

# American Mestizo: Filipinos and Antimiscegenation Laws in California

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Racial aliens may undercut us, take away our jobs, surpass us in business competition, or commit crimes against our laws, and we will be only a little harder on them than we would be on aliens from Europe of our own race. But let them start to associate with our women and we see red.<sup>1</sup>

In 1933 the California Court of Appeals was faced with the following question: should a Filipino be considered a “Mongolian”?<sup>2</sup> Salvador Roldan, a Filipino man, and Marjorie Rogers, a white woman, had applied for a license to marry. Was this marriage acceptable under the state’s antimiscegenation laws, which prohibited marriages between “whites” and “Mongolians”?<sup>3</sup>

This Essay examines the legal history of prohibition of the marriages of whites to Filipinos in the State of California. In writing this history, I note that what we call “history” is in fact an interpre-

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<sup>1</sup> BRUNO LASKER, FILIPINO IMMIGRATION TO CONTINENTAL UNITED STATES AND TO HAWAII 92 (1931) (quoting *San Francisco Chronicle* article written by Chester H. Rowell on Feb. 10, 1930).

<sup>2</sup> Roldan v. Los Angeles County, 129 Cal. App. 267, 268, 18 P.2d 706, 707 (1933). While Roldan’s first name was spelled “Solvador” in the legal proceedings, his signature in the case file spells his name “Salvador.”

<sup>3</sup> See CAL. CIV. CODE § 69 (1906) (amended 1937, 1959) (prohibiting issuance of license authorizing marriage of “a white person with a negro, mulatto, or mongolian”); CAL. CIV. CODE § 60 (1906) (amended 1937, repealed 1959) (making marriages of “white persons with negroes, Mongolians, or mulattoes . . . illegal and void”); *Roldan*, 129 Cal. App. at 268, 18 P.2d at 707.

tation of the past.<sup>4</sup> One does not find, or excavate history; rather, one “commits historical acts.”<sup>5</sup> If the act of writing history is a site for the renegotiation of meanings,<sup>6</sup> this Essay seeks to reshape the terrain of two different areas of inquiry. The first area is the study of antimiscegenation laws. I seek to complicate how we understand antimiscegenation efforts to relate to race, gender, class, and sexuality. The second area is how we conceptualize the relationship of Filipinos to the broader identity-based rubrics of Asian Americans and Latinas/os.<sup>7</sup> This Essay probes what this history suggests about such relationships.

I reach these questions through examining the history of antagonism directed against Filipinos in the State of California in the 1920s and 30s, which, while economic in its roots, reached its most fevered pitch concerning Filipino relations with white women. This anxiety led to various efforts to classify Filipinos under the state’s antimiscegenation statute as “Mongolian,” so they would be prohibited from marrying whites. I trace these efforts through both public discourse and legal discourse, in the form of advisory opinions of the California State Attorney General and the Los Angeles County Counsel, litigation in Los Angeles Superior Court and the California Appellate Court, and state legislation. We can understand these efforts as attempts to shift the legal entitlements

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<sup>4</sup> See Nayan Shah, *Sexuality, Identity, and the Uses of History*, in Q & A: QUEER IN ASIAN AMERICA 141, 148 (David L. Eng & Alice Y. Hom eds., 1998).

<sup>5</sup> ANTOINETTE BURTON, *BURDENS OF HISTORY: BRITISH FEMINISTS, INDIAN WOMEN, AND IMPERIAL CULTURE, 1865-1915*, at 23 (1994) (citing CHRISTINA CROSBY, *THE ENDS OF HISTORY: VICTORIANS AND “THE WOMAN QUESTION”* 151 (1991)).

<sup>6</sup> See *id.*

<sup>7</sup> Whether to use the term Asian American or Asian Pacific American is a question fraught with political significance. See J. Kehaulani Kauanui & Ju Hui “Judy” Han, “*Asian Pacific Islander*”: *Issues of Representation and Responsibility*, in *THE VERY INSIDE: AN ANTHOLOGY OF WRITING BY ASIAN & PACIFIC ISLANDER LESBIAN AND BISEXUAL WOMEN* 37 (Sharon Lim-Hing ed., 1994) (cautioning against irresponsible uses of “Asian Pacific” or “Asian Pacific Islander” that engulf concerns of Pacific Islanders within those of Asian Americans). Following this caution, because I am not examining the concerns of Pacific Islanders, I use the term Asian American here.

While Filipinas/os are commonly thought to fall under the Asian American rubric, identifying Filipinas/os as Latinas/os is a more novel claim. The organizers of the Fourth Annual LatCrit conference chose to make such a claim, recognizing that this is a connection newly forged, rather than one commonly perceived. The impetus for this connection was the shared experience of Spanish colonialism.

bundled with the marriage contract away from Filipino men, symbolizing the desire to deny Filipinos membership in the national political community.

I want to first mark the paucity of legal writing,<sup>8</sup> both about the Filipina/o American community,<sup>9</sup> and about miscegenation laws targeting Asian Americans in general.<sup>10</sup> Numbers make this lack of academic inquiry especially surprising. Filipinas/os comprise the second largest community of Asian Americans;<sup>11</sup> and laws prohibiting Asian Americans from marrying whites were enacted in fifteen

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<sup>8</sup> I note this, both to point out that I am writing this history into what is a law review void, and to encourage others to write about what is an astonishingly fertile and interesting site.

<sup>9</sup> The law review articles that focus to any extent on Filipina/o Americans concern either naturalization of Filipino World War II veterans, the responsibility of the United States government towards Filipino Amerasians, or employment discrimination based on accent discrimination. See, e.g., Mari J. Matsuda, *Voices of America: Accent, Antidiscrimination Law, and a Jurisprudence for the Last Reconstruction*, 100 YALE L.J. 1329, 1334 (1991); Kevin Pimentel, *To Yick Wo, Thanks for Nothing! Citizenship for Filipino Veterans*, 4 MICH. J. RACE & LAW 459, 461 (1999); Eugenio A. Cruz, Note, *Unprotected Identities: Recognizing Cultural Ethnic Divergence in Interpreting Title VII's "National Origin" Classification*, 9 HASTINGS WOMEN'S L.J. 161, 180 (1998); Maria B. Montes, Note, *U.S. Recognition of Its Obligation to Filipino Amerasian Children Under International Law*, 46 HASTINGS L.J. 1621, 1621 (1995).

<sup>10</sup> This Essay should be considered part of a larger project examining antimiscegenation laws targeting Asian Americans generally. There are a handful of articles that touch on miscegenation laws and Asian Americans. See, e.g., Robert S. Chang, *Dreaming in Black and White: Racial-Sexual Policing in the Birth of a Nation, the Cheat, and Who Killed Vincent Chin?*, 5 ASIAN L.J. 41, 44 (1998); Peter Kwan, *Invention, Inversion and Intervention: The Oriental Woman in the World of Suzie Wong, M. Butterfly, and the Adventures of Priscilla, Queen of the Desert*, 5 ASIAN L.J. 99, 102 (1998). However, there is surprisingly little that has been specifically written on this topic. Four notable exceptions are Nellie Foster, *Legal Status of Filipino Intermarriage in California*, 16 SOC. & SOC. RES. 441 (1932), reprinted in ASIAN INDIANS, FILIPINOS, OTHER ASIAN COMMUNITIES AND THE LAW 5 (Charles McClain ed. 1994), Megumi Dick Osumi, *Asians and California's Anti-Miscegenation Laws*, in ASIAN AND PACIFIC AMERICAN EXPERIENCE: WOMEN'S PERSPECTIVES 1 (Nobuya Tsuchida ed., 1982), UCLA Asian American Studies Center, *Anti-Miscegenation Laws and the Pilipino*, in LETTERS IN EXILE: AN INTRODUCTORY READER ON THE HISTORY OF PILIPINOS IN AMERICA 63 (1976) [hereinafter *Anti-Miscegenation Laws and the Pilipino*], and Henry Yu, *Mixing Bodies and Cultures: The Meaning of America's Fascination with Sex Between "Orientals" and "Whites,"* in SEX, LOVE, RACE: CROSSING BOUNDARIES IN NORTH AMERICAN HISTORY 444 (Martha Hodes ed., 1999) [hereinafter SEX, LOVE, RACE]. Osumi's piece remains a foundational work of legal scholarship examining antimiscegenation legislation directed against Chinese, Japanese, and Filipinos in the state of California. Nellie Foster's article is also extraordinarily valuable. Writing in the 1930s, she documented information in her article from sources that at this point in time are no longer accessible. See Letter from Nellie Foster to Mr. L. E. Lampton, County Clerk of Los Angeles (Nov. 7, 1930) (in *People v. Yatho* microfilm file). The letter was written on the letterhead of the Inter-Racial Council of San Diego, and requests more information on particular cases.

<sup>11</sup> See George F. Will, *They Fought for Freedom, Not for Money*, N.Y. POST, Aug. 16, 1998, at 53.

states.<sup>12</sup> Thus, this Essay seeks to narrate a neglected area of legal history. Due to the space limitations for contributions to this symposium, I do not attempt to do more than interpret this history and raise some suggestions for future work.

The focus for this Essay is the experience of Filipinos in the State of California, although it is important to note what occurred nationally. The first antimiscegenation statute affecting marriage was enacted in 1661 in Maryland.<sup>13</sup> The statute did not prohibit marriage between whites and blacks but it enslaved white women that married black men, as well as the couple's children.<sup>14</sup> By the time the Supreme Court finally declared antimiscegenation laws unconstitutional in *Loving v. Virginia*,<sup>15</sup> thirty-nine states had enacted antimiscegenation laws;<sup>16</sup> in sixteen of these states, such laws were still in force at the time of the decision.<sup>17</sup> While the original focus of

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<sup>12</sup> These states were Arizona, California, Georgia, Idaho, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, Oregon, South Dakota, Utah, Virginia, and Wyoming.

<sup>13</sup> See *Proceedings of the General Assembly, 1637-1664*, at 533-34, cited in EDWARD BYRON REUTER, *RACE MIXTURE: STUDIES IN INTERMARRIAGE AND MISCEGENATION* 78 (1969).

<sup>14</sup> See *id.* at 79.

<sup>15</sup> 388 U.S. 1 (1967).

<sup>16</sup> See Note, *Constitutionality of Anti-Miscegenation Statutes*, 58 YALE L.J. 472, 480-82 (1949) [hereinafter *Constitutionality*]. The states with antimiscegenation laws were Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Washington, and Wyoming. See *id.* (providing specific statutory cites). Bills to prohibit intermarriage were introduced, but failed, in the District of Columbia, New York, Pennsylvania, Illinois, Wisconsin, Connecticut, and Minnesota. See REUTER, *supra* note 13, at 103; Irving G. Tragen, Comment, *Statutory Prohibitions Against Interracial Marriage*, 32 CAL. L. REV. 269, 270 n.6 (1944) (citing REUTER, *supra* note 13, at 103). In the words of Edward Reuter:

The fact that a number of states have no legislation forbidding marriage between persons of different racial origin should not be taken as evidence that such unions are approved or even that there is a general popular indifference to them. The absence of such legislation is rather an expression of the fact that Negroes and Orientals are such a negligible part of the population of several states and intermarriages are so very few that the question can be ignored.

REUTER, *supra* note 13, at 101.

<sup>17</sup> The states that still maintained antimiscegenation laws in 1967 were Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia. See *Loving v.*

these laws was primarily on relationships between blacks and whites, also prohibited were marriages between whites and “Indians” (meaning Native Americans), “Hindus” (South Asians), “Mongolians” (into which were generally lumped Chinese, Japanese, and Koreans), and “Malays” (Filipinos).<sup>18</sup> Nine states — Arizona, California, Georgia, Maryland, Nevada, South Dakota, Utah, Virginia, and Wyoming — passed laws that prohibited whites from marrying Malays.<sup>19</sup> The statutes varied in their enforcement

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Virginia, 388 U.S. 1, 7 n.5 (1967). Maryland only abandoned its antimiscegenation statute a few days before the *Loving* decision. *See id.*

<sup>18</sup> *See* Peggy Pascoe, *Miscegenation Law, Court Cases, and Ideologies of “Race” in Twentieth-Century America*, in *SEX, LOVE, RACE*, *supra* note 10, at 464, 468. Regarding South Asians, Arizona passed laws restricting marriage between whites and “Hindus.” *See* ARIZ. REV. STAT. ANN. § 3092 (1901). Georgia only allowed white persons to marry those with “no ascertainable trace of . . . Asiatic Indian . . . blood in their veins.” *See* GA. CODE ANN. §§ 53-106, 53-312 (1937) (repealed 1979). The following states passed laws restricting marriage between whites and “Mongolians,” “Chinese,” “Japanese,” or “Koreans”: Arizona, California, Georgia, Idaho, Mississippi, Missouri, Montana, Nebraska, Nevada, Oregon, South Dakota, Utah, Virginia, and Wyoming. *See* ARIZ. REV. STAT. ANN. § 3092 (1901) (referring to “Mongolians”); CAL. CIV. CODE §§ 60, 69 (Deering 1937) (§ 60 repealed 1959, § 69 amended 1959) (referring to “Mongolians”); GA. CODE ANN. §§ 53-106, 53-312, 53-9002, 53-9003, 79-103 (referring to “Mongolians”); IDAHO CODE § 32-206 (1947) (repealed 1959) (referring to “Mongolians”); MISS. CODE ANN. § 459 (1942) (amended 1987) (referring to “Mongolians”); MO. ANN. STAT. § 3361 (West 1939) (repealed 1969) (referring to “Mongolians”); MONT. CODE ANN. §§ 5701-5702 (1935) (repealed 1953) (referring to “Chinese person” and “Japanese person”); NEB. REV. STAT. § 42-103 (1943) (repealed 1963) (referring to “Japanese or Chinese blood”); NEV. REV. STAT. § 6514 (1912) (referring to “Mongolian or yellow race”); OR. REV. STAT. ANN. §§ 23-1010, 63-102 (1940) (referring to “Chinese persons”; also referring to “Mongolians”) (amended 1959); S.D. CODIFIED LAWS § 14.0106(4) (1939) (repealed 1957) (referring to “Korean” and “Mongolian races”); UTAH CODE ANN. § 40-1-2 (1943) (amended 1963) (referring to “Mongolians”); VA. CODE ANN. §§ 5087, 5099a(5) (Michie 1942) (repealed 1968) (referring to “colored persons”; whites could only marry whites or those with 1/16 or less American Indian blood); WYO. REV. STAT. ANN. § 68-118 (1931) (repealed 1965) (referring to “Mongolians”).

<sup>19</sup> Note that, despite reports to the contrary, it is not clear whether all of these nine states had miscegenation statutes that can be accurately described as specifically mentioning “Malays.” *See* Pascoe, *supra* note 18, at 485 n.13 (listing Virginia and Georgia as having statutes that “mentioned ‘Malays.’”).

Georgia’s statute stated: “It shall be unlawful for a white person to marry anyone except a white person. Any marriage in violation of this section shall be void.” GA. CODE ANN. § 53-106 (1933) (repealed 1979). The statute shifted over time, in which groups were excluded in defining a “white person,” at one point mentioning those without “Mongolian, Japanese, or Chinese blood in their veins,” and at another point entirely omitting these groups from the list. But at no point were “Malays” enumerated as part of this list. However, “Malay” was included on the list of groups that should register with the State Registrar of Vital Statistics, separately from “Caucasians,” suggesting that in Georgia “Malays” were considered nonwhite persons. *See* GA. CODE ANN. §§ 53-312, 79-103 (1933). Section 53-312 of the 1933 Georgia code states:

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The term "white person" shall include either only persons of white or Caucasian race, who have no ascertainable trace of either [sic] Negro, African, West Indian, Asiatic Indian, Mongolian, Japanese, or Chinese blood in their veins. No person, any one of whose ancestors has been duly registered with the State Bureau of Vital Statistics as a colored person or person of color, shall be deemed to be a white person.

GA. CODE ANN. § 53-312. In contrast, section 79-103 stated:

All Negroes, mulattoes, mestizos, and their descendants, having any ascertainable trace of either Negro or African, West Indian, or Asiatic Indian blood in their veins, and all descendants of any person having either Negro or African, West Indian, or Asiatic Indian blood in his or her veins, shall be known in this State as persons of color.

GA. CODE ANN. § 79-103 (1929); *see also* 1927 Ga. Laws 272 ("[T]he State Registrar of Vital Statistics . . . shall prepare a form for the registration of individuals, whereon shall be given the racial composition of such individual, as Caucasian, Negro, Mongolian, West Indian, Asiatic Indian, Malay or any mixture thereof, or any other non-Caucasic strains, and if there be any mixture, then the racial composition of the parents and other ancestors in so far as ascertainable, so as to show in what generation such mixture occurred.").

In Virginia, while not specifically enumerated in the statute, "Malays" were covered by the text of the statute by implication, like any other "colored person":

All marriages between a white person and a colored person . . . shall be absolutely void, without any decree of divorce, or other legal process . . . . For the purpose of this act, the term "white person" shall apply only to the person who has no trace whatsoever of any blood of Causasian [sic]; but persons who have one-sixteenth or less of the blood of the American Indian and have no other non-Caucasic [sic] blood shall be deemed to be white persons.

VA. CODE ANN. §§ 5087, 5099a(5) (Michie 1942) (repealed 1968). The statute listed "Malay" as a separate group from "Caucasian" in the section on "Preservation of racial integrity" where the state registrar of vital statistics was to document the "racial composition" of individuals. *See id.* § 5099a ("The State registrar of vital statistics may . . . prepare a form where on the racial composition of any individual, as Caucasian, Negro, Mongolian, American Indian, Asiatic Indian, Malay, or any mixture thereof, or any other non-Caucasic [sic] strains . . . may be certified").

Arizona, California, Maryland, Nevada, South Dakota, Utah, and Wyoming had clear and specific statutory prohibitions on marriages between whites and "Malays." *See* ARIZ. REV. STAT. ANN. § 3092 (1901) ("All marriages of persons of Caucasian blood, or their descendants with . . . members of the Malay race . . . shall be null and void."); CAL. CIV. CODE §§ 60, 69 (Deering 1937) (§ 60 repealed 1959, § 69 amended 1959) (prohibiting marriages between white persons and "a member of the Malay race"); MD. ANN. CODE art. 27, § 365 (1935) (repealed 1967) ("All marriages . . . between a white person and a member of the Malay race . . . are forever prohibited, and shall be void."); NEV. REV. STAT. § 6514 (1912) ("It shall be unlawful for any person of the Caucasian or white race to intermarry with any person of the . . . Malay or brown race . . . within the State of Nevada"); S.D. CODIFIED LAWS § 14.0106(4) (1939) (repealed 1959) ("The following marriages are null and void from the beginning: . . . (4) The intermarriage or illicit cohabitation of any person belong-

mechanisms: some simply declared miscegenous marriages void; others punished them as felonies.<sup>20</sup>

### I. CALIFORNIA: ASIAN INVASIONS

In 1850 California enacted a law prohibiting marriages between “white persons” and “negroes or mulattoes.”<sup>21</sup> Twenty-eight years later, a referendum was proposed at the California Constitutional Convention to amend the statute to prohibit marriages between Chinese and whites.<sup>22</sup> While the so-called “Chinese problem” was initially conceptualized as one of economic competition, created by the importation of exploitable laborers without political rights,<sup>23</sup> the issue of sexual relationships between whites and Chinese also functioned as a prime site of hysteria.<sup>24</sup>

Invoked were fears of hybridity. John Miller, a state delegate, speculated that the “lowest most vile and degraded” of the white race were most likely to amalgamate with the Chinese, resulting in a “hybrid of the most despicable, a mongrel of the most detestable

ing to the . . . Malayan . . . race with any person of the opposite sex belonging to the Caucasian or white race.”); UTAH CODE ANN. § 40-1-2 (1943) (amended 1963) (“The following marriages are prohibited and declared void: . . . (6) Between a . . . member of the malay race . . . and a white person.”); WYO. STAT. ANN. § 68-118 (Mitchie 1931) (repealed 1965) (“All marriages of white persons with Negroes, Mulattoes, Mongolians, or Malays hereafter contracted in the state of Wyoming are and shall be illegal and void.”).

<sup>20</sup> See generally *Constitutionality*, *supra* note 16, at 472.

<sup>21</sup> See Act Regulating Marriages, ch. 140, 1850 Cal. Stat. 494 (codified as CAL. CODE § 35 (1853)) (“All marriages of white persons with negroes or mulattoes are declared to be illegal and void.”). On California’s prohibitions against interracial marriage, see Tragen, *supra* note 16, at 269.

<sup>22</sup> See Osumi, *supra* note 10, at 5-6.

<sup>23</sup> See RONALD TAKAKI, *IRON CAGES: RACE AND CULTURE IN 19TH CENTURY AMERICA* 215-49 (1990) (1979). Takaki describes the role of industrialists in creating a “permanently degraded caste labor force” and the response by the labor movement in California that fostered the anti-Chinese movement. See *id.*

<sup>24</sup> See *id.* at 217-19. In the words of Henry Yu:

The “yellow peril” rhetoric that infused pulp magazines and dime novels did not try to rationalize unfair labor competition or overly efficient farming practices; it dwelled instead upon “Oriental” men preying on helpless “white” women. Perhaps best realized in Sax Rohmer’s fictional character in *Fu Manchu*, pulp magazines and novels depicted “Orientals” as scheming men with long fingernails, waiting in ambush to kidnap “white” women into sexual slavery.

Yu, *supra* note 10, at 449-50.

that has ever afflicted the earth.”<sup>25</sup> Miscegenation was presented as a public health concern, for Chinese were assumed by most of the delegates to be full of filth and disease.<sup>26</sup> Some argued that American institutions and culture would be overwhelmed by the habits of people thought to be sexually promiscuous, perverse, lascivious, and immoral.<sup>27</sup> For example, in 1876, various papers stated that Chinese men attended Sunday school in order to debauch their white, female teachers. In response to the articulation of these fears, in 1880 the legislature prohibited the licensing of marriages between “Mongolians” and “white persons.”<sup>28</sup>

The next large group of Asian immigrants — those from Japan — was also the subject of antagonism, leading to further amendment of the antimiscegenation laws. While the impetus for tension was, again, economic, two prime sites of expressed anxiety were school segregation<sup>29</sup> and intermarriage. Those who sought school segregation depicted the Japanese as an immoral and sexually aggressive group of people, and disseminated propaganda that warned that Japanese students would defile their white classmates.<sup>30</sup> The *Fresno Republican* described miscegenation between whites and

<sup>25</sup> Osumi, *supra* note 10, at 6 (citing I DEBATES AND PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF CALIFORNIA, 1878-79, at 632 (Sacramento State Office, 1880)).

<sup>26</sup> See generally NAYAN SHAH, LIVES AT RISK: EPIDEMICS AND RACE IN SAN FRANCISCO'S CHINATOWN (forthcoming 2000) (on file with author).

<sup>27</sup> See Chang, *supra* note 10, at 57-58; Osumi, *supra* note 10, at 7.

<sup>28</sup> See 1880 Cal Stat. Ch. 41, Sec. 1, p. 3; Osumi, *supra* note 10, at 8.

<sup>29</sup> The San Francisco School Board in 1905 had passed a resolution classifying Japanese school children as “Mongolian” and therefore subject to segregated education facilities under state law. The resolution was never carried out after intervention by President Theodore Roosevelt and two lawsuits filed by the United States government against the San Francisco School Board, which were withdrawn after a deal was brokered, whereby the School Board would withdraw the resolution in exchange for Roosevelt's promise to work to end the immigration of Japanese laborers into California. For an excellent history of Japanese Americans in California see Keith Aoki, *No Right to Own? The Early Twentieth Century “Alien Land Laws” as Prelude to Internment*, 40 B.C. L. REV. 37 (1998).

<sup>30</sup> See Osumi, *supra* note 10, at 13. Osumi has written that anti-Japanese spokesmen warned that Japanese students knew “no morals but vice, who sit beside our sons and daughters in our public schools that they may help to debauch, demoralize and teach them the vices which are the customs of the country whence they come.” *Id.* One Republican testified before the California Assembly that he was appalled at the sight of white girls “sitting side by side in the schoolroom with matured Japs, with base minds, their lascivious thoughts. . . .” *Id.*



the Japanese as a form of “international adultery,”<sup>31</sup> in a conflation of race, gender, and nation.<sup>32</sup> In 1905, at the height of the anti-Japanese movement, the state legislature sealed the breach between the license and marriage laws and invalidated all marriages between “Mongolian” and white spouses.<sup>33</sup>

## II. “LITTLE BROWN MEN”

Tension over the presence of Chinese and Japanese had led to immigration exclusion of Chinese and Japanese laborers through a succession of acts dating between 1882 and 1924. Because industrialists and growers faced a resulting labor shortage, they began to import Filipinos to Hawaii and the mainland United States.<sup>34</sup> Classified as “American nationals,” because the United States had annexed the Philippines following the Filipino-American War, Filip-

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<sup>31</sup> *Id.*

<sup>32</sup> For theorizing on the relation between race, gender, and the nation state see ROBERT S. CHANG, *DISORIENTED: ASIAN AMERICANS, LAW, AND THE NATION STATE* 123-35 (1999).

<sup>33</sup> See CAL. CIV. CODE § 60 (1906) (“All marriages of white persons with negroes, Mongolians, or mulattoes are illegal and void.”)

<sup>34</sup> Filipinos are believed to have first immigrated to the United States during the period of the Manila Galleon Trade (1593-1815) on Spanish ships. There is evidence that Filipino sailors settled in Louisiana in the 1830s and 1840s. See LUCIANO MANGIAFICO, *CONTEMPORARY AMERICAN IMMIGRANTS: PATTERNS OF FILIPINO, KOREAN, AND CHINESE SETTLEMENT IN THE UNITED STATES* 31 (1988).

Following this, the first wave of migration came in 1903 after United States colonization of the Philippines. Students were sponsored to study in the United States. Called “pensionados” because their expenses were paid by the colonial government, most returned to the Philippines, although some stayed in the United States and worked as unskilled laborers. See *id.* at 32. This was part of a broader American policy that introduced public education in English as the medium of instruction in the colony. This trained the Filipinos to be “citizens of an American colony . . . . The ideal colonial was the carbon copy of his conqueror . . . . The new Filipino generation learned of the lives of American heroes, sang American songs, and dreamt of snow and Santa Claus.” Renato Constantino, *The Miseducation of the Filipino*, in *THE FILIPINOS IN THE PHILIPPINES AND OTHER ESSAYS* 39 (1966), excerpted in *THE PHILIPPINES READER: A HISTORY OF COLONIALISM, NEOCOLONIALISM, DICTATORSHIP, AND RESISTANCE* 45, 47 (Daniel B. Schirmer & Stephen Rosskamm Shalom, eds. 1987) [hereinafter *THE PHILIPPINES READER*].

The recruiting of Filipino laborers also bore a relation to labor disputes with other workers. For example, the Hawaii Sugar Planters Association stepped up their recruiting when Japanese plantation workers in Hawaii went on strike in 1909. See MANGIAFICO, *supra* at 34. During the 1920s more than 65,000 men, 5000 women and 3000 children came to Hawaii under contract. By the mid 1920s Filipinos comprised half of all plantation workers in Hawaii and 75% by 1930. With the Great Depression many of these workers were repatriated to the Philippines. See *id.*

nos were allowed entry into the country.<sup>35</sup> On the mainland, a majority of Filipinos resided in California, with sizable numbers also in Washington and Alaska.<sup>36</sup> By 1930, the number of Filipinos on the mainland reached over 45,000.<sup>37</sup> During the winter, they stayed in the cities — working as domestics and gardeners, washing dishes in restaurants, and doing menial tasks others refused. In the summer they moved back to the fields and harvested potatoes, strawberries, lettuce, sugar beets, and fruits.<sup>38</sup> Filipinos were kept segregated from other immigrant groups in an attempt to prevent the formation of multiethnic labor unions,<sup>39</sup> but ended up spearheading labor organizing in Hawaii and on the mainland.<sup>40</sup> Subsequently, the same economic antagonism that was at the base of the anti-Chinese and anti-Japanese movements was turned against Filipinos. But the primary source of antagonism appeared to be linked, even more dramatically, to sex.

On the mainland, ninety-three percent of all who emigrated from the Philippines were males, the vast majority between sixteen and thirty years of age.<sup>41</sup> While some scholars have focused on patriarchal Asian values as the reason for early Asian migration being an almost exclusively male phenomenon, others have pointed to labor recruiting patterns and the specifics of the immigration laws themselves as restricting the immigration of Asian women.<sup>42</sup>

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<sup>35</sup> President William McKinley, in explaining how he made the decision to approve the annexation of the Philippines, said that he had gone down on his knees to pray for “light and guidance from the ‘ruler of nations’” and had been told by God that it was America’s duty to “educate” and “uplift” the Filipinos. RONALD TAKAKI, *STRANGERS FROM A DIFFERENT SHORE* 324 (1989).

<sup>36</sup> Between 1910 and 1930 the Filipino population in California jumped from five to 30,470. *See id.* at 315.

<sup>37</sup> *See* MANGIAFICO, *supra* note 34, at 35.

<sup>38</sup> *See id.*

<sup>39</sup> *See id.* at 36.

<sup>40</sup> *See* TAKAKI, *supra* note 35, at 321-24.

<sup>41</sup> *See* YEN LE ESPIRITU, *ASIAN AMERICAN WOMEN AND MEN: LABOR, LAWS, AND LOVE* 21 (1996). The sex ratios of those who immigrated from China and Japan was also similarly skewed, less dramatically for the Japanese. In 1890, the sex ratio among Chinese immigrants was 27:1. Among the Japanese, in 1910 the sex ratio was 6.5:1. *See* SUCHENG CHAN, *ASIAN AMERICANS: AN INTERPRETIVE HISTORY* 103-09 (1991).

<sup>42</sup> *See* ESPIRITU, *supra* note 41, at 17-18 (stating that United States industrialists and growers aggressively recruited male workers, while United States immigration policies barred entry of most Asian women); Sucheng Chan, *The Exclusion of Chinese Women, 1870-1943*, in

United States capital interests wanted Asian male workers but not their families, because detaching the male worker from a heterosexual family structure meant he would be cheaper labor.<sup>43</sup>

The Filipinos lived in barracks, isolated from other groups, allowed only dance halls, gambling resorts, and pool rooms of Chinatown as social outlets. They led ostracized lives punctuated by the terror of racist violence. Many restaurants and stores hung signs stating "Filipinos and dogs not allowed."<sup>44</sup> Anxiety about what was called the "Third Asian invasion" was expressed primarily around three sites:<sup>45</sup> first, the idea that Filipinos were destroying

ENTRY DENIED: EXCLUSION AND THE CHINESE COMMUNITY IN AMERICA, 1882-1943, at 94, 95 (Sucheng Chan ed., 1991) (stating that most significant factor in creating gender imbalance in immigration was action by American government to restrict immigration of Chinese women); GEORGE ANTHONY PEPPER, IF THEY DON'T BRING THEIR WOMEN HERE: CHINESE FEMALE IMMIGRATION BEFORE EXCLUSION 9-11 (1999) (arguing that United States immigration policies were highly significant in shaping gender ratio).

On the tendency to simultaneously overemphasize the patriarchy of Asian cultures and thus elide over other causal factors in shaping behavior and underemphasize the patriarchy of Western cultures, see Leti Volpp, *Talking "Culture": Gender, Race, Nation and the Politics of Multiculturalism*, 96 COLUM. L. REV. 1573 (1996), and Leti Volpp, *(Mis)Identifying Culture: Asian Women and the "Cultural Defense,"* 17 HARV. WOMEN'S L.J. 57 (1994).

<sup>43</sup> See ESPIRITU, *supra* note 41, at 17 ("Detaching the male worker from his household increased profit margins because it shifted the cost of reproduction from the state and the employer to the kin group left behind in Asia."); Lucie Cheng & Edna Bonacich, *Introduction: A Theoretical Orientation to International Labor Migration*, in LABOR IMMIGRATION UNDER CAPITALISM: ASIAN WORKERS IN THE UNITED STATES BEFORE WORLD WAR II 32 (Lucie Cheng & Edna Bonacich eds., 1984) ("Immigration law can select for ablebodied young men while excluding all dependent populations, such as women, children, the elderly, the sick, and paupers."). A Californian grower told an interviewer in 1930 that he preferred to hire Filipinos because they were without families: "These Mexicans and Spaniards bring their families with them and I have to fix up houses; but I can put a hundred Filipinos in that barn." TAKAKI, *supra* note 35, at 321. Note that the young single male immigrant is still seen as the ideal worker by agribusiness. See Peter Brownell, *Commentary, A License to Exploit Farm Workers*, WASH. TIMES, Sept. 23, 1998, at A17 (quoting Georgia onion grower that told Chicago Tribune that "the [foreign workers] we have now, they come and they work. They don't have kids to pick up from school or to take to the doctor. They don't have child support issues. They don't ask to leave early for this and that.>").

<sup>44</sup> See MANGIAFICO, *supra* note 34, at 35.

<sup>45</sup> For an expression of these three arenas of concern, see THE PHILIPPINES READER, *supra* note 34, at 59-60 (quoting Resolution of Northern Monterey Chamber of Commerce). The Resolution states:

The charges made against the Filipinos in this Resolution were as follows: (1) Economic. They accept, it is alleged, lower wages than the American standards allow. The new immigrants coming in each month increase the labor supply and hold wages down. They live on fish and rice, and a dozen may occupy one or two rooms only. The cost of living is very low, hence, Americans cannot compete with them. (2) Health. Some Filipinos bring in meningitis, and other dangerous dis-

the wage scale for white workers; second, the idea that they were disease carriers — specifically of meningitis, and;<sup>46</sup> third, the idea that they were sexually exploiting “American and Mexican” girls.<sup>47</sup>

The dance halls where Filipinos could pay ten cents to dance for one minute with hired dancers — usually white women — were the one location where Filipinos could mingle socially with white women.<sup>48</sup> Filipinos were conceptualized as sexually attractive to vulnerable girls, due to their willingness to spend their wages on their natty appearance. One active member of the movement to

eases. Some live unhealthily. Sometimes fifteen or more sleep in one or two rooms. (3) Intermarriage. A few have married white girls. Others will. “If the present state of affairs continues there will be 40,000 half-breed[s] in California before ten years have passed,” — is the dire prediction.

The Resolution continued: “We do not advocate violence but we do feel that the United States should give the Filipinos their liberty and send those unwelcome inhabitants from our shores that the white people have inherited this country for themselves and their offspring might live.” *Id.* at 60. The author of the Resolution, Judge Rohrback, stated that this was “but the beginning of an investigation of a situation that will eventually lead to the exclusion of the Filipinos or the deterioration of the white race in the state of California.” *Id.* at 59.

<sup>46</sup> See HERMAN FELDMAN, *RACIAL FACTORS IN AMERICAN INDUSTRY* 100 (1931). Feldman reports that antagonisms had arisen because of the belief that Filipinos brought meningitis into the country, a belief that was acknowledged as false by some of those who first set it in circulation. Lasker has ascribed this to a mistaken early statement of a public health officer in San Francisco, to the effect that immigrant Filipinos were responsible for the cerebro-spinal meningitis epidemic of the spring of 1929, that attracted the attention of circles hostile to the Filipinos coming to the United States and was widely diffused throughout the country. See LASKER, *supra* note 1, at 106.

<sup>47</sup> See H. BRETT MELENDY, *ASIANS IN AMERICA: FILIPINOS, KOREANS AND EAST INDIANS* 46 (1977); see also FELDMAN, *supra* note 46, at 100 (“Filipinos have in many sections offended local sentiment by appearing over-aggressive in their attention to women who are not of their race. . .”). “American” was presumably intended to mean “white.”

<sup>48</sup> See MELENDY, *supra* note 47, at 68; KEVIN J. MUMFORD, *INTERZONES: BLACK/WHITE SEX DISTRICTS IN CHICAGO AND NEW YORK IN THE EARLY TWENTIETH CENTURY* 53-71 (1997); THE PHILIPPINES READER, *supra* note 34, at 60-61; Constantine Panunzio, *Intermarriage in Los Angeles, 1924-33*, 47 AM. J. SOC. 690, 695-96 (1942); Rhacel Salazar Parreñas, “White Trash” Meets the “Little Brown Monkeys”: *The Taxi Dance Hall as a Site of Interracial and Gender Alliances Between White Working Class Women and Filipino Immigrant Men in the 1920s and 30s*, 24 AMERASIA J. 115 (1998); *Ministers Protest Filipino Dance Hall*, S.F. CHRON., Oct. 5, 1934 at 21 (reporting protest in San Jose of dance hall allegedly threatening morals of neighborhood); see also *Dancing Partners May Be Had at One Dime per Dance*, L.A. TIMES, May 10, 1925 (describing dance halls where women dance from eight until midnight and engage in from sixty to one hundred dances each night; out of the 10-cent ticket purchased for each short whirl around the floor, “the girl receives five cents”). Women that worked as taxi dancers were largely economically struggling young women, who had come to Los Angeles to try their chance in the movie industry. See Panunzio, *supra* at 696.

exclude Filipinos from the United States described them as "little brown men attired like 'Solomon in all his glory,' strutting like peacocks and endeavoring to attract the eyes of young American and Mexican girls."<sup>49</sup> In response to the dance halls, white male violence erupted in several locations.<sup>50</sup> The most publicized of these riots took place in Watsonville, California, where a mob of five hundred white men raided nearby farms, killing one Filipino and beating several.<sup>51</sup>

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<sup>49</sup> This quote was attributed to Justice of the Peace D.W. Rohrback, a leader of the Northern Monterey County Chamber of Commerce. See MELENDY, *supra* note 47, at 55.

<sup>50</sup> Anti-Filipino riots took place in Yakima, Washington in 1928, and in four locations in California: Exeter in 1929, Watsonville in 1930, Salinas in 1934, and Lake County in 1939. See LASKER, *supra* note 1, at 36.

<sup>51</sup> See MELENDY, *supra* note 47, at 55; THE PHILIPPINES READER, *supra* note 34, at 61-62; LASKER, *supra* note 1, at 358-65. Lasker and Emory Bogardus have provided a detailed report of tensions that led up to this incident. While there was severe competition for jobs in Watsonville, that was not considered the cause for the outbreak of the violence. Rather, the immediate cause was the denunciation of Filipinos as a race by Justice of the Peace D.W. Rohrback of Pajaro township, who proposed a successful resolution to this effect adopted by the Chamber of Commerce of Northern Monterey County on Jan 7, 1930. See THE PHILIPPINES READER, *supra* note 34, at 59. Bogardus stated that the antecedent to the resolution was the few cases of Filipinos who had been brought into court, primarily for reckless driving of automobiles. See *id.* Lasker said that the resolution was founded on allegations of Filipinos interacting with young teenaged white girls. For example, there was a Filipino boy found occupying a room in a Filipino rooming house with "two little girls of [G]erman stock," 16 and 11 years old. In fact, the boy was engaged to the older girl with parental consent and was found to have harmed neither of them. See LASKER, *supra* note 1, at 361. Both Lasker and Bogardus have agreed that Filipinos responded to the resolution with leaflets. See *id.*; THE PHILIPPINES READER, *supra* note 34, at 60. Subsequently, Filipinos opened a club on the beach and engaged white girls to entertain as professional dancing partners. One resident told Bogardus:

Taxi dance halls where white girls dance with Orientals may be all right in San Francisco or Los Angeles but not in our community. We are a small city and have had nothing of the kind before. We won't stand for anything of the kind.

THE PHILIPPINES READER, *supra* note 34, at 61.

Tensions escalated, but the police failed to protect Filipinos from the local residents. Autos crowded with youths toured the district, shooting stones or bullets into passing autos which were supposed to contain Filipinos and into farm buildings supposed to house Filipinos. Mobs in the hundreds clubbed Filipinos and destroyed property. See *id.* at 61. Eventually, Fermin Tobera, 22, was shot and killed. See LASKER, *supra* note 1, at 362-63.

This incident was quickly used by Filipinos to bolster claims for Filipino independence, and by California agribusiness to call for increased immigration of Mexican labor to replace Filipinos. Filipino regional and national organizations spread the message: "Give the Philippine Islands their promised independence; and we shall go home to prevent the occurrence of such events as these." See LASKER, *supra* note 1, at 364. The Agricultural Committee of the Chamber of Commerce of California used the incident to repeat its plea for Mexican labor and against its further restriction. See *id.*

The tenor of the times is made apparent in the report of a trial of a Filipino man, Terry Santiago, who had stabbed Norma Kompisch, a white dance hall girl, twenty-two times.<sup>52</sup> The judge hearing the case, Judge Lazarus, hurled “a vehement condemnation of dance hall operators who make white girls dance with Filipinos.” Judge Lazarus referred to his desire to “bring to public attention this very real evil. I once referred to Filipinos as savages. There was never a more typical case than this to justify my statement.”<sup>53</sup>

Police conducted raids on parties at which white women and Filipino men intermingled. As one article reported, these parties “were brought out of the realm of conjecture into stern reality” when police arrested five Filipino men on vagrancy charges in San Francisco. The police chief instructed officers to take into custody all “white girls” seen in company with Filipinos, together with their escorts.<sup>54</sup> Newspapers reported “shocking conditions” resulting from this intermingling. The concern appeared to be equally divided between the mere fact of these associations and the “trouble,” in the form of shootings and knifings, that grew out of these associations.<sup>55</sup>

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<sup>52</sup> Filipinos were generally characterized as criminals. The United States Commission on Law Observance and Enforcement reported the views of San Francisco authorities in 1931: “The Filipino is our greatest menace. They are all criminally minded. . . . These Filipinos are undesirable nationals because there is not one of them but who is not a potential criminal.” MELENDY, *supra* note 47, at 65-66 (citing U.S. COMMISSION ON LAW OBSERVANCE AND ENFORCEMENT, REPORT ON CRIME AND THE FOREIGN BORN, REPORT NO. 10, June 24, 1931, at 362). This characterization persisted despite the fact that the felony conviction rate for Filipino males compared favorably with that of white males. According to the Bureau of Census of Crimes, the number of felony commitments per thousand of the population between 1910 and 1940 was 4.4% for native whites and one percent for Filipinos. See TAKAKI, *supra* note 35, at 325.

<sup>53</sup> Yet he “did not blame” the Filipinos. “They are vainly attempting to adjust themselves to civilization, but haven’t the training or education. They are only one jump from the jungle. It is our fault for bringing them here.” *Dance Halls Hit: White Girl Tells of Filipino Attack*, S.F. CHRON., May 17, 1936, at 3. Judge Lazarus had previously characterized Filipinos as “scarcely more than savages.” *Id.* In response, more than 200 Filipinos adopted a resolution protesting this, forwarded to the Judge and to the Filipino Resident Commissioner in Washington, D.C. See *Filipinos Protest “Savage” Statement*, S.F. CHRON., Feb. 22, 1936, at 16.

<sup>54</sup> See *Five Filipinos Admit Mixed Race Parties*, S.F. CHRON., Feb. 23, 1936 at 2.

<sup>55</sup> One “white girl” testified that the social contacts of hundreds of San Francisco girls were restricted to “flashily dressed ‘little brown men.’” See *Filipinos’ White Girls: Waitress Tells of Mixed Race Parties*, S.F. CHRON., Feb. 22, 1936, at 13. Judge Lazarus “blew up.” *Id.* He

Anti-Filipino spokesmen also raged about the evils of intermarriage. The Northern Monterey Chamber of Commerce charged, “[i]f the present state of affairs continues there will be 40,000 half-breed[s] in California before ten years have passed.”<sup>56</sup> Two representatives from the Commonwealth Club and the President of the Immigration Study Commission warned of “race mingling” which would create a “new type of mulatto,” an “American Mestizo.”<sup>57</sup>

There appears to have been a greater level of tension felt about Filipino male sexuality than for Chinese and Japanese. The President of the University of California testified before the House Committee on Immigration and Naturalization in 1930 that Filipino problems were “almost entirely based upon sexual passion.”<sup>58</sup> While Chinese and Japanese were also considered sexually depraved — and, perhaps, more sexually perverse — Filipinos appeared to be specifically characterized as having an enormous sex-

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noted that if a girl is of age and wanted to associate with these men, there was nothing that could be done. *See id.* But “girls of tender years are being ruined and led astray by the strange influence these men seem to have on women of a certain type.” *Id.* He attributed this to the Filipinos driving flashy cars and spending money on white girls, while hundreds of “decent white youths can’t find a job for love or money. . . . It’s enough to make a man’s blood boil, and mine is boiling at this minute!” *Id.* It was also alleged that Filipino men attended church for the opportunity to “meet white girls.” *See Church Closed by Elopements of Mixed Races: Filipino Marriages to White Girls Cause of Breach*, S.F. CHRON., Apr. 10, 1933, at 3 (minister closed church when he discovered “five mixed elopements between whites and Filipinos and general unconventional relations between whites and Filipinos” in congregation).

<sup>56</sup> *See THE PHILIPPINES READER*, *supra* note 34, at 59-60.

<sup>57</sup> *See* Osumi, *supra* note 10, at 18 (citing COMMONWEALTH CLUB, TRANSACTIONS 24, at 341 (1929), and C.M. Goethe, *Filipino Immigration Viewed as Peril*, *Current History* 353-36 (1931)). Note that in the Philippines the word *mestizo* has its own meaning, which is someone with Spanish ancestry.

<sup>58</sup> *Hearings Before the Comm. On Immigration and Naturalization*, 71st Cong. 35 (1930) (statement of Dr. David Barrows of the University of California), *cited in* LASKER, *supra* note 1, at 98.

Their [the Filipinos’] vices are almost entirely based on sexual passion . . . . The evidence is very clear that, having no wholesome society of his own, he is drawn into the lowest and least fortunate associations. He usually frequents the poorer quarters of our towns and spends the residue of his savings in brothels and dance-halls, which in spite of our laws exist to minister to his lower nature. Everything in our rapid, pleasure-seeking life and the more or less shameless exhibitionism which accompanies it contributes to overwhelm these young men who, in most cases, are only a few years removed from the even, placid life of a primitive native barrio.

*Id.*

ual appetite, as more savage, as more primitive, as “one jump from the jungle.”<sup>59</sup> Their sexual desires were thought to focus on white women.<sup>60</sup>

A possible reason for any sexual differentiation of Filipino men from Chinese or Japanese men was the link to Spanish colonialism. One contemporary writer referred to “the Latin attitude of Filipinos toward the opposite sex: he is assertive and possessive; she is his and his alone.”<sup>61</sup> E. San Juan, Jr. has also argued that the myth of Filipino sexuality was a departure from the “Anglo Saxon conception of the Oriental male,” which he links to the media and popular identification of Filipinos with blacks during the Filipino-American War of 1898-1903.<sup>62</sup> Yet it is important to point out here

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<sup>59</sup> Melendy reports that the prevalent white view was that Filipinos were savages, not far removed from the tribal state. See MELENDY, *supra* note 47, at 59. He notes that the reports of missionaries, who recounted primitive conditions of rural tribes furthered public apprehension of Filipinos, thought of as “cannibalistic” and “savage-like.” See *id.* at 59-60. The President of the Immigration Study Commission stated: “These men are jungle folk, and their primitive moral code accentuates the race problem even more than the economic difficulty.” TAKAKI, *supra* note 35, at 325-26. One contemporary observer has queried:

But what of these people, whom we have placed beneath the Stars and Stripes, both by the right of capture and purchase of their land? . . . Most persons know very little of them, except that they are a half-civilized lot of people, at best, and the lowest order of barbarians, at worst.

And this general impression is almost correct; civilization is at a very low ebb in the Philippines. Of course, the Spaniards who have settled there, the Europeans who carry on business dealings on the islands, some of the Chinese merchants, and even some of the high-caste natives, are people of culture; but the great overwhelming mass of residents on the island are in low stages of savagery.

ALDEN MARCH, *THE HISTORY AND CONQUEST OF THE PHILIPPINES AND OUR OTHER ISLAND POSSESSIONS* 169 (1970) (1899).

<sup>60</sup> See *Free Blames Sex in Filipino Row*, S.F. CHRON., Sept. 16, 1930, at 3. Representative Arthur Free of San Jose explained that resentment against Filipinos in California was not because they worked for lower wages, but because “the aliens mix with white women. . . . Most of them come here without their women, and the real cause for resentment against them is that they attract white girls to their club houses and other places of resort.” *Id.*

<sup>61</sup> See MELENDY, *supra* note 47, at 69.

<sup>62</sup> See E. San Juan, Jr., *Configuring the Filipino Diaspora in the United States*, 3 *DIASPORA* 117, 120 (1994) [hereinafter San Juan, Jr., *Configuring the Filipino Diaspora*]. This racialization is evident in contemporary reports of the Filipino-American War, described by one participant as “a hot game of killing niggers.” See E. SAN JUAN, JR., *FROM EXILE TO DIASPORA: VERSIONS OF THE FILIPINO EXPERIENCE IN THE UNITED STATES* 20 (1998) [hereinafter SAN JUAN, JR., *FROM EXILE TO DIASPORA*]; see also George Lipsitz, “Frantic to Join . . . the Japanese Army”: *The Asia Pacific War in the Lives of African American Soldiers and Civilians*, in *THE POLITICS OF*



that, as Ronald Takaki has documented, in the late 1800s, Chinese were also ascribed both physical attributes and “racial qualities” that had been assigned to blacks.<sup>63</sup> Further complicating this analogy is the fact that one contemporary observer argued that blacks, unlike Filipinos, caused less tension because they knew they were not supposed to intermarry with whites.<sup>64</sup>

As pointed out by Bruno Lasker, writing in 1931, there appeared to be a repeating pattern of targeting immigrants as sexual threats, with a concomitant forgetting of this targeting:

When the Chinese drew upon themselves popular antagonism on the Pacific Coast, there developed a view of Chinatown as essentially an abode of vice, which is still perpetuated in our moving pictures and cheap fiction magazines. The Japanese were accused widely of taking advantage of the custom to admit picture brides to bring to this country women for immoral purposes. . . .

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CULTURE IN THE SHADOW OF CAPITAL 324, 328 (Lisa Lowe and David Lloyd eds., 1997). Lipsitz notes that white American soldiers called Filipinos “niggers,” “black devils,” and “gugus.” See *id.* Filipinos fighting the United States occupation made explicit appeals to Black troops on the basis of “racial solidarity,” offering posts as commissioned officers to members of the rebel army who switched sides. See *id.*; see also MUMFORD, *supra* note 48, at 63, 68 (describing perception of Filipinos as black); Tanya Kateri Hernández, *The Construction of Race and Class Buffers in the Structure of Immigration Controls and Laws*, 76 OR. L. REV. 731, 737 (1997) (describing congressional debate on citizenship status of Filipinos and concern that Filipinos had African attributes). One representative described them as “physically weaklings of low stature, with black skin, closely curling hair, flat noses, thick lips, and large, clumsy feet”; another said “How different the case of the Philippine Islands. . . . The inhabitants are of wholly different races of people from ours — Asiatics, Malays, negroes and mixed blood. They have nothing in common with us and centuries can not assimilate them.” *Id.*

<sup>63</sup> See TAKAKI, *supra* note 23, at 217-19. White workers referred to Chinese people as “nagurs,” Chinese features were described as “but a slight removal from the African race,” and as described by Ronald Takaki, the “‘Negroization’ of the Chinese reached a high point when a magazine cartoon depicted them as a bloodsucking vampire with slanted eyes, a pigtail, dark skin, and thick lips.” *Id.* at 219.

The blurring of Chinese with blacks was also apparent in a 1854 case where Chinese people were prohibited from testifying against whites under a statute that provided that “no Black, or Mulatto person, or Indian, shall be allowed to give evidence in favor of, or against a White man.” *People v. Hall*, 4 Cal. 399, 399 (1854). The court’s rationale was twofold: the word “Indian” referred to “not alone the North American Indian, but the whole of the Mongolian race,” and “[t]he word ‘Black’ may include all Negroes, but the term ‘Negro’ does not include all Black persons.” *Id.* at 402-03. “Black” meant “every one who is not of white blood” and “White” excluded “all inferior races.” *Id.* at 403, 404.

<sup>64</sup> See TAKAKI, *supra* note 35, at 330. A letter to the Dinuba Sentinel stated: “Negroes usually understand how to act,” but “these Fils” think they have “a perfect right to mingle with the white people and even to intermarry.” *Id.*

[There was a repetition] of what was said about the Japanese, expressions of the “general feeling that those who begin in an inferior economic position should remain in it and that [they] are ‘cocky.’ . . . They frequently spend over much on dress. When they appear in up-to-date suits and possibly patent leather shoes, they at once are said to be ‘cocky.’” The statement was frequently made that the presence of Japanese boys in the public schools was creating a moral problem.

Not only Orientals but many other immigrant groups have in the early stage of their residence . . . given rise to unfavorable judgments . . . . This has especially been the case when a new immigration movement was composed of young men without women of their own nationality.<sup>65</sup>

Some contemporary writers suggested that there was greater focus on Filipino male sexuality than that of the Chinese and Japanese populations because of the skewed sex ratio in who immigrated: with few Filipinas around, Filipino men turned to dance halls and dance girls for company. But while more Japanese women were able to immigrate to the United States, the Chinese population was also heavily male.<sup>66</sup> What may have been different between the Chinese and Filipino male immigrant populations was their behavior: Chinese men did not set up dance halls with white taxi dancers, perhaps reflecting a change in what hovered at the limits of tolerable behavior between 1880 and 1920, both for Asian men, and for white women.<sup>67</sup> Filipinos may also have spurred controversy due to a stronger sense of entitlement to their rights and a greater willingness to engage in confrontation, stemming from

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<sup>65</sup> LASKER, *supra* note 1, at 96. He also noted that Greek and Russian immigrants to the United States and West Africans in English port cities had been similarly described. *See id.* at 97.

<sup>66</sup> *See* CHAN, *supra* note 41, at 103-09. In 1890, the sex ratio among Chinese immigrants was 27:1 and continued to be skewed into the mid-1920s. Among the Filipinos, the sex ratio in 1920 was roughly 19:1. Among the Japanese, however, the sex ratio in 1910 was 6.5:1 and the disparity had lessened further by 1920. *See id.* The 1908 Gentlemen’s Agreement halting Japanese immigration had exempted family members and wives from exclusion. *See* TAKAKI, *supra* note 35, at 337.

<sup>67</sup> Ronald Takaki asserts that men from the Philippines seemed to seek out white female companionship and to be attractive to white women, to a greater degree than men from China, Japan, Korea, and India. *See* TAKAKI, *supra* note 35, at 328.

their identity as colonial subjects, schooled in the idea that they were “nationals” of the United States.<sup>68</sup>

This history suggests there were and are qualitative differences in racial sexualization among Asian Americans. What is clear is that lumping diverse experiences together is too limited. The dominant contemporary discourse depicts Asian American men across time and space as solely effeminized.<sup>69</sup> This is clearly not the case for Filipinos — nor, as this Essay sketches, has it been the case for Chinese or Japanese men.

### III. LEGAL CHALLENGES

The right of Filipinos to intermarry was not seriously challenged in California until the early 1920s. As Filipino immigration increased, county clerks were faced with the question of deciding whether to issue marriage licenses to Filipinos, in essence choosing whether or not to classify Filipinos as “Mongolians.” The County Counsel of Los Angeles advised in 1921 that Filipinos were not “Mongolians.” The opinion reasoned that at the time of enactment of antimiscegenation legislation, there was a “Chinese problem,” and that the statutory inclusion of “Mongolian” was intended to refer only to the “yellow” and not the “brown” people.<sup>70</sup> The

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<sup>68</sup> I am indebted to Rachel Moran for this suggestion.

<sup>69</sup> For an examination of Asian male sexuality, see Richard Fung, *Looking For My Penis: The Eroticized Asian in Gay Video Porn*, in HOW DO I LOOK?, QUEER FILM AND VIDEO 145 (Bad Object-Choices ed., 1991), Daniel M. Kim, *The Strange Love of Frank Chin*, in Q & A: QUEER IN ASIAN AMERICA, *supra* note 4, at 270, and Peter Kwan, *supra* note 10, at 123-24.

<sup>70</sup> Foster, *supra* note 10, at 448. “In this opinion, Edward T. Bishop, assistant county counsel, advised L.E. Lampton, County Clerk, as to ‘classifying the Filipino under the proper one of the four races mentioned in Section 69 of the Civil Code.’” *Id.* at 447. He stated that “an examination of seven or eight authorities, encyclopedias, etc., reveals that scientists are not agreed upon the divisions of mankind into races,” and concluded:

While there are scientists who would classify the Malaysians as an offshoot of the Mongolian race, nevertheless, ordinarily when speaking of “Mongolians” reference is had to the yellow and not to the brown people and we believe that the legislature in Section 69 did not intend to prohibit the marriage of people of the Malay race with white persons. We are further convinced of the correctness of our conclusion when we regard the history of the situation. In 1880 Section 69 was amended so as to prevent the marriage of a white person with a Negro, mulatto, or Mongolian. It was about this time that there was a Chinese problem in California. . . . At that time the question of the marriage of white persons with members of the brown or Malayan races was not a live one, and there was no call for a solution. . . . We are assuming that the problem under consideration involves

opinion further noted that choosing not to classify Filipinos as Mongolians rested on the assumption that the problem under consideration involved a Filipino that belonged to one of the Malay tribes, and who was not "a Negrito or in part Chinaman."<sup>71</sup> This opinion letter appears to have been followed by the Los Angeles County Clerk, L.E. Lampton, in granting marriage licenses, until 1930.

In the meantime, tension over relationships between Filipinos and white women was heightened due to the *Yatko* case, which took place in 1925 in Los Angeles.<sup>72</sup> Timothy Yatko, a Filipino waiter, had married Lola Butler, a white woman, in San Diego. The couple had met at a dance hall in Los Angeles and lived together after their marriage until Butler left Yatko. She worked as a singer and a dancer in a girl show where Harry Kidder, who was white, also worked as a substitute piano player. Yatko spotted the two together and when he saw Kidder kissing his wife in Kidder's apartment, he stabbed Kidder, who died.<sup>73</sup> In the murder trial, the state collaterally attacked the legality of the marriage in order to permit Lola Butler to testify against Yatko.<sup>74</sup> Counsel for the state contended that the marriage was void because Yatko was Filipino, and therefore "Mongolian." The court was asked to rule on the racial classification of Filipinos because there was no earlier decision on the

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a Filipino who belongs to one of the Malay tribes. If, as is not at all impossible, he be a Negrito or in part Chinaman, another question is presented and another answer given.

*Id.* at 447-48. The County Counsel opinion was written at a time when the number of Filipinos in the United States was small, fewer than 6000.

<sup>71</sup> See *id.* at 448. It is important to point out here that Filipinas/os are a diverse community formed through mixing of different "races." See, e.g., Napoleon Lustre, *Conditions (an unrestricted list)*, 24 AMERASIA 111 (1998) (describing racial mixtures that make Filipinos). Jurists and county officials were attentive to this fact in choosing to label Filipinos as Mongolian when they were part Chinese. See *id.*

<sup>72</sup> See Foster, *supra* note 10, at 444-45 (citing *California v. Yatko*, No. 24795, Superior Court of Los Angeles County, May 11, 1925); *Filipino Pleads Unwritten Law in Murder Case*, L.A. TIMES, May 4, 1925, at 18 [hereinafter *Unwritten Law*]. Foster's article contains significant material not contained in the Los Angeles County records of the case.

<sup>73</sup> See *Unwritten Law*, *supra* note 72, at 18.

<sup>74</sup> See *Old Law Invoked on Yatko*, L.A. TIMES, May 6, 1925, at 5 [hereinafter *Old Law*]; *Unwritten Law*, *supra* note 72, at 2.

subject.<sup>75</sup> Contemporary accounts referred to the antimiscegenation statute as what was, at that point in time, “an old and almost forgotten State law.”<sup>76</sup>

In arguing the point of whether or not Yatko should be considered a “Mongolian,” counsel cited ethnologists, the encyclopedia, and various federal decisions in naturalization cases. Counsel for the state discussed the evil effects of miscegenation generally, and pointed to Mexico as a specific example of the effects of race mixture. “We see the result that the Mexican nation had not had the standing, had not the citizens as it would otherwise if it had remained pure.”<sup>77</sup> This reference to purity, not surprisingly, was intended to describe the Spanish colonizers, not indigenous people, for counsel went on to state that “when the white people, or the Caucasians, came to the United States they did not intermarry with the Indians, they kept themselves pure.”<sup>78</sup>

The judge agreed. He stated:

[T]he dominant race of the country has a perfect right to exclude all other races from equal rights with its own people and to prescribe such rights as they may possess. . . . Our government is in control of a large body of people of the insular possessions, for whom it is acting as a sort of guardian and it has extended certain rights and privileges to them . . . . Here we see a large body of young men, ever-increasing, working amongst us, associating with our citizens, all of whom are under the guardianship and to some extent the tutelage of our national government, and for whom we feel the deepest interest, of course, naturally . . . the question ought to be determined whether or not they can come into this country and intermarry with our American girls or bring their Filipino girls here to intermarry with our American men, if that situation should arise.<sup>79</sup>

The judge alluded several times to his long residence in the South, and shared his “full conviction” that:

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<sup>75</sup> See *Old Law*, *supra* note 74, at 5.

<sup>76</sup> *Id.*

<sup>77</sup> Foster, *supra* note 10, at 445.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 446.

[The] Negro race will become highly civilized and become one of the great races only if it proceeds within its own lines marked out by Nature and keeps its blood pure. And I have the same feeling with respect to other races. . . . I am quite satisfied in my own mind . . . that the Filipino is a Malay and that the Malay is a Mongolian, just as much as the white American is of the Teutonic race, the Teutonic family, or of the Nordic family, carrying it back to the Aryan family. Hence, it is my view that under the code of California as it now exists, intermarriage between a Filipino and a Caucasian would be void.<sup>80</sup>

Accordingly, the court allowed Lola Butler to testify. She represented Yatko "as the aggressor and Kidder as her chivalric defender."<sup>81</sup> Yatko was convicted and sentenced to serve a life sentence in San Quentin.<sup>82</sup>

#### IV. LOS ANGELES CIVIL CASES AND LEGISLATIVE RESPONSE

The opinion of the judge in the *Yatko* case, that Filipinos, or Malays, were Mongolian, was shared by the Attorney General of the State of California, U.S. Webb.<sup>83</sup> In 1926 Webb authored an opinion letter stating that "Malays belong to the Mongoloid race."<sup>84</sup> The letter was in response to an inquiry from the District Attorney of San Diego County, who wondered whether the San Diego County Clerk should issue marriage licenses to "Hindus and white

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<sup>80</sup> *Id.* While mention was made of the fact that Yatko's paternal grandfather was half Chinese, in other words, that Yatko was one-eighth Chinese, this did not lead the judge to rule on that basis that Yatko was "Mongolian." *See id.* at 445-46.

<sup>81</sup> *Unwritten Law*, *supra* note 72, at 2. Counsel for the state had called attention to the homicidal mania of Malays, called "running amuck," which he stated was a "neuropathic tendency imbuing them without any reason or motive to kill persons of other races." *See Foster*, *supra* note 10, at 445.

<sup>82</sup> *See Foster*, *supra* note 10, at 444; *Life Sentence to Be Imposed on Yatko Today*, L.A. TIMES, May 11, 1925, at 17; *Life Term for Filipino Slayer*, L.A. TIMES, May 9, 1925, at 2. Yatko appealed his conviction, principally on the grounds of the decision to allow Lola Butler to testify. The appeal was denied. *See Deny Filipino New Trial in Kidder Murder*, L.A. TIMES, May 12, 1925, at 5.

<sup>83</sup> Webb subsequently testified for Filipino exclusion in 1929 Commonwealth Club forums and the 1930 Congressional hearings. *See Osumi*, *supra* note 10, at 18.

<sup>84</sup> Letter from Attorney General U.S. Webb to the Honorable C.C. Kempley, District Attorney of San Diego County 6 (June 8, 1926) [hereinafter Letter from Webb] (on file with author).

persons and to Filipinos and white persons.”<sup>85</sup> Webb called this “more a question of fact than one of law,” noted that he was unable to find any judicial determination of these questions, and proceeded to share the prevailing ethnology of the day. While “the Hindu,” reported Webb, generally did not appear ethnologically to be a member of the Mongolian race,<sup>86</sup> “Malays” were indeed so classified. While the first “great ethnologist,” Blumenback, had divided the human race into five classes (the white, black, yellow, brown and red), the “most recent and best recognized variation” reduced the classification to three divisions by combining brown and red with the Mongolian in a division generally referred to as “Mongolian-Malay or yellow-brown.”<sup>87</sup> While Webb’s letter was

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<sup>85</sup> *See id.*

<sup>86</sup> Webb noted that the term “Hindu” was somewhat misleading because it was generally used to describe a native of India, which was inhabited by seven races. *See id.* Of these seven, two were “mongoloid”: the Mongolo-Dravidian type of Bengal and Orissa, and the Mongoloid type of the Himalayas, Nepal, Assam, and Burma. *See id.* These individuals would not be permitted to marry white persons in California, so there would be a question of fact in each case to determine to which race the specific native of India belonged. *See id.*

How “Hindus” (or South Asians) were understood in relation to California’s miscegenation laws is another site for further inquiry. While South Asian immigrants to California — predominantly Sikhs from Punjab — were not in a class enumerated under the state statute, there were nonetheless instances where county clerks refused to issue marriage licenses when there was “too much” differentiation in skin color between bride and groom, when she was labeled “white,” and he was labeled “black” or “brown.” This raises the important point that how race is understood, acted upon, and also created often diverges from what is presented as the official classification of race. There was little opposition to South Asian men marrying Mexican women, who were usually judged to be racially similar, and there were an estimated 500 such marriages. For a description of how South Asians were classified under California’s miscegenation laws, and the development of the Mexican-Punjabi community in Imperial Valley, California, see BRUCE LA BRACK, *THE SIKHS OF NORTHERN CALIFORNIA, 1904-1975*, at 172-76 (1988), and KAREN I. LEONARD, *MAKING ETHNIC CHOICES: CALIFORNIA’S PUNJABI MEXICAN AMERICANS* 62-78 (1992).

<sup>87</sup> Webb noted that Ales Hrdlicka, “probably the best known and ablest anthropologist in the United States,” had testified at a hearing before the House of Representatives in 1922 that Filipinos and Malays belonged to the “mongoloid race.” Letter from Webb, *supra* note 84. Webb also noted that the population of the Philippines, according to the *Encyclopedia Britannica*, is “7,635,626 of which 7,539,632 belong to the Malay race, 42,097 yellow of which 97.5% are from China; 24,016 blacks; 14,271 whites and 15,419 mixed, chinese with malays and spanish with malays.” *See id.* His conclusion that the Filipinos, being Malays, were properly classed as Mongolians, included an exception for “the inhabitants belonging to the black race and the whites constituting a negligible proportion of the population.” *See id.* Presumably, the “inhabitants belonging to the black race” would also be prohibited from marrying white persons in California under the statute. *See id.*

written to influence the action of counties, it was not binding, and the reaction of county clerks appears to have been mixed.<sup>88</sup>

The analysis in Webb's letter was embraced by a Los Angeles superior court judge, who issued the first of five decisions on this question. These five cases appear to be the only litigation — other than as collaterally raised in *Yatko* — on this issue in the State of California.<sup>89</sup> In this first case, a white woman, Ruby F. Robinson, sought to wed a Filipino named Tony V. Moreno. Robinson's mother filed a suit against Los Angeles County and secured first a temporary, and later a permanent, injunction against L.A. County Clerk Lampton to restrain him from issuing a marriage license.<sup>90</sup> Evidence as to Moreno's race adduced by the county's counsel and by the attorneys representing the mother "ranged over the whole of anthropological literature, from Linnaeus and Cuvier in the eighteenth century down to recognized textbook writers of today."<sup>91</sup> The county argued that according to the best authorities,

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<sup>88</sup> Confusion among county clerks on this issue was the norm. Bruno Lasker reported that:

Sometimes the Filipino's status in a California county changed overnight as new county clerks were appointed whose anthropological ideas differed from those of their predecessors. Thus in Santa Barbara, county clerk D. F. Hunt, several years ago, decided that Filipinos were Mongolians and has consistently held to this decision in the face of heated arguments and of the fact that many couples which first presented themselves before him later secured marriage licenses in some other county. . . . The majority of officials seem, without any recourse to science at all, to have married Filipinos indiscriminately with white and with Japanese and Chinese girls, thus exposing themselves to the possible charge that if Filipinos should through some court decision be declared to be white, then their marriages to the Asiatic girls would be illegal.

LASKER, *supra* note 1, at 118.

<sup>89</sup> See Foster, *supra* note 10, at 448-52; *Racial Divorce Plea Rejected: Judge Rules Law Needed to Bar Filipino Weddings; White Girl Denied Freedom on Skin Color Basis*, L.A. TIMES, Oct. 11, 1931, at 5 [hereinafter *Racial Divorce Plea Rejected*].

<sup>90</sup> See Foster, *supra* note 10, at 448 (describing Petition for Writ of Prohibition, Robinson v. Lampton, No. 2496504, Superior Court of Los Angeles County). Unfortunately, the case number Foster gives, cited by other scholars, is incorrect, and I was unable to locate the decision. Happily, the decision was excerpted in contemporary newspaper reports. As Rhacel Salazar Parreñas has written, the *Robinson* case signifies the loss of community and alienation from their families that white women faced for their involvement with Filipino men. See Parreñas, *supra* note 48, at 129.

<sup>91</sup> LASKER, *supra* note 1, at 118.



Filipinos are Malays, and that Malays are not Mongolians; the mother's counsel, assisted by expert testimony, argued that all the brown races are Mongolian. Judge Smith ruled in favor of Robinson's mother, that Filipinos were Mongolians.<sup>92</sup> The decision was followed by protest in the Filipino community.<sup>93</sup>

Following the Robinson case, L.A. County Clerk Lampton appeared to begin to deny marriage licenses to Filipinos seeking to marry white women. In 1931, Gavino C. Visco petitioned to marry Ruth M. Salas.<sup>94</sup> Lampton denied this petition on the grounds that Visco was a Mongolian, and that Salas was white. The couple appealed, and Superior Court Judge Guerin ordered Lampton to issue a license. But the case did not turn on Visco's Filipino identity, but rather on the identity of Salas. The court held that Salas was "not a person of the Caucasian race."<sup>95</sup> Salas, born in Mexico, had a mother born in Los Angeles and a father born in Mexico.<sup>96</sup> As a nonwhite, Salas was not barred from marrying a Filipino, no matter whether Visco was classified as Mongolian, or otherwise nonwhite. Nellie Foster, a contemporary writer, reported that the judge asserted that he would have granted the marriage license, even if Salas had been white, which suggests that Judge Guerin did not think that Filipinos should be classified as "Mongolians."<sup>97</sup>

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<sup>92</sup> See *id.* at 119.

<sup>93</sup> See *S.F. Filipinos Oppose Ruling*, S.F. CHRON., Feb. 27, 1930 at 6. The article reported that four Filipino representatives were interviewed, all of whom emphatically declared they were Malayans and not Mongolians. But they differed on the "ethics" of intermarriage with whites: one representative, while agreeing that the Filipinos were not of the Mongolian race, backed Judge Smith's ruling, stating that "all the recent race trouble was directly due to Filipinos aspiring to marry white girls." *Id.*

<sup>94</sup> See Foster, *supra* note 10, at 449 (citing *Visco v. Lampton*, No. C319408, Petition for Order of Alternative Mandamus (June 3, 1931), Superior Court of Los Angeles County, Judge Walter Guerin).

<sup>95</sup> See *id.*

<sup>96</sup> While not apparent from the record of the case proceedings, Foster asserted that Salas was classified as a Mexican Indian. See *id.*

<sup>97</sup> See *id.* ("[T]he judge stated he would have decided in favor of Mr. Visco had Miss Salas been a white person."). In advance of the *Visco* decision, circulars had been distributed in the Filipino community to garner support. The circular read, in part:

The fundamental issue involved in this case is, that Filipinos are not Mongolians.

Are you willing to stand and defend your right UNDER GOD-GIVEN PRINCIPLE OF MARRIAGE AND HAPPINESS? Or shall we allow ourselves to be restrained by laws motivated by unjust discrimination, in defiance of the laws of God and reason?

The third and fourth cases in which this issue surfaced involved attempts at annulments of marriage. Estanislao P. Laddaran sought an annulment of his marriage to Emma F. Laddaran, on the basis that the marriage had been in violation of the law, because he was "of the Filipino race" and his wife was "of the Caucasian race."<sup>98</sup> The court refused.<sup>99</sup> Shortly thereafter, in the *Murillo* case, Judge Gould also refused to annul a marriage, this time on the wife's petition that her Filipino husband was a member of the Mongolian race.<sup>100</sup>

In *Murillo*, Judge Gould noted that, while it was true that modern ethnologists had limited the number of racial groups to the white, the black and the yellow, "these writers warn us that there is no fixed line of demarcation, that these classifications are simply loose fitting generalizations, that the races are still differentiating, and that the race divisions are simply convenient terms as an aid in classification."<sup>101</sup> The judge rejected the modern day scientific definition of Mongolian in favor of what the state legislature had in mind when it enacted the law. He asserted that if the legislators had anticipated modern scientific classifications, not only would whites be prohibited from marrying "Chinese, Japanese and Koreans (who are popularly regarded as Mongolians)," and "not only with Filipinos and Malays," but also "Laplanders, Hawaiians, Esthonians, Huns, Finns, Turks, Eskimos, American Indians, native Peruvians, native Mexicans and many other peoples, all of whom are

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NOW, FILIPINOS, DO YOU WANT TO BE CALLED MONGOLIAN? IF YOUR ANSWER IS "NO" SUPPORT THE FIGHT OF GAVINO C. VISCO BY SUBSCRIBING TO HIS LEGAL FUND LIBERALLY.

Foster, *supra* note 10, at 450 (quoting FILIPINO HOME CLUB CIRCULAR).

<sup>98</sup> See Foster, *supra* note 10, at 450 (discussing Petition for Annulment of Marriage, Laddaran v. Laddaran, No. D95459 (Los Angeles Super. Ct. 1931)). The complaint stated that "[p]laintiff is of the Filipino race and as such is prohibited from marriage with Defendant who is of the Caucasian, or white race." Complaint for Annulment of Marriage at 2, Laddaran v. Laddaran, No. D95459.

<sup>99</sup> See Foster, *supra* note 10, at 450.

<sup>100</sup> See *id.* at 451 (discussing *Murillo v. Murillo*, No. D97715 (October 10, 1931), Superior Court of Los Angeles County, Judge Thomas C. Gould).

<sup>101</sup> *Id.*

included within the present day scientist's classification of 'Mongolian.'<sup>102</sup>

The fifth case before the Superior Court was *Roldan v. Los Angeles County*.<sup>103</sup> Roldan, an "Illocano in whose blood was co-mingled a strain of Spanish," sought to marry Marjorie Rogers, a "Caucasian" from England. Los Angeles County Clerk Lampton refused. Ruling that neither Rogers nor Roldan were Mongolians, Judge Gates approved the marriage petition.<sup>104</sup> The state appealed the case to the California Appellate Court, which in a divided opinion (3-3) upheld the superior court decision, holding that there was no legislative intent to apply the name Mongolian to Malays when the statute had been enacted and amended. As in the *Murillo* case, the opinion, written by Judge Archbald, expressly followed not the scientific, but the common understanding of what Mongolian meant at the enactment of the antimiscegenation statute. The opinion noted that the classification of races into the five grand subdivisions of white, black, yellow, red, and brown was commonly used in 1880 and 1905, the dates when the statute was amended to cover "Mongolians."<sup>105</sup> Because Salvador Roldan was a Malay, and not a Mongolian, the L.A. County Clerk was forced to issue him a marriage license.<sup>106</sup>

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<sup>102</sup> *Id.*; see also *Racial Divorce Plea Rejected*, *supra* note 89, at 5. The Judge also noted that the court was aware that the federal naturalization bureau included Filipinos and Malays generally in its general classification of "Mongolian Grand Division." See *Murillo v. Murillo*, No. D97715 (1931); Foster, *supra* note 10, at 451.

<sup>103</sup> See Foster, *supra* note 10, at 452.

<sup>104</sup> See *Roldan v. Los Angeles County*, No. C326484, Findings of Fact and Conclusions of Law (Los Angeles Super. Ct., Apr. 8, 1932)..

<sup>105</sup> See *id.* at 268-69. Ian Haney López has documented a general shift from consideration of scientific evidence to common-sense understandings of race in naturalization cases. This shift coincided with the growth of scientific evidence supporting the idea that groups such as Indians, Persians, and Armenians should be considered "Caucasian," and therefore eligible to naturalize under the law. Shifting towards the "common sense" understanding allowed courts to deny these groups citizenship in the United States. See generally IAN F. HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* (1996).

<sup>106</sup> See *Roldan*, 129 Cal. App. at 272-73, 18 P.2d at 708-09. In concluding that a Malay is not a Mongolian, the judge relied heavily on the definition of a "Mongolian" from the encyclopedia and on the original legislative intent of enacting laws restricting marriages between whites and Mongolians. The decision concluded by stating:

[I]n 1880 . . . there was no thought of applying the name Mongolian to a Malay; . . . the word was used to designate the class of residents whose presence caused the problem at which all the legislation was directed, viz., the Chinese, and possibly contiguous peoples of like characteristics; . . . the common classification of the

In most of these opinions, the judges were careful to note that they were not addressing the “social question” of these marriages, and suggested that if the “common thought” of today required, the legislature should address the issue.<sup>107</sup> The legislature complied.

Nine days before the *Roldan* decision was issued, State Senator Herbert Jones, an exclusionist, introduced senate bills to amend the antimiscegenation statute to include “Malays.”<sup>108</sup> On the same day, the Secretary of the California Joint Immigration Committee requested its sponsoring organizations, the American Legion, the Native Sons and Daughters of the Golden West, and the California State Federation of Labor, to ask members to urge adoption of the bills. Two months later, both bills passed the Senate unanimously.<sup>109</sup> The only dissenting voice in the Assembly was a Los Angeles County representative whose district included a large Filipino community. In April, Governor James Rolph, a prominent member of the Native Sons, signed the bills into law, effectively *retroactively* voiding and making illegitimate all previous Filipino/white marriages by defining any marriage of Caucasians with

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racess was Blumenbach's, which made the “Malay” one of the five grand subdivisions, i.e., the “brown race,” and . . . such classification persisted until after section 60 of the Civil Code was amended in 1905 to make it consistent with section 69 of the same Code.

*Roldan*, 129 Cal. App. at 272-73, 18 P.2d at 709. Attorney General U.S. Webb and Los Angeles County Counsel Everett Mattoon petitioned for a rehearing before the State Supreme Court, which was denied on March 27, 1933. See *Supreme Court Removes Ban on Filipino, White Marriages*, S.F. CHRON., Mar. 30, 1933, at 1.

<sup>107</sup> See, e.g., *Roldan*, 129 Cal. App. at 273, 18 P.2d at 709 (deferring to legislature).

<sup>108</sup> See Osumi, *supra* note 10, at 20; see also *Bill Opposes White, Filipino Marriages*, S.F. CHRON., Mar. 14, 1933, at 1 (noting that Senate Judiciary Committee reported that two bills voiding marriage between Malayan and white will likely pass Senate).

<sup>109</sup> See 1905 Cal. Stat. 104 (amending section 60 of Civil Code to read: “All marriages of white persons with negroes, Mongolians, members of the Malay race, or mulattoes are illegal and void”); 1905 Cal. Stat. 105 (amending section 69 of Civil Code to read: “no license must be issued authorizing the marriage of a white person with a negro, mulatto, Mongolian or member of the Malay race”); Osumi, *supra* note 10, at 20 (recognizing that amended statute included Malays); *Bill Forbids White, Filipino Marriages*, S.F. CHRON., Apr. 1, 1933, at 1 (stating that Assembly committee approved the bills introduced by Senator Jones). The *San Francisco Chronicle* reported the marriage of one couple, Magno Basilides Badar and Agnes Regina Peterson — described as “an attractive blonde” — who would probably be among the few couples of Caucasian and Filipino nativity to be married in California, because they slipped between the window of the *Roldan* decision and the new law. See *White Girl, Filipino Ask Permit to Wed*, S.F. CHRON. Apr. 6, 1933, at 1.

“negroes, Mongolians, members of the Malay race, or mulattoes to be illegal and void.”<sup>110</sup>

The 1934 passage of the Tydings-McDuffie Act<sup>111</sup> promising eventual independence to the Philippines effectively halted Filipino immigration<sup>112</sup> — and indeed was successfully enacted because of the efforts of those seeking to exclude Filipinos from the United States.<sup>113</sup> Exclusion led to the dissipation of obsessive anxiety over Filipino sexuality.<sup>114</sup> While California subsequently became the first

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<sup>110</sup> See CAL. CIV. CODE § 69 (1937) (amended 1959 to exclude race as a criterion for legal marriage); CAL. CIV. CODE § 60 (Deering 1937) (repealed 1959); see also Osumi, *supra* note 10, at 20-21; *Recent Decisions: Marriage: Miscegenation*, 22 CAL. L. REV. 116-17 (1934) (criticizing passage of legislation); *White Girl, Filipino Ask Permit to Wed*, *supra* note 109. Filipino-white couples could still go to neighboring states to be lawfully married. See *People v. Godines*, 17 Cal. App. 2d 721, 723, 62 P.2d 787-88 (1936) (holding that Filipino-white marriage in New Mexico, where it was legal, was also valid in California). The ability of couples to travel to another state where Filipino-white marriages were permitted obviously depended on their financial situation, something made more difficult by the Great Depression. Because of agitation about the practice of couples traveling to other states for this purpose, the California Assembly and Senate passed a resolution requesting Utah to prohibit Filipino-white marriages, which Utah did in 1939. South Dakota, Nevada, Arizona, and Wyoming had already done so. See Osumi, *supra* note 10, at 22.

<sup>111</sup> Tydings-McDuffie Act, Pub. L. No. 73-127, 48 Stat. 456 (1934). As increasing concern about competition from the Philippines arose in the 1920s, the independence movement in the United States started to gain support. By the late 1920s, the anti-Philippine sentiment was strongly articulated by dairy organizations, general farm groups, domestic sugar producer and cordage manufacturers; in 1932 Congress approved the Hare-Hawes-Cutting Act. The Hares-Hawes-Cutting Act provided for a 10-year transitional period of free trade, imposition of quotas on Philippine products, immigration restrictions limiting entry of Filipinos to 50 persons a year, and presence of permanent American military bases in the Philippines. The Philippine legislature or a constitutional convention had to agree to the act for it to take effect. It was slightly amended, eliminating the reference to permanent military bases, except naval stations, and was approved as the Tydings-McDuffie Act in 1934. It is generally understood that the Filipinos agreed to the terms of the Tydings-McDuffie Act because they believed the act was the best possible at the time and implied future review of the provisions. See *id.*; THE PHILIPPINES READER, *supra* note 34, at 56-58; H. Brett Melendy, *The Tydings-McDuffie Act of 1934*, in ASIAN AMERICANS AND CONGRESS: A DOCUMENTARY HISTORY 283-96 (Hyung-Chan Kim ed., 1996).

<sup>112</sup> Even after the Tydings-McDuffie Act was passed, there was unabated pressure from labor groups, so in 1935 Congress passed the Repatriation Act, providing free transportation for Filipinos returning home — but with the catch that re-entry was subject to the new annual quota of 50. Only a small minority agreed. See MANGIAFICO, *supra* note 34, at 37.

<sup>113</sup> See BILL ONG HING, MAKING AND REMAKING ASIAN AMERICA THROUGH IMMIGRATION POLICY, 1850-1990, at 35 (1993).

<sup>114</sup> E. San Juan has suggested that this obsessive anxiety only temporarily lived an underground existence, but metamorphized into anxiety over G.I. brides at the end of WWII, and now has manifested in anxiety over the so-called mail-order bride syndrome. See San Juan, Jr., *Configuring the Filipino Diaspora*, *supra* note 62, at 120. I am indebted to Sherene Razack for the point that this anxiety should not really be considered a generalized anxiety about Filipino sexuality, but that it has differently gendered roots and trajectories. We can see the

and only state after Reconstruction to rule that its state's antimiscegenation laws were unconstitutional in the 1948 case *Perez v. Sharp*,<sup>115</sup> in 1948, the legislature refused to expunge the invalidated laws from the California Civil Code until 1959.<sup>116</sup>

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contemporary anxiety about "mail-order brides" as described in Peter Kwan's work on the film *Priscilla, Queen of the Desert*, in which the Filipino woman character is presented as a grotesque sexual figure, motivated solely by her desire to sexually perform. She is referred to by others in the film as a "mail-order bride," even though she is not one. See Kwan, *supra* note 10, at 106-07. Often, Filipina is equated with a "mail-order bride," even though many women involved in the "mail-order bride" business are not Filipina. It is important to point out here that "mail-order bride" is considered by many to be a derogatory term. See LETI VOLPP, *WORKING WITH BATTERED IMMIGRANT WOMEN: A HANDBOOK TO MAKE SERVICES ACCESSIBLE* 8 (1995). I would argue that there are significant similarities between some relationships that are formed through the "mail-order" bride business and the everyday United States practice of placing and answering personals ads. A similar point could be made about comparing the United States practice of using personal ads with arranged marriages. What leads, in part, to the failure to understand the significant similarities between what "they" do and what "we" do is the prevalent conceptualization of United States dating and marriage as purely romantic, in contrast to what is conceptualized as the unromantic nature of family members or written advertisements facilitating marriages or the unromantic idea of finances playing a role in marriages.

Describing the Australian context, Jan J. Pettman writes that "many Filipinas married to Australian men bitterly resent those who see them as 'mail-order brides,' a stereotype that encourages their treatment as exotic and available Asian women or as passive victims." JAN J. PETTMAN, *WORLDING WOMEN: A FEMINIST INTERNATIONAL POLITICS 194-95* (1996). Some women did enter Australia as part of the trade in wives, in order to make what they could of their options, leading to arrangements that sometimes ended satisfactorily but sometimes did not, due to the situation of acute dependence that can result. See *id.* Since 1980, 18 Filipina women and four children have died at the hands of Australian men, and four women and one child have disappeared in Australia. See *id.*

In the United States, there has also been violence directed against women that came to the United States through these mechanisms. Timothy Blackwell of Seattle, Washington, shot and killed his pregnant Filipina wife, Susana Blackwell, whom he met and married through a matchmaking service, while she sat outside the courtroom that was to determine whether there should be an annulment of marriage or a divorce. See Thomas W. Haines & Neil Gonzales, *Third Shooting Victim Dies*, SEATTLE TIMES, Mar. 3, 1995, at A1.

<sup>115</sup> 32 Cal. 2d 711, 198 P.2d 17 (1948). In *Perez*, a divided majority agreed the statute was unconstitutional. Roger Traynor and two other justices wrote a lengthy opinion asserting that racial categories regarding marriage are irrational and violate the equal protection clause. A separate concurrence called antimiscegenation laws unconstitutional because they were color conscious. Finally, an additional concurrence stated that the freedom of religion is one of the liberties encompassed in the Fourteenth Amendment and the antimiscegenation statutes were too vague and uncertain to regulate a fundamental right.

<sup>116</sup> I will note here that Alabama currently still has, as part of its constitution, an antimiscegenation provision. See ALA. CONST. art. IV, § 102. The proposal to eliminate the antimiscegenation provision was approved by the House in April 1999 and by the Senate in June 1999 without dissent. The proposal was expected to be on the ballot on October 12, 1999, when Alabama voters were to cast ballots for two other statewide referendums. However,

## V. HISTORY LESSONS

What questions does this history raise? First is the question of what it tells us about the study of antimiscegenation laws, and what more complicated stories emerge about the relationship of these laws to race, gender, class, and sexuality. Second is the question of what this history reveals for the relationship of the Filipino community to other identity-based rubrics.

A. *Complicating Antimiscegenation Narratives*

In terms of the first area of inquiry, this history suggests that antimiscegenation efforts targeting Filipinos demonstrate a differing history of racialization. Eva Saks has described miscegenation laws legislating the sexuality of blacks and whites as functioning to govern the marriage contract, with legal implications for inheritance and legitimacy. She has also asserted that these laws created a property in white blood, and upheld the purity of the body politic, in which the human and national body stood in for each other and in which blacks were considered to pollute the pure white national body.<sup>117</sup> Robert Chang has suggested that miscegenation laws functioned as racial-sexual policing to discipline the transgressive sexuality of whites and people of color in order to preserve the proper racial, national, and familial order. He has argued that with regard to laws restricting Asian miscegenation, racial and economic preservation were linked so that we can see the accompanying of anti-

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due to the failure of the legislature to pass a resolution setting the antimiscegenation issue for the October ballot, the expected amendment may have to wait until the general elections in November 2000. See *Alabama Interracial Nuptial Ban Nears End*, L.A. TIMES, June 3, 1999, at A13; Phillip Rawls, *Goof Keeps Interracial Marriage Issue Off Oct. 12 Ballot*, ASSOCIATED PRESS NEWSWIRE, June 18, 1999, at 03:06:00. In November 1998, South Carolina voters approved an initiative to remove the ban of interracial marriages from their state constitution. Although this has been reported as a victory, it is important to note that the repeal was opposed by 38% of those who voted. See Richard Reeves, Editorial, *Jefferson's Pessimism Proved Wrong*, STAR-LEDGER (Newark N.J.), Nov. 20, 1998, at 031; Editorial, *Wonders About Interracial Vote Result*, AUGUSTA CHRON., Nov. 24, 1998, at A4.

<sup>117</sup> See Eva Saks, *Representing Miscegenation Law*, 8 RARITAN 39, 40-42, 64 (1988). The *Yale Law Journal* reported in 1949 that evidence deduced in support of the statutes consisted largely of biological reports of "Negro mental and physical inferiority" and "the allegedly disastrous results of miscegenation," namely "race crossing" leading to inferior progeny, and sociological considerations that miscegenation occurs among the "dregs of society" and that miscegenous marriages "increase animosity towards racial minorities." See *Constitutionality*, *supra* note 16, at 473-79. While the note describes all of the existing antimiscegenation laws, its focus is on miscegenation between whites and blacks.

miscegenation statutes by immigration and naturalization restrictions, and alien land laws.<sup>118</sup>

We can glimpse the trace of differing racializations relating to antimiscegenation efforts that could be described as connected to slavery, foreignness,<sup>119</sup> or colonization.<sup>120</sup> Miscegenation laws directed against excludable “racial aliens” — whether Chinese, Japanese, or Filipino — were sharply linked to both sex specific patterns of migration and calls for expulsion. Where racialization of Chinese and Japanese may have diverged from Filipinos is in the history of U.S. colonization. The colonization of Filipinos, accompanied by Americanization projects, may have facilitated a racialization that differentiated Filipinos from Chinese and Japanese through the perception of Filipinos as less foreign.<sup>121</sup> While there was enormous uproar over miscegenous interactions between Filipinos and white women, the uproar was nonetheless ambiguous. For example, certain commentators seem to have understood why some white women would see Filipino men as desirable objects of affection, which contrasts with a seemingly greater repugnance directed against Chinese and Japanese men.

Second, it is important to examine what this history of antimiscegenation laws tells us about gender. Peggy Pascoe has done significant research analyzing the manner in which the campaign to prohibit interracial marriage reflects U.S. gender, as well as racial, hierarchies. She has examined miscegenation laws that were sex-specific in their enumeration of prohibited arrangements, and has

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<sup>118</sup> See Chang, *supra* note 10, at 59-60.

<sup>119</sup> See Neil Gotanda, *Asian American Rights and the Miss Saigon Syndrome*, in *ASIAN AMERICANS AND THE SUPREME COURT 1087, 1095-99* (Hyung-Chan Kim ed., 1992); Neil Gotanda, “Other Non-Whites” in *American Legal History: A Review of Justice at War*, 85 *COLUM. L. REV.* 1186, 1190-91 (1985) (book review).

<sup>120</sup> While Vietnam and Korea were, unlike the Philippines, not official United States colonies, another question that should be contemplated is the manner in which the experiences of war and colonialism or neocolonialism have shaped the racialization of communities such as Vietnamese Americans and Korean Americans. For examples of this work, see generally *WATERMARK: VIETNAMESE AMERICAN POETRY & PROSE* (Barbara Tran et al. eds., 1998), and JeeYuen Lee, *Toward a Queer Korean American Diasporic History*, in *Q & A: QUEER IN ASIAN AMERICA*, *supra* note 5, at 185.

<sup>121</sup> Kevin Mumford suggests that Filipinos were probably less stigmatized than Chinese and Japanese men, and that they were seen as more like whites, perhaps because of the history of Spanish colonialism. See MUMFORD, *supra* note 48, at 67.



also examined gender hierarchies structured by miscegenation laws that were formally gender neutral. Pascoe has found that in the western United States, laws were applied more stringently to groups whose men were thought likely to marry white women, and less stringently to groups whose women were thought likely to marry white men.<sup>122</sup> Gender also inflected why individuals chose to cross racial boundary lines and get married, as well as shaped when cases would be brought.<sup>123</sup>

The history of Filipinos in California makes vivid the gendered relationship between racial identity and the marriage contract. In addition to cases in which Filipino/white couples sought to marry and who therefore asserted that Filipinos were not "Mongolians," the racial classification of Filipinos was put at issue in the case of a mother seeking to stop her daughter's marriage, in two cases where annulment of marriage was sought, one by a white woman, the other by a Filipino man, and in one case in which a prosecutor sought to void a marriage so a white wife could testify against her Filipino husband. These parties all argued that Filipinos fell under the jurisdiction of the antimiscegenation statute, because they sought a basis on which to alter legal entitlements and to shape behavior.

We could look to the manner in which gender has historically been bound up with race through the linkages of manhood, citi-

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<sup>122</sup> See Peggy Pascoe, *Race, Gender, and Intercultural Relations: The Case of Interracial Marriage*, 12 FRONTIERS 5, 7 (1991). She has put Chinese, Japanese, and Filipinos in the former category and Native Americans and Hispanics into the latter. The differing understanding of miscegenation regulation depending on whether the prohibited relationships involved white men or white women, has been furthered by the work of Adrienne Davis. She has argued that shifting the focus from miscegenation regulation of black men and white women to that of white women and black men changes the understanding of what miscegenation regulation sought to accomplish. While regulation of the black man/white woman is correctly understood as prohibitory and repressive to both sides of the dyad, regulation of the white man/black woman must be understood as operating within the context of laws and norms of slavery that intervened to provide systematic access to black women's sexuality, trumping formal antimiscegenation statutes. See Adrienne Davis, *Loving and the Law: The History and Jurisprudence of Interracial Sex* (unpublished manuscript on file with author); see also ANGELA DAVIS, *WOMEN, RACE, AND CLASS* 172-201 (1983) (arguing that access of white men to women of color was never blocked with threat of lynching or ability of women of color to testify against whites in court).

<sup>123</sup> In her article, Pascoe found that cases were frequently ex post facto attempts to invalidate interracial marriages in order to take what had been a white man's estate away from the inheritor, who was a woman of color. See Pascoe, *supra* note 122, at 7-8.

zenship, and whiteness.<sup>124</sup> The history of antimiscegenation laws targeting Filipinos in California reveals a complicated desire to protect white women from “brown men.” This desire must be understood as being shaped by class. White women that associated with Filipino men appear to have been largely working class women — and not women considered deserving of greater protection because of middle class status.

The research of Rhacel Salazar Parreñas indicates that there were actually several distinct opinions among whites concerning these relationships: upper-class white women that formed commissions to control “promiscuity” in the dance halls, white working-class men that initiated anti-Filipino race riots to protect white women’s purity from Filipino men, and upper-class white men who enacted legislation to protect white purity. But, significantly, Parreñas has added that there were some upper class white men that saw the working class women that would associate with Filipinos as so “cheap” and “inferior” that they tainted innocent Filipino men.<sup>125</sup>

The concern to protect “women” was of course also racialized. While young Mexican women were also thought to be the target of Filipino male affection, interactions among Mexican women and Filipino men did not appear to incite any uproar beyond occasional rhetorical inclusion as subjects in need of protection. In fact, in the *Visco* case, Ruth Salas, as Mexican, was quite literally thrust out of the category “white” that the state sought to protect from marriage to Filipinos.

While scholars writing about miscegenation law have recognized the bundle of legal entitlements associated with the marital contract that women in miscegenous relationships lost if their mar-

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<sup>124</sup> Emily Field Van Tassel has examined this relationship in the context of the post-Civil War South, which sought to maintain an economy of racialized dependency. See Emily Field Van Tassel, “*Only the Law Would Rule Between Us*”: Antimiscegenation, the Moral Economy of Dependency, and the Debate over Rights After the Civil War, 70 CHI-KENT L. REV. 873, 878-905 (1995). I agree with her criticism that as an explanation for white antipathy towards interracial marriage “racial purity” or the maintenance of “white supremacy” as explanation does no more than rephrase the question. See *id.* at 926.

<sup>125</sup> See Parreñas, *supra* note 48, at 116, 124-28. For example, academic Emory Bogardus is so identified. See *id.*

riages were declared void, what has not been examined by these scholars is the relationship of interracial marriages to immigration consequences.<sup>126</sup> As of 1790, only whites, and after 1870, only whites and those of African descent or nativity, were allowed to naturalize to become United States citizens.<sup>127</sup> Thus, anyone not considered to fall within one of those two categories was considered ineligible to naturalize as a United States citizen. Filipinos were considered racially ineligible to naturalize,<sup>128</sup> and, as “nationals” of the United States, were not citizens.

In 1907, Congress passed the Expatriation Act, which provided that any American woman who married a foreigner was automatically denaturalized.<sup>129</sup> Congress partially repealed the law in 1922, but continued to require that any woman who married a man ineligible to naturalize — in other words, one racially barred from doing so — would lose her citizenship. This provision remained law until 1931.<sup>130</sup> Thus, a white U.S. female citizen who married a Filipino could face a catch-22. If her marriage was seen as violating an antimiscegenation statute, the marriage would be void. However, if it was upheld as a legitimate marriage, that marriage could subject her to expatriation. It is not clear whether any woman who married a Filipino was, in fact, subject to denaturalization, although reportedly, the federal district director of naturalization stated this would take place.<sup>131</sup>

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<sup>126</sup> For a discussion of these consequences, see generally CANDICE LEWIS BREDBENNER, *A NATIONALITY OF HER OWN: WOMEN, MARRIAGE, AND THE LAW OF CITIZENSHIP* (1998).

<sup>127</sup> Act of March 26, 1790, ch. 3, 1 Stat. 103; Act of July 14, 1870, ch. 255, section 7, 16 Stat. 254.

<sup>128</sup> See, e.g., *Morrison v. California*, 291 U.S. 82, 85-86 (1934) (“White persons’ within the meaning of the [Naturalization Law of 1790] are members of the Caucasian race, as Caucasian is defined in the understanding of the mass of men. The term excludes the Chinese, the Japanese, the Hindus, the American Indians and the Filipinos.”); see also *Toyota v. United States*, 268 U.S. 402, 410-12 (1925).

<sup>129</sup> Act of March 2, 1907, Pub. L. 193, ch. 2534, section 3. This provision was upheld as constitutional in *Mackenzie v. Hare*, 239 U.S. 299, 311-12 (1915), in which the Supreme Court upheld the power of Congress to expatriate a female United States citizen that obtained foreign nationality by marriage to a foreign national during the period of coverture because such action was a “necessary and proper” implementation of the inherent power of sovereignty in foreign relations.

<sup>130</sup> See Act of Sept. 22, 1922, ch. 411, section 3, 42 Stat. 1022; Act of March 3, 1931, ch. 442, secs 4(a),(b), 46 Stat. 1511.

<sup>131</sup> In 1930, a Salinas Superior Court Judge ruled that a German immigrant who married a Filipino man was not entitled to naturalize. See TAKAKI, *supra* note 35, at 342 (mentioning case involving Mrs. Anne Podien-Jesena, married to Basalico Jesena, and decision of Mon-

Considering the relationship of gender to miscegenation law requires a recognition of the manner in which the control of women and their sexuality is understood as necessary to maintaining and reproducing the identity of communities and nations.<sup>132</sup> Women are thought to guard the purity and honor of communities. Nationalism entwines with race so that women are subjected to control in order to achieve the aim of a national racial purity. This is visible in the history described here. Filipino male sexual engagement with white women was considered a national threat, requiring the literal expulsion of Filipino men from the body politic, accomplished through the simultaneous granting of independence to the Philippines, and the revocation of “national” status which had formerly allowed Filipinos to freely travel to the United States.

Finally, we should examine the extent to which scholarship on miscegenation laws has shaped our understandings of male and female sexuality, and specifically, shaped them through the lens of presumptive heterosexuality. For example, to what extent does the lament over the all male, so-called bachelor societies in Asian communities — communities thought to be damaged by their lack of access to women — deny the reality and nondeviancy of same sex sociality and sexuality of various forms?<sup>133</sup> Along the same lines, there are few exceptions to the conflation of interracial with heterosexual in this field.<sup>134</sup> The bulk of contemporary legal writing on miscegenation seeks to demonstrate an analogy between prohibiting marriage on the basis of race to prohibiting marriage on the basis of sexual orientation.<sup>135</sup> This literature generally unreflec-

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terey Superior Court Judge H.C. Jorgenson). Following this ruling came the statement of the district director that United States citizen women marrying Filipinos would be denaturalized. *See id.*; *see also Anti-Miscegenation Laws and the Pilipino*, *supra* note 10.

<sup>132</sup> On the relationship of nationalism, gender, race, and sexuality, see generally Leti Volpp, *Blaming Culture for Bad Behavior*, 12 *YALE J.L. & HUMAN.* 89 (2000).

<sup>133</sup> *See generally* SHAH, *supra* note 26 (asking this critical question).

<sup>134</sup> For examples of scholarship which do not conflate interracial with heterosexual, see Estelle B. Freedman, *The Prison Lesbian: Race, Class, and the Construction of the Aggressive Female Homosexual, 1915-1965*, in *SEX, LOVE, RACE* *supra* note 10, at 423, and Bryant Simon, *The Appeal of Cole Blease of South Carolina: Race, Class, and Sex in the New South*, in *SEX, LOVE, RACE*, *supra* note 10, at 373.

<sup>135</sup> *See e.g.*, William N. Eskridge, Jr., *A History of Same-Sex Marriage*, 79 *VA. L. REV.* 1419 (1993); Andrew Koppelman, *Why Discrimination Against Lesbians and Gay Men Is Sex Discrimination*, 69 *N.Y.U. L. REV.* 197 (1994); Andrew Koppelman, Note, *The Miscegenation Analogy*:

tively analogizes the presumptively heterosexual interracial miscegenous relationship to the contemporary same sex one.<sup>136</sup>

### B. *Filipina/o Identities*

A second locus of inquiry is to explore what this sketch of Filipino history tells us about identity categories. Specifically, this history raises the question of the relationship of Filipinas/os to the Asian American identity category. We have here a very real rupture of Mongolian with Malay, of East Asian with Filipino, made manifest in legal history. Does this mean anything more than antiquated notions of ethnology? Well, yes — this rupture is something that is continually perpetuated.<sup>137</sup> One critic has called the continued inclusion of Filipinas/os within the term “Asian American” a form of semiotic violence inflicted on Filipinas/os, when

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*Sodomy Law as Sex Discrimination*, 98 YALE L.J. 145 (1988); James Trosino, Note, *American Wedding: Same-Sex Marriage and the Miscegenation Analogy*, 73 B.U. L. REV. 93 (1993).

<sup>136</sup> I recognize that, in this literature, the interracial miscegenous relationship is presumptively heterosexual, because what is at issue is legal marriage. Nonetheless, there is a manner in which many authors frame the inquiry as if same sex relations are never interracial, and as if interracial relationships are always heterosexual. For exceptions to this, see MUMFORD, *supra* note 48, and SHAH, *supra* note 26. Nayan Shah's research into the way that the Chinese were identified as lepers and deported at the height of the Congressional Inquiry into Chinese immigration in 1876, amidst growing public hysteria about contagion to whites through sex with Chinese, allows us to see the importance of the relation of sexuality and disease to antimiscegenation legislation. At the inquiries, physicians offered stories of young white boys that had become infected by leprosy Chinamen that shared their beds. Leprosy was analogized to syphilis; both were thought to originate in Chinese bodies. This necessitated the social and sexual isolation of Chinese lepers from other races. Health officials emphasized the devastating health consequences of illicit interracial sexual relations and identified Chinese lepers as inhuman, calling for the removal of these creatures from society in an attempt to prevent the United States from becoming a nation of lepers. The presumption of Chinese as potential lepers was used to isolate the population and make their integration into American society impossible. Shah explains how the narratives of the transgression of racial boundaries were the material and metaphorical symptoms of the unhealthy fluidity and dangerous freedom in the cities. See generally SHAH, *supra* note 26. Historical research like this, which provides a finely grained analysis of specific sites, pushes our knowledge much further.

<sup>137</sup> As an example of the bifurcation between “Asian American” and “Filipino,” Peggy Pascoe listed states with miscegenation laws that “mentioned” Asian Americans, and those that “mentioned” Malays. Her “Asian American” is fully occupied by Chinese, Korean, and Japanese Americans, with no room for Filipino/a Americans. See Pascoe, *supra* note 18, at 485 n.13.

Asian American is translated as Chinese or Japanese American by Asian American activists or legal scholars.<sup>138</sup>

We know that stretching identity categories is not without risk.<sup>139</sup> Always the increasing heterogeneity of what we put within a particular larger identity category risks obliterating the experiences of those who take up its margins and are not conceptualized at its center.<sup>140</sup> There are internal hierarchies within identity categories that need to be recognized.<sup>141</sup> Failure to recognize these risks in the form of the continued occlusion of the Filipina/o within the Asian American category reflects political expediency — but may also reflect more complicated issues. Oscar Campomanes has made the point that the invisibility of the Philippines in American history reflects the constitutional and cultural difficulties posed by its annexation by the United States and the discomfort associated with the United States as an imperial power.<sup>142</sup> We could posit that this discomfort is mirrored in the invisibility of Filipinas/os within the Asian American identity category, which often presumes a do-

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<sup>138</sup> See San Juan, Jr., *Configuring the Filipino Diaspora in the United States*, *supra* note 62, at 117.

<sup>139</sup> See LISA LOWE, *IMMIGRANT ACTS: ASIAN AMERICAN CULTURAL POLITICS* 68 (1996) (arguing for Asian American necessity to organize, resist, and theorize as Asian Americans, even while being cognizant of risks of cultural politics that rely on construction of sameness and exclusion of differences).

<sup>140</sup> An example of this is the numerous “Asian American” or “Asian Pacific American” civil rights and other organizations that are entirely staffed or led by Chinese and Japanese Americans. There are, of course, exceptions to this; for example, Bill Tamayo was Managing Attorney of the Asian Law Caucus in San Francisco for many years.

<sup>141</sup> For example, Yen Le Espiritu examined bibliographies and publications for the period from the 1970s to the 1980s and determined the number of studies for specific Asian American groups: Japanese, 514; Chinese, 460; Filipinos, 96; South Asian, 53; Korean, 32; Pacific Islander, 8; Southeast Asian, 6. See YEN LE ESPIRITU, *ASIAN AMERICAN PANETHNICITY: BRIDGING INSTITUTIONS AND IDENTITIES* 37 (1992).

As Oscar Campomanes has pointed out, this unevenness can be explained in part by the vagaries of academic production, changing immigration policy and specific demographics. Nonetheless, it is imperative to examine what internal hierarchy is replicated in the name of a politically efficacious Asian American panethnic identity. See Oscar V. Campomanes, *New Formations of Asian American Studies and the Question of U.S. Imperialism*, 5 *POSITIONS* 523, 528-29 (1997).

<sup>142</sup> See Oscar V. Campomanes, *Filipinos in the United States and Their Literature of Exile*, in *READING THE LITERATURES OF ASIAN AMERICA* 49, 53 (Shirley Geok-lin Lim & Amy Ling eds., 1992).

mestic and national, rather than an imperialist, construction of "America."

And what does this historical narrative tell us about the Latina/o identity category? The impetus for centering the experience of Filipinas/os at the Fourth Annual LatCrit conference was the suggestion of conference organizers to place Filipinas/os within the rubric of Latinas/os, primarily because of a shared legacy of Spanish colonization. If we were to consider Filipinas/os as Latinas/os, then the claim that "Latinas/os were not subjected to miscegenation laws" would be incorrect, factually.<sup>143</sup> But the idea of calling Filipinas/os "Latinas/os" seems primarily an interesting theoretical proposition at this point, although there may be suggestive similarities to the racialization of Filipinas/os and some Latina/o communities.<sup>144</sup>

As important as Spanish colonialism to the Filipino experience may be the experience of U.S. colonialism. This does not deny links between Filipinas/os and Latinas/os, but merely suggests the links may be ones we have not generally recognized. One undertheorized connection is between the experience of Puerto Ricans, Filipinas/os, and Hawaiians as official colonial possessions of the United States.<sup>145</sup> Puerto Rico and the Philippines share histories of Spanish, and then U.S. colonialism. That these connections are

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<sup>143</sup> See Rachel Moran, *What If Latinos Really Mattered in the Public Policy Debate?*, 85 CAL. L. REV. 1315, 1320 (1997). Moran cites Pascoe, *supra* note 122, as stating that antimiscegenation laws did not cover Latinos. Thinking about who is placed within the Latina/o rubric raises the important question as to what other communities are elided over in the claim that Latinas/os were not subjected to the reach of miscegenation laws. The claim replicates the longstanding problem of the disappearance of both Indian and Black identity within what we conceptualize as Latina/o (not to mention East Asian) — all groups subjected to the reach of miscegenation laws. See Pascoe, *supra* note 18, at 464-65 (describing specific case where Indian identity of man we would call "Latino" brought him under purview of Arizona's antimiscegenation law); *supra* notes 10-13 and accompanying text (enumerating communities subjected to miscegenation laws).

<sup>144</sup> Linking factors might be the experiences of conquest, the Spanish language, and presumptions about heterosexual gendered relationships, for example, the Filipino as a "Latin lover."

<sup>145</sup> See generally Efrén R. Ramos, *The Legal Construction of American Colonialism: The Insular Cases (1901-1922)*, 65 REVISTA JURIDICA U.P.R. 225 (1996) (analyzing jurisprudence that was utilized to justify American imperialism); HAUNANI KAY TRASK, *FROM A NATIVE DAUGHTER: COLONIALISM AND SOVEREIGNTY IN HAWAII* (1993) (discussing United States colonization of Hawaii); Oscar V. Campomanes, *1898 and the Nature of the New Empire*, 73 RADICAL HIST. REV. 1 (1998) (discussing United States colonization of Philippines); Ediberto Román, *Empire Forgotten: The United States' Colonization of Puerto Rico*, 42 VILL. L. REV. 1119 (1997) (discussing United States colonization of Puerto Rico).

undertheorized may be connected to two different factors. One is that we are still prey to the systems of racial classification propagated by the ethnographers of a previous century, which restricts the linkages we make between identity based categories. The second is the general failure to focus on the history of U.S. imperialism and the role of the United States as a colonial power.<sup>146</sup>

### CONCLUSION

This Essay focuses on a community whose legal history has been sorely neglected. In interpreting the history of antimiscegenation efforts prohibiting Filipinos from marrying whites in the State of California, I have sought to complicate our narration of miscegenation laws. Generalizations about miscegenation laws or about the impetus for them do not do justice to the specific histories that have impacted particular communities. For Filipinos in California, antimiscegenation efforts seeking to regulate sexual relationships between Filipino men and white women were clearly connected to white anxiety about the concrete display of this desire in the space of the dance hall. As the legislature had already forbidden marriage licenses from being granted to “Mongolians” who sought to marry whites, and had also declared such marriages void, anxiety about Filipino/white sexual relations was made manifest in legal efforts to group Filipinos under the rubric of “Mongolian.” While the Attorney General of the State of California sought to control the sexual activity of Filipinos through so labeling them, many jurists resisted, looking both to ethnology and legislative intent.

Identity is central to the writing of history — communities are named and name themselves within the narratives of the past.<sup>147</sup> The positioning of Filipinos as “Mongolian,” or the positioning of Filipinos in opposition to Mongolians, as the ethnologically differ-

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<sup>146</sup> This is no doubt connected to the image of the origins of the United States as freedom-fighting subject seeking liberation from a colonial power.

<sup>147</sup> See Stuart Hall, *Cultural Identity and Diaspora*, in *IDENTITY, COMMUNITY, CULTURE, DIFFERENCE* 222, 225 (Jonathan Rutherford ed., 1990). The cases demonstrate Filipinos arguing both that they were and that they were not “Mongolian.” See, e.g., *Roldan v. Los Angeles County*, 129 Cal. App. 267, 268, 18 P.2d 706, 707 (1933) (arguing that Filipinos were not Mongolian); *Laddaran v. Laddaran*, No. D95459, (Sept. 4, 1931) (arguing that Filipinos were Mongolian).



ent “Malay,” provides a narrative within which the contemporary identity of Filipinos is created. The historical question of whether to group Filipinos with Chinese and Japanese as “Mongolian” for purposes of miscegenation laws is echoed in the contemporary quandary about positioning Filipinas/os as Asian American, when the center of that identity category is clearly occupied by Chinese and Japanese Americans.

The relationship between contemporary identity and historical narrative is not monolithic or static, but should be seen as multiple and fluid. The history presented in this Essay suggests that greater attention should be paid to the role of U.S. colonialism in shaping racialization and connections we might make between different communities. Choosing to position Filipinas/os within the rubric of Latinas/os at the LatCrit conference exemplifies the willingness to break beyond perceived historical borders and recognize new linkages that can be made.

This history demonstrates the manner in which racial identity is created. There is nothing natural or preordained about the classification of Filipinos as “Malay” or as “Mongolian” — or as any other identity. Racial identity is shaped in relation to other forces. Here, such forces include assumptions about racialized sexuality, colonial relations between the United States and the Philippines, the importation of exploitable laborers without political rights, and the intertwining of gender and nationalism. The legal history of the shifts in racial classification of Filipinos in California, between “Mongolian” and “Malay,” underlines the manner in which race is made.

