,’* WASH. EXAM’R (Dec. 2, 2019), <https://www.washingtonexaminer.com/news/first-black-woman-to-win-top-literary-prize-says-cultural-appropriation-is-total-nonsense> [<https://perma.cc/LN87-MF6D>]. More recently, Percival Everett, a Black British novelist nominated for the Booker Prize, stated that the “‘appropriation of anything if well intended is acceptable in art.’” David Sanderson, *White Artists Can Use Black Imagery, Says Booker Nominee Percival Everett*, TIMES (UK) (Oct. 17, 2022), <https://www.thetimes.co.uk/article/white-artists-can-use-black-imagery-says-booker-nominee-percival-everett-n78dzfwwc> [<https://perma.cc/CBG9-BQBE>] (Everett was defending the painting of Emmet Till by white artist Dana Schultz, who had been criticized for cultural appropriation that the subject was not hers to paint); *see also* REKDAL, *supra* note 20, at 35–38 (critiquing Shultz’s painting, *Open Casket*, as “further dehumaniz[ing] Till. . . . [and] accidentally mimic[king] the dehumanizing rhetoric used to describe Black bodies.”).

91. *See Inappropriate Appropriation*, PEN AM. (Apr. 3, 2007), <https://pen.org/inappropriate-appropriation> [<https://perma.cc/83BP-HWKG>].

92. Parul Sehgal, *Is Cultural Appropriation Always Wrong?*, N.Y. TIMES (Sept. 29, 2015), <https://www.nytimes.com/2015/10/04/magazine/is-cultural-appropriation-always-wrong.html> [<https://perma.cc/923F-LX2F>]; *see also* Morton, *supra* note 76 (“The point is that artists imagine the experiences of others by virtue of a common humanity. . . . [I]magining other lives is part of the job.”).

93. Coombe, *supra* note 89, at 251–52.

94. Tsosie, *supra* note 61, at 347.

95. Coombe, *supra* note 89, at 280.

the issue of cultural appropriation in a manner that links issues of cultural representation with a history of political powerlessness.<sup>96</sup> Additionally, this political powerlessness extends to the publishing world. As discussed below, in Section II.B.3, the publishing world is overwhelmingly white; over eighty percent of published books are by white authors.<sup>97</sup> Some theorists, such as Nourbese Philip argue that the racism in the publishing world is a greater problem than racism of “the individual white writer.”<sup>98</sup> By disregarding the reality of publishing, the Romantic position that an author should be free to write anything “purports to be apolitical, but manages only to be ahistorical and blind to relations of power.”<sup>99</sup> The power relations consist of “the network of institutions and organizations that reinforce each other in the articulation of systemic racism.”<sup>100</sup>

Between the extremes of Orientalism and Romanticism is the practical and historical reality that outsiders culturally appropriate stories, designs, images, and motifs. An absolute or categorical rule prohibiting or permitting all cultural appropriation is impractical.<sup>101</sup> As Edward Said argued, while we should “acknowledge the massively knotted . . . histories of special but nevertheless overlapping and interconnected experiences—of women, of Westerners, of Blacks, of national states and cultures—there is no particular intellectual reason for granting each and all of them an ideal and essentially separate status.”<sup>102</sup> Since cultural appropriation is not regulated by law, it can be understood as a question of ethics and politics.<sup>103</sup> As the writer Kit de Waal explained:

When you have lost everything as a nation or a tribe or a culture,  
like the Native Americans who have lost their land and have

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96. *Id.* at 272; Coombe, *supra* note 19, at 88.

97. Serena Puang, *The Real Problem with ‘American Dirt,’* YALE DAILY NEWS (Feb. 14, 2023), <https://yaledailynews.com/blog/2023/02/14/puang-the-real-problem-with-american-dirt> [<https://perma.cc/S9WT-5QJ6>]; *see supra* text accompanying note 77.

98. Philip, *supra* note 77, at 102.

99. Coombe, *supra* note 19, at 78.

100. Philip, *supra* note 77, at 102; *see also* BORROWED POWER, *supra* note 3, at 7–9.

101. *See* Philip, *supra* note 77, at 101–02 (arguing against a categorical rule because it “is essentially unenforceable” and “would not ensure that writers from those [marginalized] cultures or races would get published any more easily.”); *see also* Tsosie, *supra* note 61, at 356–57 (arguing against categorical rules, but instead, for “limited rights to control cultural expression in order to avoid certain tangible group harms” and acknowledging that “the remedy for each category [of cultural appropriation] will arguably be different, and thus, it does not seem feasible to issue a broad, ‘one size fits all’ right to control cultural expression.”).

102. REKDAL, *supra* note 20, at 87 (quoting Said).

103. *See supra* text accompanying note 77; Coombe, *supra* note 19, at 93 (these “are not *legal* questions to be addressed in terms of asserting rights, but *ethical* ones to be addressed in terms of moral and political commitments.”).

been reduced to the role of savages in cowboy films, or you are treated like shit and addressed by the president of the US as thieves and rapists . . . , what remains—things like language or food or the sombrero or the headdress—becomes doubly important and maybe to some people disproportionately important. . . . They mean a whole culture, they mean everything because they represent what was lost.<sup>104</sup>

De Waal, in what could be a response to Romantic views held by those such as Lionel Shriver's, gave this advice to writers: "when those people say there is no such thing as cultural appropriation and insist that we can do what we want [as writers], we need to think again of the impact of taking another's story and using it as we want."<sup>105</sup> She continued, "when we become the other we need always to act with respect and recognise the value of what we discover, show by our attitudes and our acknowledgments that we aren't just appropriating but are seeking to understand."<sup>106</sup> This understanding should include an understanding of "the actual histories of colonization."<sup>107</sup>

A final consideration, mentioned above, of this broader debate is the argument Matthes makes that "there is general agreement that if cultural appropriation is morally objectionable, it is only objectionable when a member of a dominant cultural group appropriates from a member of a marginalized group . . . ."<sup>108</sup> As a result, Matthes claims that rather than refer to appropriation of insider groups by outsider groups, we should refer to the appropriation of marginalized groups by dominant groups.<sup>109</sup>

### *B. Harms to Insider or Marginalized Cultures*

When a literary work contains elements of cultural appropriation, it risks harming the insider or marginalized culture by "silencing, exploitation, misrepresentation, or offense."<sup>110</sup> In considering these harms, especially when looking at a work of literature, it is important to recognize that sometimes a creative work may be judged a failure both as a harmful cultural appropriation and/or as a poorly crafted work. For example, in discussing the controversy

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104. Kit de Waal, *Don't Dip Your Pen in Someone Else's Blood: Writers and 'the Other,'* IRISH TIMES (June 30, 2018), <https://www.irishtimes.com/culture/books/don-t-dip-your-pen-in-someone-else-s-blood-writers-and-the-other-1.3533819> [https://perma.cc/JL26-DURD].

105. *Id.*

106. *Id.*

107. Coombe, *supra* note 89, at 283.

108. Matthes, *supra* note 57, at 347.

109. *Id.* This Article uses the terms interchangeably.

110. *Id.* at 343, 345, 348. Matthes, *supra* note 39, at 1003.

over Anders Carlson-Wee's poem "How-To" as a failure based on racist stereotypes, Rekdal also asserts that it fails because it is "the performance of a didactic message, not a fully fleshed character study."<sup>111</sup> Below, five broad categories of harm are discussed.

*1. Does the Work Contain (Unconscious) Racist Stereotypes or Rely on Sentimental Melodrama?*

Cultural appropriation of objects can be a form of physical theft—as in Lord Elgin's appropriation of the Parthenon marbles.<sup>112</sup> Subject appropriation in literature, however, results in different types of harm than physical theft; harm which may not be intentional.<sup>113</sup> One form of harm is "cultural degradation," harming the "integrity and identities of cultural groups."<sup>114</sup> For instance, a writer may not intend to cause harm by inscribing racist stereotypes into a character, but may unconsciously do so because "writing a character well is based on imagining extremely specific details about his or her background" and it is almost impossible to get all the details about another culture right.<sup>115</sup>

Moreover, as discussed above, society's value judgments shift over time. So, a Pulitzer Prize-winning novel by a white writer, such as William Styron's *The Confessions of Nat Turner* (1967),<sup>116</sup> might be subsequently criticized as "an appeal to the White male imagination of both Black men and Southern women, [by using] sexist and racist tropes" in describing Turner's rape fantasies, tropes which arguably cannot be rescued because they are too reductive.<sup>117</sup> A similar criticism can be made for the poem "Pondy Woods" by Robert Penn Warren, the white Southern, Pulitzer Prize-winning novelist and poet.<sup>118</sup> The poem describes a lynching in 1926 of a fugitive black

111. REKDAL, *supra* note 20, at 58–61. The critical reception to this poem is discussed below in Section II.B.5.

112. See SCAFIDI, *supra* note 26, at 50.

113. A marginalized culture may consider the cultural appropriation to be theft, but as mentioned above, it is not legally cognizable. See Coombe, *supra* note 19, at 79, 92–93.

114. BORROWED POWER, *supra* note 3, at 8–9.

115. See REKDAL, *supra* note 20, at 48 (acknowledging that it is easier said than done to avoid writing racist stereotypes for this reason); see also Philip, *supra* note 77, at 103 ("The danger with writers carrying their unfettered imaginations into another culture . . . is that without careful thought, they are likely to perpetuate stereotypical and one-dimensional views of this culture.").

116. WILLIAM STYRON, *THE CONFESSIONS OF NAT TURNER* (1967).

117. REKDAL, *supra* note 20, at 65–70. Rekdal admits that "By insisting that literary characters conform to political virtues that exactly duplicate my own, I risk misreading a text according to its reflection of my own historical moment." *Id.* at 70. However, she goes on to argue that some tropes are beyond rescue. *Id.*

118. ROBERT PENN WARREN, *SELECTED POEMS, 1923–1943*, at 84–86 (1944).

man on the run from a posse after apparently assaulting a white woman.<sup>119</sup> Contemporary poet and critic, Major Jackson, reads the poem's "argument [as] attempt[ing] to deify and consecrate the dominance and superiority of white, intelligent men over perceived instinct-driven black men."<sup>120</sup> Consequently, Jackson believes that while Warren may have been praised in the 1930s, today he "would be . . . most likely excoriated for such retrograde beliefs about black folk" and "despite the author's intention, [readers] would likely receive the speaker in the poem as an embodiment and mouthpiece of the author's own narrow-minded ideas about non-white peoples."<sup>121</sup>

Racial stereotypes and sentimental racism are two harms of cultural appropriation that may cause offense because misleading or erroneous depictions "can have corrosive effects on the integrity of an exploited culture" or can "erode[] or degrade[] cultural identity."<sup>122</sup> Stereotypes also underlie systems of dominance and control, such as the Orientalist views of the Middle East, which Said argued was a basis for imperialistic dominance.<sup>123</sup> An example of sentimental racism in literature is William Meredith's poem, "Effort at Speech," which was praised in the 1990s for its sapphic meter and white speaker's attempt to empathize with a young black mugger.<sup>124</sup> Today the poem is more likely to be criticized.<sup>125</sup> It describes the mugging as: "Darkness takes me, an arm around my throat and / *Give me your wallet.*"<sup>126</sup> After the mugger runs off with the torn half of the speaker's wallet, the speaker imagines that the mugger is thinking, "*Next time a switchblade,*" and describes him as "a tall boy running, / Fifteen, sixteen, dressed thinly for the weather. / Reaching the street light, he turns a brown face briefly."<sup>127</sup> The speaker then thinks to

119. *Id.*; Major Jackson, *A Mystifying Silence: Big and Black*, 36 AM. POETRY REV. 19, 19 (2007).

120. *Id.*

121. *Id.* Warren's racist views evolved in the 1960s, when he argued for racial integration and supported the Civil Rights Movement, although this transformation has been called into question. See Dennis Negrón, "An Extraordinary Meditation on the Self": Robert Penn Warren's Writings on Race iii, 97 (Dec. 2019) (Ph.D. dissertation, Middle Tennessee State University) (ProQuest), <https://www.proquest.com/docview/2394920955/abstract/53C01D08EA594E36PQ/1?accountid=7082> [<https://perma.cc/8HKA-GG8Q>].

122. BORROWED POWER, *supra* note 3, at 9–10 (also noting that these harms can extend to "political praxis" because "[t]o the extent that cultural appropriation can lead to cultural degradation, the ability to practice identity politics may be compromised.").

123. *Id.* at 12 (noting that "[c]oncerns about the creation and perpetuation of stereotypes can be applied outside of the Orient as well.").

124. REKDAL, *supra* note 20, at 5–9; William Meredith, *Effort at Speech*, NEW YORKER, Dec. 6, 1969, at 58.

125. See REKDAL, *supra* note 20, at 5–9; Meredith, *supra* note 124, at 58.

126. Meredith, *supra* note 124, at 58.

127. *Id.*

himself that his attacker is “*Luckless and lied to, how can a child master / human decorum?*”<sup>128</sup> The poem ends with the speaker’s realization that both he and the mugger have failed, and that they are from such different worlds that discourse is impossible:

Error like from Babel mutters in the places,  
 Cities apart, where now we word our failures.  
 Hatred and guilt have left us without language  
 who might have held discourse.<sup>129</sup>

Meredith’s poem fails, according to Rekdal, because instead of presenting a more accurate, complex, and compassionate portrait, Meredith relies on racist stereotypes.<sup>130</sup> The imagery is of a “darkness that symbolize menace, social decay, or violence” and the not-unexpected (after-the-fact) mugging by a young man of color.<sup>131</sup> The poem shows the two are from different worlds, “one marked by arbitrary violence and speechlessness, one defined by empathy, art, and civility.”<sup>132</sup>

How can authors create a sense of empathy in characters outside of their own racial identity without devolving to racial stereotypes? As Jackson urges, “[r]ace is still the most controversial social phenomenon that defines America as a country,” and for that reason (and because “[p]oems] ‘exist to say the unsayable’”) poems must address race.<sup>133</sup> Jackson argues that poems about race are successful when they create empathy, when they allow us “to inhabit the consciousness of others.”<sup>134</sup> He gives as an example a poem by Sharon Olds, “On the Subway,”<sup>135</sup> which he views as honest in describing the white speaker’s fear of the black man on the subway, yet the poem also indicates that the speaker is aware of “the advantages she enjoys at the expense of his subjugation.”<sup>136</sup> However, I am not

128. *Id.*

129. *Id.*

130. “Compassionate approximations, if they want to avoid becoming cultural appropriations, cannot first be sentimental projects.” REKDAL, *supra* note 20, at 11–12, 89–90, 90–91. Rekdal discusses *Uncle Tom’s Cabin* as an example of sentimental racism, even if it succeeded as a protest novel. *Id.* at 89–90. Rekdal admits that she liked the poem when she first read it twenty years earlier, and discusses how she might continue to teach the poem, recuperating it by “let[ting] Meredith’s poem become something both more difficult and more instructive . . . by using [it] as a vehicle for a conversation we might have around the co-construction of Whiteness and Blackness in literature[.]” *Id.* at 11.

131. *Id.* at 8.

132. *Id.* at 9.

133. Jackson, *supra* note 119, at 20–21.

134. *Id.* at 21. Rekdal questions whether empathetic portrayals are even possible. REKDAL, *supra* note 20, at 52–56.

135. SHARON OLDS, *On the Subway*, in *THE GOLD CELL* 5 (1987).

136. Jackson, *supra* note 119, at 24.

sure today's reader would agree that the poem avoids stereotypical racist descriptions. Like Meredith, Olds refers to the black man as a "boy," which is a racial epithet, and Olds also describes him as having "the / casual cold look of a mugger."<sup>137</sup> Like Meredith, Olds could be said to rely on racist stereotypes in imagining how much the man's life differs from hers. For example, the speaker thinks of how "I am / living off his life, eating the steak / he does not eat, as if I am taking / the food from his mouth."<sup>138</sup> Olds' poem also assumes a violence that relies on racist stereotypes, when the speaker imagines how "he could take [my life] so easily and / break across his knee like a stick the way his / own back is being broken."<sup>139</sup>

As Rekdal has acknowledged, it is not an easy task to imagine the details of a life outside of one's subject position or identity.<sup>140</sup> Common advice is that a writer who appropriates content or subject matter from another culture should thoroughly research that culture. As writer Kit de Waal advises,

we must remember that no one person can speak for a nation. . . . There are as many diverse ways to be a Muslim, or an Indian or a Jamaican as there to be an Irish person, a Catholic or an American. . . . Read widely, interrogate what we learn, talk to people, to elders, to the young generation, . . . go places, open your ears and eyes and listen with your heart.<sup>141</sup>

Even if a work manages to be an anti-racist cultural appropriation, it may nevertheless be viewed as a harmful appropriation for other reasons discussed below, such as if it silences or exploits (profits from) the marginalized community.

## *2. Does the Work Risk Becoming the Dominant Narrative for the Insider Culture? Does It Silence the Marginalized Culture?*

In addition to damaging stereotypes and sentimental racism, a related concern is that when a story is told by a dominant outsider, it "risks becoming the authenticating narrative for the reading public."<sup>142</sup> Matthes considers how cultural appropriation has the "power

137. OLDS, *supra* note 135, at 5.

138. *Id.*

139. *Id.* at 5–6.

140. REKDAL, *supra* note 20, at 48, 158. As a writer, Rekdal also discusses her cultural appropriation in her own writing which she now questions. *Id.* at 158.

141. Kit de Waal, *supra* note 104; *see also* Philip, *supra* note 77, at 107 (giving example of successful appropriation by writer Margaret Laurence, and claiming that writers need a "sense of humility . . . . [and] must be willing to learn . . . . They cannot enter as oppressors . . .").

142. REKDAL, *supra* note 20, at 26; Mishan, *supra* note 21 (giving an example in the



to oppress and silence” a marginalized community.<sup>143</sup> Matthes argues that this is a result of the way the writer “interacts with *dominating systems*,” because as a member of a dominant cultural group, the writer already has a “‘credibility excess’ [meaning that] their credibility is inflated beyond what is epistemically warranted.”<sup>144</sup> As a result, readers or listeners believe that members of the marginalized group “have no special credibility with respect to their experience . . . .”<sup>145</sup> This power imbalance and power to suppress a culture is also discussed by legal scholar Rebecca Tsosie, who looks at the historical suppression of Native Peoples’ society and culture by the government from the late 1800s until the 1934 Indian Reorganization Act.<sup>146</sup> During this time, in which “Native ceremonies, languages and traditional practices [were suppressed] in the attempt to colonize, ‘civilize,’ and assimilate the Indian people,” they were depicted by white writers as a “vanishing” race or “noble savage.”<sup>147</sup> Native people “had no voice and no agency.”<sup>148</sup> The dehumanizing stereotypes justified “the historical mistreatment of Indian people by the federal government,” through genocide, forced sterilization, and land disenfranchisement.<sup>149</sup>

A recent literary example of “credibility excess” concerns the heated discussion surrounding Jeanine Cummins’ novel, *American Dirt*.<sup>150</sup> A primary objection was that the work contained inaccuracies, and since it was selected as an Oprah book club pick, it would become the dominant narrative and “perpetuate troubling stereotypes about Latinxs and other people of color.”<sup>151</sup> Writers such as

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art world from the installation by British Damien Hirst, who made a gold replica of a brass head dating back to 14th or 15th century Yoruba—one Nigerian artist feared that because the Hirst gold head would be seen by so many people, “the narrative will shift” so that a contemporary Nigerian artist will be told, “Your work reminds me of Damien Hirst’s ‘Golden Head.’”

143. Matthes, *supra* note 57, at 345; Philip, *supra* note 77, at 101 (“The ‘right’ to use the voice of the Other, has, however, been bought at great price—the silencing of the Other . . .”).

144. Matthes, *supra* note 57, at 349, 351.

145. *Id.* at 351–52. Matthes points out that individuals from a marginalized group can also be held to speak for the entire group because “the same social inequalities that can lead to silencing through credibility deficits when those with epistemic authority speak for the marginalized can also lead to unwarranted credibility excesses: namely, cases in which members of socially marginalized groups are burdened with ‘speaking for’ the group.” *Id.* at 352.

146. Tsosie, *supra* note 61, at 317–18.

147. *Id.*

148. *Id.* at 318.

149. *Id.* at 318–21 (Tsosie describes the following stereotypes as justifying government actions: the Princess or Squaw stereotype, the savage stereotype, the Noble Savage stereotype.).

150. JEANINE CUMMINS, *AMERICAN DIRT* (2020).

151. Vázquez, Berrera & Machado Sáez, *supra* note 25 (noting other recent books which

León Krauze, a Mexican journalist who lives in the United States, criticized the novel because its two main characters were “not emblematic” of a mother desperate to cross the border or of a cartel drug lord.<sup>152</sup> Krauze objected to the novel’s middle-class, bookstore-owner mother as not representative of the “hundreds of immigrant women” he has interviewed, who “are escaping poverty . . . , work in the fields, often struggling to feed their families. They are often fleeing drunk, abusive, or absent husbands, not an awkward love triangle with a smitten narco dandy.”<sup>153</sup> Similarly, Krauze criticized the novel’s drug lord as “pure fiction” because the novel depicts him as “a debonair, book-loving Latin lover,” not more accurately as one of “Mexico’s most dangerous and violent” criminals.<sup>154</sup>

Additional objections to *American Dirt* regarded the author’s having received a million-dollar advance from the publisher and praise by prominent authors, including Stephen King, Sandra Cisneros, Reyna Grande, and Julia Alvarez.<sup>155</sup> Yet, as novelist Richard Z. Santos explained, before the publication date,

[m]ore and more Latinx writers started to question why the publishing industry was so eager to anoint Cummins’s book as the savior of our fractured era. Esmeralda Bermudez . . . asked why this novel garnered so much attention and money when so many Latinx writers had been writing better books about the border and immigration for years?<sup>156</sup>

The controversy over *American Dirt* shows how a work may be deemed harmful cultural appropriation when it becomes the dominant narrative for a marginalized culture, but as the next section discusses, a work may also be criticized if it profits from the marginalized culture—and *American Dirt* shows it is hard to separate these two harms.

### 3. *Does the Work Profit from or Exploit the Marginalized Culture?*

Some make the argument that “[s]ubject appropriation could deprive insiders of an audience and, consequently, harm their

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were “penned by white authors who wish to portray the experiences of people of color,” such as “Kathryn Stockett’s *The Help*,’ [and] Ben Winters’ *Underground Airlines* . . .”).

152. Krauze, *supra* note 25.

153. *Id.*

154. *Id.*

155. Richard Z. Santos, *The Real Problem with ‘American Dirt,’* TEX. MONTHLY (Feb. 5, 2020), <https://www.texasmonthly.com/arts-entertainment/american-dirt-book-controversy> [<https://perma.cc/MKY2-26QX>].

156. *Id.*

economic interests.”<sup>157</sup> This harm has been described as “deprivation of material advantage,”<sup>158</sup> and can be exacerbated for minority writers because as mentioned above, “colonial history continues to shape publication policy” of white privilege.<sup>159</sup> This harm is also sometimes referred to as “marketplace colonialism,” which occurs when white writers are published or marketed at the expense of non-white artists.<sup>160</sup> A recent survey showed that although publishers now select more diverse authors, the industry is still very white; for example, “[n]on-Hispanic white people account for 60 percent of the U.S. population; in 2018, they wrote 89 percent of the books in our sample.”<sup>161</sup> The numbers for 2022 were not much better—eighty three percent white—even though publishers tried to diversify.<sup>162</sup>

The controversy over Cummins’ novel, *American Dirt*, was fueled, in part, because of marketplace colonialism.<sup>163</sup> As discussed above, the novel received a very large advance and praise from well-known authors.<sup>164</sup> Many viewed this success to have been at the expense of minority authors because of “the overwhelming whiteness of the publishing industry . . . .”<sup>165</sup> Similarly, a non-literary example is the controversy over the film about Nina Simone (*Nina*), in which Zoe Saldana played the part of Nina Simone.<sup>166</sup> Critics objected to the film because “casting the lighter skinned Afro-Latina actress, rather than someone who better resembled Simone, was an attempt to make the film more marketable instead of staying true to the singer and the life that inspired her art. The makeup and prosthetic nose, they also charge, were sloppy and poorly executed.”<sup>167</sup>

157. YOUNG, *supra* note 1, at 114–15; *see also* SCAFIDI, *supra* note 26, at 10.

158. BORROWED POWER, *supra* note 3, at 8, 14.

159. REKDAL, *supra* note 20, at 83.

160. *Id.* at 82–83 (giving the example of Cummins’ book *American Dirt*).

161. Richard Jean So & Gus Wezerek, *Just How White Is the Book Industry?*, N.Y. TIMES (Dec. 11, 2020), <https://www.nytimes.com/interactive/2020/12/11/opinion/culture/diversity-publishing-industry.html> [<https://perma.cc/H28X-76P3>].

162. Puang, *supra* note 97.

163. REKDAL, *supra* note 20, at 82–83.

164. Vázquez, Berrera & Machado Sáez, *supra* note 25.

165. *Id.*

166. Leah Donnelly, *Ta-Nehisi Coates on the Fight over ‘Nina Simone’s Face,’* NPR: CODESWITCH (Mar. 19, 2016, 9:25 AM), <https://www.npr.org/sections/codeswitch/2016/03/19/470721842/ta-nehisi-coates-on-the-fight-over-nina-simones-face> [<https://perma.cc/4G7C-SY5P>].

167. *Id.* The NPR story quotes the criticism made by Coates about appropriation:

We are talking about people who think it’s fine to profit off her music while heedlessly contributing to the kind of pain that brought that music into being. To acknowledge that pain, to consider it in casting, would be inconvenient—as anti-racist action always is. It would mean giving an opportunity to someone who’s actively experienced the kind of pain that plagued Simone.

*See id.*; *see also* Tsosie, *supra* note 61, at 322–31, 357 (describing cultural appropriation

Does this mean that White writers should not try to publish works about an insider or marginalized culture? Perhaps some would make this argument based on the “social responsibility” of the writer,<sup>168</sup> but as Rekdal points out, if a writer makes the ethical decision to wait for publishing equality, “you’ll be waiting a *very* long time.”<sup>169</sup> Likewise, Young rejects the marketplace colonialism argument because “no one has a right to an audience for a work of art on a particular subject matter,” and furthermore, “it is likely that outsider books open up new markets for insider books.”<sup>170</sup> The statistics for the publishing industry seem to refute Young’s claim about opening the market, however other theorists suggest that while cultural appropriation “has the potential to become a form of colonialist exploitation, it may simultaneously benefit the source community seeking to preserve or define its identity.”<sup>171</sup>

#### 4. *Does the Work Exploit the Insider Culture by Revealing Private or Sacred Practices?*

One of the harms Ziff and Rao discuss is the harm to a cultural object due to damaging or transforming the object, for instance, by removing it from its setting.<sup>172</sup> For intangibles, this harm could include the loss of “oral traditions . . . through disuse,” or “the commodification and desecration of activities or objects such as sacred

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of Native Americans in film and the lack of access Native Americans have to the film industry). See also Russell Contreras, *The Casting of James Franco as Fidel Castro Sparks Anger Among Latinos*, AXIOS (Aug. 9, 2022), <https://www.axios.com/2022/08/09/james-franco-fidel-castro-alina-cuba-film> [<https://perma.cc/86HJ-M7UP>] (discussing the film about Castro’s daughter, *Alina of Cuba*).

168. Philip, *supra* note 77, at 105–06 (arguing that the privileged writer has a social responsibility to “understand the privilege that has generated the idea that free choice of voice is a right,” and to “begin to work to expand the area of that right to include [marginalized voices].” Philip also argues that the writer’s responsibility may be “not to use the voice of a group their culture has traditionally oppressed,” but that this is an individual decision.)

169. REKDAL, *supra* note 20, at 88.

170. YOUNG, *supra* note 1, at 110, 115–16. Young points out that while Edward Said rejected Kipling’s Imperialist assumptions in *Kim*, its publication resulted in an explosion of English literature about India. *Id.* at 110. See also BORROWED POWER, *supra* note 3, at 14 (“It might be claimed . . . that the success of those who appropriate the voice of Native writers has opened avenues for other writers.”).

171. SCAFIDI, *supra* note 26, at 97. See also Mishan, *supra* note 21 (giving an example of a cultural appropriation by Christian Dior of a Romanian folk costume, which resulted in “a boost in sales” for the “artisans specializing in the original costume . . . after news of the appropriation circulated online.”).

172. BORROWED POWER, *supra* note 3, at 8, 12 (explaining the claim for good stewardship but extending it to other claims for intangibles).

rituals or images.”<sup>173</sup> In terms of literary appropriation, this harm involves revealing private or sacred practices. As Scafidi observes, “[w]hile cultural exchange is not only valuable but inevitable, subaltern source communities and cultural products of religious or spiritual significance are particularly susceptible to damage through misappropriation.”<sup>174</sup> For example, sneaking into a pueblo and filming sacred dances can harm the insider community by destroying the symbolic value or experience for the community, or by misrepresenting or disrespecting the ceremony.<sup>175</sup> Young also cautions that it is an ethical violation of insiders’ privacy when the appropriation is obtained by stealth or coercion, such as Sir Richard Burton’s secret visit to Mecca on a pilgrimage in the 1850s (which was forbidden for non-Muslims) and his subsequent book, *Personal Narrative of a Pilgrimage to El-Madinah and Meccah*.<sup>176</sup>

Despite these concerns, not all appropriations of the sacred are considered offensive by the insider community. For example, Tony Hillerman’s novels about the Navajo (Dineh) nation and spirituality<sup>177</sup> were well-regarded by the Dineh community, which awarded him with a Special Friend of the Dineh award.<sup>178</sup> However, while the Dineh community may have given Hillerman this award in the past,

173. *Id.* at 13–14.

174. SCAFIDI, *supra* note 26, at 107; *see also* Tsosie, *supra* note 61, at 314 (describing cultural harm of “use of Native religions by non-Native people,” for instance the belief “that even one mistake in the wording of a song or the placement of a design during a ritual can have profound and negative consequences.”).

175. SCAFIDI, *supra* note 26, at 103–07 (an example of a harmful misrepresentation was the American government’s misconstruing the Ghost Dance at Wounded Knee as an uprising, rather than a sacred dance, which led to a massacre.); *see also* Riley, *supra* note 64, at 125.

176. YOUNG, *supra* note 1, at 125–26; RICHARD F. BURTON, *PERSONAL NARRATIVE OF A PILGRIMAGE TO EL-MADINAH AND MECCAH* (2d. ed. 1857), <https://www.loc.gov/item/49031226> [<https://perma.cc/97A9-QFYU>]. Young’s point concerns an ethical violation of privacy, but a cause of action for invasion of privacy is a common law tort which would be difficult for a community to assert. The Restatement Second of Torts recognizes four distinct invasions of privacy: (1) unreasonable intrusion; (2) appropriation of name or likeness; (3) unreasonable publicity; and (4) false light. *RESTATEMENT (SECOND) OF TORTS* § 652(a) (1977).

177. Beverly G. Six, *Slaying the Monsters: Native American Spirituality in the Works of Tony Hillerman* (1998) (Ph.D. dissertation, Texas Tech University) (on file with the University of Saskatchewan Library).

178. YOUNG, *supra* note 1, at 150. Interestingly, Rekdal uses Hillerman as an example of an outsider profiting at the expense of the insider community, which she views as one problematic aspect of appropriation. REKDAL, *supra* note 20, at 25–26 (pointing out that Hillerman and Picasso were the ones “who became rich and famous” and that even a relatively small-press poet who may not have much power but who appropriates becomes part of the historical problem of being part of a nation that has “materially profited from and profoundly harmed the cultures we are now influenced by.”).

it is unclear how contemporary Dineh insiders view his novels or how they will be received in the future, because views about what is appropriate change over time “as we readjust our critical understanding of race and representation, and with it our ideas of canonicity and inclusion.”<sup>179</sup>

##### 5. *Does the Work Culturally Appropriate Language in a Way That Causes Offense or Misrepresentation?*

Writing in dialect can also result in harmful cultural appropriation. For example when white authors write in Black dialect, “without any clear understanding of where the dialect comes from, or why people spoke with that dialect in the first place” the work may be seen as harmfully appropriative and offensive.<sup>180</sup> Linguist John McWhorter points out that “[w]hites writing Black English in 1895 almost always meant it as either disparagement or infantilization,” but today it should be evaluated on a case by case basis.<sup>181</sup> Nonetheless, some Black writers, such as Roxane Gay, have admonished white writers never to use dialect.<sup>182</sup> Unlike Gay, others such as Rekdal do not categorically “argue against using dialect or Black English” in a work; instead, Rekdal argues for the accurate use of dialect, which “allow[s] a reader to feel the physical complexity of a person’s speech patterns,” which depend on “bodily rhythm, what you might call the twang and rasp of speech.”<sup>183</sup> It is still easy to get dialect wrong, because as McWhorter points out, “language is something that all of us can distort even when it’s our own language, because so very much of communication is subconscious.”<sup>184</sup>

An example of a clash over harmful cultural appropriation, due in part to dialect, involves the poem “How-To,” by Anders Carlson-Wee, published on *The Nation*’s website in 2018. The editors ultimately

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179. REKDAL, *supra* note 20, at 168–69; *see also* Coombe, *supra* note 19, at 79 (describing how “[t]he Canadian culture industries were accused of stealing the stories of Native peoples. Native artists asked if ‘Canadians had run out of stories of their own.’”).

180. Lydia Bleyle, *Give Me Back My Language! The Harmful Nature of Language Appropriation for American Minorities*, MEDIUM (May 5, 2020), <https://medium.com/literature-and-social-change/give-me-back-my-language-d8244c817067> [<https://perma.cc/T33H-D846>].

181. John McWhorter, *There’s Nothing Wrong with Black English*, ATLANTIC (Aug. 6, 2018), <https://www.theatlantic.com/ideas/archive/2018/08/who-gets-to-use-black-english/566867> [<https://perma.cc/L373-GMLB>].

182. *Id.*

183. REKDAL, *supra* note 20, at 58–61, 62. Rekdal discusses the use of dialect in the poem “How-To” by Anders Carlson-Wee. *Id.* at 58–62.

184. McWhorter, *supra* note 181.

apologized for publishing it “after [receiving] a firestorm of criticism on social media over a white poet’s attempt at black vernacular.”<sup>185</sup> The fourteen-line poem is a narrative poem in the voice of a homeless person:

If you got hiv, say aids. If you a girl,  
 say you’re pregnant—nobody gonna lower  
 themselves to listen for the kick. People  
 passing fast. Splay your legs, cock a knee  
 funny. It’s the littlest shames they’re likely  
 to comprehend. Don’t say homeless, they know  
 you is. What they don’t know is what opens  
 a wallet, what stops em from counting  
 what they drop. If you’re young say younger.  
 Old say older. If you’re crippled don’t  
 flaunt it. Let em think they’re good enough  
 Christians to notice. Don’t say you pray,  
 say you sin. It’s about who they believe  
 they is. You hardly even there.<sup>186</sup>

After the poem was published, writers criticized its use of Black dialect, especially since it was written by an “educated, White, and middle class” poet.<sup>187</sup> For instance, Nate Marshall, a Chicago poet, objected that “I’m trying to understand the voice in this poem . . . It feels offensive to me and like it’s trafficking inappropriately in Black language . . .”; writer Roxanne Gay, warned, “Don’t use AAVE [African-American Vernacular English]. Don’t even try it . . . Know your lane.”<sup>188</sup> Similarly, Rekdal, who admitted she was not an expert in linguistics, analyzed other problems with Carlson-Wee’s poem, including difficulty locating or identifying the voice of the speaker, and “hav[ing] no clear idea *how* the speaker’s particular voice matters in the poem outside of triggering the reader’s potential voyeurism.”<sup>189</sup> Rekdal’s critique blurs the boundaries of cultural appropriation and problems with craft. Rekdal clarifies that “[i]f I can’t easily name or even physically imagine the narrator, the poem becomes the performance of a didactic message, not a fully fleshed character study,”

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185. Jennifer Schuessler, *A Poem in The Nation Spurs a Backlash and an Apology*, N.Y. TIMES (Aug. 1, 2018) (explaining that the poet also apologized for the poem). The poem is no longer available on the journal’s website.

186. REKDAL, *supra* note 20, at 58–59 (quoting poem in full); Anders Carlson-Wee, *How-To*, NATION (July 5, 2018), <https://www.thenation.com/article/archive/how-to> [<https://perma.cc/73M5-BRZ9>].

187. REKDAL, *supra* note 20, at 59.

188. Schuessler, *supra* note 185.

189. REKDAL, *supra* note 20, at 60–62.

and as a result, it comes across as “identity *otherness*,” “because the exact racial or regional identity of the poem’s speaker gives its readers no more complicated a sense of how visibility might be socially coded, enforced, or personally experienced.”<sup>190</sup>

While Rekdal makes a good case for her argument that Carlson-Wee’s poem fails on the level of craft, McWhorter, a linguist, analyzes the dialect in “How-To” and concludes that Carlson-Wee “got it [Black English] right.”<sup>191</sup> Although McWhorter admitted that some linguists might disagree with his evaluation, he questions whether it is counterproductive to want white writers “to understand black pain, . . . to empathize,” but then “muzzle[]” the “basic human creativity, as well as the fundamental drive to share between cultures . . . .”<sup>192</sup> These disagreements over Carlson-Wee’s poem illustrate Rekdal’s assertion that literary appropriation can be more offensive than other types of appropriation because literature is intimately linked to identity, and consequently readers and critics will respond in different ways, having the ultimate say about whether a work is such a failure that it should be removed from the literary canon.<sup>193</sup>

### III. THE APPROPRIATION OF OTA BENGA

Ota Benga was an African from the Congo, who lived from about 1883–1916,<sup>194</sup> at a time when King Leopold II ruled with a reign of terror.<sup>195</sup> Villages were destroyed, Africans worked as unpaid laborers to harvest rubber and elephant tusks; workers were beaten and mutilated and chained.<sup>196</sup> Observers described “bloody raids of villages . . . , accompanied by mutilation, rape, and the

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190. *Id.* at 61.

191. McWhorter, *supra* note 181. McWhorter analyzes the linguistics of the poem in greater detail in his *Lexicon Valley* podcast *White Author, Black English. Problem?*, transcript available at <https://slate.com/transcripts/ZXkvS0xJTWIZM3dCQ2w3aFICVktqQ1ZlQTV6STVhTmhPOUgrL3lueWtsTT0=> [<https://perma.cc/24MT-WL22>].

192. McWhorter, *supra* note 181.

193. REKDAL, *supra* note 20, at 34, 158. Another example of cultural appropriation of Black dialect in another context was the critique of Asian American film star, Nora Lum, known as Awkwafina, for talking in “blaccent.” Andre Ellington, *Awkwafina Leaves Twitter After Addressing Accusations of Appropriating Black Culture*, HUFFINGTON POST (Feb. 7, 2022, 7:52 PM), [https://www.huffpost.com/entry/awkwafina-leaves-twitter-cultural-appropriation\\_n\\_62017947e4b09170e9d49c8a](https://www.huffpost.com/entry/awkwafina-leaves-twitter-cultural-appropriation_n_62017947e4b09170e9d49c8a) [<https://perma.cc/A9TY-CBYE>].

194. PAMELA NEWKIRK, SPECTACLE: THE ASTONISHING LIFE OF OTA BENGA 31, 241–43 (2015) (Benga was listed as seventeen years old on the passenger list in 1904. Benga died in 1916 and it is uncertain how old he was.).

195. *Id.* at 20; PHILLIPS VERNER BRADFORD & HARVEY BLUME, OTA: THE PYGMY IN THE ZOO 104 (1992).

196. NEWKIRK, *supra* note 194, at 120.



brutal enslavement of men, women, and children forced to meet impossibly high rubber quotas.”<sup>197</sup>

In 1904, Ota Benga was brought from the Congo to the United States by American missionary and explorer, Samuel Phillip Verner, who had been hired by William John McGee, the head of the St. Louis World’s Fair’s ethnology department and the Smithsonian’s Bureau of American Ethnology.<sup>198</sup> As part of the 1904 World’s Fair exhibitions, McGee had planned a global village comprised of “all the world’s race,” and sent Verner to Africa to find “twelve pygmies—including ‘One Pygmy Patriarch or chief, One adult woman, preferably his wife . . . Two infants . . .’ and ‘Four more pygmies, preferably adult but young, but including a priestess and a priest, or medicine doctors.’”<sup>199</sup>

Verner had already been to Africa in 1896 as a missionary, and several years later, had brought back two Congolese orphans, Kondola and Kassongo.<sup>200</sup> He had established himself as an “Africanist,” and was hired by McGee as a leading expert<sup>201</sup> for the purpose of bringing pygmies to exhibit in the World’s Fair.<sup>202</sup> On his second trip to Africa, Kondola accompanied Verner as “interpreter and guide,”<sup>203</sup> and African American missionary Alonzo Edmiston also accompanied him.<sup>204</sup>

Verner told several inconsistent accounts about where and how he obtained Benga (saving him from cannibals, from army troops, buying him from a chieftain, buying him from the Baschilele slave market).<sup>205</sup> While Verner did not find all the categories on McGee’s acquisition list, Verner brought nine African young men to sail with him to America, including Kondola, Benga, four pygmies and three village men.<sup>206</sup> However it is unclear whether the men were pygmies,

197. *Id.*

198. *Id.* at 108–11, 130, 149.

199. BRADFORD & BLUME, *supra* note 195, at 5, 97. The acquisition list also included four “Red Africans” and whatever settings were necessary for display, such as “one most primitive house . . . religious emblems and ceremonial objects.” *Id.*

200. *Id.* at 73, 78, 87 (Verner also brought back art and artifacts, “mineral specimens, . . . plants, seeds, parrots, two monkeys and a wildcat.”). Kondola and Kassongo were enrolled at the Stillman Institute in Tuscaloosa, but Kassongo was killed during an audience stampede at a speech given by Booker T. Washington, when an audience member shouted “fight,” but was heard as shouting “fire.” *Id.* at 93–96. Kondola accompanied Verner on his return to Africa in 1899. *Id.* at 99.

201. *Id.* at 88, 94–95, 97.

202. *Id.* at 98.

203. Karen Sotiropoulos, “Town of God:” Ota Benga, the Batetela Boys, and the Promise of Black America, 26 J. WORLD HIST. 41, 50 (2015).

204. *Id.* at 65.

205. NEWKIRK, *supra* note 194, at 117–18, 130–31.

206. MARTHA COLLINS, *Ota Benga, Part One*, in ADMIT ONE: AN AMERICAN SCRAPBOOK 12 (2016).

or what their ethnicity was.<sup>207</sup> However, all nine of the Congolese men were exhibited at the fair as pygmies.<sup>208</sup> And while they spoke five different languages, Kondola knew various languages, so the men were eventually able to communicate.<sup>209</sup> During the Fair, and over his lifetime, Benga would be referred to by different names, including Mbye Otabenga (his given name on ship's passenger list from Africa), Artiba, Autobank, Otta Bang, Otto Binga (the name he adopted sometime around 1908), and Otto Bingo (the name he went by in Lynchburg, Virginia).<sup>210</sup> Until his death in 1916, Benga would spend multiple periods on display in the United States.

The World's Fair exhibited about 10,000 people—including Native Americans, Japanese Ainu, natives from the Philippines, African Zulus and Balubas—as part of a “global village in which all of the world's people and their artifacts [were] grandly displayed, to illustrate human development from the lowest to the highest civilizations.”<sup>211</sup> The Fair also included an “Old Plantation” exhibit, “in which African American actors depicted a fictional life of black complacency in the antebellum South.”<sup>212</sup> The concept of a “global village” was not new. For at least two decades, expositions had displayed villages—“mix[ing] commerce with anthropology to exhibit the world's people and market colonial rule.”<sup>213</sup> Likewise, in 1904, the point of the St. Louis World's Fair “global village” was to demonstrate the superiority of Caucasians,<sup>214</sup> and “to highlight the United States' conquests, imperialism, and progress.”<sup>215</sup> Of all the peoples, the African pygmies were considered “the smallest people and the least advanced civilization on earth.”<sup>216</sup> They were also considered “the missing link on the evolutionary chain.”<sup>217</sup>

Geronimo, the Apache chief who had been captured by the U.S. Army and was a federal prisoner, was one of the Fair's most popular

207. Sotiropoulos, *supra* note 203, at 50, 66 n.67 (noting that “English and Boer officials at St. Louis claimed that there were no pygmies and that Verner could not have located one.”).

208. NEWKIRK, *supra* note 194, at 126, 151. Newkirk assumes “that Verner included Kondola in the fair exhibition out of desperation, since his delegation had fallen far short of the eighteen people he had promised to bring back.” *Id.* at 126.

209. Sotiropoulos, *supra* note 203, at 68.

210. NEWKIRK, *supra* note 194, at 133, 158, 229; BRADFORD & BLUME, *supra* note 195, at 16, 116.

211. NEWKIRK, *supra* note 194, at 129, 139, 154. The fair covered 1,200 acres and lasted from April 30–December 1, 1904. *Id.* at 128, 138.

212. Sotiropoulos, *supra* note 203, at 44.

213. *Id.* at 42 (noting that Antwerp's 1885 exposition, Chicago's 1893 exposition, and Belgium's 1897 exposition all displayed villages of people, including Congolese.).

214. NEWKIRK, *supra* note 194, at 138.

215. *Id.* at 129.

216. *Id.*

217. Sotiropoulos, *supra* note 203, at 66.

exhibits, and may have befriended Benga.<sup>218</sup> Benga was also popular at the Fair, especially since he was described as a cannibal. One news article read, “Have you seen Otabenga’s teeth? . . . They’re worth the 5 cents he charges for showing them . . . . Otabenga is a cannibal, the only genuine cannibal in America today.”<sup>219</sup> Although Verner had previously described Benga’s tribe as *not* being cannibalistic, now that Benga was on display, it was more sensational to maintain that Benga *was* a cannibal.<sup>220</sup> Benga’s sharp teeth were the result of filing or chipping, which was a common practice in the Congo, and a sign of bravery, not cannibalism.<sup>221</sup>

During the Fair, the crowds would poke and prod the Africans, and when the weather cooled, the Africans “were left to endure the cold in only their loincloths,” although they managed to acquire some blankets and jackets from their “neighbors.”<sup>222</sup> In addition to being exhibited, Benga was also measured and examined by scientists, and a plaster bust was made of his head.<sup>223</sup> He was also photographed and was the subject of news and academic articles.<sup>224</sup>

What was the status of all of the people in the “global village”? The members of the villages were not free to leave; about a month before the Congolese arrived, a group of Zulus ran away, and were caught and put in jail, and then returned to the Fair.<sup>225</sup> Aside from being physically appropriated as property, Benga and the others could possibly be considered to have been held in involuntary servitude,<sup>226</sup> or at the very least, appropriated and exploited to benefit the Fair’s organizers. Although four of the Congolese “signed contracts with an ‘X’ . . . that they agreed to work for Verner for twelve months and would receive pay ‘at the rate of 1 lb salt and two brasses cloth per month,’” it does not appear they were ever paid or

218. BRADFORD & BLUME, *supra* note 195, at 16–17, 114–15; NEWKIRK, *supra* note 194, at 129, 139.

219. NEWKIRK, *supra* note 194, at 157 (quoting the *St Louis Post-Dispatch*).

220. *Id.* at 131–32.

221. *Id.* at 149 (The ethnologist Frederick Starr, who studied tribes in the Congo, wrote “no girl would marry them unless their teeth are made beautiful.”).

222. *Id.* at 137.

223. *Id.* at 134–35. Casts of the bust were sent to various museums.

224. *Id.* at 134–35, 139.

225. Sotiropoulos, *supra* note 203, at 71–72 (noting that Black Americans in St. Louis considered the Zulus “to be forcibly held,” and “not only helped them escape, but harbored them in a black neighborhood . . .”).

226. See Aric K. Short, *Slaves for Rent: Sexual Harassment in Housing as Involuntary Servitude*, 86 NEB. L. REV. 838, 869–70 (2008) (discussing the broad scope of the Thirteenth Amendment’s prohibition of slavery and involuntary servitude). Short quotes the 1897 case of *Robertson v. Baldwin*, 165 U.S. 275, 282, which held that involuntary servitude was “intended to cover the system of Mexican peonage and the Chinese coolie trade, the practical operation of which might have been a revival of the institution of [African chattel] slavery under a different and less offensive name.” *Id.* at 872, n.194.

understood the contracts.<sup>227</sup> At the end of the Fair, they were each given a watch fob and fifteen cents.<sup>228</sup>

Verner made plans to take the men back to Africa. While Verner and Benga first went to Washington, D.C., Kondola went with the others to New Orleans to wait for their ship's departure.<sup>229</sup> Kondola did not return to Africa, but remained in the States in order to finish his studies.<sup>230</sup> Verner stayed in Africa for almost two years, then returned to the United States in 1906, again bringing Benga back—and again, Verner gave different accounts about why Benga returned (he had threatened suicide, or it was a better option than being captured).<sup>231</sup>

Once Verner and Benga reached New York, Verner checked in to a mental sanatorium, and left Benga and two chimpanzees at the American Museum of Natural History, under the care of the museum director Hermon Bumpus.<sup>232</sup> Benga was apparently “the building’s only living resident.”<sup>233</sup> Bumpus had written Verner several times, asking him to retrieve Benga, who he said had become “agitated,” had tried to escape, and had thrown a chair at a donor’s wife.<sup>234</sup> Nonetheless, Verner left Benga there about a month while he recovered.<sup>235</sup> Verner was also apparently evading authorities for debts and hot checks.<sup>236</sup>

When Verner returned for Benga, he almost immediately turned him over to William Hornaday, the director of the newly opened Bronx Zoo.<sup>237</sup> Once again, Benga was physically appropriated, and displayed in an iron cage in the primate house, where thousands of visitors stared, laughed, and poked at him.<sup>238</sup> Both Hornaday and

227. Sotiropoulos, *supra* note 203, at 68–69.

228. BRADFORD & BLUME, *supra* note 195, at 125.

229. *Id.* at 125–27 (Verner paid Kondola five dollars a week to take care of the others in New Orleans until they were ready to depart, which was longer than expected because Kondola and his charges were quarantined with the chicken pox in New Orleans.).

230. *Id.* at 135; NEWKIRK, *supra* note 194, at 132–33 (Kondola would later change his name to John Dundes Condola and become a minister.).

231. NEWKIRK, *supra* note 194, at 184. Newkirk postulates that Verner returned with Benga in order to profit from him.

232. *Id.* at 171. When Verner first brought Benga to the States, Verner had also checked himself into a sanatorium. *Id.* at 126; BRADFORD & BLUME, *supra* note 195, at 111–12.

233. NEWKIRK, *supra* note 194, at 173.

234. *Id.* at 171–72, 180–81; BRADFORD & BLUME, *supra* note 195, at 165–67 (describing the chair incident as a visit by donors, including Daniel and Florence Guggenheim; when Bumpus asked and gestured for Benga to bring Mrs. Guggenheim a chair, Benga picked a chair up and threw it at her.).

235. BRADFORD & BLUME, *supra* note 195, at 166–67.

236. *Id.* at 167.

237. NEWKIRK, *supra* note 194, at 3, 183 (the zoo opened in 1899.).

238. *Id.*; BRADFORD & BLUME, *supra* note 195, at 185 (40,000 visitors came to the zoo on Sunday, September 16, according to *The Times.*).

scientist and co-founder Henry Fairfield Osborn had “sanctioned” Benga’s display at the zoo.<sup>239</sup> Additionally, co-founder and secretary Madison Grant also “had in fact been intimately involved in the negotiations to secure Benga.”<sup>240</sup>

Like his display at the World’s Fair, Benga’s display at the zoo served the scientists’ theories about evolution of the different races.<sup>241</sup> Grant later wrote *The Passing of the Great Race*, arguing that “Negroes” were a separate species, and advocated the “cleansing . . . of ‘inferior races’ through birth control, antimiscegenation and racial segregation laws, and mass sterilization.”<sup>242</sup> Grant’s ideas were supported by scientists and politicians, including Hitler (who “quoted Grant copiously in his speeches and was said to have written Grant a letter saying that ‘the book is my Bible’”).<sup>243</sup> These views that race was biological and that the “Nordic whites” were the superior race, led to the founding of the Eugenics Society, the Hereditary Commission, and the Eugenics Records Office.<sup>244</sup>

While he was living in the zoo, Benga was billed in news articles as “a genuine African ‘savage.’”<sup>245</sup> Reportedly, “[t]here was always a crowd before the cage, most of the time roaring with laughter . . .”<sup>246</sup> Once again, Benga was physically appropriated, held in involuntary servitude, and exploited for the benefit of the zoo and for the scientists’ views about social Darwinism and white superiority.<sup>247</sup> When leading clergymen, including Reverend Robert Stuart MacArthur, the white pastor of Manhattan’s Cavalry Baptist Church, Reverend Matthew William Gilbert, the African American pastor of New York’s Mount Olivet Baptist Church, and others learned about Benga’s captivity, they unsuccessfully appealed to the zoo director and mayor

239. NEWKIRK, *supra* note 194, at 16 (“Hornaday also insisted that the exhibit was in keeping with human exhibitions in Europe . . . Hadn’t Sara Baartman, a southern African woman, been exhibited, barely clad, throughout London and Paris as the ‘Hottentot Venus’ until her death in 1815?”).

240. *Id.*

241. BRADFORD & BLUME, *supra* note 195, at 174–75.

242. NEWKIRK, *supra* note 194, at 43.

243. *Id.* at 46; *see also* JILL LEPORE, *THIS AMERICA: THE CASE FOR THE NATION* 89–90 (2019).

244. NEWKIRK, *supra* note 194, at 45. “Nordic” whites were of northern European stock, and it was “[d]etermine[d], on no basis whatsoever, that 75 percent of the population of the United States was descended from the eugenically preferable ‘Nordic’ . . . stock, 75 percent of new immigrants had to be ‘Nordic,’ too,” under the 1924 Immigration Act. LEPORE, *supra* note 243, at 89. Although not discussed in this Article, Collins writes about the eugenics movement and resulting racist laws and practices in the “Fitter” and “Fewer” sections of *Admit One*. COLLINS, *supra* note 206, at 37, 39, 41–44, 56, 58, 61, 73.

245. NEWKIRK, *supra* note 194, at 15.

246. BRADFORD & BLUME, *supra* note 195, at 180.

247. NEWKIRK, *supra* note 194, at 26, 73–74.

for his release.<sup>248</sup> Reverend James Gordon, superintendent of the Howard Colored Orphan Asylum in Brooklyn, protested that “Our race, we think, is depressed enough, . . . ‘without exhibiting one of us with the apes. We think we are worthy of being considered human beings, with souls.’”<sup>249</sup> The ministers’ appeals held no sway until attorney Wilford H. Smith, a friend and personal attorney of Booker T. Washington, threatened to sue for Benga’s release, and John Henry Milholland, a wealthy white businessman who had helped fight civil rights causes, promised financial backing.<sup>250</sup>

In addition to these efforts by others to secure his release, Benga began to “steer mischief in Hornaday’s direction” by taking his clothes off and brandishing a knife at the zookeepers who tried to clothe him, or baring his teeth when they tried to cage him.<sup>251</sup> More pressure was put on Hornaday, who began viewing Benga as “unmanageable,” which was what he wrote and wired to Verner: “Boy had become unmanageable; also dangerous. Impossible to send him to you. Please come for him at once. Answer.”<sup>252</sup>

Finally, Verner arrived and sent Benga to the Howard Colored Orphan Asylum in Brooklyn where Reverend Gordon was superintendent. There, Benga received lessons in reading and writing with the children, although at that time Benga was about twenty-eight years old.<sup>253</sup> He remained at the orphanage off and on from September 1906 to October 1908, spending part of that time working in the orphanage’s agricultural fields on Long Island.<sup>254</sup>

In 1906, Benga briefly went to Lynchburg, Virginia, to attend the elementary school portion of the Virginia Theological Seminary and College,<sup>255</sup> whose president was Reverend Gregory Willis Hayes, one of the ministers who had protested Benga’s placement in the zoo, and who was also the husband of poet Carrie Allen McCray’s mother, Mary.<sup>256</sup> Hayes and Mary “were members of the early Pan-African

248. *Id.* at 27, 30–34; BRADFORD & BLUME, *supra* note 195, at 182–83.

249. BRADFORD & BLUME, *supra* note 195, at 182–83.

250. NEWKIRK, *supra* note 194, at 46–48 (Smith was the first Black lawyer to successfully present a case before the U.S. Supreme Court.).

251. BRADFORD & BLUME, *supra* note 195, at 187.

252. *Id.* at 189.

253. NEWKIRK, *supra* note 194, at 194–95; Benga was given his own room, and he ate with the staff.

254. *Id.* at 203 (He changed his name to Otto Benga.); BRADFORD & BLUME, *supra* note 195, at 198, 202–04 (Benga was sent to work in Long Island because of an incident involving one of the young women in the orphanage.).

255. Benga took elementary courses with the children, “but outside the classroom he became a trusted teacher and companion to neighborhood boys.” NEWKIRK, *supra* note 194, at 232.

256. *Id.* at 203; CARRIE ALLEN MCCRAY, *Preface to OTA BENGA UNDER MY MOTHER’S ROOF* xi–xii (1998).

movement,”<sup>257</sup> and he was “an ardent Black nationalist.”<sup>258</sup> Their house guests included leading Black leaders, such as W.E.B. Du Bois.<sup>259</sup> Benga lived with the Hayes family for six months, until Hayes suddenly died, and Benga was sent back to the orphanage and again worked on its Long Island farm.<sup>260</sup> He then worked on two private farms in Long Island until 1910, trying to save money for a passage back to the Congo.<sup>261</sup>

However, “[he] was eager to return to the black college in Virginia, where he . . . ‘had friends.’”<sup>262</sup> In early 1910, Benga returned to Lynchburg, Virginia, and was again enrolled in the Virginia Theological Seminary.<sup>263</sup> One of his teachers, and a friend of the Hayes-Allen family, was Annie (Anne) Spencer, who later would become a well-known Harlem Renaissance poet.<sup>264</sup> Benga lived with the Hayes-Allen family after Mary had married her second husband, attorney William Patterson Allen.<sup>265</sup> Including Carrie, there were eight children in the family.<sup>266</sup> Benga befriended the boys in the family and neighborhood, and taught them to fish and hunt; he also told them stories about the Congo and showed them the forest dances.<sup>267</sup> As part of a Black family, school, and community, he “had found a surrogate home and family.”<sup>268</sup>

Unfortunately, by 1916, Benga had become depressed with an “all-consuming longing to go home. For hours he would sit alone in silence under a tree.”<sup>269</sup> Yet, returning home was impossible, especially

257. MCCRAY, *supra* note 256, at xii.

258. NEWKIRK, *supra* note 194, at 204, 222; Sotiropoulos, *supra* note 203, at 74 (“Hayes echoed early black nationalist sentiment and remained committed to providing black students at his institution a liberal arts education similar to the one he had earned at Oberlin.”).

259. *See* NEWKIRK, *supra* note 194, at 231.

260. *Id.* at 204–05. When Rev. Hayes died, his wife, Mary succeeded him as interim president of the college. CARRIE ALLEN MCCRAY, FREEDOM’S CHILD: THE LIFE OF A CONFEDERATE GENERAL’S BLACK DAUGHTER 102, 103 (1998).

261. NEWKIRK, *supra* note 194, at 210. At the time, his age was listed on the census as 24. *Id.* at 210–11.

262. Sotiropoulos, *supra* note 203, at 74.

263. MCCRAY, *supra* note 260, at 113; NEWKIRK, *supra* note 194, at 215, 218, 226. By this time, Benga’s teeth had also been capped.

264. MCCRAY, *supra* note 260, at 4; NEWKIRK, *supra* note 194, at 225–27; Sotiropoulos, *supra* note 203, at 75 (the Spencer house also hosted Black leaders such as W.E.B. Du Bois and Booker T. Washington).

265. MCCRAY, *supra* note 260, at 107–08, 113; NEWKIRK, *supra* note 194, at 229.

266. MCCRAY, *supra* note 260, at 109; NEWKIRK, *supra* note 194, at 229.

267. MCCRAY, *supra* note 260, at 113–14; NEWKIRK, *supra* note 194, at 232–33, 236–37.

268. NEWKIRK, *supra* note 194, at 234; Sotiropoulos, *supra* note 203, at 74 (“he entered a black world of friendship and support, one in which the Hayes clan treated him as a family member.”).

269. NEWKIRK, *supra* note 194, at 237; MCCRAY, *supra* note 260, at 116 (“Hunter

“in the midst of the raging war” when no passenger ships were sailing; in his despair, Benga shot himself.<sup>270</sup> The afternoon before, he had built a fire and danced. The Hayes children “watched in awe as Otto danced around the fire, faster, faster, faster, . . . making strange sounds as he danced, chanting, moaning. Sweat on his brow . . . .”<sup>271</sup>

#### IV. OTA BENGA IN LITERARY WORKS

While we can read the history of Ota Benga’s life, literature often conveys a deeper emotional impact than does nonfiction. “[L]iterature can help us see, understand, and identify with those whose lives and experiences are often illegible before the law.”<sup>272</sup> Moreover, literature can also help readers empathize with difficult, or even traumatic, experiences, such as Benga’s experiences as a human exhibit in St. Louis and Brooklyn.<sup>273</sup> One of the values of poems over fiction is that poems create empathy or emotional investment in the reader by metaphor. As Stephen Dobyns explains, the reader has to be a “participant in th[e creative] process” by nondiscursive reasoning based on analogy, or by figuring out the information that has been left out.<sup>274</sup> Metaphor’s ability “to elicit large, nonverbal perceptions . . . is one of the great strengths of poetry and what can make a poem convincing.”<sup>275</sup> As poet Martha Collins has said, “what I value as a reader of poetry is that it conflates intellectual, emotional, even physical experience in a way that factually-oriented prose cannot.”<sup>276</sup>

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[McCray’s brother] says that over the years, Otto changed from the smiling, patient teacher of the hunt to a brooding man. Toward the end, he was no longer interested in the hunt. Trips up the hill . . . , outings to the river to spear fish ended. He became a silent, solemn man and often sat for hours, motionless under a tree, all alone.”)

270. NEWKIRK, *supra* note 194, at 240.

271. MCCRAY, *supra* note 260, at 116.

272. Austin Sarat, Matthew Anderson & Cathrine O. Frank, *Introduction: On the Origins and Prospects of the Humanistic Study of Law*, in *LAW AND THE HUMANITIES: AN INTRODUCTION* 1, 7 (Austin Sarat, Matthew Anderson & Cathrine O. Frank eds., 2010).

273. See Susan Ayres, *Teaching Empathy: Using Dramatic Narrative to Understand Domestic Violence*, 7 *FAM. & INTIMATE PARTNER VIOLENCE Q.* 331, 333, 344, 349 (2015) (examining domestic violence in the poems of Ai); see also Susan Ayres, *Trauma-Informed Advocacy: Learning to Empathize with Unspeakable Horrors*, 26 *WM. & MARY J. RACE, GENDER & SOC. JUST.* 225, 234–35 (2020) (showing how poems by Marie Howe about childhood violence create empathy in reader).

274. STEPHEN DOBYNS, *BEST WORDS, BEST ORDER: ESSAYS ON POETRY* 336, 332, 338–39 (2003).

275. *Id.* at 21.

276. Michael Simms, *Push the Poem: An Interview with Martha Collins*, *COAL HILL REV.*, <https://coalhillreview.com/15531> [<https://perma.cc/P393-WPND>] (last visited Nov. 13, 2023).



Although I have not found any fictional works about Ota Benga aside from one independently published children's picture book,<sup>277</sup> several books of nonfiction and poetry have been written about Benga.<sup>278</sup> This Part considers poetry, beginning with a poem from 1906, printed in *The New York Times*, which incorporates stereotypes of the time. It then turns to contemporary poems about Benga by award-winning poets, including African American poet, Yusef Komunyakaa (born 1947), Columbian poet, Carlos Aguasaco (born 1975), white American poet, Martha Collins (born 1940), and African American poet and memoirist, Carrie Allen McCray (1913–2008).<sup>279</sup>

The poems about Ota Benga include both narrative and lyrical poems, and also political or documentary poems. Komunyakaa's poem and McCray's poems are narrative and lyrical, whereas Aguasaco's poem is a political poem, or one that breaks the conventional expectations of "propriety, sublimity, and taste."<sup>280</sup> While political poetry used to be looked upon with suspicion by academics,<sup>281</sup> today it is tolerated and even welcomed.<sup>282</sup> As part of this growing acceptance, the term "political poetry" has been replaced by "poetry of engagement" or "public poetry," which connotes "a respectable civic term

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277. See LITTLE NOAHA, *OTA BENGA: A CHILDREN'S PICTURE BOOK ABOUT A BOY WHO WAS KIDNAPPED FROM AFRICA AND CAGED IN NEW YORK'S BRONX ZOO* (2020), <https://www.amazon.com/Ota-Benga-Childrens-Picture-Kidnapped/dp/B08M8GWMWQ#:~:text=Book%20overview,attracting%20huge%20number%20of%20visitors> [<https://perma.cc/XPN9-QRBX>]. The book sells for \$26, and in the online preview, contains a misspelling on the first page of "salve" for "slave."

278. This Article focuses primarily on contemporary poems by nationally known writers. Because it is difficult to search for poems based on subject matter, it is completely possible that other poems exist about Ota Benga. For instance, I have come across a few chapbooks by small presses that contain poems about Benga, such as ELVIS ALVES, *OTA BENGA* (2017) (containing two poems about Benga). In addition to poems, two nonfiction books in English have been written about Benga and have been cited in this Article. See PHILLIPS VERNER BRADFORD & HARVEY BLUME, *OTA BENGA: THE PYGMY IN THE ZOO* (1992); PAMELA NEWKIRK, *SPECTACLE: THE ASTONISHING LIFE OF OTA BENGA* (2015). Also, there are at least two documentary films in English. See Discovery Science, *Human Zoos: America's Forgotten History of Scientific Racism*, YOUTUBE (Feb. 17, 2019), <https://youtu.be/nY6Zrol5QEk?si=P9VPoWTehlygUd96> [<https://perma.cc/S99G-ZCP7>] (selection of the 2017 Oregon Documentary Film Festival); *Ota Benga* (Jean Bodon 2015) (winner of Best Director at International Filmmaker Festival of World Cinema, London and Nice International Film Festival), [https://www.imdb.com/title/tt4661250/awards/?ref\\_=tt\\_awd](https://www.imdb.com/title/tt4661250/awards/?ref_=tt_awd) [<https://perma.cc/U57E-PZM7>].

279. McCray's memoir about her mother contains a chapter on Ota Benga, when he lived with her family. See MCCRAY, *supra* note 260, at 112–16.

280. DALE M. SMITH, *POETS BEYOND THE BARRICADE: RHETORIC, CITIZENSHIP, AND DISSENT AFTER 1960* 9 (2012).

281. See *id.* at 11.

282. Eleanor Wilner, *Homeland Insecurity and the Poetry of Engagement*, in *THE NEWS FROM POEMS: ESSAYS ON THE 21ST-CENTURY AMERICAN POETRY OF ENGAGEMENT* 13, 13 (Jeffrey Gray & Ann Keniston eds., 2016).

that sheds the old pejorative so often attached to ‘political poetry.’”<sup>283</sup> Collins’ poems about Ota Benga are documentary poems for the most part (with a few lyrical poems). Documentary poetry often critiques historical events, and uses fragmentation, sampling, and collage.<sup>284</sup> Material incorporated into documentary poetry may include “testimonials, interviews, facts, and figures.”<sup>285</sup> The documentary poet “infus[es] the lyric line with ‘data clusters’ so ‘that poetry should again assume responsibility for the description of history.’”<sup>286</sup> An example is Claudia Rankine, whose collection *Citizen: An American Lyric*, documents moments that are microaggressions or macroaggressions against African Americans.<sup>287</sup>

#### A. Individual Poems About Ota Benga

On September 19, 1906, when Benga was on exhibit in the Bronx Zoo, *The New York Times* printed a poem entitled “Ota Benga,” by M.E. Buhler:

From his native land of darkness,  
To the country of the free,  
In the interest of science  
And of broad humanity,

Brought wee little Ota Benga,  
Dwarfed, benighted, without guile,  
Scarcely more than ape or monkey,  
Yet a man the while!

So, to tutor and enlighten—  
Fit him for a nobler sphere—  
Show him ways of truth and knowledge  
Teach the freedom we have here

In this land of foremost progress—  
In this Wisdom’s ripest age  
We have placed him in high honor,

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283. *Id.*

284. Philip Metres & Mark Nowak, *Poetry as Social Practice in the First Person Plural: A Dialogue on Documentary Poetics*, 12 IOWA J. CULTURAL STUD. 9, 10, 12, 15 (2010).

285. Tana Jean Welch, *Don’t Let Me Be Lonely: The Trans-Corporeal Ethics of Claudia Rankine’s Investigative Poetics*, 40 MELUS 124, 124–25 (2015). “Documentary poetry” is also referred to as “Investigative poetry.” *Id.* at 124.

286. *Id.* at 129 (quoting ED SANDERS, INVESTIGATIVE POETRY 3 (1976)).

287. See CLAUDIA RANKINE, *CITIZEN: AN AMERICAN LYRIC* (2014); see also Susan Ayres, *Claudia Rankine’s Citizen: Documenting and Protesting America’s Halting March Toward Racial Justice and Equality*, 9 ALA. CIV. RTS. & CIV. LIBERTIES L. REV. 213 (2018).

In a monkey's cage!  
 'Mid companions we provide him,  
 Apes, gorillas, chimpanzees  
 He's content! Wherefore decry them

When he seems at ease?  
 So he chatters and he jabbers  
 In his jargon, asking naught  
 But for "Money—money—money!"<sup>288</sup>

While parts of the poem seem ironic, such as "We have placed him in high honor, / In a monkey's cage!," overall, the poem contains the stereotypes of imperialism and Orientalism. The poem refers to Africa as the other, the "land of darkness," in contrast to the civilized "country of the free," which Benga finds himself caged in.<sup>289</sup> The poem praises the science and humanity of the times of "foremost progress," which views Benga as lowest on the evolutionary scale, where he is "[s]carcely more than ape or monkey" and belongs caged with his "companions" of "[a]pes, gorillas, chimpanzees."<sup>290</sup> It is hard not to read the poem as ironic, but on a literal level, the poem dehumanizes Benga, and casts him as the lowest human on the evolutionary scale, what scientists of the time considered the missing link between apes and humans: "Scarcely more than ape or monkey, / Yet a man the while!"<sup>291</sup> By today's standards, the poem would be considered light verse that is not well-crafted. The last stanza drops the rhyme scheme and the poem lacks closure. Today, the poem would be read as an example of a harmful appropriation that fails, because it cannot overcome racist stereotypes and tropes, although it might be useful to read contextually, to show the biases of the time.

In contrast, two contemporary stand-alone poems about Ota Benga discussed below are very different from Buhler's and from each other. Komunyakaa's more traditional narrative contrasts with Aguasaco's poem of political engagement. Komunyakaa explains that Carrie Allen McCray first told him about Ota Benga, and that when he learned the poet Anne Spencer was Benga's friend, a "poem

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288. NEWKIRK, *supra* note 194, at 62–63. I believe M.E. Buhler is Mary Edith Buhler, a poet from Louisiana, who worked in New Orleans and New York City, and who received a letter from Theodore Roosevelt praising her poetry. *See also* Buhler (Mary Edith) Papers, <https://lib.lsu.edu/sites/default/files/sc/findaid/1192.pdf> [<https://perma.cc/2VLY-GRB2>] (last visited Nov. 13, 2023).

289. NEWKIRK, *supra* note 194, at 62–63.

290. *Id.*

291. *Id.*

began in [his] psyche.”<sup>292</sup> The poem, “Ota Benga at Edenkraal,” refers to Benga’s friendship with his Lynchburg teacher and mentor Anne Spencer, who named her writing cottage “Edankraal.”<sup>293</sup>

Komunyakaa’s lyrical and narrative poem includes references to some of the traumas or “broken memor[ies]” in Benga’s past, such as “the old smell of the monkey house.”<sup>294</sup> These memories come from “several lifetimes behind him,” memories he does not share when he is in Lynchburg, but instead, teaches the boys skills from his own days as a boy:

. . . He never spoke  
of the St Louis world’s Fair  
or the Bronx Zoo. The boys  
crowded around him for stories  
about the Congo, & he told them  
about hunting “big, big” elephants,  
& then he showed them the secret  
of stealing honey from the bees  
with bare hands, how to spear fish  
& snare the brown mourning dove.<sup>295</sup>

Komunyakaa imagines the visits between Benga and Spencer, who “had juba / in her voice,” and whose “fine drawl”:

summoned rivers, trees, & boats,  
in a distant land, & he could hear  
a drum underneath these voices  
near the forest.<sup>296</sup>

The poem ends with the poignant stanzas and figurative language:

One night he sat in the hayloft,  
singing, “I believe I’ll go home.  
Lordy, won’t you help me?”

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292. Yusef Komunyakaa, *Ota Benga at Edenkraal*, POETS.ORG (Apr. 8, 2016), <https://poets.org/poem/ota-benga-edenkraal> [<https://perma.cc/6QCA-WUFG>].

293. *Id.*; see also NEWKIRK, *supra* note 194, at 228 (explaining the cottage name as the combination of Ed Spencer, Anne Spencer, “and the Afrikaans name for enclosure”).

294. Komunyakaa, *supra* note 292.

295. *Id.*

296. *Id.*

A hoot owl called to the moon  
 hemmed in a blackberry thicket,  
 & he bowed to the shine of the gun.<sup>297</sup>

Komunyakaa's poem is a subject appropriation of Ota Benga's life, approached respectfully, and avoids reducing Benga to a stereotype. It is obvious Komunyakaa researched details of Benga's life, and included details in the poem, such as hunting and fishing skills Benga taught the boys, and the various names Benga was known by: "Artiba, Bengal, Autobank, or / Otto Bingo."<sup>298</sup> The poem depicts lyrical imaginings of Benga and Anne in her garden, and finally, of Benga's suicide. Komunyakaa's cultural appropriation of Benga does not contain characteristics of a harmful appropriation. Instead, it creates a sense of emotional investment and empathy in Benga's life, and hints at reasons Benga might take his own life—both because of past, unspoken traumas and his longing for the forest and "distant land."<sup>299</sup>

The second stand-alone poem about Ota Benga is Aguasaco's political poem, translated from the Spanish, "Ota Benga the Mexican don't come here," and is both a subject appropriation of Ota Benga and a metaphor for America's treatment of undocumented immigrants from Mexico.<sup>300</sup> The poem contains an epigraph and clear reference to Benga: "Ota Benga (Ituri, Congo 1883–1916 Lynchburg, Virginia)."<sup>301</sup> Unlike Komunyakaa's poem, which is more lyrical, Aguasaco's poem is more didactic, it is a poem of protest.

The first third of the poem begins with a description of Ota Benga caged in the Bronx Zoo: "barefoot in a cage / . . . / hugs a chimpanzee and the tourists smile."<sup>302</sup> The speaker asks, "Is this progress? / Is this liberty? / America?"<sup>303</sup> The next two-thirds of the poem shift to Benga as a metaphor for America's treatment of undocumented immigrants: "Ota Benga the Mexican don't come here nameless boy dressed in gray and blue / barefoot in an ICE / cage in McAllen—Texas."<sup>304</sup> The "nameless boy" "cries and kicks / with his twenty-four months of tears" and pain, while "an unmentionable cynic with an orange wig / bursts out laughing in Washington / and

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297. *Id.*

298. *Id.*

299. *Id.*

300. CARLOS AGUASACO, *CARDINAL IN MY WINDOW WITH A MASK ON ITS BEAK 5* (Jennifer Rathbun, trans. 2022). The lines of this poem are difficult to replicate, as Aguasaco has written the book's poems in three columns, which can be read horizontally or vertically. The collection won the Academy of American Poets Ambroggio Translation Prize.

301. *Id.* (emphasis omitted).

302. *Id.*

303. *Id.*

304. *Id.*

says that the boy is better that way,” a reference to President Trump’s response to caging immigrants, like an animal, like Benga was caged.<sup>305</sup> The poem ends repeating the earlier questions, in a slightly different order: “Is this progress? Is this liberty? America?”<sup>306</sup>

One could read this poem as an unempathetic description of Ota Benga. Even the description of the Black ministers who protested the zoo’s treatment of Benga is dry and sterile: “Well-intentioned activists mobilize and demand they remove him from the cage.”<sup>307</sup> The poem reduces Benga to a symbol of captivity, a metaphor. However, I don’t believe the poem’s cultural appropriation of Benga fails. While it does reduce Benga to a metaphor, it is not a racist stereotype because it does not dehumanize Benga.<sup>308</sup> Instead, it serves as a metaphor to show how U.S. policy dehumanizes immigrants, it shows “how to read the society that constructs racial identity.”<sup>309</sup> Given Aguasaco’s political purpose and metaphorical treatment, the thinned-down facts of Benga’s life are a vehicle to criticize an immigration policy which resulted in thousands of adults and children being “caged.”<sup>310</sup> Rather than a narrative poem about Benga’s life, this is a political poem with Benga as a metaphor.<sup>311</sup> If anything, the poem arguably reduces the “unmentionable cynic with an orange wig” to a racist stereotype: “with his poorly-ironed red tie / with his fake tan and his stupidity.”<sup>312</sup> However, disdain for Trump’s immigration policy was widespread,<sup>313</sup> and Aguasaco’s irreverent description is not uncommon in poetry of engagement.

### *B. Sequence of Poems About Ota Benga*

In addition to these two individual poems, two other contemporary and award-winning poets have written a series of poems on Ota Benga. The first series is by Carrie Allen McCray, whose family had

305. *Id.*

306. AGUASACO, *supra* note 300, at 5.

307. *Id.*

308. See REKDAL, *supra* note 20, at 104 (“Racist metaphors . . . require a singular and dehumanizing vision of the raced person, rendering that person an object.”).

309. *Id.* at 119.

310. See Miriam Jordan, *U.S. Shutters Warehouse Where Migrants Were Kept in ‘Cages,’* N.Y. TIMES (Nov. 25, 2020), <https://www.nytimes.com/2020/11/25/us/border-migrant-children-cages-ursula-warehouse.html> [<https://perma.cc/6RSL-2B75>]. See also AGUASACO, *supra* note 300, at 5 (describing Trump in a didactic manner: “with his poorly-ironed red tie / with his fake tan and his stupidity.”).

311. See Ayres, *supra* note 287, at 219–22 (discussing contemporary protest poetry).

312. AGUASACO, *supra* note 300, at 5. As Rekdal points out, anyone can “express racist ideas” through negative metaphors “that ‘suggest one racial group is superior or inferior to another racial group in any way.’” REKDAL, *supra* note 20, at 108.

313. See Jordan, *supra* note 310.

a personal connection to Ota Benga, because, as mentioned above, he lived with her family on two occasions—once before she was born, and then again for about three years after she was born.<sup>314</sup> McCray's 2012 collection, *Ota Benga, Under My Mother's Roof*, is a series of first-person and third-person poems about Ota Benga, based primarily on information shared by her older brother, Hunter, and her parents' friends including the Harlem Renaissance poet Anne Spencer, Benga's teacher and mentor.<sup>315</sup> McCray's volume was published before that of Martha Collins, whose poems about Ota Benga are found in *Admit One: An American Scrapbook* (2016).<sup>316</sup> Collins ties her family's experience of attending the 1904 St. Louis World's Fair to her larger exploration of early 20th century racism, especially the "science" of eugenics, which resulted in restrictive immigration laws and forced sterilizations.<sup>317</sup> Thus, both poets are writing about Benga based in part upon Benga's connection to their family history. Additionally, both poets critique Belgian imperialism and American scientists' dehumanizing views. Unlike insider authors who defend cultural appropriation on the ground that the outsider experience was part of their personal history, but who fail to "acknowledg[e] the actual histories of colonization in which those images came to figure as part of a consciousness,"<sup>318</sup> McCray and Collins not only acknowledge oppressive history but critique it.

McCray's poems are more traditional narrative and lyrical poems, and Collins' poems are primarily documentary and political. As documentary poetry, Collins takes a more "flat, unembellished tone . . . [that] conveys the unquestioned actions and the unaccountable culpability of the men in charge."<sup>319</sup> Collins lists the numerous sources consulted for her volume of poems, and notes that "although I have

314. See McCRAY, *supra* note 260, at 101–02, 112–16.

315. See McCRAY, *supra* note 256, at xi–xiii. McCray also includes a chapter about Ota Benga in her memoir published earlier about her mother, *FREEDOM'S CHILD: THE STORY OF MY MOTHER, A CONFEDERATE GENERAL'S BLACK DAUGHTER* 112–16 (1998).

316. COLLINS, *supra* note 206.

317. *Id.* at 86. Collins notes in the *Acknowledgments* that McCray's collection was published after she "had completed the Ota Benga sections," but that she was "indebted to McCray for some details in *Ota Benga, Part Four*." See also Simms, *supra* note 276 (explaining that *Admit One* is the third book in a trilogy consisting of *Blue Front*, "a book-length poem that focuses on a lynching [her] father witnessed in Cairo, Illinois," and *White Papers*, a book in which she "was trying to educate [herself], about both [her] own past and the racial history of this country" in terms of "what it means to be 'white' in a multi-racial and often racist world."); see also Robin Becker, *(In)justice of the Place: Design and Pattern in Contemporary Political Poetry*, 70 GA. R. 842, 844 (2016) (describing *Admit One* as "launch[ing] an alternative American history," that "illuminates connections among her own family members and proponents of 'scientific racism,' forced sterilization, miscegenation laws, eugenics theory, and Nazism.").

318. Coombe, *supra* note 19, at 91.

319. Becker, *supra* note 317, at 845.

not consciously invented factual material, I have not attempted to resolve differences among sources.”<sup>320</sup> McCray’s poems are not as strictly based on published sources, but rely on information her family and friends told her about Benga.<sup>321</sup> Moreover, McCray also imagines scenes, like a memoirist would, and as a result, her poems about Benga are more expansive, especially as stories that evoke empathy. McCray’s imagined scenes may not be completely accurate; however, as Rekdal comments, “[m]uch of writing a character well is based on imagining *extremely* specific details about his or her background.”<sup>322</sup> McCray’s project, more so than Collins’, is to imagine details of Benga’s experience and to tell his story from his perspective.

In this way, McCray’s project is similar to that of historian Karen Sotiropoulos, who has told the story by “look[ing] through Benga’s eyes,” in order “to tell world history from below.”<sup>323</sup> Sotiropoulos, who is critical of Verner’s view of the story (as told by Bradford and Blume), describes her project as follows:

This article turns away from how Benga’s experiences fit into white spectatorship and Western narratives of race, however, and situates him among his fellow travelers as a man looking out from central Africa to show how St. Louis seemed to foretell for him the possibility of seeking new comrades, training, and knowledge with which to save his people by any means necessary from the throes of European colonialism.<sup>324</sup>

Sotiropoulos examines the historical record and concludes that “[h]owever slim the evidence, it does seem that the Hayes and Spencer homes were where Benga felt most at peace in the United States,” and news accounts reported that he “was pleased, to be with black people and free from the witchcraft of the white man.”<sup>325</sup> Like Sotiropoulos, McCray’s poems tell Benga’s story from his viewpoint, and in this way, her project is different from that of Collins, whose documentary poems critique the rise of white supremacy in early twentieth-century science and society. In my opinion, neither the poems by McCray nor Collins incorporate harmful cultural appropriation. Below I consider their poems jointly, looking first at Benga’s life in Africa, and then at poems about the World’s Fair and the zoo.

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320. COLLINS, *Acknowledgments to ADMIT ONE: AN AMERICAN SCRAPBOOK*, *supra* note 206, at 85.

321. See MCCRAY, *Acknowledgments to OTA BENGA UNDER MY MOTHER’S ROOF*, *supra* note 256, at xv, xvii.

322. REKDAL, *supra* note 20, at 48.

323. Sotiropoulos, *supra* note 203, at 44.

324. *Id.* at 48–49.

325. *Id.* at 75.



1. *Ota Benga in Africa*

Drawing from passages in Bradford and Blume's book, *Ota Benga*, Collins sketches the basics of the elephant hunting and of forest dancing in "Ota Benga, Part One": "in the forest, alone, away from the villages: / hunted the elephant, hidden among the trees."<sup>326</sup> This description tracks the description given by Bradford and Blume:

While Verner had been swatting mosquitos and plying the Kasai in his race to find the Batwa [pygmies], Ota had been hunting. It is not unusual for a pygmy on the trail of an elephant to be gone for days . . . . Nor is it uncommon for a pygmy to hunt an elephant alone.<sup>327</sup>

Collins' poem also refers to the forest dances:

leafwork and forest shadow  
dancing with the forest, with the moon

dancing for (*because they like it*)  
dancing for, in place of— *for the trees*<sup>328</sup>

This description tracks what Verner recorded in his journal when he and Benga returned to Africa after the World's Fair, and Benga and others sang and danced in the forest:

"[T]he dancing went on full tilt. There is no use trying to describe it . . . ."  
"Why do you dance so much, Ota?" . . .  
"Because they like it," said Ota.  
"Who likes it?"  
"They do," and Ota made a casual gesture toward the trees.<sup>329</sup>

In contrast to Collins' brief mentions of Benga's life in Africa, McCray includes nine poems about Benga's life in Africa before Verner brought him to the United States. These poems humanize

326. COLLINS, *supra* note 206, at 12.

327. BRADFORD & BLUME, *supra* note 195, at 103. The description goes on to explain that when Benga returned from the hunt, his village was gone, and he was captured by the Baschilele. In her acknowledgments, Collins lists Bradford and Blume's work. See COLLINS, *supra* note 206, at 86.

328. COLLINS, *supra* note 206, at 12.

329. BRADFORD & BLUME, *supra* note 195, at 147. Verner reportedly asked Professor Frederick Starr of the University of Chicago, who was also in Africa during this time, why the Africans danced so much. According to Bradford and Blume, "Starr informed him that 'the phallic idea which underlies so many primitive religions' was at the root of the African preoccupation with the dance. Verner thought Starr's idea was hogwash." See *id.* at 148.

Benga and speak back to racist beliefs held by Verner and the anthropologists that the African pygmies were not fully human (the missing link theory), were cannibals, and did not have human intelligence.<sup>330</sup> The poems show the villagers' respect for the forest, and love of Benga for his wife and son. The poems also give a context for the reign of terror in the Congo under King Leopold II.

For example, McCray's poem "Fathers" describes the traditions of the village fathers in teaching their sons to hunt and fish, and also to "listen to Forest," which they praise in song: "*Forest, giver of life, I'm born to you / . . . / Forest, giver of food, of clothes, of home, / I bow to you.*"<sup>331</sup> Later, when Benga was in Lynchburg, he taught hunting and fishing skills to McCray's older brothers ("Together / we make arrow and we make short spear."); he was like a father to them after their father died.<sup>332</sup> He also taught the boys to dance:

*Come, Ota says, dance with me for Forest.  
Otto, we can't dance.*

Ota laughs.  
*Gregory, everybody in Forest dance. Come.*<sup>333</sup>

McCray's poetry counters the dehumanizing views of Verner that "the negro is inferior to the Anglo-Saxon,"<sup>334</sup> and of scientists that on IQ tests, "African Pygmies, behaved a good deal in the same way as the mentally deficient person."<sup>335</sup>

Other poems describe Benga falling in love in Africa and courting his wife Kemba, as well as the birth of their child, Kafi.<sup>336</sup> In McCray's poem "Ota's Courtship and Marriage," Kemba is described as follows:

Slim like a fale stalk, walks  
like dancing,  
smooth dark skin like Ota's

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330. See *id.* at 5, 244–45, 247–48 (depicting newspaper articles describing the traits of the Africans at the World's Fair).

331. MCCRAY, *Fathers*, in OTA BENGA UNDER MY MOTHER'S ROOF, *supra* note 256, at 4–5.

332. *Id.* at 4; see also MCCRAY, *Virginia: The House on Durmid Hill*, in OTA BENGA UNDER MY MOTHER'S ROOF, *supra* note 256, at 34 ("Gregory, / a child beside him / so full of questions like his own son.").

333. MCCRAY, *Life in the Congo Forest*, in OTA BENGA UNDER MY MOTHER'S ROOF, *supra* note 256, at 3. In Lynchburg, Ota went by the name of "Otto."

334. NEWKIRK, *supra* note 194, at 85.

335. BRADFORD & BLUME, *supra* note 195, at 121.

336. MCCRAY, *supra* note 256, at 9–11. In the poem, "Kafi," when her son is born, "Kemba joins / other mothers outside the huts singing." *Id.* at 11.

which she makes more beautiful with dye  
 from the *nkola* tree.  
 Her laughter, a song, her voice,  
 the whisper of wind.  
 Ota wants to marry her.<sup>337</sup>

Benga's wife and two children were slaughtered during King Leopold II's reign in the Congo from 1885–1908, when “ten million or more of Benga's people were systematically murdered, and more were tortured and enslaved . . . .”<sup>338</sup> These atrocities committed in the Congo during the Belgian reign “rendered Benga and his people vulnerable to slave traders and self-styled American explorers.”<sup>339</sup> While Collins alludes to this savage history, “wife, children killed by neighboring . . . / no, by Leopold's *Force Publique*,”<sup>340</sup> McCray includes three poems chronicling this era of the quest for Congo “red rubber,” which reduced workers to unpaid slaves,<sup>341</sup> and while “King Leopold II drinks / from gold-edged glasses[,]” the overseers “lash black backs” and pile “cut-off hands . . . / in baskets.”<sup>342</sup>

A British Foreign Service diplomat sent reports of mutilations—hands cut off, men castrated—and reported that “[o]ne of them—a strong, indeed, a splendid-looking man—broke down and wept, saying that their lives were useless to them, and that they knew of no means of escape from the troubles around them.”<sup>343</sup> McCray's short poem, “Where Are the Hands?” evokes the cruelties of these horrific times:

Where are the hands that held the Molimo horn  
 in praise to Forest, hands joined in marriage  
 hands touching, embracing, hands caressing  
 held newborns, quieted by the soft breeze lullaby  
 hands waved and clapped to the rhythm of happy songs?<sup>344</sup>

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337. MCCRAY, *Ota's Courtship and Marriage*, in OTA BENGA UNDER MY MOTHER'S ROOF, *supra* note 256, at 10.

338. NEWKIRK, *supra* note 194, at 20; BRADFORD & BLUME, *supra* note 195, at 104 (slaughter of Benga's village); MCCRAY, *Strings I*, in OTA BENGA UNDER MY MOTHER'S ROOF, *supra* note 256, at 18 (poem quotes Verner that “*This special pygmy of Herodatus said to be / around 21 years old, father of two, / very intelligent.*”).

339. NEWKIRK, *supra* note 194, at 19.

340. COLLINS, *Ota Benga, Part One*, in ADMIT ONE: AN AMERICAN SCRAPBOOK, *supra* note 206, at 12.

341. MCCRAY, *Storm Warning*, in OTA BENGA UNDER MY MOTHER'S ROOF, *supra* note 256, at 6.

342. MCCRAY, *Dichotomy*, in OTA BENGA UNDER MY MOTHER'S ROOF, *supra* note 256, at 7; *see also* MCCRAY, *Where Are the Hands?*, in OTA BENGA UNDER MY MOTHER'S ROOF, *supra* note 256, at 8.

343. NEWKIRK, *supra* note 194, at 119.

344. MCCRAY, *Where Are the Hands?*, in OTA BENGA UNDER MY MOTHER'S ROOF, *supra* note 256, at 8.

These poems on Benga's life in Africa show the terrors of imperialism, and can be related to modern-day events, such as the terrors of the war,<sup>345</sup> as well as to the troubling history of the United States as an imperialist country.<sup>346</sup>

2. *The St. Louis World's Fair and New York Zoological Gardens*

Scientists interested in displaying Benga at the World's Fair and the zoo were steeped in theories of white racial superiority and eugenics.<sup>347</sup> They believed that race was determined by biology, and that measures must be taken to ensure the purity of the white race.<sup>348</sup> Madison Grant, the co-founder and secretary of the zoo, wrote *The Passing of the Great Race* in 1916, a book which inspired Hitler.<sup>349</sup> Grant believed that "Negroes were so inferior to Nordic whites that they were a separate species," and should be "cleans[ed] . . . through birth control, antimiscegenation and racial segregation laws, and mass sterilization."<sup>350</sup> Both the president of the World's Fair, David Francis, and the head of anthropology, McGee, planned to show "a global village in which all of the world's people and their artifacts would be grandly displayed, to illustrate human development from the lowest to the highest civilizations."<sup>351</sup>

In their poems, McCray and Collins include these stereotypes and theories as part of their critique of how Benga was treated, and the racism inherent in science and culture at the time. For example, McCray describes the scientists' project as follows:

they came for species to exhibit  
at the 1904 St. Louis World's Fair.  
*The Lower Form of Man.*<sup>352</sup>

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345. See, e.g., Andreea M. Prundeanu-Thrower, *Unwilling and Unprepared: Collective Responsibility for Traumatic Wartime Motherhood*, 18 L., CULTURE & HUMANS. 612 (2022).

346. Daniel Immerwahr, *How the US Has Hidden Its Empire*, GUARDIAN (Feb. 15, 2019, 1:00 PM), <https://www.theguardian.com/news/2019/feb/15/the-us-hidden-empire-overseas-territories-united-states-guam-puerto-rico-american-samoa> [<https://perma.cc/H9PP-MAYZ>].

347. NEWKIRK, *supra* note 194, at 43, 45, 46.

348. *Id.* at 45–46.

349. *Id.* at 43, 46.

350. *Id.* at 43.

351. *Id.* at 129.

352. MCCRAY, *Trail of the Mazungus*, in *OTA BENGA UNDER MY MOTHER'S ROOF*, *supra* note 256, at 12.

Collins includes the list of “specimens” that McGee asks Verner to acquire in Africa,<sup>353</sup> and quotes (in italics) a description of Benga that Verner wrote for the *St. Louis Post-Dispatch*:

*The only genuine African cannibal  
In America today (was / was not a)*

*the only human chattel. . . . He  
belongs to the Exposition . . .*<sup>354</sup>

Collins’ parenthetical phrase “(was / was not a)” refers to the contradictory statements Verner made about Benga being a cannibal—apparently, Verner claimed he was a cannibal only for the purpose of making him more popular at the World’s Fair; in earlier articles, Verner had denied that Benga was a cannibal.<sup>355</sup>

At both the Fair and the zoo, spectators tormented Benga and the other Africans by poking and laughing at them, and by burning their parrots and monkeys with cigars.<sup>356</sup> The Africans’ complaints to Verner about this mistreatment appear in McCray’s poem, “The Anthropology Exhibit”:

Why Mazungus act bad  
to us like they do? We dance  
for them like we dance for Forest,

our way to give a gift. Forest happy  
when we dance for Forest, but here they mad,  
poke us, throw things at us, try to spit on us, laugh at us.

. . .

When white man come to our country,

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353. COLLINS, *Ota Benga, Part One*, in ADMIT ONE: AN AMERICAN SCRAPBOOK, *supra* note 206, at 12. The “Acquisition List” Collins includes in lineated form is:

*One Pygmy Patriarch or chief  
One adult woman, preferably his wife  
One adult man, preferably his son  
One adult woman, the wife of . . .*

*. . .  
Two infants of women in the expedition  
Four more Pygmies, preferably adult but young  
including a priestess and a priest  
or medicine doctors, preferably old*

354. COLLINS, *Ota Benga, Part One*, in ADMIT ONE: AN AMERICAN SCRAPBOOK, *supra* note 206, at 13; BRADFORD & BLUME, *supra* note 195, at 255 (showing a news article); Samuel P. Verner, *An Untold Chapter of My Adventures While Hunting Pygmies in Africa*, ST. LOUIS POST-DISPATCH (Sept. 4, 1904).

355. See COLLINS, *supra* note 206, at 12; NEWKIRK, *supra* note 194, at 131–32.

356. BRADFORD & BLUME, *supra* note 195, at 118–19.

we give presents, sheep, goat, bird.  
They treat us like they treat our monkey.

Latuna, our leader, he right.  
They poke our monkey,  
they poke us.

We don't poke our monkey.  
Our monkey our friend.<sup>357</sup>

Latuna not only protested about how they were treated by spectators, but also how the Fair's organizers did not give them blankets for the cold night; he also led other protests which Sotiropoulos describes as "not as dramatic as the Zulu escape, but in actions that portray nonwhite solidarity and a culture of resistance . . . ."<sup>358</sup> For instance, Latuna seized the camera of a spectator who took their picture and refused to pay, and refused to perform a dance that involved a ritual killing.<sup>359</sup>

During another dance performance, the Africans rebelled at the bad behavior of the spectators, and "[w]hen they finished dancing, they yodeled war cries, brandished bows and arrows, put on their meanest faces, and made directly at the crowd . . . ."<sup>360</sup> The crowd surged back, and it took "the First Illinois Regiment . . . to separate the two sides."<sup>361</sup> Another time, they rebelled during marching drills by "marching and countermarching in all directions" and by spontaneously halting and marching.<sup>362</sup> Sometimes, they mimicked the spectators.<sup>363</sup>

Sotiropoulos believes that their community spirit of protest and other "[m]emories of St. Louis likely influenced Benga's decision to return to the United States the following year . . . ."<sup>364</sup> McCray captures their rebellious spirit in the second half of the poem, "The Anthropology Exhibit":

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357. MCCRAY, *The Anthropology Exhibit*, in OTA BENGA UNDER MY MOTHER'S ROOF, *supra* note 256, at 22–23. "Mazungus" was what the Africans called the white people.

358. Sotiropoulos, *supra* note 203, at 72.

359. *Id.* (The Africans were upset by the fake blood that spurted from the dummy in the ritual killing). Additionally, during the World's Fair, the people exhibited in the Global Village had to compete in games, and occasionally, they performed dances or marching routines. They were also displayed by the anthropologist, Professor Starr, in a course he taught from the Fair.

360. BRADFORD & BLUME, *supra* note 195, at 119.

361. *Id.* at 120.

362. *Id.* (quoting an article from the *Post-Dispatch*).

363. *Id.*

364. Sotiropoulos, *supra* note 203, at 73.

Yah, in Forest when people do bad,  
 we mimic them. Then they shame,  
 don't do that no more, so when Fair  
 people bad, we mimic them.  
 They make fun of us,  
 we make fun of them.  
 They poke us,  
 we poke them.  
 They strut around proud,  
 we strut around proud  
 behind them.  
 At fair we all suppose to march in  
 line, all other group do,  
 but not us. Each one of us march  
 any way we want.  
 One marching right,  
 one marching left.  
 One marching crossways,  
 one marching other ways.  
 We know how to fix them.  
 We had fun. Fair people mad,  
 real mad. Face get red, red, red.  
 They say we cause trouble.  
 Yah, we cause trouble cause they  
 cause trouble.  
 That's way of Forest.<sup>365</sup>

Despite the Africans' protests and their sense of ethics and justice, the white scientists and Fair organizers believed the "urban village" displayed uncivilized and inferior races. In a poem about the competitions, Collins implies that the purpose was to show "that Caucasians were superior."<sup>366</sup> As Collins writes in "Physical Culture,"

Then came Anthropology Days  
 when *primitive* people competed against  
 each other in *civilized* athletes' games

while registered athletes competed  
 in the Third (modern) Olympics.<sup>367</sup>

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365. MCCRAY, *The Anthropology Exhibit*, in OTA BENGA UNDER MY MOTHER'S ROOF, *supra* note 256, at 23–24.

366. BRADFORD & BLUME, *supra* note 195, at 123.

367. COLLINS, *Physical Culture*, in ADMIT ONE: AN AMERICAN SCRAPBOOK, *supra* note 206, at 16.

Collins' short poem quotes the conclusion of McGee that "*The white man can do more and better / than the yellow, the yellow . . . than the red or black.*"<sup>368</sup>

After the World's Fair, Benga returned to Africa with Verner, only to return to the United States again. When Verner was in the sanatorium, he placed Benga first at the Museum of Natural History and then at the Bronx Zoo. McCray does not include a poem about the zoo.<sup>369</sup> As Collins writes in "Ota Benga, Part Two," Verner brought Benga back, claiming that he wanted to return because his "new wife / was killed by a snake no family no tribe / said Verner more or less."<sup>370</sup> As Newkirk notes, Verner's account that Benga remarried "is questionable and has not been independently verified."<sup>371</sup>

Collins' poem continues, with Benga's stay at the Museum of Natural History, "until he misunderstood / the director's gestures (chair → woman) / or understood and still threw the chair . . ."<sup>372</sup> While he was not displayed at the museum, he was taunted by the children who visited, as McCray's poem, "Like a Wind," depicts:

Mazungus, they  
all laughing at me. I laughing at them.  
I show my teeth. They think teeth sharp  
to eat them up. Naw, our teeth  
sharp to eat elephant meat. But,  
I show my teeth to scare Mazungus.<sup>373</sup>

Just as he was thought to be a cannibal at the World's Fair, museum goers think his sharpened teeth indicate he is a savage, and Benga misleads them to get some peace.

368. *Id.*

369. McCray's poem "South Winds: The Pennsylvania Train" depicts Benga's journey by train to Virginia after his release from the zoo. The poem alludes to this in the opening stanza: "Out of the cage, / glad to leave Brooklyn's cold concrete, cold / people (pass you without / a word)." MCCRAY, *South Winds: The Pennsylvania Train*, in OTA BENGA UNDER MY MOTHER'S ROOF, *supra* note 256, at 32.

370. COLLINS, *Ota Benga, Part Two*, in ADMIT ONE: AN AMERICAN SCRAPBOOK, *supra* note 206, at 22.

371. NEWKIRK, *supra* note 194, at 142. It is also not mentioned by McCray in either her memoir or poems, although she does mention his first wife, as discussed above. MCCRAY, *supra* note 256, at xxiv.

372. COLLINS, *Ota Benga, Part Two*, in ADMIT ONE: AN AMERICAN SCRAPBOOK, *supra* note 206, at 22; BRADFORD & BLUME, *supra* note 195, at 166; NEWKIRK, *supra* note 194, at 180.

373. MCCRAY, *Like a Wind*, in OTA BENGA UNDER MY MOTHER'S ROOF, *supra* note 256, at 44–45.



When he is moved to the zoo, it was probably the most stressful and demeaning situation that Benga had experienced in the United States. Journalist Pamela Newkirk surmises that the experience was traumatic and shaming for Benga.<sup>374</sup> Komunyakaa seems to agree, because his poem has Benga telling the boys stories, but never speaking about the Fair or zoo.<sup>375</sup>

Collins describes Benga's display in the zoo in "Ota Benga, Part Three." Again, this documentary poem is drawn from news articles and other documents. When William Hornaday, the zoo's curator, displayed Benga, there were bones in his cage "to suggest cannibalism," and later, he was displayed "with a bow and arrow, a new target made of clay, and a pet parrot . . . [and] Dohong, an orangutan."<sup>376</sup> Collins writes:

And then he was housed in the Primate House  
 where he hung his hammock and wove his nets  
 and watched the orangutan try to escape  
 and then they put up a sign:

The African Pigmy, "Ota Benga."  
 Age 23 years. Height 4 feet 11 inches.  
 Weight 103 pounds. Brought from the Kasai River,  
 Congo Free State, South Central Africa  
 by Dr. Samuel P. Verner  
 Exhibited each afternoon during September

and the people came and the *New York Times* said:

BUSHMAN SHARES A CAGE  
 WITH BRONX PARK APES  
*their heads are much alike*

and zoo director Hornaday said:

Madison Grant gave *full approval*  
*We are taking excellent care*  
*He has one of the best rooms*  
*in the primate house*<sup>377</sup>

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374. NEWKIRK, *supra* note 194, at 12–13, 242.

375. See Komunyakaa, *supra* note 292.

376. NEWKIRK, *supra* note 194, at 25–26.

377. COLLINS, *Ota Benga, Part Three*, in ADMIT ONE: AN AMERICAN SCRAPBOOK, *supra* note 206, at 27–28.

The poem also alludes to a newspaper article describing how “a German visitor asked: *Ist das ein Mensch?*” and to a letter sent to Hornaday where, “a woman asked if she could buy him[.]”<sup>378</sup>

For the most part, Benga attracted huge crowds to the zoo. Some visitors, such as the German visitor quoted in the *Times*, were disturbed by Benga’s presence in the zoo, but most visitors did not question it. Collins describes how finally, however, a group of influential African American ministers protested:

Then black ministers raised a protest, went  
to Hornaday, then to the Mayor, then to Madison Grant,  
and at last the sign came down, Ota Benga was free to roam  
the grounds, but still the visitors came, 40,000 in one day:

*they chased him . . . poked him . . . tripped him up[.]*<sup>379</sup>

Collins describes how Benga once again became rebellious, as he had in the museum, and as the group of Africans had at the World’s Fair:

<i>they chased him</i>	he shot an arrow
<i>they poked him</i>	he brandished a knife
<i>they tripped him</i>	he tried to take off his clothes

—

*this well-developed little man*  
*this normal specimen of his race*

—*this untamed ebony bunch of bother*  
said Hornaday and let the ministers

take Ota Benga to live in the Colored  
Orphan Asylum in Brooklyn and then

on their farm on Long Island and then  
on a farm where he was paid and then . . . [.]<sup>380</sup>

Collins’ poem sets out the facts about this traumatic part of Benga’s life, it shows the racism of the zoo director and zoo visitors and evokes a sense of shock and outrage that a zoo would exhibit a human in the primate house. It is not told from Benga’s perspective,

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378. *Id.* at 28.

379. *Id.* at 28–29.

380. *Id.* at 27–29.

so it does not evoke as much empathy as do the poems by McCray and Komunyakaa.

While all four poets have appropriated Ota Benga as a subject for their poems, they approach the poetry from different intentions. Part of Collins' project in writing the poems in *Admit One* is to "understand[] how her contemporary 'I' is connected to the 'we' of whiteness."<sup>381</sup> Literary critic Ruth Williams sees Collins as "construct[ing] a counter-memory of white group identity which includes racist histories that might otherwise be disavowed in order to perpetuate . . . white supremacy."<sup>382</sup> The collection is entitled *Admit One*, and this title, along with the poem, "Admit / Admit," refers to the Fair admission, as well as to the act of admitting the past history of racism. Williams explains, "[e]ven as we may 'hate to' admit the history of American eugenics into our collective memory, we 'have to' admit it 'into the record' so that we might 'own' it."<sup>383</sup> Collins' poems work to counteract or disavow attitudes, such as that of the Bronx Zoo, Verner, and *The New York Times*, which denied that Benga had been displayed at the zoo, but claimed he was there voluntarily or as an employee.<sup>384</sup> As mentioned above, it was not until 2020, over a hundred years after Benga was displayed in the zoo, that the Bronx Zoo acknowledged this and apologized.<sup>385</sup> On a larger scale, the poems trace how eugenics, Social Darwinism, and other scientific theories of racism, were used to justify colonialism and white supremacy.<sup>386</sup>

These poems about Benga's exhibition at the Fair and zoo have relevance to contemporary issues today. Aguacaso's poem makes an explicit connection, discussed above, between Ota Benga's caging in the zoo to the caging of thousands of undocumented migrants.<sup>387</sup> Journalist Pamela Newkirk draws a correlation to the problems of mass incarceration and police violence. She writes,

[i]f Ota Benga's exhibition holds a lesson for us today, it is this:  
his humanity and that of his spectators were inextricably linked.  
Of the nearly quarter-million people who viewed Ota Benga in  
a cage . . . only a handful spoke out. Most seemed inured to

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381. Ruth Williams, *Writing White: Martha Collins's Poetry of Collective Memory*, 23 LITERARY IMAGINATION 232, 234 (2021).

382. *Id.*

383. *Id.* at 245–46.

384. See NEWKIRK, *supra* note 194, at 202, 245–47.

385. Jacobs, *supra* note 18.

386. See Williams, *supra* note 381, at 244.

387. See AGUASACO, *supra* note 300, at 5.

Benga's plight, just as many appear numb to the brutality that black boys and men live with today.<sup>388</sup>

As Martha Collins has said, she writes these documentary poems of protest because "we have to understand our history, so we won't repeat it. We need to remember."<sup>389</sup>

### CONCLUSION

One of the goals of an anti-racist pedagogy is to examine and critique structural racism, using strategies such as storytelling.<sup>390</sup> However, while bans on critical race theory run rampant throughout the country, navigating how to teach works about race involves complex and contradictory considerations. What should be included in the literary canon today? What will legislators or school boards ban next? How do educators teach a classic work (or a new one) that is seen as culturally appropriative? As this Article shows, whether a literary work fails because it is a harmful cultural appropriation is not a straightforward determination. The definition of "cultural appropriation" is not a stable or uniform one—there is no consensus about the definition, and society's value judgments about cultural appropriation and its harms change over time and among different cultures.

Despite these concerns, I agree with Major Jackson about the necessity of writing and teaching about race because it "is still the most controversial social phenomenon that defines America as a country."<sup>391</sup> However, "[w]e will never have perfect depictions of race, or perfect models for how to imagine race, because we have imperfect beliefs about race."<sup>392</sup> As a result, today's "hypercritical vigilance" over cultural appropriation may have unintended consequences by "actually endanger[ing] writers' freedom to fully characterize with great candor the complexity of their full humanity[.] . . . [As Jackson asks,] [d]oes it not benefit us to have even the most disdainful beliefs and opinions represented in our art?"<sup>393</sup> Similarly, does it not benefit us to study and to teach works which may be judged as culturally appropriative? Is there a way to recuperate these works?

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388. Pamela Newkirk, *The Numbing Spectacle of Racism*, NATION (June 1, 2015), <https://www.thenation.com/article/archive/numbing-spectacle-racism> [<https://perma.cc/2WGY-DMSJ>].

389. Doug Holder, *Interview with Poet Martha Collins*, SOMERVILLE TIMES (Mar. 8, 2017), <https://www.thesomervilletimes.com/archives/74283> [<https://perma.cc/M486-9WDB>].

390. See Delgado, *supra* note 14, at 2412–14; see also Ayres, *supra* note 14, at 28–30, 35–36.

391. Jackson, *supra* note 119, at 20.

392. REKDAL, *supra* note 20, at 169.

393. Jackson, *supra* note 119, at 19.

This Article has considered both Benga's life story along with poems about his life to demonstrate possibilities for an anti-racist pedagogy. Specifically, Buhler's poem written at the turn of the twentieth century, when Benga was held captive and exhibited in the Bronx Zoo, reveals racist stereotypes of the times. Today, it would likely be read as an example of harmful cultural appropriation.<sup>394</sup> In contrast, the more contemporary poems by Komunyakaa, Aguasaco, Collins, and McCray allow us to empathize with Benga, to grasp the underlying racism of early twentieth century science, and to examine the construction of race. Taken together, these poems portray Benga as what James Baldwin called a "true character," a character who is "resolutely indefinable, unpredictable," rather than merely a "sentimental project."<sup>395</sup>

While stories and narrative are valuable tools for a pedagogy of anti-racism, it is hard to predict what educators can and cannot teach in states that have enacted critical race theory bans. One strategy is to recuperate works that might be viewed as harmful cultural appropriations. For example, Buhler's 1906 poem about Ota Benga could be recuperated as evidence of the social and cultural beliefs of the time, read against the more contemporary poems critiquing society's treatment of Benga. Or, classic works in the law and humanities canon which have been criticized *as* harmful cultural appropriation, such as *To Kill a Mockingbird*,<sup>396</sup> could be recuperated for an anti-racist pedagogy. Professor Geoffrey Glover suggests that racist tropes and stereotypes in *To Kill a Mockingbird* can be challenged by readers of color, for instance, by "de-center[ing] whiteness . . . [and providing] an oppositional reading of the text that focuses on the few instances of Black characters . . . giv[ing] students the opportunity to create their own meaning for some of the scenes."<sup>397</sup>

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394. See REKDAL, *supra* note 20, at 167. The 1906 poem is evidence of the racist sentiment of the times and so, I would include it in teaching materials about Benga.

395. JAMES BALDWIN, *Everybody's Protest Novel*, in NOTES OF A NATIVE SON 13, 15 (1983); see also REKDAL, *supra* note 20, at 90–91 (quoting Baldwin).

396. The novel has been criticized as harmful cultural appropriation because it: is one by a white author, told through primarily white characters. Rereading the book, I was struck that Lee offers rich profiles of the story's white characters, their personalities, mannerisms, dress, histories, but there are no such character studies to be found for any of the African Americans in this story. Their humanity is obscured from us, suggesting that it is of little consequence to the author, reader or the whites in Maycomb. White privilege means not actually having to know black or brown people, to live among them but to never really see them, even in one's own house.

Errin Haines, *The Truths 'To Kill a Mockingbird' Tells About White People: Rereading A Classic On Its 60th Anniversary*, WASH. POST (July 22, 2020, 8:14 AM), <https://www.washingtonpost.com/lifestyle/2020/07/22/truths-kill-mockingbird-tells-about-white-people> [<https://perma.cc/LHC9-F4KQ>].

397. Fischgrund, *supra* note 23.

Additionally, classic works in the law and literature canon that have been recently criticized as harmful cultural appropriations, including *To Kill a Mockingbird*, could be recuperated to teach about race, identity, history, and trauma.<sup>398</sup> This could be done by contextualizing the work with other works and views of the time—to show, for instance, that Harper Lee’s views about race “were both imitative *and* innovative.”<sup>399</sup> Or, to explore questions such as: “[w]hat does whiteness mean in the 1960s, when it was written? What does it mean in the 1930s when the book is set? And what does it mean now?”<sup>400</sup>

Likewise, *To Kill a Mockingbird* can also be examined to show the intersections of race, class, and gender.<sup>401</sup> For instance, an intersectionality approach to the novel reveals that “[t]he crime that’s investigated is a rape of a white woman of lower class by a Black man. The woman is questionable in her credibility because of her class, and the Black man isn’t believed because of his race. It reflects the story of Emmett Till.”<sup>402</sup> The story also reflects police violence against Black men, and other problems with the current criminal justice system. Related to this intersectionality approach is Judy Cornett’s penetrating discussion of not only class, but the American urban-rural divide in *To Kill a Mockingbird*.<sup>403</sup>

Finally, a work can be paired with another to show a different perspective. For instance, Glover suggests pairing *To Kill a Mockingbird* with Toni Morrison’s *The Bluest Eye*, in order to examine “a Black child’s interaction with racism versus white child’s interaction with racism, and the loss of innocence they both experience.”<sup>404</sup> Or it could be paired with Chester Himes’ *If He Hollers Let Him God*,

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398. See REKDAL, *supra* note 20, at 155.

399. *Id.* at 167 (Rekdal makes this point in teaching Faulkner). She also uses Brian Morton’s theory of reading as a time machine—in other words, reading from the historical and cultural context of the author. *Id.* at 164.

400. Fischgrund, *supra* note 23.

401. See Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL. F. 139, 149 (1989); see also Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1242–45 (1991).

402. Fischgrund, *supra* note 23.

403. Judy M. Cornett, *Urban and Rural Values in To Kill a Mockingbird*, Manuscript on file with author.

404. Fischgrund, *supra* note 23. Of course, it is possible that *The Bluest Eye* will be on a banned-book list. See Dan Solomon, *A User’s Guide to All the Banned Books in Texas*, TEX. MONTHLY (Sept. 20, 2022), <https://www.texasmonthly.com/arts-entertainment/users-guide-banned-books-texas> [https://perma.cc/7R2Y-3XA6] (listing *The Bluest Eye* as among “some of the most acclaimed books” that are being banned, along with poetry by Maya Angelou, and other “well regarded” works).

to show “Black rage and rage against institutions of racism. It links to the despair Tom felt as he went to escape [in *To Kill a Mockingbird*].”<sup>405</sup>

Even if a teacher attempts to recuperate a work, it is important to remember that there will be readers who believe the work is beyond recuperation or believe that any cultural appropriation is a failure. Students may even claim that a teacher is racist for including the work on the syllabus. It is difficult to predict how efforts to incorporate an anti-racist pedagogy will be evaluated by students or administrators. Yet, I would give the same advice to teachers striving for an anti-racist pedagogy that Rekdal gives in *Appropriate* to her fictional creative writing student (“X”), substituting the word “teaching” for “writing”:

This is why, X, an appropriative work that succeeds aesthetically might also be treated by readers as a larger ethical failure, and why appropriative works can never be excused or justified on the basis of accuracy. If you are looking for comfort or vindication for your [teaching], you will never have it. You will have to choose for yourself, understanding that even sensitive literary portrayals may perpetuate racist systems.<sup>406</sup>

In today’s contentious society, and as more and more states enact critical race theory bans, educators must resist attempts “to eliminate one side of the debate.”<sup>407</sup> Thus, it is more important now than ever—in this seemingly “dystopian”<sup>408</sup> era—to develop a pedagogy of anti-racism and to work through questions of cultural appropriation, as long as higher education “is peculiarly the ‘marketplace of ideas.’”<sup>409</sup>

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405. Fischgrund, *supra* note 23 (also suggesting Morrison’s short story “Recitatif,” Octavia Butler’s *Kindred*, Samira Ahmed’s *Internment*, and Ralph Ellison’s *Invisible Man* or “Battle Royale”).

406. REKDAL, *supra* note 20, at 88–89 (emphasis added). This advice also applies to legal scholarship that may be considered culturally appropriative, but again, that discussion is for another article.

407. *Pernell v. Fla. Bd. of Governors of State U. Sys.*, 641 F. Supp. 3d 1218, 1230 n. 5 (N.D. Fla. 2022).

408. *Id.* at 1230.

409. *Id.* at 1236 (citing *Healy v. James*, 408 U.S. 169, 180–81 (1972)).