

# BETWEEN BLACK AND WHITE: THE COLORING OF ASIAN AMERICANS

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## I. INTRODUCTION

While reporting on the civil unrest that followed the police killing of Mike Brown in Ferguson, Missouri last August, Fox News host Bill O'Reilly became enraged when his guest Megyn Kelly suggested that race-based privilege<sup>1</sup> shields White<sup>2</sup> people from police violence while it simultaneously subordinates Black people.<sup>3</sup> After the brief on-air debate, O'Reilly penned a follow-up for the "Talking Points Memo" segment on his eponymous show.<sup>4</sup> O'Reilly asserted that White Privilege was a fiction and held out the economic successes of Asian Americans<sup>5</sup> as

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1. See generally Peggy McIntosh, *White Privilege and Male Privilege: A Personal Account of Coming to See Correspondences through Work in Women's Studies*, Working Paper No. 189 (1988) (delineating some contours of White Privilege).

2. Like Cynthia Lee (and others), I intentionally capitalize the words Black and White when referencing racial identity, to highlight the socially constructed nature of those terms. See, e.g., Cynthia Lee, *(E)Racing Trayvon Martin*, 12 OHIO J. CRIM. L. 91, 92 n.6 (2014); Tanya Kateri Hernández, *A Critical Race Feminism Empirical Research Project: Sexual Harassment & the Internal Complaints Black Box*, 39 U.C. DAVIS L. REV. 1235, 1237 n.2 (2006).

3. Watch *Bill O'Reilly And Megyn Kelly Spar Over The Existence Of White Privilege*, MEDIA MATTERS FOR AMERICA (Aug. 25, 2014, 9:38 PM), <http://mediamatters.org/video/2014/08/25/watch-foxs-megyn-kelly-educate-bill-oreilly-on/200545>. In support of her argument, Kelly cited unemployment and incarceration rates, statistics on poverty, and information about segregated housing and concluded that these figures "are all correlated" with skepticism voiced by the African American community about the then-ongoing investigation of police officer Darren Wilson, who, on August 9, 2014, shot and killed Michael Brown, an unarmed African American teenager. *Id.* See also The Family of Mike Brown, HandsUp United, Organization for Black Struggle (OBS), & Missourians Organizing for Reform and Empowerment (MORE), *Written Statement on the Police Shooting of Michael Brown and Ensuing Police Violence Against Protestors in Ferguson, Missouri (2014)*, available at <http://fergusontogeneva.org/FergusonReport.pdf>.

4. Bill O'Reilly, *The Truth about White Privilege*, FOX NEWS (Aug. 26, 2014), <http://www.foxnews.com/on-air/oreilly/2014/08/27/bill-oreilly-truth-about-white-privilege>.

5. Throughout this Article, I will use the term Asian American to refer both to immigrants from Asia and to U.S. citizens by birth. When the distinction between the two groups is relevant, I will try to make that clear. Note, however, that the broad and inclusive term "Asian American" is often

incontrovertible proof of his claims. Noting that Asian Americans have a lower unemployment rate than White Americans, O'Reilly demanded:

So, do we have Asian privilege in America? Because the truth is, that Asian American households earn far more money than anyone else. The median income for Asians, [sic] close to \$69,000 a year; it's 57,000 for whites \$33,000 for black—so the question becomes why? And the answer is found in stable homes and in emphasis on education . . . . That is why Asian Americans, who often have to overcome a language barrier, are succeeding far more than African-Americans and even more than white Americans. Their families are intact and education is paramount.<sup>6</sup>

The popular resonance of the Model Minority Myth<sup>7</sup> as articulated by O'Reilly above, has led other commentators to wonder whether Asian Americans have, like other ethnic immigrant populations<sup>8</sup> before them, “become White.”<sup>9</sup>

Musings like O'Reilly's expose the Black/White binary that frames race discourse in the United States. More accurately described as “White-over-Black,”<sup>10</sup> the power in this model's imagery is the clear distinction between the two racial categories and the strict separation between them.

deceptive. For example, although it is true that the median household income for the umbrella group Asian Americans is higher than for White, Black, and Latino families, wealth among sub-groups of Asian Americans is not evenly distributed. *See generally* Asian American Center for Advancing Justice, *A Community of Contrasts: Asian Americans, Native Hawaiians and Pacific Islanders in the Midwest*, [http://napca.org/wp-content/uploads/2014/04/Community\\_of\\_Contrasts\\_Midwest\\_2012.pdf](http://napca.org/wp-content/uploads/2014/04/Community_of_Contrasts_Midwest_2012.pdf) (2012); Deirdre M. Bowen, *Meeting Across the River: Why Affirmative Action Needs Race & Class Diversity*, 88 DENV. U. L. REV. 751, 770–72 (2011) (distinguishing wealth from income).

6. O'Reilly, *supra* note 4.

7. *See infra* Part V.A and Volokh, *infra* note 9 for additional discussion of the Myth.

8. *See, e.g.*, NOEL IGNATIEV, *HOW THE IRISH BECAME WHITE* (2008); KAREN BRODKIN, *HOW JEWS BECAME WHITE FOLKS AND WHAT THAT SAYS ABOUT RACE IN AMERICA* (1998); DAVID R. ROEDIGER, *WORKING TOWARD WHITENESS: HOW AMERICA'S IMMIGRANTS BECAME WHITE* (2006).

9. *See, e.g.*, Eugene Volokh, *How the Asians became white*, WASH. POST (May 29, 2014), <http://m.washingtonpost.com/news/volokh-conspiracy/wp/2014/05/29/how-the-asians-became-white/>.

Asians have succeeded even though they are a racial minority—this fact deserves to be acknowledged. It redounds to the credit of the many Asians who worked terribly hard against often overwhelming odds. And it's evidence of the essential fairness of the American capitalist system, which has rewarded this hard work even though many people, including many government officials, tried to penalize it.

*Id.* (echoing the tenets of the Model Minority Myth).

10. *See, e.g.*, WINTHROP D. JORDAN, *WHITE OVER BLACK: AMERICAN ATTITUDES TOWARD THE NEGRO, 1550–1812* (1968); Robert S. Chang & Neil Gotanda, *Afterword: The Race Question in LatCrit Theory and Asian American Jurisprudence*, 7 NEV. L.J. 1012, 2019 (2007); Athena Mutua, *Shifting Bottoms and Rotating Centers: Reflections on LatCrit III and the Black/White Paradigm*, 53 U. MIAMI L. REV. 1177, 1179 (1999).

The binary is not merely a social or cultural byproduct; law has always played a central role in defining and regulating racial categories. Anti-miscegenation statutes, for example, were promulgated for the express purpose of maintaining the stability of the color line demarcating the racial hierarchy upon which the slave trade and chattel slavery depended.<sup>11</sup> By prohibiting marriages between Black and White persons, the states ensured that racial mixing would not threaten to destabilize the rigid divisions that kept the races separate and allowed White supremacy to thrive.<sup>12</sup>

Within the bounds of this socio-legal dichotomy fall Asian Americans.<sup>13</sup> O'Reilly asserts that Asian Americans occupy a privileged position as compared to other groups in the United States.<sup>14</sup> If Asian Americans hold any type of privileged status in today's racially-stratified society,<sup>15</sup> however, this certainly was not always the case. Throughout history, Asian Americans were the special targets of federal and state laws written to specifically exclude them from the polity.<sup>16</sup> Because "the yellow peril"<sup>17</sup> posed by Asian immigrants and their descendants was an equal threat to the rigid racial divisions that organized U.S. society, states with

11. Kevin D. Brown, *The Rise and Fall of the One-Drop Rule: How the Importance of Color Came to Eclipse Race*, in *COLOR MATTERS: SKIN TONE BIAS AND THE MYTH OF A POST-RACIAL AMERICA* 50–52 (Kimberly Jade Norwood ed. 2014) [hereinafter *COLOR MATTERS*].

12. *Id.*; PETER WALLENSTEIN, *TELL THE COURT I LOVE MY WIFE: RACE, MARRIAGE, AND LAW—AN AMERICAN HISTORY* 3 (2002) (quoting Kingsley Davis, an anthropologist, who in 1941 framed the choice thus: "either intermarriage must be strictly forbidden or racial caste abandoned"). See also RACHEL F. MORAN, *INTERRACIAL INTIMACY: THE REGULATION OF RACE AND ROMANCE* 19 (2001) ("Marriages across the color line could give blacks and their mixed-race offspring access to white economic privileges by affording them the property protections that marriage and inheritance laws offered.")

13. See Mari Matsuda, *We Will Not Be Used*, 1 *UCLA ASIAN AM. PAC. IS. L.J.* 79, 79 (1993) (employing the term "the racial middle" to describe the Asian American position on the racial hierarchy vis-à-vis White and Black Americans).

14. See O'Reilly, *supra* note 4.

15. Neil Gotanda employs the term "racial stratification" and observes that the ideological impact of employing this framework is to narrate socio-economic disparities existing between racial groups as "natural" and "normal" outcomes. The success of this narrative depends on the inclusion of intermediate racial and ethnic categories between the poles of Black and White. Racial stratification—a model in which some non-White groups manage to make financial gains—obviates the need for legal responses to social problems. "The presence of more successful Asian Americans and Latinos, located between Whites and African Americans, proves that the social and economic barriers can be overcome and are not rooted in 'race.'" Neil Gotanda, *Asian American Rights and the "Miss Saigon Syndrome"*, in *ASIAN AMERICANS AND THE SUPREME COURT: A DOCUMENTARY HISTORY* 1090–91 (Hyung-Chan Kim ed., 1992) [hereinafter Gotanda, *Miss Saigon*].

16. For example, from 1882 until 1965, Asian migrants were subject to a series of immigration laws that specifically barred them from entering the United States. Gabriel J. Chin, *Segregation's Last Stronghold: Race Discrimination and the Constitutional Law of Immigration*, 46 *UCLA L. REV.* 1, 13–15 (1998).

17. See, e.g., *Oyama v. California*, 322 U.S. 633, 658–59 (1948) (Murphy, J., concurring).

significant Asian American populations expanded enforcement of their anti-miscegenation statutes to regulate marriages between Asians and Whites.<sup>18</sup>

Lawsuits over the anti-miscegenation laws were not battles over the power of the states to regulate marriage—all parties conceded that;<sup>19</sup> instead, Asian American litigants fought over how they ought to be classified within the racial framework erected by those laws. Caught in the racial bind set by the Black/White binary, Asian Americans made several attempts to obtain the legal benefits of citizenship by claiming a stake in “Whiteness.”<sup>20</sup> The marriage cases are only one example. Whiteness claims by Asian American litigants proliferated in the twentieth century, in areas as disparate as immigration and naturalization to education and equal protection.<sup>21</sup> In hindsight, these Whiteness claims can be viewed as entirely instrumental, or they can be viewed within the context of colorism—how a preference for light skin within communities of color complicates a race analysis. This Article takes the latter approach.

As in other ethnic and racial groups, colorism plays a significant role in the social interactions in and among Asian Americans. Investigating colorism in the Asian American community provides insights into how group members construct their own racial identities in relation to the broader race-stratified society. A colorism inquiry is a necessary intervention into the existing discourse of Asian American identity construction because it complicates common understandings of the Black/White binary in ways that shed new light on inter- and intra-racial relationships.

Part II addresses colorism in the Asian American community, and demonstrates both how Asian Americans have been racialized within the Black/White binary as well as how that dichotomy has impacted processes of internal self-identification based on color and skin tone within Asian American communities. Part III presents three examples of the racialization of Asian Americans by U.S. courts. In each case, the Asian

18. Hrisi Karthikeyan & Gabriel J. Chin, *Preserving Racial Identity: Population Patterns and the Application of Anti-Miscegenation Statutes to Asian Americans, 1910–1950*, 9 *ASIAN L.J.* 1, 14–19 (2002) (listing Arizona, California, Mississippi, Montana, Nevada, Oregon, and Utah).

19. *Cf. Obergefell v. Hodges*, 576 U.S. \_\_\_ (2015) (recognizing the fundamental right marriage under the Fourteenth Amendment’s Due Process and Equal Protection Clauses and extending that right to same-sex couples).

20. *See, e.g.,* RICK BALDOZ, *THE THIRD ASIATIC INVASION: EMPIRE AND MIGRATION IN FILIPINO AMERICA, 1898–1946* 1–10 (2011) (recounting the case of Rafael Lopez de Oñate, a Filipino immigrant “who probably passed as a white man in his everyday interactions” and who asserted that he was White (of “pure Spanish blood”) in order to marry his White fiancé).

21. *See infra* Part III.

American petitioners claimed that they were white in order to avail themselves of specific privileges that accompanied Whiteness. These efforts to claim White racial identity by and for themselves were unsuccessful.<sup>22</sup> More recently, however, Asian Americans find themselves on the threshold of becoming “Honorary Whites,”<sup>23</sup> as evidenced by O’Reilly’s adherence to the Model Minority Myth. Part IV will consider whether Asian Americans are presently being invited to join the ranks of Whiteness and how the status quo of White supremacy and anti-Black subordination is supported by the creation of this intermediate category.

Part V begins with an interrogation of the Model Minority Myth. Read within the context of the Black/White binary, the Myth presents a choice for Asian Americans—to either accept or reject invitations to Whiteness. Lawsuits by Asian American plaintiffs challenging affirmative action programs in higher education provide contemporary case studies upon which to explore some available options—to join the ranks of Whites or to engage in anti-subordination work through interracial coalition. Being attentive to how and where Asian Americans fit into the racial structure of the United States—and how that structure may be reproduced in color hierarchies within the Asian American community—can provide insights into where and how Asian Americans can participate in interracial coalitions for racial justice. Part VI concludes this Article.

## II. COLORISM IN THE ASIAN AMERICAN COMMUNITY

The prevailing paradigm for understanding and discussing race relations in the United States is the Black/White binary. Although many have embraced the binary as a valuable tool for framing contemporary discussions about race relations, several legal scholars have decried the dichromatic model as inaccurately representing the nation’s numerous and varied racial and ethnic groups.<sup>24</sup> One development which the existing critiques of the Black/White binary have not yet fully accounted for, however, is the growing body of literature on colorism. Colorism is a useful intervention into the existing discourse of Asian American identity construction because it complicates prevailing understandings of the Black/White binary of race relations. Furthermore, because color

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22. Frank H. Wu, *Neither Black Nor White: Asian Americans and Affirmative Action*, 15 B.C. THIRD WORLD L.J. 225, 249 (1995).

23. *Id.* at 249 (employing the terms “honorary whites” and “constructive blacks” to describe the contingent positioning of Asian Americans in the racial hierarchy). *See also* Volokh, *supra* note 9.

24. *See infra* Part IV.

preferences are likely to change subject to time and geographical contingencies,<sup>25</sup> colorism discourse offers an alternative, perhaps more agile, method of mapping the complex interactions of race and identity politics.

Racism and colorism are distinct, but related forms of subordination. Sociologist Margaret Hunter defines colorism as “a process that privileges light-skinned people of color over dark in areas such as income, education, housing, and the marriage market.”<sup>26</sup> Colorism, therefore, is a particular manifestation of the broader, systemic problem of racism.<sup>27</sup> As Hunter notes: “The hierarchy employed in colorism, however, is usually the same one that governs racism: light skin is prized over dark, and European facial features and body shapes are prized over African features and body shapes.”<sup>28</sup>

In the Asian American community, colorism is the product of a complex set of social and historical interactions with gender, immigrant, generational, and class dimensions.<sup>29</sup> Within Asian ethnic groups, differences in skin color frequently determine social standing and

25. See Trina Jones, *The Significance of Skin Color in Asian and Asian-American Communities: Initial Reflections*, 3 U.C. IRVINE L. REV. 1105, 1116, 1118–19 (2013) (noting that the preference for light skin among Asian Americans diminishes over time and through the passing of generations); JOANNE LAXAMANA RONDILLA, COLONIAL FACES: BEAUTY AND SKIN COLOR HIERARCHY IN THE PHILIPPINES AND THE U.S. 47–53 (2012), Doctoral Dissertation, available at [http://digitalassets.lib.berkeley.edu/etd/ucb/text/Rondilla\\_berkeley\\_0028E\\_12807.pdf](http://digitalassets.lib.berkeley.edu/etd/ucb/text/Rondilla_berkeley_0028E_12807.pdf).

26. Margaret Hunter also uses the term “skin color stratification.” Margaret Hunter, *The Persistent Problem of Colorism: Skin Tone, Status, and Inequality*, 1 SOCIOLOGY COMPASS 237, 237 (2007). The material impacts of colorism on darker-skinned people has been studied and documented. *Id.* at 238 (citing numerous studies); Angela P. Harris, *Introduction*, in SHADES OF DIFFERENCE: WHY SKIN COLOR MATTERS 4, 55 (Evelyn Nakano Glenn ed. 2009) [hereinafter SHADES OF DIFFERENCE].

27. Hunter, *supra* note 26, at 238.

28. *Id.* at 239; Leonard M. Baynes, *If It's Not Just Black and White Anymore, Why Does Darkness Cast a Longer Discriminatory Shadow Than Lightness? An Investigation and Analysis of the Color Hierarchy*, 75 DENV. U. L. REV. 131, 133 (1997) (describing the color hierarchy thus: “Lighter is better and darker is worse.”). Light-skinned people experience certain disadvantages due to colorism, or discrimination on the basis of skin tone. For example, light-skinned or mixed-race African American women and men are often subject to ridicule and inquisitions regarding their racial authenticity. Kimberly Jade Norwood, *Colorism and Blackthink: A Modern Augmentation of Double Consciousness*, in COLOR MATTERS, *supra* note 11, at 166–68.

29. For excellent coverage of this topic, see generally JOANNE L. RONDILLA & PAUL SPICKARD, IS LIGHTER BETTER?: SKIN TONE DISCRIMINATION AMONG ASIAN AMERICANS, 106 (2007); Evelyn Nakano Glenn, *Consuming Lightness Segmented Markets and Global Capital in the Skin-Whitening Trade*, in SHADES OF DIFFERENCE, *supra* note 26, at nn.21–37 (discussing India and the Indian diaspora, the Philippines, Japan, China, and Korea). See also E.J.R. David & Kevin L. Nadal, *The Colonial Context of Filipino American Immigrants' Psychological Experiences*, 19 CULTURAL DIVERSITY & ETHNIC MINORITY PSYCHOLOGY 298, 299 (2013) (explaining the authors' use of the term “colonial mentality” to refer to a specific form of internalized oppression “characterized by a perception of ethnic or cultural inferiority”) (internal quotations omitted).

marriageability.<sup>30</sup> Colorism is a multifaceted system of subordination and influences not only the way that in-group members treat each other, but also how outsiders treat in-group members, and how in-group members treat outsiders.<sup>31</sup> Investigating how colorism operates in the Asian American community yields important insights about how anti-Black prejudice is formed and deployed. Therefore, it is necessary to acknowledge how Asian American groups assert agency both in constructing their own identities and also in “redeploy[ing] structures of racial oppression against others.”<sup>32</sup>

In the Asian American community,<sup>33</sup> colorism exists as a result of an ideology of White supremacy imposed by European colonialists, but also because of a pre-existing preference for white skin that predates sustained contact with Europeans.<sup>34</sup> Ancient Japanese believed that light skin was an indicator of spiritual purity.<sup>35</sup> In China, the association between wealth and fair skin dates back to before the Qin Dynasty.<sup>36</sup> In countries with long histories of European and U.S. colonialism, the Philippines, India, and Vietnam, for example, preference for light skin is closely connected to social and cultural values enforced by White colonial regimes.<sup>37</sup>

Whatever its origin, colorism persists in Asia today. In the melodramatic world of Filipino telesejres (soap operas), for example, color prejudices play out on the small screen with alarming frequency.<sup>38</sup>

30. Jyotsna Vaid, *Fair Enough? Color and the Commodification of Self in Indian Matrimonials*, in *SHADES OF DIFFERENCE*, *supra* note 26, at 311–98.

31. Hunter, *supra* note 26, at 238; Eduardo Bonilla-Silva, *We Are All Americans!: The Latin Americanization of Racial Stratification in the USA*, 5 *RACE & SOCIETY* 9 (2002) (citing Rachel Moran and Mia Tuan for proposition that “intra-Asian preferences seem to follow a racialized hierarchy of desire”).

32. Taunya Lovell Banks, *Colorism: A Darker Shade of Pale*, 47 *UCLA L. REV.* 1705, 1716 (2000) (citing Eric K. Yamamoto, *Rethinking Alliances: Agency, Responsibility, and Interracial Justice*, 3 *UCLA ASIAN PAC. AM. L.J.* 33, 38 (1995)).

33. See generally *COLOR MATTERS*, *supra* note 11 (comparing colorism in the Asian American community to colorism in other communities of color).

34. See, e.g., Eric P.H. Li et al., *Skin Lightening and Beauty in Four Asian Cultures*, 35 *ADVANCES IN CONSUMER RESEARCH* 444 (2008); Princess Orig, *Kayumanggi Versus Maputi: 100 Years of America’s White Aesthetics in Philippine Literature*, in *MIXED BLESSING: THE IMPACT OF THE AMERICAN COLONIAL EXPERIENCE ON POLITICS AND SOCIETY IN THE PHILIPPINES* 99–111 (Hazel M. McFerson ed., 2002).

35. Kimberly Jade Norwood & Violeta Solonova Foreman, *The Ubiquitousness of Colorism: Then and Now*, in *COLOR MATTERS* 12, *supra* note 11.

36. Kirstin Clouser, *Chinese Whiteness: The Discourse of Race in Modern and Contemporary Chinese Culture* (2013), at 20, [http://digitalcommons.bucknell.edu/cgi/viewcontent.cgi?article=1168&context=honors\\_theses](http://digitalcommons.bucknell.edu/cgi/viewcontent.cgi?article=1168&context=honors_theses).

37. Hunter, *supra* note 26, at 239.

38. See *Nita Negrita Inspires; Touches On Parentage and Self-Realization*, *GMA NETWORK*, (June 8, 2011), <http://www.gmanetwork.com/entertainment/gma/articles/2011-02-24/7120/URL%20>

One of the highest-rated series in GMA Network history was titled, *Nita Negrita*.<sup>39</sup> The show's lead actor played the role of the dark-skinned title character in blackface.<sup>40</sup> "Negrita" in the Tagalog vernacular is not a neutral descriptor. Though diminutive, the word "negrita" is meant to denigrate the person whom it describes.<sup>41</sup> The general societal distaste for dark skin is a factor in ordering the social hierarchy in the Philippines as well as in the formation of racial attitudes when Filipinos migrate to the United States.<sup>42</sup> Colorism as practiced in the Philippines predisposes immigrants to developing negative stereotypical views of Black Americans and other dark-skinned people of color. The author Toni Morrison summarizes the choice that all immigrants confront: "Whatever the ethnicity or nationality of the immigrant, his nemesis is understood to be African American. . . . It doesn't matter anymore what shade the newcomer's skin is. A hostile posture toward resident blacks must be struck at the Americanizing door before it will open."<sup>43</sup> Upon arrival to the United States, latent anti-Black ideology is immediately reinforced by interactions within the extant color and racial hierarchy.

Colorism also impacts intra-racial and inter-ethnic relationships between and among different Asian American sub-groups. Darker-skinned Asian groups are widely considered to be at the bottom of the Asian American social hierarchy.<sup>44</sup> They are often the punch line of crude ethnic

FEED (noting the prevalence of television shows, like *Kirara, Ano Ang Kulay na Pag-Ibig?* (What is the Color of Love?) and *Bakekang*, featuring dark-skinned protagonists).

39. *Nita Negrita Concludes Successful Run with a Heartwarming Finale*, GMA NETWORK, (Jun. 8, 2011), <http://www.gmanetwork.com/entertainment/gma/articles/2011-06-08/7290/Nita-Negrita-concludes-successful-run-with-a-heartwarming-finale>.

40. Honey Orio-Escullar, *Barbie is Black Beauty*, THE PHILIPPINE STAR (Feb. 14, 2011, 12:00 AM) at <http://www.philstar.com/entertainment/656957/barbie-black-beauty>.

41. See Earl Villanueva, *Commentary: Nita Negrita sidesteps issue of racial discrimination*, PHILIPPINE ENTERTAINMENT PORTAL (Mar. 1, 2011), <http://www.pep.ph/guide/tv/7732/commentary-nita-negrita-sidesteps-issue-of-racial-discrimination> (comparing the word "negrita" to the N-word).

42. See Estella Habal, "Why is Barack Obama a Filipino?" *Race, Immigrant Identities, and Community Organizing Among Filipino Americans*, RACE 2008, 176 (Myra Mendible ed., 2010).

43. Toni Morrison, *On the Backs of Blacks*, TIME MAGAZINE (Dec. 2, 1993), <http://collective.liberation.org/wp-content/uploads/2013/01/Morrison-On-the-Backs-of-Blacks.pdf>. See also Mirta Ojito, *Best of Friends, Worlds Apart*, N.Y. TIMES (June 5, 2000), <http://partners.nytimes.com/library/national/race/060500ojito-cuba.html> (describing Achmed Valdés, a White immigrant from Cuba's, attitudes on race: "When he thinks about race, which is not very often, it is in terms learned from other white Cubans: American blacks, he now believes, are to be avoided because they are delinquent and dangerous and resentful of whites.").

44. See, e.g., Patricia Espiritu Halagao & Rayna Higa Fujii, *Asian American Hierarchy in Hawaii*, in ENCYCLOPEDIA OF DIVERSITY IN EDUCATION 1040–41 (James A. Banks ed., 2012); Kevin L. Nadal, *Colonialism*, in ASIAN AMERICAN PSYCHOLOGY: CURRENT PERSPECTIVES 164 (Nita Tewari & Alvin N. Alvarez eds., 2012).



jokes which trade on negative stereotypes.<sup>45</sup> External markers of success, such as educational achievement, occupation, and income are not shared evenly throughout the Asian American community. In Hawai‘i, for example, light-skinned East Asian groups (i.e., Chinese and Japanese) along with their White counterparts, are overrepresented in white-collar industries.<sup>46</sup> This group’s socially and economically powerful position in the islands has aided in the subordination of other, typically darker-skinned ethnic groups.<sup>47</sup> Dark-skinned Asian Americans, including Pacific Islanders, are overrepresented in low-wage blue-collar industries.<sup>48</sup> Differences in socioeconomic class contribute to stratification along racial and ethnic lines, and the resulting hierarchical power structure is reproduced and maintained through cultural practices such as ethnic jokes.<sup>49</sup>

Further, colorism informs the ways in which Asian Americans perform race and racial identity.<sup>50</sup> Chinese American Chrissy Lau reports receiving the following admonition from her mother after swimming outside: “[she] yelled at me with disgust and said, ‘Look how dark you are! You’re becoming black!’”<sup>51</sup> For many Asian American women and men, Lau’s mother’s rebuke is perhaps familiar.<sup>52</sup> It is not unusual for Asian American women to take steps to maintain light skin by avoiding the sun<sup>53</sup> or to purchase expensive skin lighteners or brighteners<sup>54</sup> to obtain the benefits that accompany a light-skinned appearance. Lau notes that her mother’s

45. Roderick N. Labrador, “*We Can Laugh at Ourselves*”: *Hawai‘i Ethnic Humor, Local Identity and the Myth of Multiculturalism*, 14 *PRAGMATICS* 291, 299 (2004) (uncovering the structures of inequality and systems of power that undergird the popularity of ethnic jokes).

46. JONATHAN OKAMURA, *ETHNICITY AND INEQUALITY IN HAWAII* (2008).

47. *Id.*

48. *Id.*

49. Labrador, *supra* note 45, at 293 (including, for example, jokes based on the stereotype that Filipinos eat dog).

50. RONDILLA & SPICKARD, *supra* note 29; Charis Thompson, *Skin Tone and the Persistence of Biological Race in Egg Donation for Assisted Reproduction*, in *SHADES OF DIFFERENCE*, *supra* note 26.

51. RONDILLA & SPICKARD, *supra* note 29, at 7–8.

52. *Id.* at 9 (“[My Korean parents] always said we looked like a Black person or a country bumpkin when we got dark.”).

53. Veronique Hyland, *Strange Visors Getting Their Moment in the Sun*, *N.Y. MAG.* (Apr. 30, 2014, 5:56 PM), <http://nymag.com/thecut/2014/04/strange-visors-getting-their-moment-in-the-sun.html> (noting popularity of full-face sun visors among women in China); Lynn M. Thomas, *Skin Lighteners in South Africa Transnational Entanglements and Technologies of Self*, in *SHADES OF DIFFERENCE*, *supra* note 26; RONDILLA & SPICKARD, *supra* note 29, at 79–101.

54. Rachel Felder, *Skin Brighteners Find a Welcome*, *N.Y. TIMES* (Feb. 9, 2012) (“In Asia, there are a lot of whitening products, and that’s what the category is called, which is in reference to the pearl-white skin that they aspire to have.”), <http://www.nytimes.com/2012/02/09/fashion/skin-brighteners-find-a-welcome.html>.

disapproval of dark Asian skin permeated her attitudes towards other people of color: “I began to form a prejudice that I found light skin to be more attractive than dark skin, not only within the Asian race, but the Black race and the Hispanic race.”<sup>55</sup> Colorism is not merely an intra-ethnic phenomenon, but also impacts relationships across different racial groups.

Although the preference for fair skin is the central feature of colorism, phenotypical traits such as hair texture, nose width, and eye shape are other markers of one’s color.<sup>56</sup> Cosmetic surgery has made it possible for individuals to alter the presentation of their color on an even deeper level. The most common cosmetic surgery for Asian American women is a blepharoplasty, or double-eyelid surgery, which promises to make the eyes appear bigger, rounder, and more alert.<sup>57</sup> The outpatient surgery costs between \$2500–5000 and lasts less than an hour.<sup>58</sup> When asked, blepharoplasty patients frequently deny that they seek surgery to look more “White.”<sup>59</sup> Through her ethnographic research, however, Eugenia Kaw carefully deconstructs these denials, concluding “the conscious or unconscious manipulation of gender and racial stereotypes . . . influence [] Asian American women to alter their features through surgery.”<sup>60</sup>

Exercising the choice (when available) to display a lighter-skinned appearance or to deemphasize phenotypical markers of difference can yield material benefits for the agent of that choice. As discussed above, light skin may signal belonging in a dominant economic class. These physical features can elevate one’s social status and reputation for beauty. Cosmetic surgery is not always about beauty, however. For Fred Korematsu, undergoing an eyelid surgery was a risky attempt to maintain

55. RONDILLA & SPICKARD, *supra* note 29, at 8.

56. *Id.* at 106. See also Michael Omi & Howard Winant, *Racial Formations*, in *RETHINKING THE COLOR LINE: READINGS IN RACE AND ETHNICITY* 13 (2d ed. 2003) (“Temperament, sexuality, intelligence, athletic ability, aesthetic preferences and so on are presumed to be fixed and discernable from the palpable marks of race.”).

57. RONDILLA & SPICKARD, *supra* note 29, at 106. Japanese medical journals dating from 1896 contained details of early blepharoplasty procedures. WILLIAM P.D. CHEN, *ASIAN BLEPHAROPLASTY AND THE EYELID CREASE* 1, 285 (2d ed. 2006).

58. See Maureen O’Connor, *Is Race Plastic? My Trip Into the ‘Ethnic Plastic Surgery’ Minefield*, N.Y. MAGAZINE (July 28, 2014), <http://nymag.com/thecut/2014/07/ethnic-plastic-surgery.html>; American Society of Plastic Surgeons, *Eyelid surgery cost*, <http://www.plasticsurgery.org/cosmetic-procedures/eyelid-surgery.html?sub=Eyelid+surgery+cost>.

59. See, e.g., WEN HUA, *BUYING BEAUTY: COSMETIC SURGERY IN CHINA 191–96* (2013) (describing several alternative explanations for seeking double-eyelid surgery, including general beauty concerns, to increase facial expressivity, to ease makeup application, and affordability compared to other cosmetic procedures).

60. Eugenia Kaw, *Medicalization of Racial Features: Asian American Women and Cosmetic Surgery*, 7 *MED. ANTHROPOLOGY* Q. 85–87 (1993).

his freedom from unjust incarceration.<sup>61</sup> To avoid imprisonment in an internment camp for Japanese Americans during World War II, Korematsu underwent surgery, changed his name to Clyde Sarah, and claimed to be of Spanish and Hawaiian descent.<sup>62</sup>

### III. CLAIMING WHITENESS

Within the bounds of the Black/White binary, Asian Americans occupy a space of contingent racial identity primarily shaped and defined by White institutions. Congress and the courts, for instance, have participated in constructing Asian Americans as non-White or non-Black, depending on the maintenance demands of the status quo. To obtain the benefits distributed according to those boundaries, Asian Americans have often engaged in a variety of acts amounting to claims of Whiteness. Korematsu did so through a literal de-ethnicization of his face. The petitioners in *Ozawa*,<sup>63</sup> *Thind*,<sup>64</sup> and *Gong Lum*<sup>65</sup> presented and argued legal claims to Whiteness before the United States Supreme Court. Their claims were not identical; the litigants attacked laws denying their access to immigration and public education benefits, each taking a different tack. Takao Ozawa argued that his skin was actually white; whiter than some Caucasians. Bhagat Singh Thind cited contemporary scientific treatises, arguing that because he was classed as “Caucasian,” he was White. Finally, Gong Lum highlighted Chinese Americans’ cultural proximity to Whites, while explicitly disassociating them from Blacks

In October 1914, Takao Ozawa, an immigrant from Japan who had lived in the United States for the preceding twenty years, applied to become a naturalized citizen.<sup>66</sup> A 1790 law restricted naturalization benefits to “free white persons.”<sup>67</sup> In his arguments before the Supreme

61. See *Korematsu v. United States*, 140 F.2d 289, 293 (9th Cir. 1943) (Denman, J., concurring), *aff’d*, 323 U.S. 214 (1944).

62. Heidi Kathleen Kim, *When You Can’t Tell Your Friends From “the Japs”*: Reading the Body in the *Korematsu Case*, 4 J. TRANSNAT’L STUD. 1, 2, 9 (2012).

63. *Ozawa v. United States*, 260 U.S. 178 (1922).

64. *United States v. Thind*, 261 U.S. 204 (1923).

65. *Gong Lum v. Rice*, 275 U.S. 78 (1927).

66. *Ozawa*, 260 U.S. at 189.

67. *Id.* at 190–92. The Naturalization Act of 1790 was amended after the Civil War as a part of Reconstruction to include “aliens of African nativity and . . . persons of African descent.” Devon Carbado, *Yellow by Law: The Story of Ozawa v. United States*, in RACE LAW STORIES 176 (Devon Carbado & Rachel Moran eds., 2008) (citing 8 U.S.C. § 359 (1875), amended by 8 U.S.C. § 1422 (1952)). The amendment passed despite concern among some members of Congress that it might unintentionally encourage Black migration from the Caribbean. *Id.* at 177. Congress could have, of

Court, Ozawa urged that the original intent of this restrictive clause was “simply to distinguish black people from others.”<sup>68</sup> Therefore, Ozawa attempted to claim a stake in Whiteness by distinguishing himself as a Japanese American, as opposed to Black, in order to receive a legal benefit available to Whites.

Ozawa’s self-authored brief to the federal district court in Honolulu makes the claim that Japanese people have white skin and his color made him eligible to naturalize under the 1790 law.<sup>69</sup> Ozawa argued that he and other people of Japanese descent were “Yellowish White” on the color spectrum and at least as white as Italians, who were “Brownish White.”<sup>70</sup> In his own words: “Those who live in central and northern part of Japan are much whiter than some of so-called white person [sic] in Hawai‘i.”<sup>71</sup> For Ozawa, the color white did not only signify one’s race, whiteness also reflected personal virtues. Recall that in ancient Japan, white skin was a sign of spiritual and moral purity.<sup>72</sup> As Devon Carbado notes in his legal history of the case, Ozawa argued that his external white skin and his internal white character made him worthy of U.S. citizenship.<sup>73</sup> Whiteness as a signifier for hard work and good moral character was an important feature of the whiteness narrative.<sup>74</sup>

Ozawa’s skin-color arguments had legal precedent. Abba Dolla, an immigrant from India, had successfully passed a skin-color test during his own naturalization case.<sup>75</sup> The presiding judge at Dolla’s naturalization hearing determined that the skin on Dolla’s arms was “several shades lighter than that of his face and hands, and was sufficiently transparent for

course, struck the entire restrictive phrase “free white persons,” but did not. The purpose of this amendment was to purposefully exclude immigration from the Asian continent.

68. *Id.* at 194 (quoting *Naturalization of a Japanese Subject, In re Ozawa*, No. 274, at 14 (D. Haw. 1916) [hereinafter Brief], Ozawa’s self-authored brief to the District Court).

69. *Id.* at 178.

70. *Id.* at 203 (quoting Brief at 15).

71. *Id.* at 203 (quoting Brief at 7).

72. See Hunter, *supra* note 26, at 239.

73. *Id.* at 193–200, 203–05. See also John Tehranian, *Performing Whiteness: Naturalization Litigation and the Construction of Racial Identity in America*, 109 *YALE L.J.* 817, 823 (2000) (observing the emergence of a “dramaturgy of whiteness” where eligibility to naturalize in racial-prerequisite cases like *Ozawa* and *Thind* were dependent on the petitioner’s performance and conformance with White cultural values).

74. Carbado, *supra* note 67, at 189–93 (cataloguing Ozawa’s self-promoted virtues; namely, his education, his disaffiliation with Japan and Japanese American societies, his family’s complete assimilation into U.S. cultural norms, and his Christianity). Ozawa was also a successful business owner. Kaimuki Dry Goods, the store that he and his wife founded in 1926, is still open today. Kaimuki Dry Goods, About Us, <http://www.kaimukidrygoods.com/aboutus.shtml>.

75. *United States v. Dolla*, 177 F. 101, 102 (5th Cir. 1910).

the blue color of the veins to show very clearly.”<sup>76</sup> In his brief to the Supreme Court, Ozawa echoes the *Dolla* court’s focus on skin luminescence, arguing: “the Japanese are lighter than other Asiatics, not rarely showing the transparent pink tint which whites assume as their own privilege.”<sup>77</sup>

Ozawa’s skin-color argument backfired, however. The Court seemed willing to concede that Ozawa’s skin was in fact white, but it was preoccupied with a concern that a skin-color test would topple the existing race hierarchy.<sup>78</sup> If white-skinned Japanese people were recognized as members of the White race under the law, the strict lines of separation that divided the races could become blurred. So the Court rejected Ozawa’s proposed skin-color test, stating:

Manifestly the test afforded by the mere color of the skin of each individual is impracticable, as that differs greatly among persons of the same race, even among Anglo-Saxons, ranging by imperceptible gradations from the fair blond to the swarthy brunette, the latter being darker than many of the lighter hued persons of the brown or yellow races. Hence to adopt the color test alone would result in a confused overlapping of races and a gradual merging of one into the other, without any practical line of separation.<sup>79</sup>

Ultimately, the Court held that Ozawa was “clearly of a race which is not Caucasian and therefore belongs entirely outside the zone [of those eligible to naturalize].”<sup>80</sup>

Maintaining the color line was of critical importance for the Court. Led by Chief Justice William Howard Taft, the Court “generally showed very little concern over issues of racial prejudice.”<sup>81</sup> Over the next five years, the Taft Court would later vote to uphold racially restrictive covenants<sup>82</sup> and racial segregation in public education.<sup>83</sup> Justice George Sutherland, the

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76. *Id.*

77. Carbado, *supra* note 67, at 203 (quoting Supreme Court Brief, in Consulate General of Japan, Documentary History of Law Cases Affecting Japanese in the United States, 1916–1924, at 43 (1978 prtg., 1925)).

78. *Ozawa*, 260 U.S. at 189. “That [Ozawa] was well-qualified by character and education for citizenship is conceded.” *Id.*

79. *Id.* at 197.

80. *Id.* at 198.

81. PETER G. RENSTROM, *THE TAFT COURT: JUSTICES, RULINGS, AND LEGACY* 210 (2003).

82. *Corrigan v. Buckley*, 271 U.S. 323 (1926). The Court’s decision in *Corrigan* is considered by many to have encouraged the proliferation of racially restrictive covenants during the first half of the twentieth century. See, e.g., *1920s–1948: Racially Restrictive Covenants*, <http://www.bostonfairhousing.org/timeline/1920s1948-Restrictive-Covenants.html>.

83. *Gong Lum v. Rice*, 275 U.S. 78 (1927).

author of the *Ozawa* opinion, was a committed nativist who had supported the extension of the Chinese Exclusion Act.<sup>84</sup>

Bhagat Singh Thind, a Sikh man born in India, attempted to exploit the *Ozawa* Court's conflation of "Caucasian" with "White" by arguing that he was eligible for naturalization because he was a member of the Caucasian or Aryan race.<sup>85</sup> Thind had reason to be optimistic about the strength of his legal claims; the contemporary race literature had definitively placed Indians within the category of Caucasian and his petition for citizenship had been granted at the district court level.<sup>86</sup> Moreover, Thind had served honorably in the U.S. Army during World War I, and Congress had recently streamlined the naturalization process for military service members.<sup>87</sup>

Although based on (pseudo) scientific definitions of the races, Thind's arguments failed to win over the Court.<sup>88</sup> Justice Sutherland's opinion again betrays the Court's concern for the color line and separation of the races. Although technically Caucasians, immigrants from South Asia could not rely on assimilation to erase the corporeal marks of their racial difference, Sutherland reasoned: "It is a matter of familiar observation and knowledge that the physical group characteristics of the Hindus render them distinguishable from the various groups of persons in this country commonly recognized as white."<sup>89</sup> The Court therefore rejected the race science of the day to return to a physical-traits test it had just rejected in *Ozawa*.<sup>90</sup>

When asserting their own claims to Whiteness, Asian Americans litigants invariably failed. A third case from the Taft Court era further illustrates this point. The Mississippi state constitution contained a

84. Carbado, *supra* note 67, at 221. Carbado notes that Justice "Sutherland's later opinions were decidedly unfriendly to immigrants," and that Asian immigrants were the most frequent target of his naturalization opinions. *Id.* at 222 n.253 (citing, for example, *Chung Fook v. White*, 264 U.S. 443 (1924)). For comprehensive treatment on Justice Sutherland's career and judicial philosophy, see Samuel R. Olken, *Justice Sutherland Reconsidered*, 62 VAND. L. REV. 639 (2000).

85. *United States v. Bhagat Singh Thind*, 261 U.S. 204, 211 (1923). The question presented to the Court—"Is a high-caste Hindu, of full Indian blood, born in Amritsar, Punjab, India, a white person within the meaning of the [Naturalization Act]?"—misrepresented Thind's identity. He was a Sikh, not a Hindu. Khyati Y. Joshi, *The Racialization of Hinduism, Islam, and Sikhism in the United States*, 39 EQUITY & EXCELLENCE IN ED. 211, 215 (2006).

86. See Carbado, *supra* note 67, at 225–26 (citing IAN HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* 88 (1997)).

87. Carbado, *supra* note 67, at 225 (contrasting common sense attitudes with "scientific" definitions of race).

88. HANEY LÓPEZ, *supra* note 86.

89. *Thind*, 261 U.S. at 215.

90. HANEY LÓPEZ, *supra* note 86.

provision requiring that “[s]eparate schools should be maintained for the children of the white and colored races.”<sup>91</sup> In *Gong Lum v. Rice*,<sup>92</sup> the Chinese American plaintiffs in a pre-*Brown*<sup>93</sup> school desegregation case argued that they were not “colored” and therefore should be allowed to attend “White” schools.<sup>94</sup> The Court ruled against the plaintiffs, finding that Chinese people were not “White” and therefore, that they were “colored” and that the State was not required to provide separate schools for each of the colored races.<sup>95</sup>

Like *Ozawa* and *Thind*, in making their legal arguments, the *Gong Lum* plaintiffs did not raise challenges to the system of White supremacy that subordinates people of color. Instead they argued that the Mongolian race—namely the Chinese—

furnish some of the most intelligent and enterprising people. They certainly stand nearer to the [W]hite race than they do the [N]egro race. If the Caucasian is not ready to admit that the representative Mongolian is his equal he is willing to concede that the Mongolian is on the hither side of the half-way line between the Caucasian and African.<sup>96</sup>

The *Gong Lum* plaintiffs assumed the legitimacy of the established racial hierarchy and sought to induce the court to classify Chinese at the top of that hierarchy, proximate to Whites, with as much distance from Blacks as possible.<sup>97</sup> This choice fits squarely within a familiar observation about the inescapability of the Black/White binary and its corresponding racial hierarchy: “the anti-black world is conditioned by what we can here describe as two principles of value: (1) It is best to be white but (2) above all, it is worst to be black.”<sup>98</sup>

91. *Gong Lum*, 275 U.S. at 82 (1927) (citing Section 207 of the Mississippi Constitution of 1890).

92. *Rice v. Gong Lum*, 139 Miss. 760, 104 So. 105 (1925), *aff'd*, 275 U.S. 78 (1927).

93. *Brown v. Bd. of Ed. of Topeka*, 347 U.S. 483 (1954).

94. *Gong Lum*, 275 U.S. at 81–82.

95. *Id.* at 85, 87 (“a Chinese citizen of the United States . . . is classed among the colored races”).

96. Taunya Lovell Banks, *Both Edges of the Margin: Blacks and Asians in Mississippi Masala, Barriers to Coalition Building*, 5 *ASIAN L.J.* 7, 15 (1998) [hereinafter Banks, *Both Edges*].

97. *Id.* at 27 (stating “The Chinese in Mississippi . . . used the Jim Crow laws to argue for racial separation from Blacks and integration with Whites.”); Robert S. Chang & Jerome M. Culp, Jr., *Business as Usual? Brown and the Continuing Conundrum of Race in America*, 2004 *U. ILL. L. REV.* 1181, 1192–95 (2004); Sora Y. Han, *The Politics of Race in Asian American Jurisprudence*, 11 *ASIAN PACIFIC AM. L.J.* 1, 5–8 (2006) (asserting that “Asian Americans have exercised agency in ways that undermine interracial cooperation.”).

98. Han, *supra* note 97.

According to the ideology of colorism, white skin and Whiteness signifies status and accomplishment, not infrequently purchased by methods of deliberation and self-control. Ozawa, Thind, and Gong Lum made herculean efforts to prove that their individual successes made them like Whites. No amount of effort, however, could prove to the Supreme Court that Asian Americans should be afforded the status of White. That the Asian American petitioners described above may have made what they considered authentic color-based claims to Whiteness is not unproblematic. Claims to Whiteness in this context were rejections of any alliance or allegiance to Blackness and to the Black community. After they lost their legal battle to obtain access to White schools, for example, the Chinese Americans in the Mississippi Delta did not turn to the Black Delta community with whom the Supreme Court had grouped them. Instead, the Mississippi Chinese doubled efforts “to make themselves more acceptable to the White community.”<sup>99</sup> It was a missed opportunity for two racially-subordinated groups in the Mississippi Delta to build an anti-racist campaign together.

#### IV. THE ADVENT OF THE PIGMENTOCRACY

That some Asian Americans might try to claim Whiteness or to alter their physical appearance to conform to cultural norms, even to the point of de-ethnicization, is not startling if understood within the complex dynamics of racial formation. Race is not a fixed identity characteristic, but is, rather, socially constructed and mutable.<sup>100</sup> Racial categories and the meanings ascribed to them can therefore be interrogated with reference to the contingencies of time and space.<sup>101</sup> In the United States, the enslavement of Black Africans by White slave-owners created the necessity for legal regulations of race, and so the Black/White binary became the prevailing paradigm of race discourse. The binary disallowed uncertainty and equivocation. The principle of hypo-descent, or the “one-drop” rule, was created to “avoid the ambiguity of intermediate identity.”<sup>102</sup> Moreover, by relegating mixed-race children to subordinate

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99. Banks, *supra* note 32, at 17.

100. See generally MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES: FROM THE 1960S TO 1990S* (2d ed. 1994).

101. Neil Gotanda, *A Critique of “Our Constitution is Color-Blind”*, 44 *STAN. L. REV.* 1, 6 (1991).

102. Omi & Winant, *supra* note 56, at 11 (quoting MARVIN HARRIS, *PATTERNS OF RACE IN THE AMERICAS* 56 (1964)) (contrasting the hypo-descent rule of the United States with the proliferation of “intermediate” race categories in Latin America).



status, the one-drop rule also functioned as an engine in the production of new slaves once the Atlantic slave trade had ended.<sup>103</sup>

This binary system was, of course, never inviolate. The racial categories Black and White have always been unstable and contested. People who were born Black under the one-drop rule often “passed” over the color line, relying on their light skin color and other racially ambiguous features to gain entrance into White society.<sup>104</sup> A similar crossing occurred when European immigrants who were not racialized as White upon entry to the United States eventually assimilated and “became” White.<sup>105</sup>

As these examples demonstrate, if the lens through which race is viewed captures only Black and White, one-way crossings over the two categories can be facilitated, but this view also renders invisible those peoples who exist between those two poles.<sup>106</sup> The Black/White binary threatens to erase the lived experiences of non-Black peoples of color.<sup>107</sup> Neither Black nor White, racial intermediate groups like Asian Americans, Latinos, and Native peoples frequently lack both visibility (and thus political power) as well as the legal language to articulate valid discrimination claims.<sup>108</sup>

The long-term viability of the Black/White binary has been put into doubt, however. Scholars across the disciplines have predicted that the binary will become anachronistic in the near future, and a new and more

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103. See Brown, *supra* note 11.

104. See generally ALLYSON HOBBS, *A CHOSEN EXILE: A HISTORY OF RACIAL PASSING IN AMERICAN LIFE* (2014).

105. See generally IGNATIEV, *supra* note 8.

106. Leslie Bow uses the notion of “racial interstitiality” to frame her study of Asian Americans in the Jim Crow South. LESLIE BOW, *PARTLY COLORED: ASIAN AMERICANS AND RACIAL ANOMALY IN THE SEGREGATED SOUTH* 8–12 (2010).

107. Janine Young Kim, Note, *Are Asians Black? The Asian-American Civil Rights Agenda and the Contemporary Significance of the Black/White Paradigm*, 108 *YALE L.J.* 2385, 2387–88 (1999) (citing the work of Michael Omi & Howard Winant, Robert S. Chang, and Juan Perea); Gotanda, *Miss Siagon*, *supra* note 15, at 1090–91; Juan F. Perea, *The Black/White Binary Paradigm of Race: The “Normal Science” of American Racial Thought*, 85 *CAL. L. REV.* 1213 (1997).

108. See, e.g., TANYA KATERÍ HERNÁNDEZ, *RACIAL SUBORDINATION IN LATIN AMERICA: THE ROLE OF THE STATE, CUSTOMARY LAW, AND THE NEW CIVIL RIGHTS RESPONSE* 9–11 (2013) (describing the quality of “racial innocence” that imbues the general societal refusal in Latin America to acknowledge the existence of structural racism and its the “myth of mestizaje” that supports this denial); Tanya Katerí Hernández, *Multiracial Matrix: The Role of Race Ideology in the Enforcement of Antidiscrimination Laws, a United States-Latin America Comparison*, 87 *CORNELL L. REV.* 1093, 1157 (2002); Eduardo Bonilla-Silva & David Dietrich, *We Are All Americans!: The Latin Americanization of U.S. Race Relations: A New Pigmentocracy*, in *SHADES OF DIFFERENCE*, *supra* note 26, at n.9, n.11 (asserting that the mestizaje myth “help maintain the traditional racial hierarchy by hiding the fact of racial division and racial rule”).

complex racial hierarchy based on gradations of color will take its place.<sup>109</sup> Sociologists Eduardo Bonilla-Silva and David Dietrich propose a pigmentocracy model, in which race relations in the United States will begin to more closely resemble Latin America's.<sup>110</sup> That is, existing racial stratification will become more variegated, allowing for more gradations of color within a spectrum bounded at one end by White and at the other by Black. Yet even in the pigmentocracy model, Whites still occupy the most privileged position in terms of power, wealth, and social standing.<sup>111</sup> These material benefits are unevenly distributed across the color spectrum, and in decreasing amounts the closer one's skin color matches those identified as "Black."<sup>112</sup>

Under the pigmentocracy model, some Asian American groups fall into an intermediary category labeled "Honorary White."<sup>113</sup> For Bonilla-Silva, the creation of an intermediary group like "Honorary White" is a hegemonic strategy;<sup>114</sup> installing a buffer group between Black and White aids in the maintenance of White dominance.<sup>115</sup> Under this system of pigmentocracy, inequality will actually worsen<sup>116</sup> but creation of the intermediary category allows Whites to remain at the top of the social structure, and insulates them from race-based challenges to the equality gap.<sup>117</sup>

Bonilla-Silva finds proof of the coming pigmentocracy in the already-existing and ever-widening socioeconomic gaps between the groups he identifies as Whites, Honorary Whites, and the Collective Black.<sup>118</sup> Honorary White Asian Americans (e.g., Japanese, Koreans, Chinese) have outpaced the socioeconomic gains made by Asian American groups in the

109. See, e.g., Hernández, *supra* note 108, at 1098 (2002) (predicting that the "multiracial matrix" characteristic of race discourse in Latin America is soon bound to take root in the United States); Harris, *supra* note 26, at 4 ("[I]n the coming era, the highest status will not be whiteness itself, but a color status that is light without being white."); Bonilla-Silva & Dietrich, *supra* note 108, at n.10. See also Eduardo Bonilla-Silva, *We are all Americans!: the Latin Americanization of racial stratification in the USA*, 5 RACE & SOCIETY 3, 5 (2002).

110. "Pigmentocracy refers to the rank ordering of groups and members of groups according to phenotype and cultural characteristics." Bonilla-Silva & Dietrich, *supra* note 108.

111. Bonilla-Silva, *supra* note 109, at 5.

112. *Id.*

113. *Id.* See also Wu, *supra* note 22, at 249 (employing the terms "honorary whites" and "constructive blacks" to describe the contingent positioning of Asian Americans in the racial hierarchy).

114. See OMI & WINANT, *supra* note 100, at 67.

115. Bonilla-Silva, *supra* note 109, at 5.

116. *Id.* at 6; HERNÁNDEZ, *supra* note 108.

117. Bonilla-Silva, *supra* note 109, at 13. See also Part V (discussing the Model Minority Myth).

118. Bonilla-Silva, *supra* note 109, at 6 (using the term "tri-racial order" here).

collective Black (e.g., Vietnamese, Cambodian, Hmong).<sup>119</sup> Social psychologists believe that recognition of the differences “in income, occupational status, and education” contribute to identity and group formation.<sup>120</sup> The empirical data is only one source of the identity work needed to reify the Honorary White category, however. In addition to recognizing these group distinctions, potential entrants to the intermediary group must also make meaning of them.<sup>121</sup> Awareness of differences and the assignment of normative values to those differences propels the process by which distinctions between groups become racialized and understood by both members of the nascent intermediary group and Whites alike.<sup>122</sup>

According to Bonilla-Silva, as this process takes place, those in the formative intermediary group begin to take on “White-like . . . attitudes.”<sup>123</sup> In the Asian American community, the heritage of colorism facilitates the claimed distinctions between lighter-skinned, socioeconomically privileged groups and darker-skinned, socioeconomically disadvantaged groups. The sense of belonging to the Honorary White group is then reinforced by the superordinate group. Whites already report more positive associations with groups in the Honorary White category than they do those in the Collective Black.<sup>124</sup> And the mixed-race children of White and Asian couples are twice as likely to be classified as White compared to the children of Black and White couples.<sup>125</sup>

## V. REJECTING WHITENESS

When Asian Americans made legal claims to Whiteness in the past, courts rejected those claims in order to maintain the strict separation of the races along the Black/White binary. In the context of the coming pigmentocracy, however, Honorary White status can be read as a sort of

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119. *Id.* at 7 table 1.

120. *Id.* at 8.

121. *Id.*

122. *Id.* When surveyed, Whites report they hold Asian Americans in higher social regard than Latinos. Bonilla-Silva & Dietrich, *supra* note 109, at n.56.

123. Bonilla-Silva, *supra* note 109, at 8.

124. *Id.*

125. *Id.* at 10. Gender may play a role here. In the United States, White-Asian couples are more likely to be composed of a White man and an Asian woman. Wendy Wang, *The Rise of Inter-marriage: Rates, Characteristics Vary by Race and Gender*, Pew Research Center, at <http://www.pewsocialtrends.org/2012/02/16/the-rise-of-intermarriage/?src=prc-headline>. If these couples follow Western tradition, their children will take on their father's last name. See Nancy Leong, *Half/Full*, 3 U.C. IRVINE L. REV. 1125, 1135 (2013).

invitation to Whiteness, which Asian Americans are positioned to either accept or reject. But the terms of such a bargain should be made clear. Accepting Honorary White status will not cure structural inequalities that subordinate all people of color nor will it shield Asian Americans from the microaggressions of everyday racism.

*A. The Model Minority Myth and the Affirmative Action Debate*

The O'Reilly quote in the Introduction to this Article is a typical exposition of the Model Minority Myth (the Myth). In the context of the pigmentocracy, the Myth is perpetrated by Whites against the Collective Black to maintain the established social order by creating space for an intermediary group of Honorary Whites.<sup>126</sup> The Myth is the origin story of the Honorary White group. According to the Myth, Honorary Whites (i.e., light-skinned Asian Americans) have achieved educational and economic success because of their individual efforts.<sup>127</sup> The Myth further provides that, without assistance from the State and despite experiencing virulent racism in the past, Asian Americans have managed not only to reach parity with Whites, but according to a variety of indicators, to have surpassed them.<sup>128</sup>

But the Myth is a myth, and it was concocted to serve a specific social purpose.<sup>129</sup> The term was coined in 1966 after William Petersen published an article in *The New York Times Magazine* called "Success Story, Japanese-American Style."<sup>130</sup> In touting the significant accomplishments of Japanese Americans in the twenty years after World War II, Petersen presented Asian Americans and Black Americans as foils to each other's minority group experience.<sup>131</sup> Although both groups faced "color prejudice," Peterson claimed, Japanese Americans were doing "better than any other group in our society, including native-born whites."<sup>132</sup> Unlike other "problem minorities," Petersen asserted, Japanese Americans relied on their own bootstraps—hard work and education—to obtain higher

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126. Wu, *supra* note 22, at 231.

127. *Id.* at 244–45.

128. *Id.*

129. *Id.*

130. William Petersen, *Success Story, Japanese-American Style*, N.Y. TIMES MAG., Jan. 9, 1966, at 20.

131. *Id.*

132. *Id.* at 21.

employment levels than White Americans and lower crime rates than Black Americans.<sup>133</sup>

Petersen's article was published in the wake of two major successes of the Black-led Civil Rights Movement—the 1964 Civil Rights Act<sup>134</sup> and the 1965 Voting Rights Act.<sup>135</sup> These civil rights achievements coincided with another Congressional triumph—the 1965 Immigration and Nationality Act.<sup>136</sup> The 1965 immigration law allowed for an unprecedented wave of Asian immigrants to enter the United States.<sup>137</sup> Previously denied entry because of racially exclusionary laws, post-1965 Asian immigrants were beneficiaries of the U.S. government's new immigration policy focused on family reunification and recruitment of highly-skilled workers.<sup>138</sup> At this time in U.S. history, not only were people of color growing in numbers, they were now able to exercise political power. Radical Black Power and other People's Liberation movements that sought to expose institutional racism and the breadth of White supremacy were gaining traction in mainstream society.<sup>139</sup> Among the radical visions that accompanied these times were statements of self-love—*Black is beautiful*; *Brown Pride*—that challenged Eurocentric standards of beauty.<sup>140</sup>

The Model Minority Myth was designed to mollify the societal tensions brought to the fore by these burgeoning social movements. The success of Asian Americans was intended to serve as proof that racism was not to blame for the failure to achieve the American Dream. Rather, the Myth promoted the notion that poor conditions in Black communities

133. See *id.* at 20–21, 36, 40. See also DANIEL PATRICK MOYNIHAN, *THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION* 29–31 (1965) (blaming poverty in Black communities on the rise of single-parent families and Black matriarchal society). Moynihan found further support for his thesis by contrasting what he observed as the comparable stability of nuclear families in the Japanese American community. ELLEN D. WU, *THE COLOR OF SUCCESS: ASIAN AMERICANS AND THE ORIGINS OF THE MODEL MINORITY* 171–72 (2013).

134. Pub. L. 88-352, 78 Stat. 241 (July 2, 1964).

135. Pub. L. 89-110, 79 Stat. 437 (Aug. 6, 1965).

136. Pub. L. 89-236, 79 Stat. 911 (Oct. 3, 1965).

137. Gabriel J. Chin, *The Civil Rights Revolution Comes to Immigration Law: A New Look at the Immigration and Nationality Act of 1965*, 75 N.C. L. REV. 273, 317–21 (1996).

138. *Id.* at 281–82, 317–21.

139. HELEN HERAN JUN, *RACE FOR CITIZENSHIP: BLACK ORIENTALISM AND ASIAN UPLIFT FROM PRE-EMANCIPATION TO NEOLIBERAL AMERICA* 128 (2011).

140. Joanne L. Rondilla, *Filipinos and the Color Complex: Ideal Asian Beauty*, in *SHADES OF DIFFERENCE*, *supra* note 26, at 67–68; TA-NEHISI COATES, *BETWEEN THE WORLD AND ME* 35–36 (2015) (“Black is beautiful—which is to say that the black body is beautiful, that black hair must be guarded against the torture of processing and lye, that black skin must be guarded against bleach, that our noses and mouths must be protected from modern surgery.”).

were the result of Black cultural inadequacies.<sup>141</sup> Positioned as a wedge in a social system that subordinates Black people, many—though not all—Asian American groups thrived.<sup>142</sup>

The myth of the Asian model minority has endured. For twenty years after Petersen’s article, “the media presented virtually no other image of Asian Americans.”<sup>143</sup> All Asians groups were viewed and treated as equivalent as a result of this singular image of success. Gradually, the Myth also laid the foundation for “reverse-discrimination” claims raised in political and judicial fora.

Asian Americans have become the new face of the affirmative action debate. In 2014, the California state senate was prepared to vote on an initiative (SCA-5) that would reverse the effects of Proposition 209 and restore the ability of universities to consider race as a factor in admissions decisions.<sup>144</sup> The measure was aimed at increasing the numbers of Latinos, African Americans, and Native American students in the public university system, populations which had dropped precipitously after 2009.<sup>145</sup> Although a majority of Asian Americans support affirmative action,<sup>146</sup> vocal and well-organized Chinese American groups quashed the state senate’s efforts.<sup>147</sup> The anti-SCA-5 campaign included misleading statements characterizing the measure as a racial quota, and its constituents effectively lobbied three key Asian American senators, killing the bill.<sup>148</sup>

In the courts, Asian American advocacy groups submitted four amicus briefs to the Supreme Court to help it decide a challenge to the University of Texas’s (UT’s) race-conscious undergraduate admissions process—two in support of the Petitioner Abigail Fisher<sup>149</sup> and two in support of UT.<sup>150</sup>

141. See MOYNIHAN, *supra* note 133; WU, *supra* note 133.

142. *Id.*

143. Wu, *supra* note 22, at 238. See also Gotanda, *Miss Saigon*, *supra* note 15 (explaining how the Model Minority Myth further disabled the Asian American community by obscuring anti-Asian racial prejudice).

144. See Steven Hsieh, *Effort to Revive Affirmative Action in California Splits Asian-American Community*, THE NATION (Mar. 18, 2014), <http://www.thenation.com/blog/178876/how-insurgent-asian-american-groups-helped-republicans-kill-affirmative-action-californi>.

145. *Id.*

146. KARTHICK RAMAKRISHNAN & TAEKU LEE, VIEWS OF A DIVERSE ELECTORATE: OPINIONS OF CALIFORNIA REGISTERED VOTERS IN 2014 8–10 (2014), available at <http://www.naasurvey.com/resources/Home/NAAS-Field-2014-final.pdf>.

147. *Id.*

148. See *id.*

149. Asian American Legal Foundation and The Judicial Education Project; Asian American Legal Foundation.

150. Brief of Amici Curiae Asian American Pacific Legal Center, Asian American Institute, Asian Law Caucus, Asian American Justice Center in Support of Appellees and in Affirmance of the District

Fisher's amici argued that UT's admissions process amounted to unlawful "racial balancing," which, they argued, has a discriminatory impact on Asian Americans.<sup>151</sup> Amici for UT directly challenged the assertion that UT's admissions process disadvantaged Asian American students in any way.<sup>152</sup> Moreover, the Asian American Legal Defense Fund argued that the UT policy of race-conscious, individualized review was beneficial to all students,<sup>153</sup> but in particular to Asian Americans and Pacific Islanders.<sup>154</sup>

After the Supreme Court's 2014 ruling in *Fisher*, the future of race-conscious admissions policies in higher education is in doubt.<sup>155</sup> The next test may come from an Asian American plaintiff. In December 2014, Students for Fair Admissions (SFFA), an Austin-based group, filed two lawsuits challenging undergraduate admissions policies at Harvard University and the University of North Carolina, Chapel Hill (UNC).<sup>156</sup> In order to find suitable plaintiffs for these complaints, SFFA launched a widespread advertising campaign targeting Asian Americans.<sup>157</sup> Billboards and posters proclaimed: "Were You Denied Admission to the University of Wisconsin-Madison? It may be because you're the wrong race."<sup>158</sup> A

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Court Judgment, *Fisher v. Univ. of Texas*, No. 09-50822 (5th Cir. 2011) (brief filed Mar. 11, 2010); Brief of Amici Curiae Members of Asian Americans Advancing Justice, et al. in Support of Respondents, *Fisher v. Univ. of Texas*, 133 S. Ct. 2411 (2013) (No. 11-345) (brief docketed Aug. 13, 2012).

151. *See, e.g.*, AALF Brief at 2, 15–17.

152. AALDEF Brief at 7–24.

153. *Id.* at 37–38.

154. *Id.* at 25–36.

155. On June 29, 2015, the Supreme Court granted certiorari in *Fisher II*. *See* [http://www.supremecourt.gov/orders/courtorders/062915zor\\_4g25.pdf](http://www.supremecourt.gov/orders/courtorders/062915zor_4g25.pdf); Lyle Denniston, *The Mystery of Fisher II Review*, SCOTUSBLOG (July 21, 2015, 12:09 AM), <http://www.scotusblog.com/2015/07/the-mystery-of-fisher-ii-review/>. *See also* Vinay Harpalani, *Narrowly Tailored But Broadly Compelling: Defending Race-Conscious Admissions After Fisher*, 45 SETON HALL L. REV. (forthcoming 2015) (arguing that because the Court affirmed diversity as a compelling interest and has shown deference to universities in defining their educational missions, race-conscious admissions policies will survive further constitutional scrutiny).

156. In July 2015, the U.S. Department of Education dismissed a related complaint. Chris Fuchs, *Asian American Race-Based Complaint Against Harvard Dismissed*, NBC NEWS, (July 8, 2015), <http://www.nbcnews.com/news/asian-america/asian-american-race-based-complaint-against-harvard-dismissed-n388576>.

157. Theodore R. Delwiche, *'Harvard Not Fair' Seeks Rejected Applicants for Race-Based Affirmative Action Suit*, THE HARVARD CRIMSON (Apr. 24, 2014, 12:28 PM), <http://www.the-crimson.com/article/2014/4/24/race-admissions-lawsuit-website/>. When interviewed about the websites, Edward Blum, the founder of SFFA said: "We are highly confident that during the course of a case in which admission records are examined, emails are examined, admissions officers are deposed, we will uncover a systematic program of limiting Asians to a specific a percentage year after year after year." *Id.*

158. University of Wisconsin Not Fair, *available at* <http://uwnotfair.org/>.

photo of a young, earnest-looking Asian American woman in a business suit is displayed next to this message. The pattern repeats on two analogous sites seeking applicants who were denied admission to Harvard and UNC.<sup>159</sup>

### *B. Interracial Coalition Building*

Under the pigmentocracy model described above, as Honorary Whites grow in number and status, the intermediary group will more readily serve as a buffer of interracial conflict.<sup>160</sup> As the Model Minority Myth demonstrates, the success of those groups holding intermediary status will provide fertile ground for allowing colorblind ideology to take root and flourish.<sup>161</sup> Bonilla-Silva fears that entrenchment of colorblind ideology will produce the same effects in the rest of civil society, potentially leading to Latin American-like disgust for discussions about “race,”<sup>162</sup> and concludes: “We need to short-circuit the belief in near-whiteness as the solution to status differences and create a coalition of all ‘people of color’ and their White allies.”<sup>163</sup>

Yet, it is not a *fait accompli* that Asian Americans will leave the ranks of people of color for the privileges of Honorary Whiteness.<sup>164</sup> Asian American groups continue to champion the cause of affirmative action<sup>165</sup> and humane immigration law reform.<sup>166</sup> After 9/11, the Japanese American Citizens League (JACL) was one of the first national organizations to publicly oppose the indefinite detention of suspected terrorists.<sup>167</sup> The JACL remains a staunch defender of civil liberties, and opposed the 2011 National Defense Authorization Act that codifies the Executive’s powers to indefinitely detain U.S. citizens.<sup>168</sup> Each of these events has important

159. Harvard University Not Fair, at <http://harvardnotfair.org/>; UNC Not Fair, at <http://uncnotfair.org/>.

160. Bonilla-Silva, *supra* note 109, at 11.

161. *Id.* at 12.

162. *See id.*

163. *Id.* at 13.

164. PAWAN DHINGRA & ROBYN MAGALIT RODRIGUEZ, *ASIAN AMERICA: SOCIOLOGICAL AND INTERDISCIPLINARY PERSPECTIVES* (2014) (on social movements and identity).

165. *See Fisher v. Univ. of Texas*, *supra* note 150.

166. Jose Antonio Vargas, *My Life as an Undocumented Immigrant*, N.Y. TIMES MAG. (June 22, 2011), <http://www.nytimes.com/2011/06/26/magazine/my-life-as-an-undocumented-immigrant.html?pagewanted=all> (“coming out” as an undocumented immigrant from the Philippines).

167. *Japanese American Citizens League History*, <https://www.jacl.org/about/history/> (last visited June 17, 2015).

168. *See* Letter to Senator from JACL Executive Director S. Floyd Mori, Re: Opposition to Indefinite Detention Without Charge or Trial Provisions in S. 1253, the National Defense Authorization Act for Fiscal Year 2012, Sept. 19, 2011, available at <https://pmrks.com/16e822>.



implications about the future of interracial coalitions for race equality and social justice. Interracial coalitions for racial justice are impossible, however, “so long as each group constantly seeks to improve its position in the racial hierarchy by appeasing Whites.”<sup>169</sup>

Asian Americans are strategically poised to credibly articulate a racial justice narrative that exposes historical race-based deprivations and, on this platform, to advocate for appropriate remedial measures for ourselves and for other peoples of color. Asian Americans were historically excluded by racial segregation, but have materially benefited from the Black-led civil rights struggles to integrate educational institutions.<sup>170</sup> Yet some Asian American groups—Hmong, Cambodians, Laotians, and Vietnamese—remain underrepresented in higher education and stand to gain ground through race-based affirmative action programs.<sup>171</sup> In accessing higher education through affirmative action policies, Asian Americans will not lose ground to Blacks and Latinos.<sup>172</sup> The same is true of race-conscious hiring practices in private businesses and in government.

Honorary White identity offers only the illusion of the power and status associated with Whiteness because, in the pigmentocracy, the superordinate group always maintains its dominant position. Taking a stance in favor of affirmative action would necessarily mean rejecting the invitation to Honorary White status in favor of interracial coalition building with Black Americans and other peoples of color.<sup>173</sup> It is a recognition that the intermediate status accorded to Honorary Whites is not really about access to the privileges of Whiteness, but is instead complicity in a color and race hierarchy that devalues Blackness. When Asian Americans reject this formulation, it is one way to communicate the belief that Black and Brown lives have value; that Black lives matter.

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169. Banks, *supra* note 96, at 11.

170. See, e.g., Joyce Kuo, *Excluded, Segregated and Forgotten: A Historical View of the Discrimination of Chinese Americans in Public Schools*, 5 *ASIAN L.J.* 181, 2011 (1998).

171. Matt Krupnick, *These Groups of Asian-Americans Rarely Attend College, but California Is Trying to Change That*, PBS NEWS HOUR (May 21, 2015, 1:57 PM), <http://www.pbs.org/newshour/updates/these-groups-of-asian-americans-rarely-attend-college-but-california-is-trying-to-change-that/>.

172. Wu, *supra* note 22, at 226.

173. Cf. Kim, *supra* note 107, at 2395 (warning that would-be Honorary Whites ought to “keep in mind that although the status of honorary white does affect identity, recognition, and appellation, its more insidious function is cooptation.”).

C. #Asians4BlackLives<sup>174</sup>

On February 11, 2015, the Brooklyn District Attorney filed an indictment against New York police officer Peter Liang, charging him with manslaughter in the second degree.<sup>175</sup> The previous November, while on vertical patrol in a Brooklyn housing project, Officer Liang fired his gun in a dark stairwell.<sup>176</sup> The bullet ricocheted off a wall and entered the chest of twenty-eight-year-old Akai Gurley, killing him.<sup>177</sup> Gurley became yet another victim in the long list of police killings of unarmed Black people that has come to dominate the nightly news. The wrinkle in this too-familiar narrative is that Officer Liang is Chinese American.

The Asian American community reacted to Liang's indictment in various ways. A group of Chinese Americans organized a petition, demanding that the indictment be withdrawn.<sup>178</sup> Over 100,000 people signed the petition, which favorably compared the Gurley shooting to the police-involved deaths of Michael Brown and Eric Garner.<sup>179</sup> Because the unindicted police in the latter two cases were White, the petition declares that Liang is being scapegoated because he is not White.<sup>180</sup> By contrast, CAAAV: Organizing Asian Communities (CAA AV), an Asian American non-profit advocacy group, released a statement supporting the Liang indictment, and drawing attention to the systemic problem of police impunity.<sup>181</sup> In April 2015, fifty additional Asian American groups joined

174. #Asians4BlackLives, #Asians4BlackLives Statement on #Shutdown—Action to End the War on Black People, TUMBLR (Dec. 14, 2014), <http://a4bl.tumblr.com/post/105271466654/asians4blacklives-statement-on-shutdown>.

175. *Indictment of Officer Peter Liang in the Death of Akai Gurley*, N.Y. TIMES, (Feb. 11, 2015), <http://www.nytimes.com/interactive/2015/02/11/nyregion/indictment-akai-gurley-death.html>.

176. “Vertical patrols, in which officers sweep hallways and staircases sometimes with guns drawn, have been a staple of policing the projects.” J. David Goodman & Vivian Yee, *Officer Debated Reporting Shot in Brooklyn Stairwell, Officials Say*, N.Y. TIMES (Feb. 12, 2015), <http://www.nytimes.com/interactive/2015/02/11/nyregion/indictment-akai-gurley-death.html>.

177. See J. David Goodman, *2 Young Men, a Dark Stairwell and a Gunshot*, N.Y. TIMES (Nov. 24, 2014), <http://www.nytimes.com/2014/11/24/nyregion/police-tactic-scrutinized-after-accidental-shooting.html>.

178. *Demand Brooklyn District Attorney Kenneth P. Thompson To Withdraw Indictment Against Asian Minority Officer Peter Liang!*, <https://petitions.whitehouse.gov/petition/demand-brooklyn-district-attorney-kenneth-p-thompson-withdraw-indictment-against-asian-minority-officer-peter-liang>.

179. *Id.*

180. *Id.*; Vivian Yee, *Indictment of Police Officer Divides Chinese-Americans*, N.Y. TIMES, Feb. 22, 2015, <http://www.nytimes.com/2015/02/23/nyregion/in-new-york-indictment-of-officer-peter-liang-divides-chinese-americans.html>.

181. *CAA AV Statement to Asian and Asian American Communities on the Murder of Akai Gurley by NYPD Officer Peter Liang*, CAA AV: ORGANIZING ASIAN COMMUNITIES, 2015, <http://caaav.org/caaav-statement-to-asian-and-asian-american-communities-on-the-murder-of-akai-gurley-by-nypd-officer-peter-liang>.

CAAAV and published an open letter (in English and Chinese).<sup>182</sup> The letter read, in part: “The fact that Officer Liang is Asian American shouldn’t mean that we . . . support him unequivocally. Quite the opposite—it should compel us to think about what justice looks like and how Asian Americans can contribute to the movement for police accountability and broader racial justice.”<sup>183</sup> Both responses indicate an awareness of how proffered Honorary White status inflicts harm on the Asian Americans grouped together in that intermediate race category. But whereas the petition signers are narrowly focused on the negative impact on Officer Liang as a Chinese American, CAAAV and its coalition members have articulated a broader perspective, connecting anti-Black police violence to systemic flaws in political and economic structures, of which the criminal justice system is just one part.<sup>184</sup>

## VI. CONCLUSION

Although the Black/White binary is the dominant framework for understanding interracial relations in the United States, successful coalition work between different peoples of color requires an understanding of how an intermediate group labeled “Honorary Whites” can be manipulated by the existing power elites to maintain a system of racial subordination. Affirmative action and movements for police accountability in the face of racialized violence targeting Black bodies are two of the multitude of contemporary issues on which Asian Americans can assert their collective voice in coalition and alliance with other communities of color. The work of building and maintaining interracial coalitions is not easy and is always fraught with complicated questions of shared and divergent interests, but the choice to engage in this work recognizes that peoples of color share many struggles and are more capable of addressing those shared struggles as an organized assembly.

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182. *#JusticeforAkaiGurley National Sign-on Letter*, CAAAV: ORGANIZING ASIAN COMMUNITIES, 2015, <http://caav.org/justiceforakaigurley-national-sign-on-letter>. See also Beyersdorf, Mark Ro Beyersdorf, *Press Release: 50+ Asian American & Pacific Islander Groups Release Open Letter Supporting Justice for Akai Gurley and the Indictment of NYPD Officer Peter Liang*, CAAAV: ORGANIZING ASIAN COMMUNITIES, Apr. 23, 2015, <http://caav.org/open-letter-press-release> (accompanying press release).

183. *Id.*

184. *Id.*