

Cambridge University Press  
978-1-107-07004-2 - In Defense of Uncle Tom: Why Blacks Must  
Police Racial Loyalty  
Brando Simeo Starkey  
Excerpt  
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## Introduction

IN DECEMBER 1942, a black man named Warren H. Brown denounced black newspapers in a *Saturday Review of Literature* editorial. Brown, director of Negro relations for the Council for Democracy, argued that blacks came in two molds, “Negroes and sensation-mongering Negro leaders.” To his discomfort, the latter controlled black newspapers. He believed the “agitators” provided whites an inaccurate portrait of the Negro. These newspapers painted blacks as hungry and thoroughly frustrated with what America served them. When the black man peeked over at the white man’s plate, he saw something far more appetizing.

Brown, however, depicted a satisfied lot, believing that “despite his sometimes snail’s-pace progress, the Negro knows that in America – for the long pull – he can’t lose.” Brown was dismayed that black newspapermen excluded this positive picture from their work. In his estimation, these newspapers aggravated racial hostility by portraying blacks as discontent and “Negro first and American second.” Brown implored black newspapers to change the images they disseminated and solicited his people to boycott these publications for their “venomous, hate-making policies.”<sup>1</sup>

But black newspapers, not Brown, best captured the likeness of black people. Indeed, blacks endorsed their newspapers’ sharp criticisms of America. Reacting to Brown’s editorial, the *Negro Digest* polled blacks, finding that 86 percent of respondents felt that their newspapers represented their views. The monthly reported, in fact, that many wished the black press was even more aggressive.<sup>2</sup>

<sup>1</sup> Warren H. Brown, *A Negro Looks at the Negro Press*, *Saturday Review of Literature*, Dec. 19, 1942, at 5–6.

<sup>2</sup> Wallace Lee, *Does the Negro Press Speak for Most Negroes in its Opinions?*, *Negro Digest*, Feb. 1943, at 54.

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But beyond simply misjudging blacks' perceptions of race relations, Brown denigrated an important black institution in the Jim Crow era. Writing in the *Michigan Chronicle*, a black newspaper, Louis E. Martin argued that whites had consistently targeted the black press. Acutely aware of the need to monitor blacks to maintain the racial pecking order, whites who perused black newspapers were frequently alarmed by their content and depicted them as extreme. Martin anticipated a black person would parrot whites' criticisms, and Brown became "the long awaited voice of an Uncle Tom courting the affection of his white masters." In a different black newspaper, James A. Hamlett Jr. agreed, stating that Brown was one of the "'Uncle Tom' Negroes" who "tell white people anything ... as long as it is something to block the progress of the Negro race."<sup>3</sup>

Both argued that black newspapers encouraged recent racial progress. Martin specifically mentioned President Franklin Roosevelt's executive order outlawing employment discrimination in war industries as well as the Fair Employment Practice Committee, which prohibited companies that practiced employment discrimination from receiving federal contracts. Martin insisted that black newspapers taught blacks to "demand" their rights, and Brown committed racial treachery by rebuking such a vital institution. With one epithet, the two disparaged Brown for taking thirty pieces of silver. Martin and Hamlett participated in a common black cultural practice. They launched *Uncle Tom* at a black person they felt violated unwritten group rules and impeded the race's collective interests.<sup>4</sup>

As the case of Warren Brown shows, *Uncle Tom* is more than just a slur that blacks have hurled at supposed Judases. It is a vital component of a system of social norms in the black community that police racial loyalty. Social norms are the rules that regulate behavior in groups that are enforced through sanction. Blacks have monitored fidelity through the management of "racial loyalty norms" throughout history. This book is a biography of *Uncle Tom*, the most historically significant punishment for defying these norms.<sup>5</sup>

*Uncle Tom* owes much of its prominence to the cause of black solidarity. By marshalling support for certain goals, solidarity provides blacks a path toward legal gains. By itself, it is inadequate. But in concert with other tools – strategy,

<sup>3</sup> Louis E. Martin, *Negro Digest*, Feb. 1943, at 46.

<sup>4</sup> Id.; James A. Hamlett Jr., *Week-end Chats*, Plaindealer, Jan. 15, 1943, at 1; Andrew Edmund Kersten, *Race, Jobs, and the War: The FEPC in the Midwest, 1941–46* 17–18 (2000); Paul Norgen, *Government Contracts and Fair Employment Practices*, 29 *Law and Contemporary Problems* 225, 225 (1964).

<sup>5</sup> Cass Sunstein, *Social Norms and Social Roles*, 96 *Columbia Law Review* 903, 907 (1996); Christine Horne, *Sociological Perspectives on the Emergence of Norms* found in Michael Hechter and Karl-Dieter Opp, *Social Norms* 5 (2001).

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moral authority, organization, and the like – black solidarity is invaluable. The Montgomery Bus Boycott, the 1960s sit-in movements, and Project Confrontation in Birmingham in 1963 exemplify black solidarity, in tandem with other tools, helping produce civil rights victories. Even when substantive legal gains never eventuate, see, for instance, the antilynching movement, solidarity nonetheless provides a starting point from which to resist subordination. And as law professor Derrick Bell once noted, the mere act of resisting should oftentimes be considered a form of victory. If black solidarity is so valuable in the pursuit of legal triumphs, then social norms that encourage that solidarity are crucial.<sup>6</sup>

My thesis is that blacks should enforce “constructive” social norms to police racial loyalty because doing so helps bolster black solidarity, which is vital in promoting collective legal interests and ability to affect public policy. I follow the life of *Uncle Tom* to demonstrate my thesis. A person is called an *Uncle Tom* for violating a racial loyalty norm that truly exists or a norm that one who endeavors to create new norms, a norm entrepreneur, wants to exist. This signals to the rest of the black community to conform or else face punishment. That is, *Uncle Tom*’s power stems from its effects on the broader group, not any effect it may have on the supposed betrayer. Quite simply, *Uncle Tom* deters treachery. Shadowing *Uncle Tom* through black history helps us to understand where and how these norms were constructed, disseminated, applied, and enforced. From there, we can assess their propriety.<sup>7</sup>

These norms arrange into two groups: constructive norms and destructive norms. Constructive norms, on the one hand, help build black solidarity by penalizing individuals for consciously promoting the interests of antiblack

<sup>6</sup> There is a wealth of literature on the Montgomery Bus Boycott, the sit-in movements, Project Confrontation in Birmingham, and the antilynching movement. See, for example, Jo Ann Gibson Robinson, *The Montgomery Bus Boycott and the Women Who Started it* (1987); Donnie Williams and Wayne Greenhaw, *The Thunder of Angels: The Montgomery Bus Boycott and the People Who Broke the Back of Jim Crow* (2006); Randall Kennedy, *Martin Luther King’s Constitution: A Legal History of the Montgomery Bus Boycott*, 98 *Yale Law Journal* 999 (1989); Robert Jerome Glennon, *The Role of Law in the Civil Rights Movement: The Montgomery Bus Boycott, 1955–1957*, 9 *Law and History Review* 59 (1991); Ruth Searles and J. Allen Williams Jr., *Negro College Students’ Participation in Sit-Ins*, 40 *Social Forces* 215 (1962); Diane McWhorter, *Carry Me Home: Birmingham, Alabama: The Climatic Battle of the Civil Rights Revolution* (2001); Rosalyn Terborg-Penn, *Discontent Black Feminists: Prelude and Postscript to the Passage of the Nineteenth Amendment in The Black Studies Reader* 74 (Editors Jacqueline Bobo, Cynthia Hudley, and Claudine Michel 2004); Deleso Alford Washington, *Exploring the Black Wombman’s Sphere and the Anti-Lynching Crusade of the Early Twentieth Century*, 3 *The Georgetown Journal of Gender and the Law* 895 (2002); Derrick A. Bell, *Racial Realism*, 24 *Connecticut Law Review* 363, 379 (1992).

<sup>7</sup> For a deeper discussion of the “norm entrepreneur” see Eric A. Posner, *Symbols, Signals, and Social Norms in Politics and the Law*, 27 *Journal of Legal Studies* 765, 772–76 (1998).

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entities, for exhibiting inexcusable meekness in the face of racism, or for lacking concern for the race. “Destructive” social norms, on the other hand, discipline blacks for behaviors the race should permit, impeding the cause of racial solidarity. These norms overregulate behavior.

I want to clarify what I am not arguing. For one, I am not alleging that social norms that punish “sellouts,” on their own, directly caused concrete gains. Because many variables account for racial progress, that position is unreasonable. My claim is, rather, that properly using social norms can help galvanize the black community around important goals. Where evidence supports the contention that social norms did help galvanize the black community, I argue as such. I do not contend, furthermore, that blacks have strategically maintained social norms for racial progress. I endeavor to show, in short, that subordinate groups can advance their collective interests, particularly their legal interests, with intelligent use of social norms.

Apart from my main thesis, I proffer three subsidiary arguments. The first is that blacks have discarded and redrawn conceptions of racial betrayal throughout time. To varying degrees, racial loyalty policing responds to the many methods of racial subordination of a particular era.

The first of three definable periods of *Uncle Tom*’s “post Cabin” career began in 1865 and ended in 1959. During these years, blacks managed various norms to promote racial solidarity. The most prevalent norm was that blacks had to resist segregation. Norms were also constructed to empower blacks to eschew the asserted meek characteristics of Southern Negroes. *Uncle Tom*, furthermore, assailed blacks in various employment contexts. Black clergymen who supposedly advised capitulation too were constantly targeted for *Uncle Tom* punishment. Negroes supporting Herbert Hoover likewise broke norms, resulting in *Uncle Tom* brandings. Blacks in Hollywood, as well, suffered the indignity that inevitably accompanies *Uncle Tom* when playing roles that were considered demeaning to the race. These roles reinforced stereotypes that endorsed racial inferiority and supported legal subjugation.

The second period is from 1960 to 1975. Here, recalcitrance regarding desegregation and a lack of true progress largely propelled the direction in which racial loyalty norms proceeded. During the first period, these norms were, generally speaking, only enforced by one group, those endeavoring to overthrow the racial caste system. But in the second period, we see two groups – integrationists and black nationalists – manage frequently clashing sets of social norms. Integrationists’ entire enterprise of norms maintenance was devoted to rallying blacks around the goal of an integrated society that followed the complete dismantling of segregation. Thus, blacks who refused to take part in uprooting the status quo, disapproved of busing, or deprecated

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the sit-in and protest efforts all broke the social norms promulgated by integrationists.

Whereas integrationists were concerned with introducing blacks into larger society, black nationalists loudly dissented. Nationalists indicted integrationists for betrayal for wanting closer associations with whites who, nationalists averred, refused to remedy their racist past to create an egalitarian future. Militants, preferring more radical strategies, attacked both integrationists and supporters of interracial coalition politics. Malcolm X, who rebuffed racial intermingling, features prominently during this period. Black nationalists, in sum, fashioned racial loyalty norms to push blacks away from white society and toward the creation of a separate black existence.<sup>8</sup>

During these years, moreover, visible hostility between the black community and police officers increased. Blacks, integrationists and militants alike, profoundly distrusted the police. Police departments, in response, hired black officers particularly to police black neighborhoods. Blacks taking such positions, however, were constantly derided as *Uncle Toms*.

The third and final period starts in 1976 and continues to the present day. Overt racism is more relic than reality and Americans overwhelmingly reject discrimination. With federal and state antidiscrimination laws, legal equality is secured. That does not, however, equate to actual equality. Whatever is deemed worth having, blacks have less. This is the central issue of this period, guiding *Uncle Tom's* trajectory. With blacks voting for Democrats nine to one, black Republicans are frequently dismissed as sellouts. As blacks run for all levels of political office, social norms, furthermore, often require complete black support. Being too connected with or favorable toward the prosecutorial side of justice system, which is perceived as rife with racial bias, also makes blacks vulnerable to *Uncle Tom* accusations.

My second subsidiary argument is that as the endeavor of policing loyalty through social norms continued throughout history, destructive norms have increasingly predominated over constructive ones. The best explanation is that social norm managers are now less responsible. Previous enforcers tended to be more conscientious. This has been gradually less true, particularly in the third period. *Uncle Tom* has diverted from its past. It now frequently appears in situations devoid of even a whiff of duplicity.

But what should blacks do with *Uncle Tom*? In the third subsidiary argument, I address what place racial loyalty norms and *Uncle Tom* should have in contemporary society. Killing *Uncle Tom* and ceasing policing loyalty is the

<sup>8</sup> Angela Jones, *African American Civil Rights: Early Activism and the Niagara Movement* 50 (2011).

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popular stance. But that's a terrible, potentially disastrous, idea. Rather, blacks must continue to constructively manage social norms, and *Uncle Tom* should be rehabilitated, not deserted. Because constructive social norms and *Uncle Tom* can still help blacks improve their condition, the group must resist any impulse to forsake them. Many malign the very idea of sellout rhetoric. I write, however, in defense of *Uncle Tom*.

I concede, though, that the *Uncle Tom* card is now overplayed. *Uncle Tom* is dealt to nearly every black person who voices conservatism. Publically opposing affirmative action, for instance, is a sure bet to be called an *Uncle Tom*. Yet criticizing the policy is far from treacherous. I hold, nevertheless, that the epithet can still aid in the pursuit of racial progress. In the quest for equality, it is imperative that blacks not sacrifice the race's well-being for personal gain or any other reason. Some are still guilty of this. And there will be more in future generations. Blacks, therefore, must be concerned about potential turncoats. *Uncle Tom* is a baleful epithet with the capacity to bolster racial fidelity. For self-defense, *Uncle Tom* must be retained although not unsheathed habitually. But, racial loyalty norms and *Uncle Tom* must remain in the arsenal because blacks' best opportunity for full emancipatory justice calls for group unity. A race cannot lift itself with turncoats weighing it down.

This book draws from legal history, American history, black studies, sociology, psychology, political science, and other disciplines to make the point that blacks can manage racial loyalty norms to promote their collective legal interests. Among the various fields this work may be linked to, it certainly is what legal historian Alfred Brophy refers to as applied legal history, legal historical scholarship that "speaks to contemporary issues." This book inspects the past to guide present and future generations in their quest for social justice.<sup>9</sup>

But I primarily intend to expand the debate within law and social norms literature. Legal scholars examining the intersection of law and social norms make various arguments. As seen in Robert Ellickson's *Order without Law* (1994) or Lisa Bernstein's work on the diamond industry, one prominent argument holds that disputes can be settled in the absence of law by using social norms. And as seen in the scholarship of Dan Kahan or Cass Sunstein, another argument holds that society can be improved if government, through law, manages social norms in certain contexts.<sup>10</sup>

<sup>9</sup> Alfred L. Brophy, *Introducing Applied Legal History*, 31 *Law and History Review* 233, 233 (2013).

<sup>10</sup> Robert Ellickson, *Order Without Law* (1994); Lisa Bernstein, *Opting out of the Legal System: Extralegal Contractual Relations in the Diamond Industry*, 21 *Journal of Legal Studies* 115 (1992); Sunstein, *Social Norms and Social Roles*; Dan M. Kahan, *Social Influence, Social Meaning and Deterrence*, 83 *Virginia Law Review* 349 (1997).

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Another story, however, longs to be told, one obscured by the larger law and social norms narrative. My claim is that marginalized peoples can, and often should, contest their legal marginalization by managing norms within their own communities. Finding great potential, perhaps women can unlock a more equal future through the management of social norms. The lesbian, gay, bisexual, and transgendered community too might apply this principle to their plight. Or poor whites in Appalachia, perchance, may see the benefits of my position. This thesis has enormous potential for marginalized groups with varied legal grievances. This book explores how communities can manage social norms to promote their legal interests by examining one community, the black community, and one class of norms, those punishing racial treachery.

Chapter 1 provides the context about black solidarity, how *Uncle Tom* became an epithet and the difference between constructive and destructive social norms. In full, this chapter presents the background and structure on which the rest of the book builds. The following seven chapters examine the three different periods of these social norms: 1865–1959, 1960–1975,

I am not contending that these are the only arguments made within the law and social norm fields. There are countless examples of law and social norms scholarship produced by law professors. This following list is based on an amazing bibliography put together by Christopher Fennell, *Sources on Social Norms and Law*, available at: <http://www.anthro.illinois.edu/faculty/cfennell/syllabus/normbib.htm>. See, for instance, Eric A. Posner, *Law and Social Norms* (2002); Eric A. Posner, *Social Norms, Nonlegal Sanctions, and the Law* (2007); *Norms and the Law* (Editor John N. Drobak 2006); Lisa Bernstein, *Social Norms and Default Rule Analysis*, 3 *Southern California Interdisciplinary Law Journal* 59 (1993); Richard A. Posner, *Social Norms and the Law: An Economic Approach*, 87 *The American Economic Review* 365 (1997); Dan M. Kahan, *Gentle Nudges vs. Hard Shoves: Solving the Sticky Norms Problem*, 67 *University of Chicago Law Review* 607 (2000); Robert Cooter and Ariel Porat, *Should Courts Deduct Nonlegal Sanctions from Damages?*, 30 *Journal of Legal Studies* 401 (2001); Steven A. Hetcher, *Norm Proselytizers Create A Privacy Entitlement in Cyberspace*, 16 *Berkeley Technology Law Journal* 877 (2001); Dan M. Kahan and Eric A. Posner, *Shaming White-collar Criminals: A Proposal for Reform of the Federal Sentencing Guidelines*, 42 *Journal of Law and Economics* 365 (1999); Dan M. Kahan, *Reciprocity, Collective Action, and Community Policing*, 90 *California Law Review* 1513 (2003); Lawrence Lessig, *The Regulation of Social Meaning*, 62 *University of Chicago Law Review* 943 (1995); Lawrence Lessig, *Social Meaning and Social Norms*, 144 *University of Pennsylvania Law Review* 2181 (1996); Richard H. McAdams, *Signaling Discount Rates: Law, Norms, Economic Methodology*, 100 *Yale Law Journal* 625 (2001); Lawrence E. Mitchell, *Understanding Norms*, 49 *University of Toronto Law Journal* 177 (1999); Lior J. Strahilevitz, *How Changes in Property Regimes Influence Social Norms: Commodifying California's Carpool Lanes*, 75 *Indiana Law Journal* 1231 (2000); Lior J. Strahilevitz, *Charismatic Code, Social Norms, and the Emergence of Cooperation on the File-swapping Networks*, 89 *Virginia Law Review* 505 (2003); Cass Sunstein, *Selective Fatalism*, 27 *Journal of Legal Studies* 799 (1998); Robert C. Ellickson, *Controlling Chronic Misconduct in City Spaces: Of Panhandlers, Skid Rows, and Public-Space Zoning*, 105 *Yale Law Journal* 1165 (1996); Dan M. Kahan, *Between Economics and Sociology: The New Path of Deterrence*, 95 *Michigan Law Review* 2477 (1997).

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and 1976–present. Two chapters are dedicated to the first two periods and three chapters are dedicated to the last. Each period has one chapter detailing the social norms that regulated the behavior of non-famous blacks and one doing the same with renowned blacks. The last period also has a chapter about Supreme Court Justice Clarence Thomas. These seven chapters assess the propriety of the various *Uncle Tom* accusations – determining who was and who was not guilty of betrayal – and establish how constructive norms helped blacks’ overall legal interests and why destructive norms were imprudent. The final chapter, Chapter 9, explores what blacks should do with racial loyalty norms moving forward. Here I unpack my third subsidiary argument – that blacks should continue enforcing constructive racial loyalty norms to help advance collective legal interests and capacity to influence public policy.



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## 1

Solidarity, Social Norms, and *Uncle Tom*INTRODUCING *UNCLE TOM*

**I**N 1934, FISK UNIVERSITY, A BLACK college in Nashville, disciplined one of its students for protesting the school's decision to have student singers perform at a segregated theater. A columnist for the *Baltimore Afro-American*, a black newspaper, commended the student and criticized Fisk for bowing and scraping before Jim Crow. The columnist preferred to burn down all Southern black colleges rather than have the race's brightest young minds learn in "'Uncle Tom' Schools," which train their students to lie down while educators drain their valor to resist racism.<sup>1</sup>

A few months later and nearly 700 miles north, M. Gran Lucas, a black elementary school principal, defended segregation before a National Education Association gathering in Washington, DC. Lucas told the audience, which included President Franklin Roosevelt, that separate schools were best for black children. According to Lucas, black pupils had particular needs that integrated schools could not accommodate. Columnist L. K. McMillan lambasted the speech as one in a series of disgraceful pro-Jim Crow speeches blacks had delivered to national audiences in recent memory. Lucas, like the other speakers, was an "Uncle Tom" more concerned with receiving his "assured pork chops" than black children.<sup>2</sup>

These incredibly rich tales reveal various textures that represent just a piece of the intricate tapestry that is the black American existence. These accounts illustrate the burgeoning race consciousness and black solidarity

<sup>1</sup> Flying Cavalier, *Hats Off to Flory*, *Afro-American*, Mar. 31, 1934, at 15. From now on, when I refer to the *Afro-American* I mean the *Baltimore Afro-American*. A few other cities had their own *Afro-American* newspapers.

<sup>2</sup> L. McMillan, *McMillan Scourges Lucas for Favoring Dual School System*, *Afro-American*, July 14, 1934, at 14.

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before the civil rights movement; they highlight the frequent expectations of racial loyalty; they reveal how the black community managed social norms; and they suggest the sanctioning power of *Uncle Tom*. Each of these separate ingredients, when stewed together, forms the basis of this book.

In this chapter, I provide the background structure upon which the rest of this book will build. First, I narrate how race consciousness and black solidarity arose and argue that blacks should enforce social norms to maintain and build that solidarity. I then champion black solidarity and differentiate between constructive and destructive racial loyalty norms. Next I investigate *Uncle Tom* and detail how a character from a novel became an epithet. Last I defend the continued use of *Uncle Tom*.

### CHRONICLING BLACK SOLIDARITY

The story of social norms, racial treachery, and *Uncle Tom* is comprised of various smaller narratives. The foundational narrative, though, concerns what, beyond racism, sparked blacks to enforce racial loyalty. The catalysts are race consciousness – the identification with and loyalty toward one’s racial group – and racial solidarity – the end state where the racially conscious unite around shared interests. Strong conceptions of both precede widespread expectations of loyalty.<sup>3</sup>

Our story opens with free blacks in the North in the late 1700s. The first black social movement, which indicates race consciousness and solidarity, was launched by free blacks seeking separate churches in the North. Their campaign for their own houses of worship began when blacks were increasingly present in white Baptist and Methodist pews. A sprinkling of Negroes among a sea of whites triggered no waves. A “mass” of dark faces, however, “caused [Northern whites] to react with the same prejudice as their brothers to the South.” Rather than welcome the budding black population, white churchgoers limited their privileges. The movement for black churches, occurring in various Northern cities, encouraged race consciousness and solidarity among freemen.<sup>4</sup>

<sup>3</sup> W. O. Brown, *The Nature of Race Consciousness*, 10 *Social Forces* 90 (1931); W. O. Brown, *Race Consciousness among South African Natives*, 40 *American Journal of Sociology* 560–70 (1935); Alvin J. Schexnider, *The Development of Racial Solidarity in the Armed Forces*, 5 *Journal of Black Studies* 415, 415–16 (1975); William T. Hoston, *Black Solidarity and Racial Context: An Exploration of the Role of Black Solidarity in U.S. Cities*, 39 *Journal of Black Studies* 719 (2009).

<sup>4</sup> Joseph R. Washington Jr., *Black Religion: The Negro and Christianity in the United States* 187–88 (1966).