
The Yellow Pacific: Transnational Identities, Diasporic Racialization, and Myth(s) of the “Asian Century”

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INTRODUCTION

The history of blacks in the West and the social movements that have affirmed and rewritten that history can provide a lesson which is not restricted to blacks. They raise issues of more general significance . . . [and] a potentially important contribution here towards the politics of a new century in which the central axis of conflict will no longer be the colour line but the challenge of just, sustainable development and the frontiers which will separate the overdeveloped parts of the world (at home and abroad) from the intractable poverty that already surrounds them. . . . [I]t may be easier to appreciate the utility of a response to racism that doesn't reify the concept of race, and to prize the wisdom generated by developing a series of answers to the power of ethnic absolutism that doesn't try to fix ethnicity absolutely but sees it instead as an infinite process of identity construction.¹

Many scholars and commentators have dubbed the modern rise and global influence of certain Asian countries as the "Asian Century."² However, this term typically refers to a single nation-state during a specific period of time. For instance, the "British Century" connotes the prominence of the British Empire during the nineteenth century. Similarly, the "American Century" refers to the dominance of the United States as a global superpower since World War II. However, is such a narrow conception of the Asian Century warranted?

"The Yellow Pacific" is an attempt to reframe the discussion surrounding the Asian Century.³ Asia is not a nation-state, and Anglo-American attitudes towards the people and nations of Asia have shaped profoundly U.S. politics, culture, and economics for over a century and a half.⁴ Thus, rather than view the Asian Century from a

¹ PAUL GILROY, *THE BLACK ATLANTIC: MODERNITY AND DOUBLE CONSCIOUSNESS* 223 (1993).

² For accounts referencing the "Asian Century," the "Japanese Century," the "Chinese Century," or even the "Chinidan Century," see JAGDIS N. SHETH, *CHINDIA RISING: HOW CHINA AND INDIA WILL BENEFIT YOUR BUSINESS* (2008); EZRA VOGEL, *JAPAN AS NUMBER ONE: LESSONS FOR AMERICA* (1979); Kenneth Abbott & Gregory Bowman, *Economic Integration for the Asian Century: An Early Look at New Approaches*, 4 *TRANSNAT'L. & CONTEMP. PROBS.* 187, 189, 191 (1994); Ted C. Fishman, *The Chinese Century*, *N.Y. TIMES MAG.*, July 4, 2004, at 24, 27.

³ "The Yellow Pacific," part of this Article's title, is a racial metaphor that mirrors Paul Gilroy's coining of the term "The Black Atlantic." See GILROY, *supra* note 1.

⁴ GARY Y. OKIHIRO, *MARGINS AND MAINSTREAMS: ASIANS IN AMERICAN HISTORY AND CULTURE* 48 (1998) (arguing that model minority concept posits compatibility, if not

nation-state conception, the term is more properly understood through the lens of Asian diaspora, race, immigration law and policy, and geopolitics.

This Article will proceed in four parts. Part I assesses scholars' use of the term the Asian Century. While the British Century or the American Century refer to distinct nation-states, the Asian Century does not carry a distinct frame of reference.⁵ Scholars using the term the Asian Century take for granted that "Asia" and "Asian" are self-evident concepts, when in fact, these terms are ambiguous, vague, overstated, and contradictory.⁶ Thus, this Article argues that the Asian Century does not reference a particular nation-state, but rather an extremely ambiguous geographic and racial/ethnographic formulation.

Furthermore, scholars and commentators assume that the twenty-first century is the Asian Century. However, such a narrow conception ignores the historical baggage of nearly a century and half of tenuous relations between the United States and Asia.⁷ Thus, Part II argues that the twentieth century, where the United States repeatedly dealt with racialized fears of cyclic Asian military, political, economic, and cultural ascendance, is the true Asian Century.

This Article then proceeds to propose theoretical frameworks from which the Asian Century may be best understood. Part III argues that diasporas from the various nation-states of Asia in an era of

identity, between key elements of Asian and Anglo-American culture, and thus, instead of deconstructing European identity, Anglicized Asian culture representation reifies and attests perceived differences as Asian versus American); Marcus Noland, *United States Economic Policy Toward Asia*, 103 E. W. CENTER ECON. SERIES 1, 3 (2009), available at www.eastwestcenter.org/fileadmin/stored/pdfs/econwp103.pdf (noting that Anglo-American attitudes towards Asian people and nations have profoundly shaped U.S. politics). As Paul Gilroy points out, understandings of race and the white-black paradigm have shaped trans-Atlantic politics, culture, economics, and societies in complex ways for over five centuries. See generally GILROY, *supra* note 1.

⁵ Although the discussion is primarily in the context of nation-states, such discussions almost always include racial allusions. See Neil Gotanda, *Disoriented: Asian Americans, Law, and the Nation-State*, 4 J. ASIAN AM. STUD. 175, 175-77 (2001) (reviewing ROBERT S. CHANG, *DISORIENTED: ASIAN AMERICANS, LAW AND THE NATION-STATE* (1999)) (arguing that context, race, and Asian American race matter).

⁶ Cf. Neil Gotanda, *Exclusion and Inclusion: Immigration and American Orientalism*, in *ACROSS THE PACIFIC: ASIAN AMERICANS AND GLOBALIZATION* 129, 130-32 (Evelyn Hu-DeHart ed., 1999); EDWARD SAID, *ORIENTALISM* 31-110 (1979) (discussing and critiquing ways that Europeans constructed "Orient" in contradistinction to Europe and "West" via West Asian civilization study).

⁷ In particular, since the mid-nineteenth century, the United States has demonstrated a deep and pervasive anxiety regarding Asia. Much of this anxiety continues to color U.S. military, political, economic, and cultural relations with China, Japan, Korea, Vietnam, and India.

globalization have resulted in a complex fracturing of the idea of “Asian” in the context of transnationalization of politics, economics, and culture.⁸ Technological advancement makes these borders more porous, facilitating significant amounts of communications, remittances, and other contacts between immigrants from the “home” and “host” countries.⁹ A diasporic perspective creates a profound interpenetration and transformation of national, economic, political, cultural, and individual and group identities in both host and home countries.¹⁰ Thus, technologies and other globalization factors have de-centered the notion of “Asia” meaning that “Asia” is “here” in the United States and Europe and, for better or worse, the United States and Europe are “there.”¹¹

⁸ This Article does not argue that perceived, but dynamic, notions of race are irrelevant or should be ignored when discussing migration and international relations. This Article argues that understandings of ethnicity, nation, and race from homelands interact in complex ways with understandings of the same in new hostlands, giving rise to transnational identities and loyalties of individuals and groups.

⁹ See Anupam Chander, *Diaspora Bonds*, 76 N.Y.U. L. REV. 1005, 1013, 1048 (2001).

¹⁰ See Sunil Bhatia, *Acculturation, Dialogical Voices and the Construction of the Diasporic Self*, 12 THEORY & PSYCHOLOGY 55, 55-77 (2002), available at <http://tap.sagepub.com/content/12/1/55.abstract> (explaining how immigrants who settled in Europe and North America negotiate their cultural identities as citizens of first world countries while retaining strong identification with home country's culture); Binod Paudyal, *Re-imagining Transnational Identities in Norma Cantú's Canticula and Jhumpa Lahiri's The Namesake* 2, 12-13 (May 1, 2010) (unpublished M.A. thesis, Utah State University), available at <http://digitalcommons.usu.edu/etd/709> (noting how one can study South Asian immigrants to try to understand complexities and existential confusion of immigrants in new land of settlement, necessity of creating transnational identity to overcome these complexities, and how immigrants must constantly negotiate between different aspects of their lives, recreating third space that transcends definite cultural and national boundaries).

¹¹ “Here” and “there” are used in a heuristic sense, in the manner of Edward Said, to identify and locate the subject position of the writer. Said pointed out that scholars use the “Orient,” or the “East” as a counterpoint to construct a set of presumptions of “Europe.” This may be illustrated by the use of the meridian that runs through Greenwich, England as the marking line between the “East” and the “West.” Said focused on ways that the countries of the Middle East were used from the Crusades onward to define and construct an idea of Europe as “Christian” and “Civilized,” and Europe's “others” in the “East” as “Heathen” and “Uncivilized.” This Article makes use of this heuristic with regard to the United States and the countries of Asia, which have been used to construct an image of America and its “others,” hence the explicit positioning of the United States as “here” and the countries of Asia as “others” located “there.” Of course, this Article points out how problematic such simple dichotomies are in an age of globalization where concepts of culture and people from “here” and “there” become hopelessly interpenetrated and hybridized.

Part IV examines whether all is well in this newest iteration of the global village. Racial and ethnic strife, exacerbated by increasing disparities in access to resources, come head to head with one another in country after country, particularly those countries with market-dominant ethnic or racial minorities. This interpenetration of Asia's imaginary communities expatriating in countries such as the United States may prove to be a problematic racial and ethnic flashpoint on many fronts. After considering the lessons from a transnational assessment of the Asian Century, "objects in the mirror are closer than they appear." In other words, looking outward from the United States, U.S. national racial tropes may be projected on a global frame. The Article then concludes.

I. THE TWENTY-FIRST CENTURY AS THE ASIAN CENTURY: IS THERE A "THERE" THERE?

The genesis of the term the "Asian Century" lies in discussions regarding the American Century and the British Century.¹² The British Century refers to the British Empire at the height of its global dominance during the nineteenth century through imperial conquests.¹³ The American Century refers to the rise of the United States as a global super-power after World War II.¹⁴ Similarly, the

¹² See, e.g., Anthony Browne, *Why China is the REAL Master of the Universe*, DAILY MAIL, Apr. 11, 2008, at 14, available at <http://www.dailymail.co.uk/news/article-559133/Why-China-REAL-master-universe.html> (discussing how nineteenth century was British Century, twentieth century was American Century, and how twenty-first century is Asian Century).

¹³ See JOHN DARWIN, *THE EMPIRE PROJECT: THE RISE AND FALL OF THE BRITISH WORLD-SYSTEM 1830-1970*, at 18-20 (2009) (describing conditions beginning in 1830s that ultimately led British Empire to be unchallenged global power); cf. J.H. PARRY, *TRADE AND DOMINION: THE EUROPEAN OVERSEA EMPIRES IN THE EIGHTEENTH CENTURY* 334 (1971) (outlining Britain's eighteenth century maritime and imperial dominance).

¹⁴ The term "American Century" is attributed to Henry Luce, an American publisher who published a 1941 article in *LIFE* with a title of the same name. See Paul Kennedy, *The Next American Century?*, 16 *WORLD POL'Y J.* 52, 52 (1999). Bruce Cumings also discusses the proliferation of books on the "American Century" and that these books overwhelmingly refer to "unipolar pre-eminence and comprehensive economic advantage that the United States now enjoys." Bruce Cumings, *Still the American Century*, 25 *REV. INT'L STUD.* 271, 271 (1999). Cumings also notes that this enthusiasm was recent as just a few years earlier there had been talk of the demise of the American Century: "If this intoxicating optimism is commonplace today, it would have seemed demented just a few short years ago: back then, the scholars and popular pundits who are supposed to know the occult science of international affairs were full of dread about American decline and Japanese and German advance." *Id.* Notably, the term the American Century specifically refers to the United States, rather than the body of nations comprising North and South America.

Asian Century connotes the recent economic and cultural dominance of Asia.¹⁵

As this dominance expands, the term the Asian Century has also come to encompass political dominance and hegemony, not of Asia per se, but of individual countries such as China.¹⁶ For instance, discussions of the Asian Century are linked to a perceived threat to the United States's dominant economic, political, and cultural status.¹⁷ However, while the British Century and the American Century refer to specific nation-states, the term the Asian Century seems to have a more fluid provenance, leading to a vague, unstated, or over-inclusive understanding of the term.¹⁸ As such, while there is a "there" for

¹⁵ See Abbott & Bowman, *supra* note 2, at 189, 191 (noting that Asia replaced Europe as United States's major trading partner, and advocating that conceptualizing Asian Century requires paying attention to way Asian Pacific economic integration is occurring); Ian Buruma, *What Happened to the Asian Century?*, N.Y. TIMES, Dec. 29, 1999, at A25 ("The supposedly advantageous Asian traits, or 'values,' included collective discipline, hard work, ethnic homogeneity, omnipotent bureaucracy, autocratic government, strict morals or Confucian ethics (whatever that meant), and an unshakable belief in national destiny. The main point, in any case, was that Asians, and the Japanese in particular, were on the verge of economic dominance and Westerners, Americans in particular, were soft, lazy, decadent dupes. The West was suffering from too much messy democracy. It needed a swig of bitter Asian medicine.").

¹⁶ See Cumings, *supra* note 14, at 275 (noting that elements of American ascendancy have little to do with military strength but rather mass consumption, mass culture, advantages of continent, unappreciated aspect of American technological prowess, and peculiarities of both American liberalism and global hegemony that results from it); see also Vincent H. Shie & Craig D. Meer, *Is This the Asian Century? China, India, South Korea and Taiwan in the Age of Intellectual Capitalism*, 40 J. CONTEMP. ASIA 1, 1-2 (2010) (noting global rise of Asian countries, including China).

¹⁷ Cf. NINA HACHIGIAN & MONA SUTPHEN, THE NEXT AMERICAN CENTURY: HOW THE U.S. CAN THRIVE AS OTHER NATIONS RISE 9-21 (2008) (arguing that increasing influence of other economic and political powers — in particular China, Russia, Europe, India, and Japan — need not threaten United States and instead can become necessary collaborative relationship network); Paul Krugman, *Can America Stay on Top?*, 14 J. ECON. PERSP. 169, 169 (2000) (citing reasons for demise of United States's economic supremacy and suggesting that developing Asian countries' rapid growth might shift world economic power balance to that region); John Pomfret, *The Chinese Are 'Changing Us': Rising Global Power Is Reshaping the Way Americans Do Business and Live Their Lives*, WASH. POST, Nov. 14, 2009, at A1. See generally Samuel P. Huntington, *The Erosion of American National Interests*, 76 FOREIGN AFF. 28 (1997) (suggesting fear of disintegration of American identity resulting from many factors).

¹⁸ See Ruchir Sharma, *It's Not the Asian Century*, NEWSWEEK (Oct. 8, 2007), <http://www.newsweek.com/2007/10/02/it-s-not-the-asian-century.html> (observing that aside from China, Asian countries are struggling to regain lost glory and underperforming their global peers); Guy Sorman, *What Asian Century?*, PROJECT SYNDICATE (Apr. 1, 2010), <http://www.projectsyndicate.org/commentary/sorman9/English> (opining that Asian Century discussions are premature).

purposes of defining the British and American Centuries, there is not necessarily a “there” for purposes of understanding the Asian Century.

Additionally, the term “Asian” in the Asian Century has traces of an unreflective and essentialist racialism that belies the hybrid nature and diasporic consciousness of the relation between peoples and nations of Asia and the rest of the globe.¹⁹ Such a uni-directional assessment fails to recognize the complex and fragile interdependence between the nation states of Asia on economic, political, military, cultural, and historical levels, as well as their shifting and volatile relations with the United States. Thus, unpacking the term “Asian” from this standpoint supports the notion that an “Asia” does not exist for the purpose of asserting the imminence of an Asian Century.

Consider that within the last thirty years, the “Asian” in the term the Asian Century refers to different countries in Asia. Professor Thomas Ginsburg suggests that Ezra Vogel’s 1979 publication of *Japan as Number One* was a key moment when the term the Asian Century entered academic parlance.²⁰ Vogel’s work speculated that Japan and China would challenge the United States as the global super power.²¹ Thus, the term the Asian Century became synonymous with Japan’s rise as an economic super power in the 1980s and early 1990s. However, Japan has been unable to maintain its status as a regional leader, in part because of its relationship with the United States. Furthermore, Japan’s conduct regarding its neighbors before and during World War II lowered its profile amongst various countries in Asia.²²

More recently, the rise of China as a burgeoning economic and political power expanded the list of nations that could belong to the Asian Century. Indeed, some scholars have dubbed the twenty-first century the Chinese Century.²³ Thus, U.S. policy makers and foreign

¹⁹ The idea of hybridity and diasporic consciousness of migrants attempts to supplement the traditional nation-state based perspective and suggests that migration should not be viewed solely from the viewpoint of the country receiving immigrants, but also from the perspectives of immigrants and their respective homelands. See LISA LOWE, *IMMIGRANT ACTS: ON ASIAN AMERICAN CULTURAL POLITICS* 6 (4th prtg. 1999); see also Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 CALIF. L. REV. 1241, 1247-50 (1993).

²⁰ See Tom Ginsburg, *Eastphalia as the Perfection of Westphalia*, 17 IND. J. GLOBAL LEGAL STUD. 27, 27 (2010).

²¹ See VOGEL, *supra* note 2, at 7.

²² See Hyong-kyu Chey, *The Changing Political Dynamics of East Asian Financial Cooperation: The Chiang Mai Initiative*, 49 ASIAN SURV. 450, 453-54 (2009) (alluding to historical regional tension resulting from Japan’s participation in World War II).

²³ See Fishman, *supra* note 2, at 27, 51. Fishman notes that since 1978,

policy experts possess a curious mixture of admiration and fear regarding the waxing strength of China and the waning strength of the United States.²⁴

Additionally, the Asian Century does not recognize inter-Asia perceptions of one another. For instance, “Chindia,” refers to China’s and India’s combined economic and military power during the rest of the twenty-first century.²⁵ Some scholars consider their economic strength potentially complementary: India has strengths in information technology and software while China has strengths in manufacturing, hardware, and infrastructure.²⁶ However, tensions

[China’s] gross domestic product has risen fourfold; in straight dollar terms, China’s economy is the world’s sixth-largest, with a G.D.P. of around \$1.4 trillion. It has gone from being virtually absent in international trade to the world’s third-most-active trading nation, behind the U.S. and Germany and ahead of Japan. . . . If any country is going to supplant the U.S. in the world marketplace, China is it.

See also Michael Elliot, *China Takes on the World*, TIME, Jan. 11, 2007, at 2, available at <http://www.time.com/time/magazine/article/0,9171,1576831,00.html> (quoting Kenneth Lierthal of University of Michigan: “The Chinese wouldn’t put it this way themselves . . . [b]ut in their hearts I think they believe that the 21st century is China’s century”).

²⁴ See George J. Gilboy, *The Myth Behind China’s Miracle*, N.Y. TIMES, Aug. 17, 2004, at 1, available at http://www.nytimes.com/cfr/international/20040701faessay_v83n4_gilboy.html (noting that “curious mixture of both admiration and fear” greeted China’s sudden rise as global trading power); see also Philip Bowring, *At Davos ‘The World’ Means the West*, N.Y. TIMES, Jan. 29, 2006, http://www.nytimes.com/2006/01/29/opinion/29iht-edbowring.html?_r=1 (explaining “shock and awe” at China’s and India’s economic growth and their “impact on everything from copper prices to the global motor industry” to North American office jobs and how mix of admiration and fear accompanies “vision of two Asian elephants threatening to invade Western pastures”); Francesco Sisci, *No Rush for China*, ASIA TIMES ONLINE (Aug. 20, 2010), <http://www.atimes.com/atimes/China/LH20Ad03.html> (noting “China’s impetus and fear that sooner or later America really could become ‘number two’ will change the mental and cultural reference points of the Americans, Europeans and other countries”).

²⁵ See SHETH, *supra* note 2, at xv; see also Pete Engardio, *A New World Economy: The Balance of Power Will Shift to the East as China and India Evolve*, BUS. WK., Aug. 22, 2005, at 52-58, available at http://www.businessweek.com/magazine/content/05_34/b3948401.htm; Peter Sondergaard, Op-Ed., *Do You Have a Chindia Strategy?*, FORBES, Aug. 13, 2007, http://www.forbes.com/2007/08/05/india-gartner-chindia-oped-cx_psg_0813chindia.html.

²⁶ See Chen Deming, *China and India Work Together for a Brighter Future*, ECONOMIC & COMMERCIAL COUNSELLOR’S OFFICE OF THE EMBASSY OF THE PEOPLE’S REPUBLIC OF CHINA IN THE REPUBLIC OF INDIA (Jan. 20, 2010, 19:27 BJT), <http://in2.mofcom.gov.cn/aarticle/biography/201001/20100106754740.html> (stating that “China and India share similar national realities and are at similar development stages, and the two economies are strongly complementary to each other” because China’s and India’s development are “mutually reinforcing rather than exclusive. Since

between China and India may impede that cooperation, such as the Sino-Indian War of 1962²⁷ and more recent territorial disputes.²⁸ Furthermore, China and India have very different political systems.²⁹ Lastly, there are marked geographic climate differences between the countries, as well as regional differences in surrounding countries.

In light of these differences between Asian countries, the term the Asian Century takes on multiple meanings in multiple contexts to multiple parties. Given the definiteness of the British and American Centuries, the lack of definiteness with respect to the Asian Century is telling. Perhaps the Chinese Century is more conceptually and sequentially appropriate, but what is one to make of the slippage

India is well known for its IT industry and China good at manufacturing, the two can learn from each other's strengths to offset their own weaknesses").

²⁷ Sherry W. Wangwhite, *China's Reactions to the Indian Deal: Implication for the United States*, (Dec. 2007) (unpublished M.A. thesis, Naval Postgraduate School), available at http://edocs.nps.edu/npspubs/scholarly/theses/2007/Dec/07Dec_Wangwhite.pdf (suggesting that "1962 Sino-Indian War and 1998 Indian Nuclear test were the prime causes of the enduring Sino-Indian rivalries").

²⁸ Edward Wong, *China and India Dispute Enclave on Edge of Tibet*, N.Y. TIMES, Sept. 3, 2009, at A1, available at <http://www.nytimes.com/2009/09/04/world/asia/04chinaindia.html?pagewanted=all> (noting that "growing belligerence [over territory] has soured relations between [China and India] and has prompted one Indian military leader to declare that China has replaced Pakistan as India's biggest threat."); Edward Wong, *China Shows Focus on Territorial Issues as It Equates Tibet and Civil War South*, N.Y. TIMES, Nov. 14, 2009, at A6, available at <http://www.nytimes.com/2009/11/14/world/asia/14beijing.html> (suggesting that "[d]isputed territory is also the biggest obstacle in relations between China and its largest neighbor, India"); see Lydia Polgreen, *India Digs Under Top of the World to Match Rival*, N.Y. TIMES, Aug. 1, 2010, at A6, available at <http://www.nytimes.com/2010/08/01/world/asia/01pass.html> (emphasizing that "India and China are hardly enemies, but much of the 2,521-mile border [that] they share is disputed or ill marked [and that] [t]he two countries fought a brief but bloody border war in 1962 . . . while these days they have . . . a mostly cordial relationship, it is marked by tension over border disputes and the future of Tibet and its [exiled] leader, the Dalai Lama").

²⁹ China possesses a single-party system while India possesses a multi-party democracy. See Zhiqun Zhu, *Two Diasporas: Overseas Chinese and Non-resident Indians In Their Homelands' Political Economy*, 12 J. CHINESE POL. SCI. 281, 281 (2007), available at http://www.viet-studies.info/kinhte/Two_Diasporas.pdf (arguing that, although "India and China are two emerging Asian powers that have many commonalities such as a huge population, a long history, rich cultural traditions, Western colonial legacy, and a large diaspora community around the world . . . the two countries took a different path in terms of political and economic developments after they gained national independence in the late 1940s"); Ross P. Buckley, *The Economic Policies of China, India and the Washington Consensus: An Enlightening Comparison* 3 (Univ. of New S. Wales Faculty of Law Research Series, Working Paper No. 22, 2009), available at <http://law.bepress.com/unswwps/flrps09/art22> (stating that, "[e]ven today China is perhaps best described as a soft authoritarian system. Certainly it is a very different political system to India's democracy").

between “Asian,” “Japanese,” “Chinese,” “Indian,” and even “Chindian”? These tensions illustrate the problem with confining the Asian Century in geographic terms. Such a limitation ignores that the region is filled with a complex history of relationships and underscores the difficulty of defining “Asia” for purposes of the Asian Century.³⁰

II. FEAR OF A “YELLOW” PLANET: WAS THE TWENTIETH CENTURY THE “ASIAN CENTURY”?

A word like ‘slant,’ for example, abbreviated from ‘slant-eyed,’ does not simply express an ordinary political enmity. It erases nation-ness by reducing the adversary to his biological physiognomy. It denies, by substituting for, ‘Vietnamese;’ just as *raton* denies, by substituting for, ‘Algerian.’ At the same time, it stirs ‘Vietnamese’ into a nameless sludge along with ‘Korean,’ ‘Chinese,’ ‘Filipino,’ and so on. The character of this vocabulary may become still more evident if it is contrasted with other Vietnam-War-period words like ‘Charlie’ and ‘V.C.,’ or from an earlier era, ‘Boches,’ ‘Huns,’ ‘Japs’ and ‘Frogs,’ all of which apply only to *one* specific nationality, and thus concede, in hatred, the adversary’s membership in a league of nations. . . . [N]ationalism thinks in term of historical destinies, while racism dreams of eternal contaminations, transmitted from the origins of time through an endless sequence of loathsome copulations: outside history.³¹

Rather than looking to an unambiguous geographic meaning of the term the Asian Century, perhaps searching for a temporal meaning of the term may be more helpful. However, rather than focus on the twenty-first century, the twentieth century provides a more

³⁰ See Ali Wyne, *A Skeptical View of Asia’s Rise*, 4 GLOBAL ASIA 50 (2009), available at <http://www.globalasia.org/l.php?c=e218> (arguing that “it is unclear how ‘Asia’ is defined [and that] most predictions of an ‘Asian century’ are, in effect, predictions of ‘Chinese century’ or a ‘Chindian century,’ or even an ‘Indian’ century. [However], [i]ronically, the prediction that seems to command the least traction within this subset is that of inclusive Asian century, whereby Asia as a whole . . . rises. Perhaps such is the case because these two countries, along with Japan, account for the lion’s share of Asia’s influence — a reality that continually perturbs members of the Association of Southeast Asian Nations and undermines the idea of an Asian Community”).

³¹ BENEDICT ANDERSON, *IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM* 148-49 (2d ed. 1991).

appropriate meaning to the term the Asian Century.³² Historically, Asian nations have been remarkably resilient objects of fear, both within and outside the United States.³³ Considering the ways that the United States has constructed aspects of “Asia” as an object of military and economic fear, focusing on the genesis of this “relationship” provides insight into the Asian Century. Thus, one important piece in this analysis, largely missing from the Asian Century discourse, is the term’s problematic relation to the “Yellow Peril.”³⁴

³² Supreme Court Justice John Marshall Harlan, the sole dissenting voice against the segregation of Black Americans in *Plessy v. Ferguson*, 163 U.S. 537 (1896), indicated the predominant legal attitude toward the Chinese in the twentieth century:

[I]n view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law.

....

[But] [t]here is a race so different from our own that we do not permit those belonging to it to become citizens of the United States. Persons belonging to it are, with few exceptions, absolutely excluded from our country. I allude to the Chinese race.

Id. at 559, 561 (Harlan, J., dissenting).

³³ The U.S. demonstrated its fears towards Asia, and people from Asia, throughout the twentieth century. This includes: (i) instituting Alien Land Laws after growing numbers of Japanese agriculturalist immigrants moved to the West Coast at the beginning of the twentieth century; (ii) the internment of Japanese immigrants during World War II; (iii) paranoia over “Red China” during the beginning of the Cold War; (iv) economic anxieties over the rise of the Japanese auto industry in the 1970s and 1980s; and (v) worries over the rise of China as the U.S.’s largest creditor nation at century’s end. See generally *infra* Part II.A -II.C (discussing examples listed above).

³⁴ The “Yellow Peril” trope has a long historical pedigree within the U.S. stemming from anti-Asian hostility towards immigrant Chinese laborers in the mid to late nineteenth century. The Yellow Peril reflected bifurcated fears of white Americans, including: (i) fears of unfair economic competition; and (ii) fears of racial mongrelization via miscegenation. From this paranoia, the “Yellow Peril” stereotype embodied Asians as a threat to Western civilization in general, and to the U.S. specifically. See Erika Lee, *The “Yellow Peril” and Asian Exclusion in the Americas*, 76 PAC. HIST. REV. 537, 550 (2007); see also ROBERT McCLELLAN, *THE HEATHEN CHINESE: A STUDY OF AMERICAN ATTITUDES TOWARDS CHINA, 1890-1905*, at 231-36 (1971); WILLIAM F. WU, *THE YELLOW PERIL: CHINESE AMERICANS IN AMERICAN FICTION, 1850-1940* (1982). See generally JOHN HIGHAM, *STRANGERS IN THE LAND: PATTERNS OF AMERICAN NATIVISM, 1860-1925* (2002) (outlining American anti-Asian movements). The important point is that these stereotypes were constructed within the U.S. and performed a double duty: they policed Asians within the U.S. and also served as a justification and rationalization for U.S. imperialism in Asia. See *Asians Against White Supremacy: On the Origins of Anti-Asian Racism and How We Fought Back*, JALAN J. ASIAN LIBERATION (Sept. 21, 2008), <http://jalanjournal.org/2008/09/asians-against->

Some scholars, such as Stanford Lyman, have noted that the aggregate conception of “Asian” has a long history of troubling racial undertones.³⁵ Lyman, for instance, links the history of the Yellow Peril trope as providing one of the foundations for the American Century.³⁶ According to Lyman, this implies that the Yellow Peril exists internal to the United States through the role of immigration and Asian countries’ economic control over the United States.³⁷ For example, the United States initiated anti-Japanese propaganda in the twentieth century depicting Japanese immigrants as an internal “fifth column” threat to U.S. national security.³⁸ This propaganda underwrote fears of a valuable natural resource — California agricultural lands — falling under foreign control.³⁹ Lyman also noted that the Yellow Peril exists

white-supremacy/.

³⁵ See Stanford Lyman, *The “Yellow Peril” Mystique: Origins and Vicissitudes of a Racist Discourse*, 13 INT’L J. POL., CULTURE & SOC’Y 683, 687, 689-90 (2000) (noting that “yellow peril discourse orders the peoples and phenomena of the . . . ‘Orient’ into a praxiologically constituted modal moral ‘logic’ [and, as such,] should be properly understood as a variant formation of race prejudice”); see also Neil Gotanda, “*Other Non-Whites*” in *American Legal History: A Review of Justice at War*, 85 COLUM. L. REV. 1186, 1188-91 (1985) (exploring historical treatment of “Other Non-Whites” and relation of “foreignness” to legal status and identity); Natsu Saito, *Model Minority, Yellow Peril: Functions of “Foreignness” in the Construction of Asian American Legal Identity*, 4 ASIAN L.J. 71, 77-81 (1997) (discussing history of racism against Asians in U.S. and ability to use conflicting descriptions of Asians as “model minority” and “yellow peril” by describing as foreign).

³⁶ Lyman, *supra* note 35, at 687.

³⁷ See *id.* at 689-90.

³⁸ See JACOBUS TENBROEK ET AL., PREJUDICE, WAR AND THE CONSTITUTION 25-27 (1968); see also ROGER DANIELS, THE POLITICS OF PREJUDICE: THE ANTI-JAPANESE MOVEMENT IN CALIFORNIA AND THE STRUGGLE FOR JAPANESE EXCLUSION 25 (2d ed. 1977).

³⁹ See *Terrace v. Thompson*, 263 U.S. 197, 220-21 (1923) (“It is obvious that one who is not a citizen and cannot become one lacks an interest in, and the power to effectually work for the welfare of, the state, and, so lacking, the state may rightfully deny him the right to own and lease real estate within its boundaries. If one incapable of citizenship may lease or own real estate, it is within the realm of possibility that every foot of land within the state might pass to the ownership or possession of noncitizens’ . . . In the case before us, the thing forbidden . . . is not an opportunity to earn a living in common occupations of the community, but it is the privilege of owning or controlling agricultural land within the State. The quality and allegiance of those who own, occupy and use the farm lands within its borders are matters of highest importance and affect the safety and power of the State itself.”); see also *Webb v. O’Brien*, 263 U.S. 313, 324 (1923) (“Conceivably, by the use of . . . [cropping] contracts, the population living on and cultivating the farm lands might come to be made up largely of ineligible aliens. The allegiance of the farmers to the State directly affects its strength and safety. . . . We think it within the power of the state to deny to ineligible aliens the privilege so to use agricultural lands within its borders.”); *Porterfield v. Webb*, 263 U.S. 225, 231-33 (1923) (denying request to extend right of

external to the United States through the race to become the global super power.⁴⁰ U.S. perceptions of Asian countries, manifested in federal legislation and judicial opinions, constructed Asians as racial “others.” These perceptions highlight threats to the United States on an economic, military, and cultural level.

Thus, the Yellow Peril’s ability to inspire a strange reactive mixture of fear, envy, and anger in the American imagination demonstrates that the twentieth century is the Asian Century. From the late nineteenth century until the early twentieth century, the deep roots of U.S. anxieties over persons from Asian countries were planted on a local, state, and national level.⁴¹ For instance, on a local level, the San Francisco School Board segregated Japanese pupils into “Oriental Schools” in 1906.⁴² This ultimately served as a backdrop to the geopolitical push and pull between the United States and Japan and a prelude to Japanese internment during World War II.⁴³ On a state level, responses included the early twentieth century Alien Land Laws,⁴⁴ anti-miscegenation laws,⁴⁵ laws controlling licensing,⁴⁶ and

eligible aliens to own or hold real property in California to ineligible aliens); *Frick v. Webb*, 263 U.S. 326, 331-34 (1923) (prohibiting sale and purchase of stock in farmland-owning corporation to ineligible alien under California Alien Land Law).

⁴⁰ See Lyman, *supra* note 35, at 688-90; see also TENBROEK ET AL., *supra* note 38, at 25-27; DANIELS, *supra* note 38, at 25.

⁴¹ See TENBROEK ET AL., *supra* note 38, at 25-27 (“The sweeping Japanese victories in the Russo-Japanese War strongly reinforced [yellow peril] propaganda, inspiring rumors in the United States that resident Japanese were spies and soldiers in disguise, representing the first wave of a ‘peaceful invasion’ which threatened to overrun the country. . . . For more than two decades after the Russo-Japanese War, the possibility of war with Japan was regularly kept before the American public, with many declaring it to be inevitable.”).

⁴² See DANIELS, *supra* note 38, at 32.

⁴³ See generally Keith Aoki, *No Right to Own?: The Early Twentieth Century “Alien Land Laws” as a Prelude to Internment*, 40 B.C. L. REV. 37, 49-51 (recalling “Gentleman’s Agreement” between United States and Japan to restrict Japanese immigration to United States after President Roosevelt failed to convince politicians to reverse segregation order).

⁴⁴ See *Terrace*, 263 U.S. at 211-13, 224 (affirming dismissal of case where Alien Land Law prevented legal lease of agricultural land to Japanese national).

⁴⁵ See Leti Volpp, *American Mestizo: Filipinos and Antimiscegenation Laws in California*, 33 UC DAVIS L. REV. 795, 798-99, 799 nn.18-19 (2000); Leti Volpp, *On Divesting Citizenship: Asian American History and the Loss of Citizenship Through Marriage*, 53 UCLA L. REV. 405, 435 n.144 (2005) [hereinafter Volpp, *Divesting Citizenship*].

⁴⁶ See *Yick Wo v. Hopkins*, 6 S.Ct. 1064, 1066 (1886) (concerning dispute over facially neutral licensing policies for laundries that invidiously discriminated towards Chinese-owned laundries located in wooden buildings in San Francisco).

local zoning laws.⁴⁷ Finally, on the national level, the federal government enacted anti-immigrant measures, such as the Page Act in 1875,⁴⁸ the Chinese Exclusion Act in 1882,⁴⁹ judicially mandated racial prerequisites to naturalization,⁵⁰ and the Immigration Act of 1924 (also known as the National Origins Act and as the Japanese Exclusion Act).⁵¹ Furthermore, from the mid-nineteenth century onward, increasing anxiety over the presence of Asian immigrants in the United States resulted in harsher and harsher legislation that sought to curtail the influx of such immigrants.⁵² Legislative amendments to the Burlingame-Seward Treaty of 1868 between the

⁴⁷ Act of Apr. 26, 1862, ch. 339, 1862 Cal. Stat. 462 (repealed 1939) (colloquially known as “Anti-Coolie Act”); see also *Lin Sing v. Washburn*, 20 Cal. 534, 564 (1862) (assessing constitutionality of Act of April 26, 1862, entitled “An Act to protect free white labor against competition with Chinese coolie labor, and discourage the immigration of the Chinese into the State of California”).

⁴⁸ The Act of Mar. 1875 (Page Law), ch. 141, 18 Stat. 477 (repealed 1974) (regarded as first federal immigration law). See Kerry Abrams, *Polygamy, Prostitution, and the Federalization of Immigration Law*, 105 COLUM. L. REV. 641, 643 (2005). The Page Act prohibited the entry of immigrants from China who were contract laborers, created a presumption that Chinese women seeking to enter the United States were prostitutes, and prohibited the entry of persons convicted of crimes in their home countries. The Act was named after Congressman Horace Page who “sought to end the danger of cheap Chinese labor and immoral Chinese women.” George Anthony Peffer, *Forbidden Families: Emigration Experiences of Chinese Women Under the Page Law, 1875-1882*, 6 J. AM. ETHNIC HIST. 28, 28 (1986). The Page Act was ineffective at stopping the entry of male Chinese laborers, but was much more effective at preventing the entry of Chinese women into the United States with concomitant effects on immigrant family formation. See EITHNE LUIBHEID, *ENTRY DENIED: CONTROLLING SEXUALITY AT THE BORDER* 31 (2002); Volpp, *Divesting Citizenship*, *supra* note 45, at 460.

⁴⁹ The Chinese Exclusion Act of 1882, 22 Stat. 58 (repealed 1943) (imposing a quota of 105 Chinese immigrants per year that Immigration Act of 1965 finally lifted). The Act excluded “skilled and unskilled laborers and Chinese employed in mining” from entering the United States for ten years with penalties including imprisonment and deportation. Leti Volpp has noted that considering the Chinese Exclusion Act of 1882 as the beginning of federal regulation, the Act obscures the Page Act of 1875 and the plethora of state statutes targeting immigrants from China before the 1870s. See Volpp, *Divesting Citizenship*, *supra* note 45, at 465; see also Gabriel J. Chin, *Segregation’s Last Stronghold: Racial Discrimination and the Constitutional Law of Immigration*, 46 UCLA L. REV. 1, 28 (1998).

⁵⁰ See *United States v. Bhagat Singh Thind*, 261 U.S. 204, 207 (1923); *Ozawa v. United States*, 260 U.S. 178, 194-95 (1922).

⁵¹ Immigration Act of 1924, ch. 190, 43 Stat. 153 (repealed 1952).

⁵² See, e.g., Immigration Act of 1917, ch. 29, 39 Stat. 874 (repealed 1952) (barring immigration of immigrants from Philippines); Immigration Act of 1924, ch. 190, 43 Stat. 153 (repealed 1952) (excluding from immigration all persons ineligible for citizenship and ultimately used to exclude Chinese, Japanese, and Filipino workers from U.S. labor force).

United States and China demonstrated the disparate treatment of Asian immigrants within the United States.⁵³ This dynamic racialization process within the United States shaped and reshaped the image and legal construction of Asian nations and immigrants.⁵⁴

A. *Prelude to the Asian Century: Harsh Nineteenth and Early- to Mid-Twentieth Century Immigration Policies Towards Asian Immigrants*

The Asian Century must be understood from the context of the virulent anti-Chinese sentiment during the nineteenth century. Since the enactment of the Chinese Exclusion Act,⁵⁵ the Page Act's presumptive bar on the admission of Chinese women, combined with state anti-miscegenation laws, depleted the number of Chinese laborers in California. In effect, this created a legal bar for the overwhelming male Chinese immigrant population to form and sustain a family.⁵⁶

⁵³ The Burlingame-Seward Treaty was signed in 1868. In its original form, this was a treaty between the United States and China, which included provisions recognizing China's sovereign power, allowing for Chinese consuls at U.S. ports and ensuring certain reciprocal rights of Chinese citizens within the United States and U.S. citizens within China. Importantly, the United States actively negotiated with the Chinese government to allow for the free flow of immigrants from China to the United States. In the decades that followed, amendments were made first to suspend further immigration of Chinese citizens to the United States. For example, in 1880, the treaty was revised under which the Chinese government agreed to limit immigration of laborers in exchange for promised protection of Chinese laborers already within the United States. The 1882 Chinese Exclusion Act amended the treaty. See CHARLES J. MCCLAIN, *IN SEARCH OF EQUALITY: THE CHINESE STRUGGLE AGAINST DISCRIMINATION IN NINETEENTH-CENTURY AMERICA* 148-49 (1994); see also ELMER CLARENCE SANDMEYER, *THE ANTI-CHINESE MOVEMENT IN CALIFORNIA* 92-95 (Illini Books, 1991) (1939); ALEXANDER SAXTON, *THE INDISPENSIBLE ENEMY: LABOR AND THE ANTI-CHINESE MOVEMENT IN CALIFORNIA* 230-31 (1971).

⁵⁴ See generally BILL ONG HING, *MAKING AND REMAKING ASIAN AMERICA THROUGH IMMIGRATION POLICY, 1850-1990* (1993) (examining prejudices against Asian immigrants and trends of increased immigration once tolerance developed).

⁵⁵ Chinese Exclusion Act of 1882, ch. 126, § 14, 22 Stat. 58; *Chae Chan Ping v. United States*, 130 U.S. 581, 609 (1889) (upholding constitutionality of Chinese Exclusion Act, as amended in 1888); see also Hiroshi Motomura, *Immigration Law After a Century of Plenary Power: Phantom Constitutional Norms and Statutory Interpretation*, 100 YALE L.J. 545, 550-54 (1990).

⁵⁶ See Peffer, *supra* note 48, at 28; see also GUNTHER BARTH, *BITTER STRENGTH: A HISTORY OF THE CHINESE IN THE UNITED STATES, 1850-1870*, at 115 (1964) (describing segregation of Chinese miners following California gold rush in working deserted and worked-over mining sites); Sucheng Chan, *Chinese Livelihood in Rural California: The Impact of Economic Change, 1860-1880*, 53 PAC. HIST. REV. 273, 280 (1984); see also CHARLES J. MCCLAIN, *IN SEARCH OF EQUALITY: THE CHINESE STRUGGLE AGAINST DISCRIMINATION IN NINETEENTH CENTURY AMERICA* 98-132 (1994) (describing use of

Curiously, the vilification of Chinese immigrant labor in the mid-nineteenth century was not universal. On its face, the Burlingame Treaty of 1868 guaranteed the equal treatment of U.S. citizens in China and of Chinese subjects within the United States.⁵⁷ *Yick Wo v. Hopkins* reflected an anomalous judicial solicitude for Chinese laborers in the laundry industry in San Francisco who were subjected to facially neutral but racially invidious licensing regulations with regard to laundries located in wooden buildings.⁵⁸ Professor Bill Ong Hing observed that certain segments of the U.S. economy welcomed Chinese workers during the mid-nineteenth century, such as union-busting labor in railroad construction projects and in domestic services.⁵⁹ However, this form of cheap labor engendered deep-seated hostility toward Chinese immigrant laborers among labor organizers and unions in cities such as San Francisco.⁶⁰ This anti-Chinese sentiment ultimately transferred to the Japanese who began

various legal mechanisms including strict geographic containment via anti-miscegenation laws, licensing, zoning, and educational segregation). See generally JOHN HIGHAM, *STRANGERS IN THE LAND: PATTERNS OF AMERICAN NATIVISM, 1860-1925* (2d ed. 1988) (using term “racial nativism” to describe intersection of racism with nationalism in context of last half of nineteenth century in U.S. West Coast with respect to Chinese immigrant labor).

⁵⁷ See *supra* note 53 and accompanying text.

⁵⁸ See Rick Su, *The Immigrant City: Lawrence, Massachusetts 1841-1921*, at 27 (Bepress Legal Series, Working Paper No. 1688, 2006), available at <http://law.bepress.com/expresso/eps/1688>; see also *Yick Wo v. Hopkins*, 118 U.S. 356, 367 (1886); Gabriel J. Chin, *Unexplainable on Grounds of Race: Doubts About Yick Wo*, 2008 U. ILL. L. REV. 1359, 1376 (2008).

⁵⁹ See Bill Ong Hing, *The Immigrant as Criminal: Punishing the Dreamer*, 9 HASTINGS WOMEN'S L.J. 79, 86 (1998) (observing states' open policy towards Chinese workers in early nineteenth century and active recruitment of Chinese workers to fulfill labor needs in both construction and service sectors of economy); Bill Ong Hing, *Beyond the Rhetoric of Assimilation and Cultural Pluralism: Addressing the Tension of Separatism and Conflict in an Immigration-Driven Multiracial Society*, 81 CALIF. L. REV. 863, 897-98 (1993); see also SAXTON, *supra* note 53, at 62-66, 122; Kevin R. Johnson, *Fear of an "Alien Nation": Race, Immigration and Immigrants*, 7 STAN. L. & POL'Y REV. 111, 118 (1996).

⁶⁰ Ronald Takaki details how railroad company management used Chinese laborers to drive down wages and bust union strikes. This generated intense hostility among groups such as the California Workingmen's Party, led by Denis Kearny, who voiced the slogan, "The Chinese Must Go!" In the late nineteenth century, San Francisco was one of the most labor friendly cities in the country and was also one of the most vehemently anti-Chinese. Takaki compares the role that Chinese labor played in the West Coast to the role that freed slaves and Northern blacks played in the Northeast in the late nineteenth century — workers that drive down wages and accused as being "unfair competitors." See RONALD TAKAKI, *STRANGERS FROM A DIFFERENT SHORE: A HISTORY OF ASIAN AMERICANS 85-94* (2d ed. 1998).

immigrating into California in substantial numbers to fill niches in the agricultural sector during the 1890s and 1900s.⁶¹

American businesses began recruiting Japanese agricultural laborers to replace Chinese laborers. The Japanese immigrant population in the United States grew from approximately 2,200 during the 1880s, to approximately 25,000 in the 1890s,⁶² and to over 129,000 during the 1900s.⁶³ While the mid-nineteenth century Chinese immigrants were unskilled and uneducated laborers, many Japanese immigrants were educated agriculturalists.⁶⁴ The practice of primogeniture⁶⁵ and the Meiji government's land reform measures⁶⁶ displaced Japanese agriculturalists in large numbers. Additionally, the immigrant Japanese were generally educated up to at least the sixth grade.⁶⁷ This enabled Japanese immigrants to occupy a different labor niche than the Chinese.

In addition to gaining a more educated and skilled workforce, Americans viewed Japanese immigrants as more assimilable to Western culture. The 1875 Page Act led to a predominantly bachelor

⁶¹ See Aoki, *supra* note 43, at 45; see also YAMATO ICHIHASHI, *JAPANESE IN THE UNITED STATES* 163 (1969); TAKAKI, *supra* note 60, at 189; Masakazu Iwata, *The Japanese Immigrants in California Agriculture*, 36 *AGRIC. HIST.* 25, 27 (1962).

⁶² See PAUL SPICKARD, *JAPANESE AMERICANS: THE FORMATION AND TRANSFORMATIONS OF AN ETHNIC GROUP* 21 (2009). In 1890, California had approximately 1000 Japanese immigrants concentrated in the San Francisco, Sacramento, and San Joaquin Valley areas. By 1900, there was a ten-fold increase on the West Coast to over 10,000 Japanese immigrants. See TOMAS ALMAGUER, *RACIAL FAULT LINES; THE HISTORICAL ORIGINS OF WHITE SUPREMACY IN CALIFORNIA* 184 (1994); DAVID J. O'BRIEN & STEPHEN FUGITA, *THE JAPANESE AMERICAN EXPERIENCE* 137 (1991).

⁶³ See HING, *supra* note 54, at 54; see also AIMEE ENG & DANIEL MCFARLAND, *THE JAPANESE QUESTION: SAN FRANCISCO EDUCATION IN 1906*, at 2 (2006), available at http://edapps.stanford.edu/caselibrary/pdf/Eng_case.pdf.

⁶⁴ O'BRIEN & FUGITA, *supra* note 62, at 15 ("The vast majority of Japanese who immigrated to . . . the West Coast of the United States came from four southwestern prefectures Contrary to what we might expect, these were not the poorest areas of Japan during that period. . . . These prefectures did, however, have an experienced agricultural labor force, part of which was prompted to emigrate through active recruiting by labor contractors.").

⁶⁵ *Id.* at 10-11.

⁶⁶ *Id.*

⁶⁷ Aoki, *supra* note 43, at 53-54 ("Japanese agricultural laborers in the early-twentieth century tended to be better educated than their Chinese predecessors because the late nineteenth-century Meiji Restoration mandated an elementary education for all Japanese subjects. Thus, they came to the United States possessing a modicum of agricultural knowledge and skills that made them increasingly useful as California agriculture turned toward intensive agricultural crops."); Makakazu Iwata, *The Japanese Immigrants in California Agriculture*, 36 *AGRIC. HIST.* 25, 27 (1962); see also ICHIHASHI, *supra* note 61, at 163.

society of Chinese laborers who were viewed as “sojourners,” intending to return to China. Thus, Americans treated the Chinese as racially, culturally, and legally unassimilable.⁶⁸ By contrast, many of the Japanese agriculturalists who immigrated to the United States in the last decade of the nineteenth century formed families and did not intend to return to Japan. These Japanese agriculturalists attempted to adopt U.S. customs and also formed a variety of religious and social groups.⁶⁹

Some scholars argue that Japanese immigrants’ assimilation attempts to white, middle-class norms mitigated nativist backlash.⁷⁰ However, such mitigation was complex, incomplete, unstable, and double-edged. These seemingly praiseworthy aspects of Japanese immigrants were often quickly transformed into threats to white dominance.⁷¹ As such, despite the benefits of immigrant labor for U.S. employers, both the public and employers have had decidedly mixed perceptions of Asian immigrants and immigrants in general.⁷²

Nativists transformed the anti-Chinese stereotypes, such as the “unfair competitor” trope, to fit the Japanese agricultural immigrant model. However, in order to level a similar attack on Japanese immigrants, nativists assaulted the assimilability of Japanese immigrants. Whereas Chinese laborers in California had been largely a bachelor society, subsequent Japanese agriculturalists formed families through “picture brides” and other arrangements.⁷³ White farmers, fearing Japanese competition, argued that the Japanese made their women and children work in the fields, giving them an unfair advantage over white agriculturalists who supposedly did not allow

⁶⁸ See CHARLES M. WOLLENBERG, *ALL DELIBERATE SPEED: SEGREGATION AND EXCLUSION IN CALIFORNIA SCHOOLS 1855-1975*, at 28-47 (1976).

⁶⁹ See SPICKARD, *supra* note 62, at 70; TAKAKI, *supra* note 60, at 42-53.

⁷⁰ NAYAN SHAH, *CONTAGIOUS DIVIDES: EPIDEMICS AND RACE IN SAN FRANCISCO’S CHINATOWN 209* (2001); *see also* SPICKARD, *supra* note 62, at 38-64.

⁷¹ *See* SHAH, *supra* note 70, at 209 (noting that many health programs targeting Chinese focused on hygiene, other public health agendas, as well as conformity of family structure to white, middle-class American nuclear family ideals); Samuel P. Huntington, *The Erosion of American National Interests*, 76 *FOREIGN AFF.* 5, 33 (1997) (discussing assimilating immigrants through Americanization programs). *See generally* CHARLOTTE BROOKS, *ALIEN NEIGHBORS, FOREIGN FRIENDS: ASIAN AMERICANS, HOUSING, AND THE TRANSFORMATION OF URBAN CALIFORNIA* (2009) (tracing transformation of Asian image and Asian Americans during twentieth century America in general, and California in particular).

⁷² *See, e.g.*, HING, *supra* note 54, at 86-87 (observing that Asian immigrant labor has not always gone unacknowledged, but rather has been praised).

⁷³ *See* SPICKARD, *supra* note 62, at 36-40.

their families to work in the fields.⁷⁴ By the first decade of the twentieth century, Japanese immigrants became the objects of anti-Oriental animus which crystallized in the nineteenth century Workingmen's Party.⁷⁵ Organized labor recycled the same paranoia over Chinese immigrants, asserting that Japanese immigrants undercut wages and spread social ills.⁷⁶ Xenophobes used Japanese immigrants' propensity to assimilate as evidence of their competition in the labor market, thereby creating a greater threat than the "unassimilable" Chinese.⁷⁷

Japanese immigrants found themselves on equal footing with Chinese immigrants in at least one respect — they were barred from becoming naturalized U.S. citizens.⁷⁸ However, a curious wrinkle to this saga emerged in 1898, when the U.S. Supreme Court established

⁷⁴ See *id.* at 70; see also TAKAKI, *supra* note 60, at 47.

⁷⁵ In San Francisco during the nineteenth century, the Workingmen's Party gave voice to the racial resentment trade unionists expressed over Chinese immigration on the grounds that capitalists were using Chinese labor to break strikes and to drive down wages. The antipathy between organized labor and pro-immigration forces persisted through much of the first three-quarters of the twentieth century. See SAXTON, *supra* note 53, at 258-59 ("In California . . . [the white workforce was] drawn together by a sense of frustration and dispossession that was common to all. Despite their [internal] differences, they believed that a greater distance separated them from the Chinese And since these producers viewed the Chinese as tools of monopoly, they considered themselves under attack . . . from above and below. But when they struck back, they generally struck at the Chinese."); TENBROEK ET AL., *supra* note 41, at 103.

⁷⁶ See WOLLENBERG, *supra* note 68, at 38-39; see also SPICKARD, *supra* note 62, at 28 (quoting era's *San Francisco Chronicle* headlines "Menace to American Women," "The Yellow Peril — How Japanese Crowd Out the White Race," "Brown Men an Evil in the Public Schools," "Brown Artisans Steal the Brains of Whites," and "Crime and Poverty go Hand in Hand with Asiatic Labor").

⁷⁷ See SPICKARD, *supra* note 62, at 28 (quoting Chester H. Rowell: "The Japanese are a very different people [than the Chinese]. As laborers they are less patient but quicker and brighter than the Chinese. . . . But the Japanese do not confine themselves to "Japtown," nor permit the white man to determine the limits of their residence. . . . The Japanese problem is only beginning and the end is not wholly within our control"); see also Chester H. Rowell, *Chinese and Japanese Immigrants — A Comparison*, 34 ANNALS AM. ACAD. POL. & SOC. SCI. 223, 230 (1909) ("The Pacific Coast is the frontier of the white man's world, the culmination of the westward migration which is the white man's whole history. It will remain the frontier so long as we guard it as such The multitudes of Asia are already awake [A]gainst Asiatic immigration we could not survive.").

⁷⁸ See *Ozawa v. United States*, 260 U.S. 178, 196-98 (1922) (holding that Japan-born Takao Ozawa was not "free white person" for purposes of becoming naturalized U.S. citizen under that era's naturalization laws and that Naturalization Act that gave African Americans right to become naturalized citizens did not include Chinese or Japanese); see also Devon Carbado, *Yellow by Law*, 97 CALIF. L. REV. 633, 635-36, 652-58 (2009).

the rule of birthright citizenship in *United States v. Wong Kim Ark*.⁷⁹ The Court held that the children of foreign nationals who were unable to become naturalized U.S. citizens would be U.S. citizens by virtue of being born on U.S. soil.⁸⁰ In short, from a legal standpoint, Japanese immigrants were treated as foreign nationals under the responsibility of the Japanese government. The United States viewed these noncitizen parents of citizen children as “aliens ineligible to citizenship” and were barred from becoming naturalized U.S. citizens.⁸¹ However, their U.S.-born children were viewed as U.S. citizens. As a result of the rule of birthright articulated in *Wong Kim Ark*, the children of Japanese immigrants born on U.S. soil attended local schools. This complicated history served as the backdrop of the Gentlemen’s Agreement in 1906.

B. The Gentleman’s Agreement of 1906–1907 and California’s Alien Land Laws

The Gentlemen’s Agreement of 1906-1907’s inauspicious local government origins provides a key example as to why the twentieth century is the Asian Century. On October 11, 1906, the San Francisco

⁷⁹ See *United States v. Wong Kim Ark*, 169 U.S. 649, 705 (1898) (providing birthright citizenship for all U.S.-born children of noncitizens except for children of diplomats as immune from U.S. law and children of hostile occupying force in United States).

⁸⁰ See *id.* at 692-93. The Court reasoned that under the English common law, only two classes of persons were excluded from birthright citizenship: (i) children of foreign diplomats; and (ii) children born to enemy forces engaged in hostile occupation of a country’s territory. Because *Wong Kim Ark* fell into neither category, the court reasoned that he was a U.S. citizen by birth, establishing the birthright citizenship rule for the United States, i.e., birth on U.S. soil confers U.S. citizenship. While *Wong Kim Ark* has been settled U.S. law for over a century, some contemporary scholars, such as Peter Schuck and John Eastman, argue that *Wong Kim Ark* was wrongly decided. They argue that the Court failed to give effect to the “and subject to the jurisdiction thereof” language in the Fourteenth Amendment’s citizenship clause: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside.” U.S. CONST. amend. XIV, § 1. Shuck and Smith’s argument is that because the parents of undocumented immigrants are here illegally, the U.S. lacks jurisdiction over the parents and also over their U.S. born children. PETER SCHUCK & ROGERS H. SMITH, *CITIZENSHIP WITHOUT CONSENT* 85-87 (1985) (interpreting first sentence of Fourteenth Amendment to mean that children of undocumented persons are not U.S. citizens because though born or naturalized in United States they are not “persons subject to the jurisdiction thereof”).

⁸¹ The term “aliens ineligible for citizenship” comes from a line of Supreme Court cases appearing before the Court at this time. See, e.g., *Terrace v. Thompson*, 263 U.S. 197, 211-13 (1923) (using the term “aliens ineligible for citizenship”).

School Board adopted a policy that racially segregated Japanese, Korean, and Chinese students to a newly created "Oriental School."⁸² While the all-white San Francisco School Board historically segregated Chinese students from schools, this was the first time the San Francisco School Board racially segregated Japanese students.⁸³

In 1901, San Francisco voters elected Eugene F. Schmitz as its mayor, campaigning on a platform calling for the segregation of all "Asiatic[s]" from other children in the public schools.⁸⁴ In 1905, the *San Francisco Chronicle* began an anti-Asiatic campaign.⁸⁵ That same year, white agriculturalists formed the Asiatic Exclusion League, reasoning that the "Caucasian and Asiatic races are unassimilable" and "the preservation of the Caucasian race upon American soil . . . necessitates the adoption of all possible measures to prevent or minimize the immigration of Asiatics to America."⁸⁶ Specifically, the League called for the Chinese Exclusion Act to cover Japanese and Koreans.⁸⁷ Additionally, the League urged the San Francisco School Board to adopt a policy of segregating Japanese children from white children, among other resolutions.⁸⁸

⁸² One of the main points of this Article is that the domestic construction of Asiatic labor immigrants (including, but not limited to the Chinese and Japanese) within the United States formed an entrenched feedback loop. This created a vicious circle which reinforced anxiety and paranoia on an international level towards the nations from which these immigrants originated. As fears regarding rising Japanese military strength in Asia rose after the Russo-Japan War of 1905, such fears were projected onto Japanese agriculturalists who were seen as an "internal" threat to U.S. security. In turn, this reinforced fears of Japan in the international arena. See TENBROEK ET AL., *supra* note 38, at 103.

⁸³ See DANIELS, *supra* note 38, at 32.

⁸⁴ See THOMAS A. BAILEY, THEODORE ROOSEVELT AND THE JAPANESE-AMERICAN CRISIS: AN ACCOUNT OF THE INTERNATIONAL COMPLICATIONS ARISING FROM THE RACE PROBLEM ON THE PACIFIC COAST 28-29 (1934).

⁸⁵ DANIELS, *supra* note 38, at 25 (citing February 1905 *San Francisco Chronicle* article entitled, "The Japanese Invasion, The Problem of the Hour" that announced "the advance of the Japanese army toward Mukden" and asserted that at least "100,000 of the 'little brown men' were here already, that they were 'no more assimilable than the Chinese,' and that they undercut white labor . . . [and warned that] 'once the war with Russia is over, the brown stream of Japanese immigration' will become a 'raging torrent'").

⁸⁶ See SPICKARD, *supra* note 62, at 28 ("[White labor formed] the Asiatic Exclusion League in San Francisco in 1905, [and] they lumped Japanese and Chinese together as a threat to the welfare of American workers."); see also TAKAKI, *supra* note 60, at 272.

⁸⁷ See TAKAKI, *supra* note 60, at 272.

⁸⁸ At the time, California state law gave local school boards the discretion to establish segregated school facilities for Chinese, Indian, and Mongolian children. In May 1905, the San Francisco School Board passed a resolution classifying Japanese school children as "Mongolian," and therefore required to attend separate schools

Against this increasingly fraught racial atmosphere, the catastrophic San Francisco earthquake in April 1906 destroyed over 500 city blocks, including nearly all of Chinatown. The earthquake badly damaged the segregated Chinese primary school and was inoperable for six months.⁸⁹ When the school reopened, the San Francisco School Board renamed the school the “Oriental Primary School,” and in October 1906 passed a resolution requiring all Japanese and Korean students to attend that school.⁹⁰

The San Francisco School Board’s actions incensed Japanese parents, who then unsuccessfully tried to petition the Board to change its policy. Some Japanese parents initiated a lawsuit in federal court, claiming that the Board’s actions violated the 1895 Treaty of Navigation and Commerce between the United States and Japan.⁹¹ The Treaty did not specifically mention education, but the Treaty did accord Japanese nationals in the United States equal rights to U.S. nationals in Japan.⁹² Japanese parents also filed a complaint with

from white children. See Raymond Leslie Buell, *The Development of the Anti-Japanese Agitation in the United States*, 37 POL. SCI. Q. 605, 623 (1922), reprinted in 2 ASIAN AMERICANS AND THE LAW: HISTORICAL AND CONTEMPORARY PERSPECTIVES 25, 43 (Charles McClain ed., 1994) (“Resolved that the Board of Education is determined in its efforts to effect the establishment of separate schools for Chinese and Japanese pupils [to relieve school crowding and] . . . for the higher end that our children should not be placed in any position where their youthful impressions may be affected by associations with pupils of the Mongolian race.”).

⁸⁹ See SPICKARD, *supra* note 62, at 29; see also ENG & MCFARLAND, *supra* note 63, at 6.

⁹⁰ See SPICKARD, *supra* note 62, at 29. Since 1870, the San Francisco School Board excluded Chinese students from San Francisco public schools. See ENG & MCFARLAND, *supra* note 63, at 3-4; see also Joyce Kuo, *Excluded, Segregated and Forgotten: A Historical View of the Discrimination of Chinese Americans in Public Schools*, 5 ASIAN L.J. 181, 196 (1998). On the other hand, in 1906, ninety-three Japanese children attended twenty-three different San Francisco public elementary schools. See ENG & MCFARLAND, *supra* note 63, at 6. The San Francisco School Board permitted African American students to attend “integrated” public schools, as the “colored school” had closed down in 1875 due to the costs of maintaining separate facilities. See *id.* at 4; see also IRVING HENDRICK, *THE EDUCATION OF NON-WHITES IN CALIFORNIA, 1849-1970*, at 18-20 (1971).

⁹¹ See FRANK F. CHUMAN, *THE BAMBOO PEOPLE: THE LAW AND JAPANESE AMERICANS* 24-28 (1976).

⁹² Carbado, *supra* note 78, at 642 (“Nor was it clear that the courts would declare the resolution [by the San Francisco School Board] unconstitutional. Arguments that it violated an 1895 ‘most favored nation’ treaty between the United States and Japan were less than compelling. For one thing, ‘the Treaty of 1895 did not contain a ‘most favored nation’ clause concerning education.’ . . . [T]he mere fact that the Japanese American children were being forced to attend an ‘Oriental’ school did not, without more, mean that they were being denied equal protection.”) (citing CHUMAN, *supra* note 91, at 25).

Viscount Shuzo Aoki, Japanese Ambassador to the United States, as well as with K. Uyeno, Japanese Consul, regarding the segregation of Japanese schoolchildren in a “colored school.”⁹³ Members of the Japanese Association of San Francisco attempted to engage in a public relations campaign by wiring Japanese newspapers about the racial discrimination Japanese students were facing in the San Francisco public schools. Japanese newspapers published editorials and insisted that the Japanese government take an aggressive stance towards the actions of the San Francisco School Board.⁹⁴

The geopolitical dimensions of the San Francisco School Board’s action emerged rapidly. Japan had been industrializing for the latter third of the nineteenth century and emerged as an estimable international military power.⁹⁵ In February 1905, Japan defeated Russia in the Russo-Japanese War, the first time a nonwhite nation had been victorious over a European nation in the modern era.⁹⁶ The U.S. government considered Japanese immigrants under Japanese political jurisdiction because they were legally unable to become naturalized U.S. citizens. Thus, while the Board’s decision was politically popular in San Francisco, politicians in Washington, D.C. were worried that the Board’s actions could trigger an international incident, leading to Japanese retaliation and possibly even war.⁹⁷

⁹³ See SPICKARD, *supra* note 62, at 29-30; Buell, *supra* note 88, at 623.

⁹⁴ See ENG & MCFARLAND, *supra* note 63, at 7; see also HERBERT B. JOHNSON, *DISCRIMINATION AGAINST THE JAPANESE IN CALIFORNIA* 45 (1971). Interestingly, the tone of some of these editorials took umbrage at the way that Californians had conflated the Chinese with the Japanese. Johnson notes that

“Japan has been wounded in her tenderest spot — her national pride. The Japanese regard themselves as the equals of any other people on earth. They believe themselves to be superior, intellectually, morally, and in every other way, to the Chinese. Anything which tends to place them on a level with the Chinese before the world is degrading and humiliating to them, and they will resent it.”

Id. (quoting telegram published in *The San Francisco Call*).

⁹⁵ See SPICKARD, *supra* note 62, at 28.

⁹⁶ See TENBROEK ET AL., *supra* note 38, at 25-27 (1968) (“The sweeping Japanese victories in the Russo-Japanese War strongly reinforced [yellow peril] propaganda, inspiring rumors in the United States that resident Japanese were spies and soldiers in disguise, representing the first wave of a ‘peaceful invasion’ which threatened to overrun the country.”).

⁹⁷ See *id.* at 25-26 (“For more than two decades after the Russo-Japanese War, the possibility of war with Japan was regularly kept before the American public, with many declaring it to be inevitable. . . . In 1907 the fear of war with Japan was general throughout America. A number of diplomats warned openly that Japan was on the point of attack; even the cautious New York Times considered the conflict all but

On October 22, 1906, Viscount Aoki voiced his concerns with U.S. Secretary of State Elihu Root.⁹⁸ Seeking to avoid a confrontation with Japan, U.S. President Theodore Roosevelt sent his Commerce Secretary, Victor Metcalf, to San Francisco to convince the Board to rescind its order.⁹⁹ Metcalf was unsuccessful at obtaining a rescission of the Board's order. Furthermore, Metcalf learned that San Francisco officials were ultimately seeking Japanese exclusion.¹⁰⁰

In President Roosevelt's annual address to Congress in December 1906, he castigated San Francisco and its Board of Education for their actions.¹⁰¹ He attempted to mollify Japan by commending the Japanese for their country's rapid economic growth and other achievements, even ensuring that Japanese officials received copies of his speech.¹⁰² Additionally, President Roosevelt authorized the U.S. Attorney General to initiate legal action against the Board.¹⁰³ However, the latter remained staunch in its position, refusing to rescind the order.¹⁰⁴ Ultimately, President Roosevelt had to summon the San Francisco School Superintendent, the School Board President, and Mayor Eugene Schmitz to Washington, D.C. in January 1907.¹⁰⁵

On February 15, 1907, President Roosevelt announced a settlement. The Japanese government agreed to cease issuing passports to Japanese laborers to come to the U.S. mainland. In exchange, the San Francisco School Board would allow Japanese students to attend non-segregated public schools.¹⁰⁶ On March 13, 2007, the Board rescinded

inevitable . . .").

⁹⁸ See ENG & MCFARLAND, *supra* note 63, at 8.

⁹⁹ See Carbado, *supra* note 78, at 642.

¹⁰⁰ See ENG & MCFARLAND, *supra* note 63, at 9; SPICKARD, *supra* note 62, at 30.

¹⁰¹ President Theodore Roosevelt's Message to Congress Concerning the Japanese Question (Dec. 3, 1906) in BENJAMIN B. RINGER, "WE THE PEOPLE" AND OTHERS: DUALITY AND AMERICA'S TREATMENT OF ITS RACIAL MINORITIES 694-95 (1983); see also ELLIOT GRINNELL MEARS, RESIDENT ORIENTALS ON THE AMERICAN PACIFIC COAST: THEIR LEGAL AND ECONOMIC STATUS 438-42 (1942); SPICKARD, *supra* note 62, at 30.

¹⁰² MEARS, *supra* note 101, at 438-42.

¹⁰³ DANIELS, *supra* note 38, at 41 (outlining how President Roosevelt underestimated the temper of the Californians, and that his message was resulting in more rather than less agitation in California).

¹⁰⁴ *Id.*; see also TAKAKI, *supra* note 60, at 201.

¹⁰⁵ CHUMAN, *supra* note 91, at 28-29; Carbado, *supra* note 78, at 643 (noting that President Roosevelt invited mayor of San Francisco and members of school board to Washington, D.C., after realizing role they would have to play in managing national and international crisis that emerged, to explore variety of proposals he could present to Japan); see also DANIELS, *supra* note 38, at 40-41; TAKAKI, *supra* note 60, at 202.

¹⁰⁶ However, Chinese and Korean students were to remain at segregated schools. See Kuo, *supra* note 90, at 206.

the school segregation order for Japanese students. Roosevelt and Congress ordered that all movement of Japanese laborers from Hawaii, Canada, and Mexico to the U.S. mainland cease as of the summer of 1908.¹⁰⁷ Although Japan memorialized the Agreement, Congress never formally enacted the “Gentleman’s Agreement” in 1908.¹⁰⁸

While the Gentleman’s Agreement stalled anti-immigrant forces in San Francisco, it was not long before anti-Japanese exclusionist forces on the West Coast were up in arms again. A significant loophole allowing wives and children of settled Japanese agriculturalists into the United States, coupled with the birthright rule, stirred anti-immigrant sentiment again.¹⁰⁹ From 1907 onward, Japanese “picture brides” entered the United States to join their spouses.¹¹⁰ Many

¹⁰⁷ See CHUMAN, *supra* note 91, at 35-36 (stating that annual U.S. immigration report of 1908 reported “Gentleman’s Agreement” as “understanding [that] contemplates that the Japanese Government shall issue passports to the continental United States only to such of its subjects as are non-laborers or are laborers who, in coming to the continent, seek to resume a formerly acquired domicile, to join a parent, wife or children residing there, or to assume active control of an already possessed interest in a farming enterprise in this country; so that the three classes of laborers entitled to receive passports have come to be designated as ‘relatives,’ ‘former residents,’ and ‘settled agriculturalists.’ ”).

¹⁰⁸ While the National Origins Act of 1924 and the Immigration Act of 1917 eventually effected the exclusion of immigration of Japanese and other countries within the Asia-Pacific Triangle, President Roosevelt’s short-term goal was to negotiate and execute the 1911 U.S.-Japan Treaty of Commerce and Navigation. However in partial response to the Gentleman’s Agreement, Congress did pass an immigration bill in 1907 authorizing the President to forbid “secondary immigration” into the United States, i.e., immigration from Hawaii, Mexico, and Canada. TAKAKI, *supra* note 60, at 203. Thus mollifying, at least temporarily, the San Francisco School Board rescinded its segregation order.

¹⁰⁹ In 1912, the U.S. Commissioner-General of Immigration wrote that the entry of “picture brides” into the United States:

[M]ust necessarily result in constituting a large, native-born Japanese population, persons who, because of their birth on American soil, will be regarded as American citizens, although their parents can’t be naturalized, and who, nevertheless, will be considered (and probably will consider themselves) subjects of the Empire of Japan

RINGER, *supra* note 101, at 713.

¹¹⁰ Spickard wrote:

[T]he picture bride phenomenon was simple and filled with human drama. To save money or avoid exposing himself to the Japanese military draft by going home, an Issei [first-generation] man working in America would write home and have relatives arrange a bride . . . [and] would send money and presents for her and her family . . . [and] courtship letters describing the success he was having and the wonderful life they would lead together in

Californians felt that the federal government had betrayed their desire for Japanese exclusion in order to be able to negotiate and execute the U.S.-Japan Treaty of Commerce and Navigation of 1911.¹¹¹ When added to the chagrin over the arrival of “photograph brides,” resentment towards the Japanese in California reached a new high.¹¹²

By 1911, publications such as the *San Francisco Chronicle*, politicians such as California Attorney General Ulysses S. Webb,¹¹³ and

America. She would send letters and pictures, too, and he would send a ticket.

. . .

Although proxy weddings had been legally recognized in prior years, through most of this period American state governments no longer recognized proxy wedding ceremonies . . . [and] some husbands married their wives at dockside

SPICKARD, *supra* note 62, at 34-35.

¹¹¹ The Treaty provided that citizens and subjects of the United States and Japan:

[S]hall have liberty to enter, travel and reside in the territories of the other to carry on trade, wholesale and retail, to own or lease and occupy houses, manufactories, warehouses and shops, to employ agents of their choice, to lease land for residential and commercial purposes, and generally to do anything incident to or necessary for trade upon the same terms as native citizens or subjects, submitting themselves to the laws and regulations there established.

See Treaty of Commerce and Navigation, U.S.-Japan, art. I, Feb. 21, 1911, 37 Stat. 1504. Note how the Treaty fails to mention of the right to enter into ownership and leases of agricultural land that left an opening for the California legislature to enact the Alien Land Law of 1913. See *id.*

¹¹² This resentment was not uniform. As with the Chinese a generation earlier, California’s largest growers and farmers favored cheap Japanese agricultural labor. However, smaller growers and farmers increasingly resented the “unfair competition” that the Japanese farmers represented. See TENBROEK ET AL., *supra* note 38, at 52-53.

Note, however, distinctions between the earlier generation of Chinese laborers and subsequent Japanese agriculturalists:

Unlike the Chinese who came before them, many of whom came from the destitute peasantry, Japanese immigrants tended to be from the comparatively prosperous farming class. They were accustomed to owning land and making their living from it. In America, land ownership was a goal for many. Thus land — and who had a right to own it — became a focus for California nativists, who saw their national efforts at exclusion at least temporarily stymied by what they considered the far too moderate gentleman’s agreement.

LAUREN KESSLER, *STUBBORN TWIG: THREE GENERATIONS IN THE LIFE OF A JAPANESE AMERICAN FAMILY* 66 (1993).

¹¹³ Ichihashi includes an excerpt of California Attorney General Ulysses S. Webb’s

growers in counties where Japanese land ownership had increased since the Gentleman's Agreement, began formulating what eventually became California's Alien Land Law of 1913. The law barred "aliens ineligible to citizenship" from acquiring fee simple interest in agricultural land or entering into leases longer than three years for such land.¹¹⁴ It was not surprising that the Alien Land Law passed in the California Senate 35-2 and the California Assembly 72-3.¹¹⁵ Republicans Theodore Roosevelt and William Taft managed to enlist the Republican Governor of California James Gillett to help suppress anti-Gentleman's Agreement legislation prior to 1911.¹¹⁶ However, no such relationship existed between Hiram Johnson, California's next Governor, and Woodrow Wilson, the Democratic U.S. President, in the period from 1911 to 1913.¹¹⁷

address at the Commonwealth Club in San Francisco in August 1913. Attorney General Webb described the intent of the California Alien Land Law of 1913 as follows:

"The fundamental basis of all legislation upon this subject, State and Federal, has been, and is, race undesirability. . . . The simple and single question is, is the race desirable. . . ? [The Alien Land Law] seeks to limit their presence by curtailing their privileges which they may enjoy here; for they will not come in large numbers and long abide with us if they may not acquire land. And it seeks to limit the numbers who will come by limiting the opportunities for their activity here when they arrive."

See YAMATO ICHIHASHI, *JAPANESE IMMIGRATION: ITS STATUS IN CALIFORNIA* 58-59 (1915).

¹¹⁴ See ICHIHASHI, *supra* note 61, at 274-75; see also RINGER, *supra* note 101, at 731.

¹¹⁵ See Paolo E. Coletta, *The Most Thankless Task: Bryan and the California Alien Land Legislation*, 36 PAC. HIST. REV. 163, 173 (1967); see also DANIELS, *supra* note 38, at 62.

¹¹⁶ For example, the first California Alien Land bill was introduced in January 1907 when negotiations over the "Gentleman's Agreement" were pending. See Bruce A. Castleman, *California's Alien Land Laws*, 7 W. LEGAL HIST. 25, 27-28 (1994). During the 1909 legislative session, seventeen anti-Japanese bills were introduced, including an Alien Land bill that provided that while aliens could own or lease property, if they did not become citizens within five years, their land would escheat to the state. However, the bill did not get out of committee. During the 1911 legislative session, President Taft pressured Governor Gillett to consider the international dimensions that passage of such a law would entail for United States-Japan relations in light of the negotiations for the U.S.-Japan Treaty of 1911. Governor Gillett was able to have pending bills buried in committee or withdrawn. However, one of the Alien Land bills was able to get onto the floor, but was defeated on the final day of the session. See TERUKO OKADA KACHI, *THE TREATY OF 1911 AND THE IMMIGRATION AND ALIEN LAND LAW ISSUE BETWEEN THE UNITED STATES AND JAPAN, 1911-1913*, at 177-79, 190-93 (1978).

¹¹⁷ See DANIELS, *supra* note 38, at 58-64. See generally Herbert P. LePore, *Prelude to Prejudice: Hiram Johnson, Woodrow Wilson and the California Alien Land Law Controversy of 1913*, 61 S. CAL. Q. 99 (1979), reprinted in 2 *ASIAN AMERICANS AND THE LAW: HISTORICAL AND CONTEMPORARY PERSPECTIVES* 265 (Charles McClain ed., 1994)

Despite the anti-Japanese animus driving the enactment of the 1913 California Alien Land Law,¹¹⁸ Japanese immigrants evaded the 1913 Alien Land Law through various legal tactics. Some Japanese would have the title of the land reside in a U.S. citizen (in some cases, their citizen children), while paying the purchase price and other fees.¹¹⁹ Other Japanese immigrants would form a land-holding corporation composed of their U.S. citizen minor children, a white lawyer, and the Japanese immigrant, who would be either a minority shareholder or would enter to a series of three-year renewable leases.¹²⁰

In response, nativist politicians, small growers, veterans,¹²¹ and anti-Japanese media teamed together to garner enough signatures to place a statewide ballot initiative on the November 1920 ballot.¹²² The 1920 California ballot initiative attempted to close the gaps in coverage of the 1913 Alien Land Law. The 1920 initiative prohibited guardianships and trusteeships for “aliens ineligible to citizenship” who would otherwise be barred by California law from owning such properties.¹²³ The 1920 initiative also prohibited all leases of

(discussing relationship between Johnson, Wilson, and The Alien Land Law).

¹¹⁸ See Yuji Ichioka, *The Early Japanese Immigrant Quest for Citizenship: The Background of the 1922 Ozawa Case*, in 2 *ASIAN AMERICANS AND THE LAW: JAPANESE IMMIGRANTS AND AMERICAN LAW: THE ALIEN LAND LAWS AND OTHER ISSUES* 397, 398 (Charles McClain ed., 1994).

¹¹⁹ See, e.g., *Oyama v. California*, 332 U.S. 633, 635 (1948) (outlining case which tested constitutionality of Alien Land Law as applied to two parcels of land that escheated to state where title of land parcels was in name of minor American citizen of Japanese descent but purchase price paid for by Japanese father who was Japanese citizen ineligible for naturalization).

¹²⁰ See Robert Higgs, *Landless by Law: The Japanese Immigrants in California Agriculture to 1941*, 38 *J. ECON. HIST.* 205, 216 (1978); Masao Suzuki, *Important or Impotent? Taking Another Look at the 1920 California Alien Land Law*, 64 *J. ECON. HIST.* 125, 130 (2004).

¹²¹ See TENBROEK ET AL., *supra* note 38, at 51, 53 (“[T]he California State Farm Bureau Federation . . . by 1920 had attracted a membership of twenty thousand farmers — largely through its early and shrewd manipulation of the ‘Japanese Problem.’ . . . As early as December, 1919, the Magnolia-Mulberry Farm Center of Imperial Valley passed resolutions calling for the total exclusion of Japanese, Hindus, and Mohammedans. . . . The immediate goal of the Farm Bureau agitation was attained in 1920 when the voters of California approved the initiative amendment to the [1913] Alien Land Law Credit for the victory was quickly claimed by farmers and their organizations”); see also CHUMAN, *supra* note 91, at 78.

¹²² See California Initiative, 1921 Cal. Stat. lxxxvii, §§ 1-14 (Nov. 2, 1920); TENBROEK ET AL., *supra* note 38, at 51, 53; see also CHUMAN, *supra* note 91, at 78.

¹²³ See, e.g., California Initiative, 1921 Cal. Stat. lxxxvii, § 4 (Nov. 2, 1920) (“Hereafter no alien mentioned in section two hereof and no company, association or corporation mentioned in section three hereof, may be appointed guardian of that portion of the estate of a minor which consists of property which such alien or such

agricultural land, classified “sharecropping contracts” as interests in land and barred them, and prevented corporations with a majority of shareholders who were “aliens ineligible to citizenship” from owning agricultural land.¹²⁴ The 1920 initiative passed with a majority vote in every county in California.¹²⁵

In 1923, the U.S. Supreme Court reviewed the California and Washington State Alien Land Laws in four cases challenging escheat actions.¹²⁶ In *Terrace v. Thompson*, the Court upheld a Washington law couched as a prohibition on alien land ownership for those who had not declared their good faith intention to become U.S. citizens.¹²⁷ The Washington law was ostensibly justified on terms of limiting absentee ownership.¹²⁸ However, the Court’s intent was not just to prohibit the unfaithful from owning land, but rather, to prohibit those such as “aliens ineligible to citizenship” from owning land as well. Citing *Terrace*, the Court in *Porterfield v. Webb* dismissed a challenge to the 1920 California initiative, finding that it ultimately prohibited the same class, aliens ineligible to citizenship, from land ownership.¹²⁹ In *Webb v. O’Brien*, the Court held that a sharecropping contract was substantially similar to a lease and, therefore, the 1920 initiative validly prohibited such contracts.¹³⁰ Additionally, in *Frick v. Webb*, the Court upheld California’s ban on ownership of a majority stock interest in a land-holding corporation.¹³¹

The Alien Land Laws provided a bridge from the hostility expressed towards the nineteenth century Chinese immigrant laborers to Japanese immigrants residing in the United States. However, unlike the Gentlemen’s Agreement of 1907, where Japan’s ascendance as a military and economic power forced the federal government to proceed with caution, the Alien Land Laws had an opposite effect. Public perception viewed cooperation between Japanese immigrants and Japan as proof of the Japanese immigrant population’s disloyalty

company, association or corporation is inhibited from acquiring, possessing, enjoying or transferring by reason of the provisions of this act.”).

¹²⁴ *See id.* §§ 1-14.

¹²⁵ Aoki, *supra* note 43, at 57.

¹²⁶ *Porterfield v. Webb*, 263 U.S. 225, 231 (1923); *Frick v. Webb*, 263 U.S. 326, 331-32 (1923); *Webb v. O’Brien*, 263 U.S. 313, 318-19 (1923); *Terrace v. Thompson*, 263 U.S. 197, 211 (1923). Note that the named parties were white U.S. citizens involved in land transactions with “aliens ineligible to citizenship.”

¹²⁷ *Terrace*, 263 U.S. at 212, 224.

¹²⁸ *Id.* at 221-22.

¹²⁹ *Porterfield*, 263 U.S. at 232-33.

¹³⁰ *O’Brien*, 263 U.S. at 322-23.

¹³¹ *Frick*, 263 U.S. at 334.

and racial undesirability. Even harsher measures were leveled against the Japanese residing in the United States, most notably Japanese internment after the attack on Pearl Harbor on December 7, 1941. Thus, wartime hysteria and propaganda cemented the pervasive fears of Asia and Asians.¹³²

The Gentlemen's Agreement and the California Alien Land Laws demonstrated the depth of anti-Asian animus in the twentieth century and how the threat of Asian had taken primary place in the American psyche. This trajectory of legal machinations stretched from the nineteenth century's Chinese Exclusion Act, through the events leading up to the Gentleman's Agreement of 1907, to the California Alien Land Laws of 1913 and 1920. Confronting and containing the "imminent threats" (real or imagined) posed by persons from Asia, particularly the Japanese, occupied U.S. law and society, supporting the notion that the twentieth century is in fact the Asian Century.

C. The Japanese American Internment

It is far beyond the scope of this Article to delve into the multiple and complex issues surrounding Japanese internment during World War II. However, the internment of Japanese immigrants and Japanese Americans during World War II provides yet another example of a perceived "Asian threat" and its effect on the American psyche. Moreover, Japanese internment illustrates how the issue of racial and national group identity imposed from without, as opposed to a group identity generated from within a particular group of immigrants, has a significant impact on transnationalism, diasporic racialization, and the Asian Century.

First, Japanese internment is an example of the unfortunate confluence between geopolitics and domestic racial politics couched under the guise of national security.¹³³ National security concerns have

¹³² See JOHN DOWER, *WAR WITHOUT MERCY: RACE AND POWER IN THE PACIFIC WAR* 3-15 (1987); MICHIE WEGLYN, *YEARS OF INFAMY: THE UNTOLD STORY OF AMERICA'S CONCENTRATION CAMPS 67-75* (1976).

¹³³ As District Court Judge Patel noted in overturning Fred Korematsu's criminal conviction:

Korematsu remains on the pages of our legal and political history. As a legal precedent it is now recognized as having very limited application. As historical precedent it stands as a constant caution that in times of war or declared military necessity our institutions must be vigilant in protecting constitutional guarantees. It stands as a caution that in times of distress the shield of military necessity and national security must not be used to protect government actions from close scrutiny and accountability. It stands as a

been present in U.S. immigration law and policy since the 1882 Chinese Exclusion Act and related U.S. Supreme Court cases. Similarly, the Gentleman's Agreement of 1907 and Alien Land Laws each possessed a national security component. They expressed a desire to protect land from the control of presumptively disloyal "aliens ineligible to citizenship."¹³⁴ The preceding examples create a vicious circle whereby geopolitical international anxieties are mapped onto domestic racial anxieties, which crystallize into laws and judicial opinions. This further inflames geopolitical anxieties that once again exacerbate domestic racial anxieties.

Second, Japanese internment may be seen as a situation in which the three branches of the U.S. government turned their formidable powers against Japanese immigrants and Japanese Americans residing in the West Coast of the United States.¹³⁵ After the Japanese attack on Pearl Harbor on December 7, 1941, public opinion turned decisively against Japanese immigrants and their citizen children. Only a month later, in January 1942, Supreme Court Justice Owen Roberts headed a commission that issued the seemingly hasty "Roberts Commission Report," at the behest of President Franklin Roosevelt.¹³⁶ The report concluded that Japanese immigrants in the United States had committed sabotage.¹³⁷ As a result of the Roberts Commission Report,

caution that in times of international hostility and antagonisms our institutions, legislative, executive and judicial, must be prepared to exercise their authority to protect all citizens from the petty fears and prejudices that are so easily aroused.

Korematsu v. United States, 584 F. Supp. 1406, 1420 (N.D. Cal. 1984) (overturning Fred Korematsu's criminal conviction for violating Civilian Exclusion Order No. 34 on writ of coram nobis).

¹³⁴ See *Terrace v. Thompson*, 263 U.S. 220, 220-21 (1923).

¹³⁵ The assertion of governmental power also extended to the state level. In California, former California Attorney General Ulysses S. Webb and then-current California Attorney General Earl Warren were advising the California Legislature's Joint Immigration Committee that the federal government should remove all ethnic Japanese from the West Coast. See U.S. COMM'N ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS (CWRIC), *PERSONAL JUSTICE DENIED: REPORT OF THE COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS 67-68* (1997) [hereinafter CWRIC].

¹³⁶ See ERIC K. YAMAMOTO ET AL., *RACE, RIGHTS AND REPARATION: LAW AND THE JAPANESE AMERICAN INTERNMENT* 99 (2001) ("Such views [that all ethnic Japanese should be removed from the West Coast] gained legitimacy with the January [1942] release of a report commissioned by President Roosevelt. Authorized hastily by Supreme Court Justice Owen Roberts, the Roberts Commission report concluded that Japanese living in America had committed espionage, contributing to the Pearl Harbor disaster. . . . After the Roberts report, the idea of mass internment caught on.").

¹³⁷ *Id.*

the idea of mass internment caught on and paved the way for the eventual Japanese internment.¹³⁸

On February 19, 1942, President Roosevelt issued Executive Order 9066, which granted the U.S. military the power to define “military areas.”¹³⁹ Thereafter, Lieutenant General John L. DeWitt, head of the Western Defense Command, issued a series of military orders to execute Executive Order 9066.¹⁴⁰ On March 24, 1942, Congress passed Public Law 503, criminalizing violations of duly issued military orders.¹⁴¹ Subsequently, General DeWitt issued multiple civilian exclusion orders following the passage of Public Law 503. These orders gave Japanese persons in the Western Defense Zone seven days to wrap up their affairs and evacuate; thereafter, Japanese persons were shipped to sixteen “assembly centers” along the West Coast.¹⁴² Finally, on March 18, 1942, President Roosevelt created the War Relocation Authority through Executive Order 9102, which administered more permanent “relocation centers” (i.e., the internment camps).¹⁴³

The federal judiciary became entangled with the issue of Japanese internment. From a legal standpoint, the internment process could be characterized as three phases of challenges.¹⁴⁴ In the first phase, Minoru Yasui (a lawyer from Hood River, Oregon) and Gordon Hirabayashi (a student and Quaker pacifist from Seattle, Washington) challenged a military order imposing a curfew on Japanese persons in federal court.¹⁴⁵ In the second phase, Gordon Hirabayashi and Fred

¹³⁸ For example, Columnist Henry McLemore of the *San Francisco Examiner* wrote, “I am for the immediate removal of every Japanese on the West Coast to a point deep in the interior. . . . Herd ’em up, pack ’em off and give ’em the inside room in the badlands. . . . Personally, I hate the Japanese. And that goes for all of them.” *Id.* at 99.

¹³⁹ *Id.* at 100.

¹⁴⁰ General DeWitt established Military Areas #1 and #2. Military Area #1 consisted of the western part of Washington, Oregon, and California and the southern part of Arizona. Military Area #2 comprised the rest of those states. Furthermore, General DeWitt’s military orders led to the curfew, evacuation, and detention of over 120,000 Japanese immigrants and their citizen children. *Id.* at 101.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ See *id.* at 96-176 (explaining three-phase organization). It is important to note that between May 10, 1943, and May 11, 1943, the Court heard arguments in *Hirabayashi v. United States*, *United States v. Korematsu*, and *Yasui v. United States*. The Court issued its decisions in *Hirabayashi* and *Yasui* six weeks later. However, the *Hirabayashi* opinion laid the foundation for the Court’s later opinion in *United States v. Korematsu*.

¹⁴⁵ *Hirabayashi v. United States*, 320 U.S. 81, 83-84 (1943); *Yasui v. United States*,

Korematsu (a welder from Oakland, California) challenged the legality of a military order implementing the exclusion of Japanese persons from the West Coast of the United States in federal court.¹⁴⁶ In the third and final phase, Mitsuye Endo (a clerical worker from Sacramento, California) challenged the physical detention of persons of Japanese ancestry by filing a habeas corpus petition in federal court.¹⁴⁷

On May 16, 1942, Gordon Hirabayashi turned himself into FBI headquarters in Seattle to challenge General DeWitt's exclusion order.¹⁴⁸ At trial, Hirabayashi admitted violating both the curfew and the exclusion orders.¹⁴⁹ The jury returned a guilty verdict in ten minutes, sentencing him to ninety days on each count to be served concurrently.¹⁵⁰ Hirabayashi's case made its way to the U.S. Supreme Court, which sought to answer whether Public Law 503 and General DeWitt's curfew and exclusion orders were constitutional.¹⁵¹

Minoru Yasui turned himself into the police on March 28, 1942 for violating the curfew order.¹⁵² He argued that the curfew provision was unlawful because it applied to all persons of Japanese ancestry and not solely to noncitizen aliens.¹⁵³ Yasui waived his right to a jury trial.¹⁵⁴ During his bench trial, the government requested that the court take judicial notice of facts demonstrating the propensity of Japanese Americans to be disloyal.¹⁵⁵ Additionally, the government proffered an argument that the Japanese being evacuated were being protected from vigilante violence.¹⁵⁶ While the court found Yasui guilty, it also made two holdings that were reversed on appeal. First, the court held that the curfew order was unconstitutional as applied to U.S. citizens.¹⁵⁷ Second, the court held that Yasui renounced his U.S. citizenship by working as a "propaganda agent" for the Emperor of Japan at the

320 U.S. 115, 116 (1943).

¹⁴⁶ *Korematsu v. United States*, 323 U.S. 214, 217-18 (1944); *Hirabayashi*, 320 U.S. at 83, 89.

¹⁴⁷ *Ex Parte Endo*, 323 U.S. 283, 294 (1944).

¹⁴⁸ See PETER IRONS, *JUSTICE AT WAR: THE STORY OF THE JAPANESE AMERICAN INTERNMENT CASES 89-92* (1983).

¹⁴⁹ YAMAMOTO ET AL., *supra* note 136, at 105.

¹⁵⁰ *Id.* at 107.

¹⁵¹ *Id.* at 107-08.

¹⁵² *Id.* at 128.

¹⁵³ IRONS, *supra* note 148, at 84.

¹⁵⁴ *Id.* at 128-129.

¹⁵⁵ *Id.* at 129.

¹⁵⁶ *Id.*

¹⁵⁷ See *Yasui v. United States*, 320 U.S. 115, 117 (1943).

Japanese consulate in Chicago. Thus, this made Yasui subject to the curfew order.¹⁵⁸ The U.S. Ninth Circuit Court of Appeals certified both issues from the *Yasui* case to the Supreme Court.¹⁵⁹

Fred Korematsu's case arose when the police stopped him in San Leandro, California, and he falsely claimed to be of Spanish-Hawaiian descent.¹⁶⁰ After eventually admitting his true identity, the local police turned over Korematsu to the FBI.¹⁶¹ Unlike, Yasui and Hirabayashi, Fred Korematsu did not set out deliberately to challenge the curfew and evacuation orders.

Korematsu waived his right to a jury trial. At issue in his case was whether General DeWitt's orders were applicable to Korematsu and whether he had in fact violated them.¹⁶² Korematsu presented a due process argument, on the grounds that even if he were a citizen or proved loyal, he would be unable to challenge the evacuation order.¹⁶³ The court found Korematsu guilty and sentenced him to a five-year probation term. However, the district court judge refused to impose the sentence on Korematsu.¹⁶⁴

Since the trial judge refused to impose the five-year probation sentence, the Supreme Court avoided having to decide whether the exclusion and detention orders in Korematsu's case were integral to the curfew and exclusion orders that were upheld in the *Yasui* and *Hirabayashi*.¹⁶⁵ *Korematsu II* has often been referred to as upholding

¹⁵⁸ See *United States v. Yasui*, 48 F. Supp. 40, 55 (D. Or. 1942); see also *Yasui*, 320 U.S. at 117.

¹⁵⁹ YAMAMOTO ET AL., *supra* note 136, at 130.

¹⁶⁰ IRONS, *supra* note 148, at 93-96.

¹⁶¹ *Id.* at 94-95. While in FBI custody, Korematsu told agents he did not turn himself in for evacuation to stay with his Italian-American girlfriend. He also told agents that he had plastic surgery in order to change his appearance. *Id.*

¹⁶² YAMAMOTO ET AL., *supra* note 136, at 139.

¹⁶³ At trial, Korematsu testified that not only was he an American citizen, but he lacked attachment to Japanese culture. *Id.*

¹⁶⁴ *Id.* Note that the U.S. Supreme Court issued two opinions in Korematsu's case. The Court issued its opinion in *Korematsu I* on June 1, 1943, along with the opinions in *Yasui* and *Hirabayashi*, all upholding the constitutionality of the curfew order. However, the Court sent the issue of the exclusion order's constitutionality back down to the Ninth Circuit. *Korematsu II* eventually made its way back to the Supreme Court, along with *Endo*. See *Ex parte Endo*, 323 U.S. 283, 284 (1944). *Endo* challenged the internment of Japanese persons with a petition for habeas corpus. *Id.* at 294. The Court issued its decision in *Korematsu II* and *Endo* a day following President Roosevelt's announcement that the federal government was ending the internment. See YAMAMOTO ET AL., *supra* note 136, at 139. Coincidentally (or not so), the Court issued decisions in *Korematsu II* and *Endo* after the November 1944 presidential elections. *Id.*

¹⁶⁵ See *Korematsu v. United States*, 323 U.S. 214, 221-24 (1944).

the internment of over 120,000 Japanese persons, but there is a curious aporia at its core.¹⁶⁶ *Korematsu II* framed the issue solely in terms of whether *Korematsu* violated the exclusion order; *Yasui* and *Hirabayashi* framed the issue as to whether the petitioners violated the curfew order. Thus, did the Supreme Court issue opinions in these cases that did not squarely confront the constitutionality of internment? If so, what could the Court have done to misdirect attention away from this aporia?

The answer lies in exploring the Court's attitude toward claims of the "military necessity." In *Ex parte Milligan*, the Supreme Court suggested that judicial intervention is needed when there is an issue over military control over civilians in the name of national security.¹⁶⁷ This is markedly different from judicial intervention in cases involving military control over military personnel.¹⁶⁸ Additionally, Professor Eric Yamamoto has commented that the Korean War era case *Youngstown Sheet & Tube Co. v. Sawyer*,¹⁶⁹ and the Vietnam War era case, *New York Times Co. v. United States*,¹⁷⁰ suggest that judicial intervention is appropriate when military necessity is unproven and war is not

¹⁶⁶ See YAMAMOTO ET AL., *supra* note 136, at 154-55.

¹⁶⁷ See *Ex parte Milligan*, 71 U.S. (4 Wall.) 2, 119 (1866). *Milligan* was not a member of the military and was arrested and charged with treason. *Id.* at 107. A civilian grand jury refused to indict him, but a military tribunal tried and convicted him, sentencing him to death. *Id.* The U.S. Supreme Court overturned *Milligan's* conviction on the basis that "it is the birthright of every American citizen when charged with crime, to be tried and punished according to law. . . . [The law] applicable to this case are found in that clause of the original Constitution which says, 'That the trial of all crimes, except in case of impeachment, shall be by jury.'" *Id.* at 119. One of the plainest constitutional provisions was, therefore, infringed when *Milligan* was tried and convicted by a court not ordained and established by Congress.

¹⁶⁸ See *Goldman v. Weinberger*, 475 U.S. 503, 507 (1986) (upholding regulations barring Jewish officer from wearing yarmulke); *Rostker v. Goldberg*, 453 U.S. 57, 67 (1981) (upholding decision to exclude women from draft).

¹⁶⁹ *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 587 (1952) ("[W]e cannot with faithfulness to our constitutional system hold that the Commander in Chief . . . has the ultimate power as such to take possession of private property in order to keep labor disputes from stopping production. This is a job for the Nation's lawmakers, not for its military authorities.").

¹⁷⁰ See *N.Y. Times Co. v. United States*, 403 U.S. 713, 714 (1971) (holding that the First Amendment's freedom of press trumped unsubstantiated claims of protecting national security interests by enjoining publication of Pentagon Papers); Eric K. Yamamoto, *Korematsu Revisited — Correcting the Injustice of Extraordinary Government Excess and Lax Judicial Review: Time for a Better Accommodation of National Security Concerns and Civil Liberties*, 26 SANTA CLARA L. REV. 1, 54-56 (1986).

declared, particularly when the executive is not working with the legislative branch.¹⁷¹

While not generally discussed in the context of diasporic racialization, the internment cases represent an intersection of domestic racial categories, a double diaspora of those of Japanese descent, geopolitics, and national security.¹⁷² This volatile mix, embodied in *Korematsu II*, gave rise to the notion that governmental use of racial categories should be subject to strict judicial scrutiny.¹⁷³ In order to withstand strict scrutiny, a challenged piece of legislation needs a compelling end and must be narrowly tailored to achieve that compelling end.¹⁷⁴

In the abstract, legislative measures aimed at preventing imminent sabotage and espionage during the throngs of World War II are compelling ends. However, questions arise as to how the U.S. government's internment of 120,000 Japanese Americans advances those ends in a narrowly tailored fashion. The majority in *Korematsu II* seems to have relied on false, unsubstantiated, and conclusory

¹⁷¹ See Yamamoto, *supra* note 170, at 54-56.

¹⁷² "Double diaspora" in this context refers to the diaspora of Japanese persons first from Japan to the United States, then from the West Coast of the United States to the internment camps during World War II.

¹⁷³ While the term "strict scrutiny" does not appear in a Supreme Court opinion under the Fourteenth Amendment's Equal Protection Clause until *Regents of University of California v. Bakke*, 438 U.S. 265 (1978), most academics would trace its genesis to the *Korematsu* case, which Justice Harlan Fiske Stone foreshadowed in his famous footnote four in *Carolene Products Co. v. United States*, 304 U.S. 144, 153 n.4 (1938). *Carolene Products*'s footnote four marked an important turning point for constitutional substantive due process (that addresses rights not found in specific constitutional provisions) in which Justice Stone articulated three situations where heightened judicial scrutiny was appropriate: (1) where legislation facially violates an explicit constitutional provision; (2) where legislation distorts or disrupts the political process; and (3) where legislation discriminates against a "discrete and insular minority" otherwise unrepresented in the political process. Justice Black, in *Korematsu*, purported to apply this higher level of judicial scrutiny to racial categories used by the government ("[A]ll legal restrictions which curtail the civil rights of a single racial group are immediately suspect. That is not to say that all such restrictions are unconstitutional. It is to say that courts must subject them to the most rigid scrutiny."). *Korematsu v. United States*, 323 U.S. 214, 216 (1944). However, deference to military necessity and national security formed the actual rationale for the *Korematsu* case. *Id.* at 223-24 ("To cast this case into outlines of racial prejudice, without reference to the real military dangers which were presented, merely confuses the issue. *Korematsu* was not excluded from the Military Area because of hostility to him or his race.").

¹⁷⁴ See, e.g., YAMAMOTO ET AL., *supra* note 136, at 103 (outlining levels of scrutiny when classifications are based upon race).

statements about a particular racial group's "propensity" for disloyalty.¹⁷⁵

The *Hirabayashi*, *Yasui*, and *Korematsu* cases represented unsuccessful attempts to challenge to the validity and legality of the various military orders issued against those of Japanese descent. *Endo*, however, was not a constitutional challenge to the various military orders. Rather, the challenge in *Endo* was premised on a habeas corpus motion. Like her Japanese brethren, *Endo* was "evacuated" to a relocation camp. *Endo*'s filed a habeas corpus petition to challenge her "evacuation" to the relocation camp.¹⁷⁶ While the opinion in her case was not released until December 1944, *Endo*'s case forced the Supreme Court to look squarely at the detention phase of the internment.

Endo filed her habeas petition in the U.S. District Court, Northern District of California, where the judge held her petition until the U.S. Supreme Court released its decisions in *Korematsu II*, *Yasui*, and *Hirabayashi*.¹⁷⁷ After the Court issued its decisions, the judge dismissed *Endo*'s habeas petition.¹⁷⁸ Her case eventually made its way to the Supreme Court. The Supreme Court decided *Hirabayashi*, *Yasui*, and *Korematsu II* in a staggered fashion. However, the Court was able to mitigate the internment and detention issue by not approving the detention of admittedly loyal U.S. citizens on the basis of their ancestry.¹⁷⁹ This compromise was justified on the grounds that such an individual would be able to file a writ of habeas corpus to challenge their detention.¹⁸⁰

The United States' internment of people of Japanese descent demonstrates yet another example of how negative racialized stereotypes derived from the international political arena have been

¹⁷⁵ CWRIC, *supra* note 135, at 65-68; See IRONS, *supra* note 148, at 336-37; YAMAMOTO ET AL., *supra* note 136, at 129.

¹⁷⁶ See generally, YAMAMOTO ET AL., *supra* note 136, at 168-69 (describing writ of habeas corpus).

¹⁷⁷ See IRONS, *supra* note 148, at 99-103; see also YAMAMOTO ET AL., *supra* note 136, at 169.

¹⁷⁸ *Ex parte Endo*, 32 U.S. 283, 285 (1944).

¹⁷⁹ *Id.* at 302 ("A citizen who is concededly loyal presents no problem of espionage or sabotage. Loyalty is a matter of heart and mind, not of race, creed, or color. . . . If we assume (as we do) that the original evacuation was justified, its lawful character was derived from the fact that it was an espionage and sabotage measure, not that there was community hostility to this group of American citizens.").

¹⁸⁰ *Id.* at 299, 304-06; see also DANIELS, *supra* note 38, at 141; IRONS, *supra* note 148, at 38-39.

deployed against immigrants and their citizen children.¹⁸¹ Japanese internment was an example of the extreme cost exacted from the international and domestic conflation of race, particularly when operating under the invocation of national security. It also represents the curious resilience of the anxieties and fears American policymakers experienced when looking eastward at Japanese political, economic, and military strength. Lastly, it represents another piece of evidence supporting this Article's assertion that the twentieth century, not the twenty first century, is the Asian Century. Asia and Asians have preoccupied the anxieties of white America, and the domestic and foreign policy initiatives of the U.S. government. White Americans transferred negative ascriptions from the nineteenth century Chinese immigrants to the early twentieth century Japanese.

III. HAVE WE MET THE "OTHERS" AND ARE "WE" THEY (OR ARE "THEY" US)?

What happens when the threatening "others" are no longer "there"? That is, because of globalization and communication technology, what happens when the "others" are either virtually or actually "here," and "we" (i.e. the West) are virtually or actually "there"? Furthermore, what happens when "we" have met the "others" and find that the "others" are "us"?

A diaspora analysis in the context of the Asian Century may help us understand this complex set of questions. The current use of the term the Asian Century does not make sense if "Asia," "Asians," and the "West" are dispersed. An examination of Asian diaspora provides a theoretical lens from which the term the Asian Century can be unpacked. On one hand, diaspora recognizes a homeland — a coherent place, history, and identity. On the other hand, diaspora is also the recognition that such identities are fractured and splintered by space, time, race, class, and gender. As a consequence, diaspora often yields a hybrid experience and culture both in the "home" country, as well as the "host" country. Thus, rather than accept the foreignness

¹⁸¹ Other examples were discussed in Part II.B of this Article. The Gentleman's Agreement was an early example of a type of transnationalism where a homeland government flexed its diplomatic and political strength on behalf of a diasporic community in a foreign hostland. However, such flexing resulted in domestic backlash, as evident in California's Alien Land Laws of 1913 and 1920. The Alien Land Laws were premised on denying the "privilege" of owning agricultural land to immigrants who could not legally become citizens, but eventually became a tool to brand Japanese persons as disloyal or potential saboteurs. *See supra* Part II.B and accompanying text.

that the term the Asian Century implies, diaspora demonstrates that “Asia” and “Asians” are much closer objects in the mirror than current scholarship may suggest.

A. *Diaspora: The Ocean Flows Both Ways (Why Do You Have to Fly West to Get East?)*

“Diaspora” derives from the Greek prefix “dia,” which means “through” and the verb “speirein,” which means “to sow” or “to scatter.”¹⁸² The archaic origins of the idea of diaspora may be too essentialist and membership-based to do much heavy-lifting in the contemporary era. However, the degree to which the meanings and definitions of “diaspora” have shifted in the hands of a variety of scholars over the past two decades is notable.¹⁸³

Anupam Chander’s *Diaspora Bonds* provides an appropriate baseline to discuss the concept of diaspora as it relates to the Asian Century, arguing that a diasporic analysis is helpful in a world of ever-increasing globalization.¹⁸⁴ First, Chander suggests that a diasporic model of identity, “which allows people to maintain hybridized and hybridizing bonds to homeland and hostland, better approximates how people now imagine their relationship to the state than either the statist or cosmopolitan models.”¹⁸⁵ Second, a diaspora model “offers a view of citizenship that reconciles globalization with the desire for a sense of rootedness . . . but does not mistake it for a renunciation of nation or state . . . [and] embraces the multiculturalism of cosmopolitanism.”¹⁸⁶ Third, Chander notes that as a basis for community, the diasporic model “affirms a connection between rich

¹⁸² MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 502 (10th ed. 1998); 4 OXFORD ENGLISH DICTIONARY 613 (2d ed. 1989).

¹⁸³ Academia’s use of the word diaspora has gone through a variety of iterations, ranging from a tightly defined context dealing with state-forced segregation and spatial migration, to a broadly encompassing term, eliding the difference between involuntary and voluntary movements across borders. See Chander, *supra* note 9, at 1022-24.

¹⁸⁴ *Id.* at 1096.

¹⁸⁵ *Id.* (defining statist and cosmopolitan models). A statist model of international law, also known as the “Westphalian model,” is premised on nation-states as the basic unit of international law, states having jurisdictional autonomy within their borders and little or no legal connection between diasporic individuals/groups/subjects/citizens and their respective homelands. See Stephen D. Krassner, *Compromising Westphalia*, 20 INT’L SEC. 115, 115 (1995). By contrast, a cosmopolitan model of international law minimizes the centrality of nationality.

¹⁸⁶ Chander, *supra* note 9, at 1096.

and poor nations that can support economic development.”¹⁸⁷ Fourth, “recognizing diasporan relationships . . . allows us to grasp the connections between distant events and to place these events into a broader global framework.”¹⁸⁸ Finally, Chander asserts that because “[d]iasporas blur the distinction between ‘us’ and ‘them’. . . [i]t will be harder to demonize another people when one’s own compatriots hail from that same place and maintain strong bonds to it.”¹⁸⁹

Chander argues correctly that diasporas and diasporans “present a challenge to standard paradigms of international law.”¹⁹⁰ However, diasporas and diasporans may also complicate paradigms of national law, particularly in nations such as the United States, which have long, complex, and troubled histories of racism and racialization of immigrants.¹⁹¹ Insofar as traditional international law hews to a statist model, the national racialization of immigrants is of no concern to any nation other than the host nation into which individuals have migrated. By proposing a third paradigm — a diasporan model — Chander seeks to reconcile or mediate the dual interests of persons and diasporic communities by finding a way that those persons may be governed by both the law of their home and that of their host countries.¹⁹²

Scholars, such as Paul Gilroy, suggest that examining culture within the context of diaspora is a critical alternative to racial and national essentialism.¹⁹³ In certain ways, Gilroy’s assertion is parallel to

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.* at 1097.

¹⁹⁰ Standard paradigms of international law include the “statist” model and the cosmopolitan model. *Id.* at 1005.

¹⁹¹ See *supra* Part III.A-III.C (discussing racialization of immigrants from China and Japan within United States from late nineteenth century through twentieth century).

¹⁹² The statist model of strong borders and autonomous sovereignty does not capture the porousness of contemporary borders brought about by transportation and communications technology. The cosmopolitan model of global citizenship seems to contemplate a reality that has not yet materialized, and seems to discount the suasion of group and individual identity rooted in history, culture, and context. The diasporan model appears to split the difference between the idea that national states and their borders are transcendent and the idea that those national borders do not matter. It may be useful to interrogate further the invention of the contemporary idea of diaspora in order to think through what ways it may be a useful heuristic. Additionally, it may inform what ways diaspora may work to obscure the very type(s) of phenomenon we are attempting to analyze — the increasing movements of people and individuals and their identities across borders in the late twentieth and early twenty-first century. See Chander, *supra* note 9, at 1096-98.

¹⁹³ PAUL GILROY, THERE AIN’T NO BLACK IN THE UNION JACK: THE CULTURAL POLITICS

assertions that Critical Race Theory scholars made at roughly the same time.¹⁹⁴ Initially, Critical Race Theory was a nation-bound analysis focusing on the experiences and encounters of different groups of people of color with U.S. law. However, Critical Race Theory quickly expanded to encompass questions regarding the differential treatment of various minority groups and how they arrived in the United States. For instance, for African Americans, the experience of chattel slavery remains central. However, it must be modified by understandings of new immigrants to the United States from Africa and the Caribbean over the past three decades. For Asian Americans, as with Latinos, defining what “Asian” or “Latino” means has been elusive. However, Asian American history involves encounters with American xenophobia and racism by successive groups of voluntary immigrants from different Asian nations. Latino histories involve the consequences of colonialism and empire as well as forced conquest and related dispersal. Thus, diasporic analysis provides a frame for the transnational aspects of these varied group and individual experiences.

B. *Defining and Redefining Diaspora: Changing Scholarly Perspectives*

Since the late 1980s, the question of exactly what type of diasporic model is relevant with respect to identity and migration has been both a weakness and a strength.¹⁹⁵ Simultaneously, there is the ever-present problem of avoiding the “essentialization” of a group foregrounded on material, ideological, or discursive grounds in increasingly complex transnational networks.¹⁹⁶ Some scholars use the diaspora concept to

OF RACE AND NATION 154-60 (1987).

¹⁹⁴ The main point here is that to greater and lesser extent, Critical Race Theory scholars were skeptical, if not incredulous, at the way that U.S. law utilized “naturalized” racial categories with persons and groups belonging to them without taking into account the ways that U.S. law (and white racial identity and consciousness) has repeatedly defined and redefined itself through the exclusion and marginalization of a range of racial “others.” See Neil Gotanda, *A Critique of “Our Constitution is Colorblind,”* 44 STAN L. REV. 1, 19 (1991); Angela P. Harris, *Race and Essentialism in Feminist Legal Thought*, 42 STAN L. REV. 581, 581 (1990); Ian Haney Lopez, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 HARV. C.R.-C.L. L. REV. 1, 3 (1994).

¹⁹⁵ See Rogers Brubaker, *The “Diaspora” Diaspora*, 28 ETHNIC & RACIAL STUD. 1, 3, 10-11 (2006). The diasporic model’s strength is its ability to capture the complexity of identity and migration. Its weakness, however, is its tendency to essentialize the experience of individual and group experiences. The diasporic model’s tendency to expand its scope begs the question of how a diasporic model deploying race as a heuristic is positioned differently when nation, religion, ethnicity, gender, sexuality, or geographic regions are foregrounded. *Id.* at 3-11.

¹⁹⁶ “Essentialization” involves the reduction of aspects of a particular group or

address some of the shortcomings that analyses based on race and ethnicity present.¹⁹⁷ For instance, race and ethnicity analyses tended to foreground processes such as assimilation, integration, conflict, and accommodation within the nation-state. However, this kind of race and ethnicity analyses discounted transnational networks and components of group and individual identity formation.¹⁹⁸ In essence, Hall and Gilroy posited diaspora as a “social condition” — as a particular type of consciousness occurring along with globalization.¹⁹⁹ Considered as a social process, diaspora might be thought of as a connection between groups spread among different nations with a commonality deriving from an original but removed homeland.²⁰⁰ This conception of diaspora rejects an essentialized racial subject and culture while advancing a difference and sameness of a “connective” culture across national groups.²⁰¹ While Hall and Gilroy sought to avoid the pitfalls of essentialism and analytical reductionism in evaluating identity and diaspora, one could still criticize the difficulties of defining what constitutes an “original homeland” for purposes of analysis.²⁰²

individual's experience to one or a few characteristics. See, e.g., Harris, *supra* note 194, at 585 (critiquing race and gender “essentialism”). Compare Tololyan Khachig, *Rethinking Diaspora(s): Stateless Power in the Transnational Moment*, in 5 *DIASPORA: A JOURNAL OF TRANSNATIONAL STUDIES* 3, 29-30 (1996) (describing that diaspora is defined by collectivity), with Stuart Hall, *Cultural Identity and Diaspora*, in *IDENTITY: COMMUNITY, CULTURE, DIFFERENCE* 222, 237 (J. Rutherford ed., 1990) (describing that diaspora is defined by hybridity).

¹⁹⁷ See, e.g., Hall, *supra* note 196, at 235 (“The diaspora experience as I intend it here, is defined, not by essence or purity, but by the recognition of a necessary heterogeneity and diversity Diaspora identities are those which are constantly producing and reproducing themselves anew, through transformation and difference.”).

¹⁹⁸ See GILROY, *supra* note 1, at 7 (“Getting beyond these national and nationalistic perspectives has become essential for two . . . reasons. The first arises from the urgent obligation to reevaluate the significance of the modern state as a political, economic, and cultural unit. Neither political nor economic structures of domination are still simply co-extensive with national borders . . . with significant consequences for the the relationship between the politics of information and the practices of capital accumulation. The second reason relates to the tragic popularity of ideas about the integrity and purity of cultures . . . [and] the relationship between nationality and ethnicity.”).

¹⁹⁹ See Floya Anthias, *Evaluating ‘Diaspora’: Beyond Ethnicity*, 32 *SOC.* 557, 560 (1998).

²⁰⁰ See *id.* at 561.

²⁰¹ See *id.*

²⁰² On the idea of “homeland maintenance” as constitutive in defining a diaspora, see William Safran, *Diasporas in Modern Societies: Myths of Homeland and Return*, 1 *DIASPORA* 83, 83 (1991). See also James Clifford, *Diasporas*, in 9 *CULTURAL*

In *The Black Atlantic*, Gilroy articulated a theory regarding the utility of diaspora.²⁰³ Gilroy used diaspora as a heuristic device with which to reconstruct the history of the West, through the lens of Black intellectuals such as W.E.B. DuBois and Richard Wright.²⁰⁴ Gilroy employed this method in order to “escape the restrictive bonds of ethnicity, national identification, and sometimes even ‘race’ itself.”²⁰⁵ He also contested the idea that there was an “essential black subject.”²⁰⁶ To achieve this end, Gilroy focused on DuBois’s notion of “double-consciousness” in which both the continuities and discontinuities of Black culture created a domain within a larger societal space of racial subordination in twentieth century American and British culture.²⁰⁷

Defining diaspora is difficult: not only are there fluctuating scholarly perspectives, but introducing factors such as race further complicates a bright line definition. This difficulty begs the question: how does one address problems related to a nation-state’s assertion or recognition of diasporic identities? In order to answer this question, one must ask: what are the core elements of diasporic identities?

Diaspora possesses three core elements that serve as key factors in analyzing transnational identities and borders.²⁰⁸ The first element is dispersion in space that may be forced or traumatic — such dispersion may even be within a particular nation-state’s borders.²⁰⁹ The second element is an orientation to a real or “imagined” homeland, with contested attitudes toward the idea of a “single source” and a teleology of return.²¹⁰ Lastly, the third element involves issues of “boundary-maintenance,” such as the preservation of differences in the host, settled society, or nation.²¹¹ Each of these elements has room for alternative definitions, as well as problematic aspects to be discussed later. Since diasporas may be considered voluntary, aspects of the first

ANTHROPOLOGY 302, 305 (1994) (providing critique de-emphasizing homeland orientation); Anthias, *supra* note 199, at 564. See generally Mark-Anthony Falzon, *Bombay, Our Cultural Heart: Rethinking the Relation Between Homeland and Diaspora*, 26 ETHNIC & RACIAL STUD. 622 (2003) (noting relation between idea of primordial homeland and diaspora is tenuous).

²⁰³ See GILROY, *supra* note 1, at 6-7.

²⁰⁴ *Id.* at 218.

²⁰⁵ *Id.* at 19.

²⁰⁶ *Id.* at 32.

²⁰⁷ *Id.* at 6.

²⁰⁸ See Brubaker, *supra* note 195, at 5-7.

²⁰⁹ *Id.* at 6.

²¹⁰ *Id.*

²¹¹ *Id.*

two elements may be relaxed. Furthermore, the second element may occur when there is a diffusion of origin, for example, discussing the origins of Asian Americans or Latinos in the United States. However, the third element, “boundary-maintenance,” is crucial in establishing a transnational community or identity.

Some scholars articulate that the practice of “boundary maintenance” is in tension with another aspect of diaspora — that of hybridity, syncretism, and creolization.²¹² Thus, there is a tension in a diasporic analysis between boundary erosion and boundary maintenance, both of which are processes that occur over time. As such, objects in the mirror are closer than they appear — there is a distancing of “homeland” in space, time, and memory, yet the “homeland” retains a salience for identity formation. This reflection, while more subjective, is “closer” than geography or national boundaries, both of which are theoretically measurable.

For purposes of this Article, the concept of diaspora, serves as a counterpoint to statist and cosmopolitan analyses, illustrated in the chart below.²¹³ This chart simplifies a more complex state of affairs regarding migration patterns in an era of globalization. However, the chart opens up the intellectual space for analyzing: (1) how and why national borders have become selectively permeable; (2) how migration patterns do not radically overthrow notions of the nation-state; and (3) how such patterns are altering how individuals and groups conceive of and act on their agency regarding migration.

<u>STATIST</u> ²¹⁴	<u>DIASPORIC</u>	<u>COSMOPOLITAN</u> ²¹⁵
Integrationist/ Assimilationist ²¹⁶	Boundary-maintenance (diasporic communities)	Diasporic identities and claims

²¹² See, e.g., Hall, *supra* note 196, at 234-35.

²¹³ The chart is adapted from Anupam Chander’s more complex matrix in *Diaspora Bonds*. See Chander, *supra* note 9, at 1060.

²¹⁴ See Krassner, *supra* note 185, at 115; see also Brian Barry, *Statism and Nationalism: A Cosmopolitan Critique*, 41 *NOMOS* 12, 25 (1999).

²¹⁵ See Jeremy Waldron, *Minority Cultures and the Cosmopolitan Alternative*, 25 *U. MICH. J.L. REFORM* 751, 754 (1992); see also Bruce Ackerman, *Rooted Cosmopolitanism*, 104 *ETHICS* 516, 534 (1994).

²¹⁶ See Clifford, *supra* note 202, at 307 (“[A]ssimilationist national ideologies such as those of the United States [produce] . . . narratives . . . designed to integrate immigrants, not people in diasporas.”); see also Chander, *supra* note 9, at 1037 (“Statism long has been associated with the often coercive assimilation of disparate groups living within the state’s territory to create a single nation from distinct tribes with different traditions, languages, worldviews, and cultures. Assimilationist strategies are, by definition, hostile to diasporas, since diasporas are defined by the transnational community they seek to maintain.”); Christopher L. Eisgruber, *The*

	separate themselves to greater or lesser degrees within host state, while simultaneously claiming status within that host state) ²¹⁷	disfavored because they represent parochial/local affiliations ²¹⁸
Nation-State = unit of analysis ²¹⁹	Host and Home Countries ²²⁰	Individual Human Being = unit of analysis ²²¹
Migration = unidirectional ²²²	Migration = multi-directional ²²³	Migration = freedom of movement ²²⁴

Constitutional Value of Assimilation, 96 COLUM. L. REV. 87, 88-89 (1996).

²¹⁷ See Chander, *supra* note 9, at 1049-50 (“[T]he diaspora model offers an internationalism that respects patriotic feelings and individual attachments to country and community . . . [and] does not mean doing away with states, but rather denying their claim to the exclusive allegiance of their residents.”).

²¹⁸ See Benjamin R. Barber, *Constitutional Faith*, in FOR LOVE OF COUNTRY 30, 33-34 (Joshua Cohen ed., 1996) (“[G]lobal citizenship demands of its patriots levels of abstraction and disembodiment most women and men will be unable or unwilling to muster, at least in the first instance.”).

²¹⁹ The analytic unit in this case, the nation-state, mostly gauges the volume and velocity of migration.

²²⁰ V.Y. Mudimbe & Sabine Engel, *Introduction: Diasporas and Immigration*, 98 S. ATLANTIC Q. 1, 4 (1999) (“Members of diasporas define themselves in terms of at least a double identity, thus bracketing the unconditional fidelity associated with citizenship in a particular nation-state. They see themselves as being, for instance, both African and American, French and Palestinian, Jewish and Spanish.”).

²²¹ See Barry, *supra* note 214, at 35-36; see also Thomas Pogge, *Cosmopolitanism and Sovereignty*, 103 ETHICS 48, 48-49 (1992).

²²² Considering the degree to which contemporary migration patterns are not unidirectional or permanent allows us to consider ways that nineteenth century migration patterns were not unidirectional or permanent either. The question does remain whether the time and distance compressing communications and transportation technologies of the late twentieth and early twenty-first century change these migrations from a difference in degree to a difference in kind. See Chander, *supra* note 9, at 1023-24.

²²³ See *id.* at 1029 (“Diasporas may demand freedom of movement. They may demand the right to pass freely between their homeland and their adopted land, and to bring their capital and possessions with them.”); see also REG’L BUREAU FOR EUROPE, UNITED NATIONS HIGH COMM’R FOR REFUGEES, NGO MANUAL ON INTEGRATION AND REGIONAL INSTRUMENTS CONCERNING REFUGEES AND HUMAN RIGHTS 251-64 (1998) (describing “freedom of movement” that “does not include a general right to enter the country of one’s choice”). See generally *Fong Yue Ting v. United States*, 149 U.S. 698, 730-31 (1893) (upholding interim changes in U.S. Chinese Exclusion Act of 1892 that excluded Chinese national who had left United States in compliance with Act expecting to be able to return, but who was excluded); JUDITH SHKLAR, *AMERICAN CITIZENSHIP: THE QUEST FOR INCLUSION* 28-29 (1991) (articulating tension between

Sharp break with home country (exclusive allegiance/citizenship to host country for assimilated immigrants; suspicion of dual citizenship) ²²⁵	Maintain networks, ties, connections, and bonds with home country (dual citizenship) ²²⁶	Membership in nation-state is incidental, not essential attribute of identity ²²⁷
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racial exclusion and citizenship, as “the tension between an acknowledged ideology of equal political rights and a deep and common desire to exclude and reject large groups of human beings from citizenship [that] has marked every stage of the American democracy”); Linda Bosniak, *Being Here: Ethical Territoriality and the Rights of Immigrants*, 8 THEORETICAL INQUIRIES L. 389, 393-95 (2007) (discussing extending *Yick Wo v. Hopkins*’s liberal tradition of providing rights and recognition to persons that are territorially present within nation-state thereby reducing burden on undocumented workers and immigrants and work to eliminate caste system that impoverishes democratic system of labor-importing countries).

²²⁴ See Chander, *supra* note 9, at 1046 (“[C]osmopolitans reject the notion of a particular ‘people,’ and thus have no legitimate basis for denying anyone entry into a country.”); see also KWAME ANTHONY APPIAH, COSMOPOLITANISM: ETHICS IN A WORLD OF STRANGERS 101-05 (2006) (discussing globalization, transnationalism, and multiculturalism); SEYLA BENHABIB, ANOTHER COSMOPOLITANISM 101-05 (2006); JACQUES DERRIDA, ON COSMOPOLITANISM, COSMOPOLITANISM AND FORGIVENESS 3-24 (Mark Dooley & Michael Hughes trans., 2001) (same); AIHWA ONG, FLEXIBLE CITIZENSHIP: THE CULTURAL LOGICS OF TRANSNATIONALITY 13-16 (1999) (same); Liisa Malkki, *Citizens of Humanity: Internationalism and the Imagined Community of Nations*, 3 DIASPORA 41, 41 (1994) (same). *But see* Sophia Rosenfeld, *Citizens of Nowhere in Particular: Cosmopolitanism, Writing, and Political Engagement in Eighteenth Century Europe*, 4 NAT’L IDENTITIES 25, 36 (2002); Iris Marion Young, *Responsibility and Global Justice: A Social Connection Model*, 23 SOC. PHILO. & POL’Y 102, 105 (2006).

²²⁵ The traditional “statist” view may overdetermine the idea of the nation-state, assuming a transhistorical or universalist aspect to the Westphalian nation-state, when nation-states have been, are, and will continue to be products of historical contingency and not teleological, timeless entities. If individuals and groups claiming “diasporic” identities are heterogeneous, dynamic, and contingent, so too may be nation-states from which such individuals and groups originate. That being said, the persistence of nation-states as well as their variety or diversity is notable.

²²⁶ Chander, *supra* note 9, at 1027-28 (“Diasporas favor the possibility of dual nationality. Dual nationality allows individuals in diaspora to maintain officially sanctioned connections to a foreign state, whereas recognition of the diaspora gives official sanction to the transnational community itself.”).

²²⁷ See Waldron, *supra* note 215, at 754 (stating “cosmopolitan” fundamentally rejects borders idea and “refuses to think of himself as defined by his location or his ancestry or his citizenship or his language”); see also Thomas M. Franck, *Clan and Superclan: Loyalty, Identity and Community in Law and Practice*, 90 AM. J. INT’L L. 359, 376 (1994) (describing Kantian idea of “Weltbürger citizens of the world”); Martha C.

Considering diaspora as an analytic stance allows scholars to examine the ways that diasporic assimilation is more complex, subtle, multi-directional, and ambivalent than traditional notions of immigrants' assimilation into home countries. Diaspora does not portend the end of the Westphalian nation-state based on discrete territorial boundaries. Rather, diaspora works to destabilize any particular nation-state's call for an exclusive claim on a citizen's loyalty.²²⁸ However, diaspora's destabilization in this context creates tension with the cosmopolitan and multiculturalist move to transcend privileging any particular history, ethnicity, or culture.²²⁹

C. *Diaspora(s) Today: From Assimilation to Exotification and Back Again*

Thus far, this Article has demonstrated how the essentialized construction of immigrants from Asian nations has shaped U.S. domestic law. This next section discusses diaspora and the geographic displacement diasporic identities entail, thereby constructing dynamic notions of "homelands" and "hostlands." Onto this spilt screen of homeland and hostland are projected domestic racial anxieties that arose in part from national anxieties. The reflexive projection of national racial paranoias onto the international stage, and vice-versa, perpetuates a disturbing and dynamic feedback loop and distorts national and international politics.

Transportation and communications technologies have transformed the sense of being "here" or "there." Where exactly is the homeland and hostland? An individual may reside in one location, communicate and participate politically in another, and travel relatively back and

Nussbaum, *Kant and Stoic Cosmopolitanism*, 5 J. POL. PHIL. 1, 6-9 (1997) (examining Stoic cosmopolitanism influence on Immanuel Kant).

²²⁸ Chander, *supra* note 9, at 1048-50 (recognizing that diasporas exemplify contemporary condition of hybridity, intermingling, and multiple allegiances and that diaspora model does not seek to dismantle nation-state, but rather to rearticulate it as multinational state permitting voluntary transnational associations of its people).

²²⁹ *Id.* at 1045-46; *see also* WILL KYMLICKA, MULTICULTURAL CITIZENSHIP: A LIBERAL THEORY OF MINORITY RIGHTS 173-92 (1995) (finding integration of "others" paramount to liberal democratic project); JOHN RAWLS, A THEORY OF JUSTICE 8 (1971) ("I shall be satisfied if it is possible to formulate a reasonable conception of justice for the basic structure of society conceived for the time being as a closed system isolated from other societies."); Will Kymlicka & Wayne Norman, *Return of the Citizen: A Survey of Recent Work on Citizenship Theory*, 104 ETHICS 352, 353 (1994) (regarding shift in citizenship scholarship as conflation of two discussions: citizenship as legal status — as full membership in particular legal community — and citizenship as desirable activity — where extent and quality of one's citizenship is function of one's participation in that community).

forth between multiple locations. With rapid diffusion of culture and politics through electronic networks, the idea that crossing a boundary fundamentally changes one's legal status is simplistic in the face of multiple complexities of race, place, and transnational networks. Thus, a brief survey of contemporary diasporic transnationalist politics involving former citizens, who maintain familial, social, economic, and national identification with their homeland in the host country (i.e. "long-distance nationalism") merits some discussion.²³⁰

Long-distance nationalism has profound effects on the domestic politics of home countries. For instance, Singapore is attempting to allow globally dispersed Singaporeans to vote in a national election. A possible consequence for a transnational electorate would be increased support for domestic Singaporean opposition parties.²³¹ In South Korea, the long-distance loyalties of migrants and immigrants may play a large role in South Korean domestic politics. Korean Americans have been prodigious political fundraisers, and this ability has drawn great interest to both Seoul and Washington, D.C.²³²

Aside from the political implications flowing from long-distance nationalism, diasporic communities may also create a "double-agenda" inside and outside the home country. For instance, Filipinos living abroad are the sixth largest population of citizens sending remittances to their home country, thereby providing a substantial source of the country's GDP.²³³ These Filipinos, who possess political and financial sympathies to their home country, can still play a role in Philippine national politics.²³⁴ Augusto Espiritu observed that Philippine

²³⁰ See BENEDICT ANDERSON, *THE SPECTRE OF COMPARISONS: NATIONALISM, SOUTHEAST ASIA AND THE WORLD* 58 (1998).

²³¹ See Christian Collet & Pei-te Lien, *The Transnational Politics of Asian Americans: Controversies, Questions, Convergence*, in *THE TRANSNATIONAL POLITICS OF ASIAN AMERICANS* 1, 19 (Christian Collett & Pei-Te Lien eds., 2009) [hereinafter *TRANSNATIONAL POLITICS*].

²³² *Id.* at 19-20.

²³³ Edgard R. Rodriguez, *International Migration and Income Distribution in the Philippines*, 46 *ECON. DEV. & CULTURAL CHANGE* 329, 330 (1998); Dean Yang, *International Migration, Human Capital, and Entrepreneurship: Evidence from Philippine Migrants' Exchange Rate Shocks* 11 (Univ. of Mich. Ford Sch. Pub. Policy, Working Paper No. 02-011, 2005), available at <http://ssrn.com/abstract=546483>. See generally Dilip Ratha et al., *Impact of Migration on Economic and Social Development: A Review of Evidence and Emerging Issues* (World Bank Policy Research, Working Paper No. 5558), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1759149 (discussing development impact of migration and remittances on origin countries).

²³⁴ A modern example of this phenomenon is seen through Gloria Macapagal-Arroyo's presidency. In 1998, Filipinos elected Joseph Arroyo as president of the Philippines. However, he was toppled over corruption charges, and Gloria Macapagal-Arroyo assumed the presidency. She was re-elected in 2004 to a six-year term, despite

struggles for national liberation depended on both the resources and ideas of exiles, refugees, and migrants.²³⁵

Espiritu further noted that the overseas anti-Ferdinand Marcos struggle inspired contemporary “‘civilian resistance and democratization’ struggle.”²³⁶ For instance, Espiritu discussed the *Katipunan ng mga Demokratikong Pilipino* (“KDP”) and its role in supporting the overthrow of Ferdinand Marcos.²³⁷ However, Espiritu also pointed out that while the KDP had “political ties to the Philippine movement, it also became a source of potential identity conflicts among KDP leaders, whose backgrounds and commitments were not exclusively Philippine . . . but heterogeneous — simultaneously Philippine, Filipino American, Third World, and U.S. working class.”²³⁸ Thus, the KDP had to walk a difficult dual line in opposing Marcos — it had to juggle supporting socialism in the United States but national democracy in the Philippines.²³⁹ This double agenda failed to reconcile the diasporic and transnational nature of the identities of the Filipino community in the United States, and its divergences with activist and revolutionary community within the Philippines.²⁴⁰

The experience of Vietnamese immigrants in the United States provides another illustration of the political complexity involved in a nation-state attempting to build economic and cultural ties with a diasporic community living abroad. The Socialist Republic of Vietnam initially denounced those who fled the country, branding them as traitors to the regime.²⁴¹ However, by the mid-1980s, that same regime began referring to Vietnamese people living in the United States as an “integral part of the nation,” eagerly encouraging remittances and seeking investment in Vietnam.²⁴² Ironically, Vietnamese immigrants and refugees in the United States organized around anti-communism,

charges that the election was rigged. Many Filipinos in the United States opposed Macapagal-Arroyo, putting immense pressure on her administration. See Augusto Espiritu, *Journeys of Discovery and Difference: Transnational Politics and the Union of Democratic Filipinos*, in TRANSNATIONAL POLITICS, *supra* note 231, at 38, 38.

²³⁵ *Id.* at 39.

²³⁶ *Id.*

²³⁷ *Id.* at 38.

²³⁸ *Id.* at 44.

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ See Hiroko Furuya & Christian Collett, *Contested Nation: Vietnam and the Emergence of Saigon Nationalism in the United States*, in TRANSNATIONAL POLITICS, *supra* note 231, at 56, 56.

²⁴² *Id.* at 56-57.

spawning “Saigon Nationalism,” which sought to overthrow the Communist party in Vietnam.²⁴³

The complexity of transnational diasporic politics is also evident in Asian and Asian American activists’ distrust of the United States, embodied in their attempts to affect U.S. foreign policy. One such example is South Asian American activists’ distrust, on behalf of India, in the U.S.-India Civil Nuclear Deal.²⁴⁴ Such advocacy within the United States might find itself in acute tension with other nationalist Indian rhetoric appealing to diasporic ties to their homeland.²⁴⁵ The Indian America community saw the chance to lobby for approval of the U.S.-India Civil Nuclear Deal as a two-fold opportunity — to support India’s national ambitions and to enhance the political influence of the Indian-American community.²⁴⁶ However, such support was not uniform across all segments of the Indian American community. The discrimination and suspicion that confronted Indian-Americans following the September 11, 2001 attack brought other segments of the Indian American community together. However, many of those advocates did not step forward to support the U.S.-India Civil Nuclear Deal, illustrating the diversity within the Indian American community.²⁴⁷

The foregoing examples illustrating the complex workings of transnational diasporic politics could not be possible under traditional modes of statist or cosmopolitan analyses. To the extent that nation, ethnicity, and race have problematic flaws that may be suppressed by a traditional state and citizen discourse, or glossed over by sanguine “cosmopolitanism,” a transnational diasporic analysis may be useful in revealing what those models suppress or disguise. However, what problems may a “split-the-difference” diasporacism have?

IV. A WORLD AFLAME, OR IS THE SKY REALLY FALLING?

America today has become the world’s market-dominant minority. Like the Chinese in the Philippines or the Lebanese in West Africa, Americans have attained heights of wealth and

²⁴³ *Id.* at 65 (arguing that Vietnamese immigrants were shaped by four factors of diaspora nationalism yet nevertheless, possessed unfavorable views toward communism and Vietnamese government).

²⁴⁴ See Sangay Mishra, *The Limits of Transnational Mobilization: Indian American Lobby Groups and the India-U.S. Civil Nuclear Deal*, in *TRANSNATIONAL POLITICS*, *supra* note 231, at 107, 113-14.

²⁴⁵ *Id.* at 108-09.

²⁴⁶ *Id.* at 117.

²⁴⁷ *Id.* at 116.

economic power wildly disproportionate to our tiny numbers. Just 4 percent of the world's population, America dominates every aspect — financial, cultural, technological — of the global free markets we have come to symbolize. From the Islamic world to China, from our NATO allies to the southern hemisphere, America is seen (not incorrectly) as the engine and principal beneficiary of global marketization. For this — for our extraordinary market dominance, our seeming global invincibility — we have earned the envy, fear, and resentment of much of the rest of the world.²⁴⁸

A. “Free” Markets and “Raw” Democracy = Backlash?

The dynamism of the transnationalism outlined above is not without its faults. Professor Amy Chua explores the dark side of transnational, political, transplanted, loyalties in the context of free-market democracy. Chua argues that market-liberalization and democracy aggravated ethnic-based tension and violence because the wealth accumulated was seen as a product of the political and economic system.²⁴⁹ As a way of ameliorating these tensions, Chua suggests that governments in such nations use a type of affirmative action used in Malaysia.²⁵⁰ This form of aggressive, “economic affirmative action,” premised on an ethnically-conscious set of policies aimed at benefiting “indigenous” poorer majorities, seeks to constrain market-dominant ethnic minorities in order to address growing interethnic, interracial economic disparities.²⁵¹

²⁴⁸ AMY CHUA, *WORLD ON FIRE: HOW EXPORTING FREE MARKET DEMOCRACY BREEDS ETHNIC HATRED AND GLOBAL INSTABILITY* 230-31 (2003).

²⁴⁹ Chua writes, “the global spread of markets and democracy is a principal, aggravating cause of group hatred and ethnic violence throughout the non-Western world,” and that this should give the U.S. and institutions in which the U.S. has considerable suasion in, such as the IMF and the World Bank, pause in an uncritical promotion of democracy and markets in the developing world.” CHUA, *supra* note 248, at 9. Professor Chua describes how the introduction of a free-market democracy fueled violence during the 1990s in a wide variety of countries including Indonesia, Malaysia, Russia, Rwanda, Sierra Leone, the former Yugoslavia, and Zimbabwe. In these countries, market dominant ethnic minorities’ new wealth created deep divisions and resentment with the poor indigenous majorities in those nations. *See id.*

²⁵⁰ *Id.* at 269. Professor Chua discusses how Malaysia has instituted what she considers to be a “government interventions into the market, consciously designed to ‘correct’ ethnic wealth imbalances.” *Id.*

²⁵¹ *Id.* But see Lan Cao, *The Ethnic Question in Law and Development*, 102 MICH. L. REV. 1044, 1046-54 (2004) (critiquing Chua’s economic “affirmative action” proposal). Both Chua and Cao presume (to varying degrees) that there is a connection between ethnic conflicts and economic disparities, although each have different

Professor Chua has not been without her critics. For instance, some critics are weary of strong government intervention that is implicated in Professor Chua's call for economic affirmative action. As an alternative, Professor Lan Cao has proposed focusing on the application and enforcement of antitrust laws to ameliorate some of the barriers to entry that market-dominant ethnic minorities create in certain economic sectors.²⁵² Other critics, such as Tom Ginsburg, have taken issue with Professor Chua's connection between the introduction of a free-market democracy and increased ethnic strife in countries possessing a market-dominant ethnic minority.²⁵³ Specifically, Tom Ginsburg takes particular issue with Professor Chua's failure to define key terms such as "democracy," "markets," "ethnicity," and "market dominant minority" which in turn affect the propriety of her analysis.²⁵⁴ As such, Ginsburg asserts, among other things, that Chua overstates her criticism of free-market democracy, wrongly conflates ethnic tension with ethnic violence, and calls into question the causality between free-market democracy and ethnic hatred.²⁵⁵

Nevertheless, Professor Chua makes a sobering and provocative point regarding how to remedy structural problems that, in her view, contribute to a concentration of wealth and restraints on competition. Furthermore, a history of colonial domination and exploitation exacerbates the ethnic strife in these countries. However, how does the prosperity and market dominance of ethnic minorities relate to the dynamic identities and conditions of diasporic individuals and communities? If Chua's thesis is correct, then the wholesale export of free-market democracy may effectively be like exporting dynamite and matches to nations willing to strike the match and light the dynamite. Thus, U.S. foreign policy should consider the very real consequences

prescriptions as to what should be done. Other scholars, however, argue that ethnic conflicts are not connected to economic disparities in a meaningful fashion because such conflicts are based on "primordial affiliations" and "ancient hatreds." See Kevin Davis et al., *Ethnically Homogenous Commercial Elites in Developing Countries*, 32 L. & POL'Y INT'L BUS. 331, 336-37 (2001). However, note that these claims may run counter to the arguments cited earlier that diasporic identities and communities are hybrid, dynamic, and contested.

²⁵² Cao, *supra* note 251, at 1046.

²⁵³ Tom Ginsburg, *Democracy, Markets, and Doomsaying: Is Ethnic Conflict Inevitable?*, 22 BERKELEY J. INT'L L. 310, 326-34 (2004) (reviewing CHUA, *supra* note 248); see also Katherine Belmont et al., *Institutional Design, Conflict Management, and Democracy*, in *THE ARCHITECTURE OF DEMOCRACY 2* (Andrew Reynolds ed., 2002).

²⁵⁴ Ginsburg, *supra* note 253, at 320-24.

²⁵⁵ *Id.*

that may result in nations where market-dominant minorities and poor, indigenous majorities have tenuous relations.²⁵⁶

B. Objects in the Mirror Are Closer Than They Appear

Chua, Cao, and Ginsburg provide three differing perspectives with how to assess diaspora. Professor Chua expresses anxiety over how the uncritical importation of free markets and raw democracy to certain nations may fan and fuel violent and destructive nationalism that has plagued the world in the past few decades. Professor Cao takes issue with Professor Chua's bracketing of "culture" and argues that government intervention changes the culture and cultures of a nation-state. In turn, this may give rise to problematic backlashes and discrimination against both a market-dominant ethnic minority and a poorer, "indigenous" ethnic majority. Ginsburg seems relatively sanguine to both Professor Chua and Cao's pronouncements, insofar as diaspora does not give rise to violent transnational violence and nationalism.

At the very least, Professor Chua's assertions should give pause as to whether the uncritical or unquestioning embrace of diaspora is beneficial. There may be tangible benefits arising from transborder networks that arise from national and international solidarities. However, the dark side of diaspora, particularly state-sponsored recognition and promotion of such diasporas, may have troubling implications. In a world of disappearing borders, at what point should a government intervene to prevent or ameliorate violence arising from ethnic and racial tensions, given the slipperiness of culture? Or, put in another way, to what degree should a government encourage or take

²⁵⁶ There are several issues that are related, but that are beyond the scope of this Article, that bear mentioning. The first is whether modernization is a nonpolitical, quasi-scientific process that proceeds on a track of successive stages. See W.W. ROSTOW, *THE STAGES OF ECONOMIC GROWTH: A NON-COMMUNIST MANIFESTO* 4-16 (3d ed. 1990) (adumbrating five development stages associated with modernization and culminating in high mass consumption, with consumption replacing subsistence); see also John Williamson, What Should the World Bank Think About the Washington Consensus (July 1999), available at <http://www.iie.com/publications/papers/paper.cfm?researchid=351>. But see Jagdish Bhagwati, *The Capital Myth: The Difference Between Trade in Widgets and Dollars*, 77 *FOREIGN AFF.* 7, 7 (1998) (critiquing so-called "Washington Consensus" as "Wall Street-Treasury Complex"). The view that modernization is a largely apolitical, technical process resulting in proliferation of western, market-order liberal democracies and embodied in large part by the "Washington Consensus" is contested by scholars such as David Kennedy and Joel R. Paul. See David Kennedy, *The Disciplines of International Law and Policy*, 12 *LEIDEN J. INT'L L.* 9, 82 (1994); Joel R. Paul, *Cultural Resistance to Global Governance*, 22 *MICH. J. INT'L L.* 1, 80 (2000).

an agnostic attitude towards diasporic migrations, given their dynamism, cultural, economic, and otherwise?

Framed this way, the question posed in this Symposium — whether the twenty-first century is the Asian Century — is really a question about what are we going to do about the way that “objects in the mirror” (i.e., our ethnic, racial, and national others) are closer than they appear. The main point is the racial and nation-state frames that have been used for good or ill in the past will increasingly serve as a poor heuristic to analyze global migrations. However, simply throwing them out and attempting to engage in a colorblind and historical approach might yield even more troubling results.

CONCLUSION

This Article began by deconstructing the term the Asian Century and suggested that there are multiple imaginary “Asias” in tension with one another. Unlike the British Century and the American Century, there is no bounded political entity inherent in the term the Asian Century. The Article proceeded to argue the fear of the Yellow Peril in the twentieth century supports the idea that the twentieth century, not the twenty-first century, is the true Asian Century. The Yellow Peril manifested itself in U.S. domestic and foreign policy, as evidenced in the circumstances surrounding the Gentleman’s Agreement, California’s Alien Land Laws, and Japanese internment during World War II.

The Article then explored the effect diaspora has had in the age of globalization. This discussion was augmented with commentary regarding how diaspora is a mediation between statism and cosmopolitanism. However, there are twin dangers attendant to using diaspora too broadly to describe too many groups, with little or no definitional edges. First, if everyone is diasporic, then perhaps no one is. The second danger relates to the first — defining “diaspora” so tightly that it becomes equivalent to showing evidence of membership, so that arguments over “authenticity” and “exclusion” become central to the idea. Related issues also arise when the nation-state becomes implicated in promulgating the definition of, or policing membership in, such putatively “diasporic” groups. The Article then discussed the question of how much political or economic influence these new immigrants should have in their host countries. If one gives any salience to the concept of diaspora (in a heuristic, not membership sense), what, if anything, are we to make of wealthy new immigrants with global networks and economic interests seeking to influence U.S.

foreign policy on behalf of those interests (given that influence may more often be perceived than real)?

Lastly, this Article went on to assess Professor Chua's contention that during the past twenty years, examples of extreme ethnic violence have resulted from ethnic tension and resentment in newly-minted host countries. Professor Chua argues that such tension and violence are connected with the push for a combination of free-market "reforms" and the introduction of a broader electoral franchise in such countries. While not disputing that there may be a connection between the introduction of free-market economics and ethnic tensions and violence in such countries, Professor Cao argues that strong governmental economic "affirmative action" on behalf of poorer indigenous majorities and against market-dominant ethnic minorities will result in unjustified ethnic and racial discrimination. As such, non-ethnic or racial enforcement of antitrust laws to address monopolistic market domination and culture changes are more palatable and desirable options. Professor Tom Ginsburg on the other hand, has strongly questioned Professor Chua's connection, both theoretically and factually, between the introduction of democracy and ethnic violence in such countries. One important lesson is that "objects in the mirror are closer than they appear." Specifically, the so-called East and West have interpenetrated socially, economically, and culturally in ways that it is difficult to call any century from here on out the Asian Century. Another important point is that despite this interpenetration, plural, contradictory, and dynamic understandings of race, ethnicity, and nation permeate our lives, individually and collectively, and that there may be no "global" answer, no "big picture" to be perceived and decisively acted upon.

However, strong governmental actions premised on hard diasporic identities — such as the United States's internment of people of Japanese descent during World War II — threaten to destroy civil liberties and aggravate racial and ethnic tension. The jury may be out on softer governmental encouragement, what Professor Anupam Chander refers to as "diaspora bonds," both on the identity and economic levels, premised on the co-existence of multiple identities of home and host lands. Finally, if the twentieth century could be understood as the Asian Century in which Asian-phobia was a major factor in shaping events, perhaps the fact that the twenty-first century is not, or rather, cannot be, the Asian Century, may give us cause for justifiable hope.