Reprinted from the

New York University Annual Survey of American Law

DESICRIT: THEORIZING THE RACIAL AMBIGUITY OF SOUTH ASIAN AMERICANS

Vinay Harpalani

DESICRIT: THEORIZING THE RACIAL AMBIGUITY OF SOUTH ASIAN AMERICANS

VINAY HARPALANI*

ABSTRACT

This Article analyzes the racial ambiguity of South Asian Americans—peoples whose ancestry derives from the Indian subcontinent—and has two major aims. First, it provides a comprehensive account of the racialization of South Asian Americans (Desi) a group that legal scholars have not considered at any length in the

Associate Professor of Law, Savannah Law School. J.D. 2009, N.Y.U. School of Law; Ph.D. 2005, University of Pennsylvania. In 2013, I presented this Article at the Yale Law School Critical Race Theory Conference, the Advanced Critical Race Theory Workshop at UCLA School of Law, and the Conference of Asian Pacific American Law Faculty. Much earlier versions were presented at the Latina and Latino Critical Legal Theory, Inc. (LatCrit) XIII conference, the annual meetings of the Law and Society Association and the American Sociological Association, the "Can 'People of Color' Become a United Coalition" Symposium at N.Y.U. School of Law, "Global and Local Dimensions of Asian America: An International Conference on Asian Diasporas" at the University of California, Berkeley, and the Asian American Studies Colloquium and the Interdisciplinary Studies in Human Development Proseminar at the University of Pennsylvania. Earlier versions of this Article also won writing prizes from LatCrit and from the National Association of Ethnic Studies. IIT Chicago-Kent College of Law provided financial and logistical support for this work from July 2012 to June 2014. The Fred T. Korematsu Center for Law and Equality provided similar support from August 2010 to May 2012, while I was the Korematsu Teaching Fellow at Seattle University School of Law. I would like to thank Professors Devon Carbado (and his students), Robert Chang, Richard Delgado, Neil Gotanda, Eduardo-Bonilla-Silva, Raymond Gunn, Peter Huang, Thomas Joo, Brant Lee, Rosane Rocher, Christopher Schmidt, and Karen Shimakawa for helpful comments on various drafts of this Article. Tom Gaylord and Kathryn Kuhlenberg provided valuable research assistance, and Brittany Jones and Adrienne Lucas also assisted me in completing the Article. Student members of the N.Y.U. Annual Survey of American Law were also very helpful. Alex Gorman and Patrick Totaro provided insightful feedback as the development and article editor of this Article, respectively. Several other staff editors also assisted with its completion. Finally, the late Professor Derrick Bell and his wife, Ms. Janet Dewart Bell, supported my work in immeasurable ways, particularly while I was the Derrick Bell Fellow at N.Y.U. School of Law from September 2009 to June 2010. Well before I met him, Professor Bell's pioneering scholarship in Critical Race Theory inspired me to go into the legal academy. It is rewarding for me that this Article is published in the N.Y.U. Annual Survey of American Law issue dedicated to Professor Bell.

rubric of American racial dynamics. The experiences of South Asian Americans are unique in the variety of racial classifications and characterizations they present, including in the U.S. Supreme Court case *United States v. Thind*, the "model minority" stereotype, "flying while brown" instances of racial profiling, and former Virginia Senator George Allen's "macaca" remark in 2006. Analysis of South Asian American racialization adds many general insights to Critical Race Theory (CRT), and this Article introduces "DesiCrit," focusing on South Asian Americans as racially ambiguous beings, to go alongside LatCrit, AsianCrit, and TribalCrit. The analysis here covers the formal classification of South Asian Americans as white and non-white, and also examines informal racial characterizations of South Asian Americans as model minorities, mystical foreigners, and malleable scapegoats more generally.

By analyzing South Asian American racialization, this Article aspires to its second major aim: beginning the synthesis of a general theoretical framework to analyze racial ambiguity of individuals and groups. In the process, this Article draws not only from CRT, but also from sociological theories of racialization, ethnic studies, historical and philosophical work on race and racial identity, and whiteness studies. It delineates formal and informal modes of racialization, extending racialization theory past the creation of legal categories to racial symbols and performative notions of race. This Article expands the discourse on racial status hierarchies by examining the agency of racialized actors, analyzing not only ascriptions of racial status by others, but also proactive claims to racial status by such actors. Also, this Article highlights the importance of "racial microclimes": local historical and political climates that impact racialization, particularly for ambiguous groups and individuals. Finally, while this Article is a full account of South Asian American racial ambiguity, it also posits broader implications of this analysis for examining American racial hierarchy and dynamics more broadly.

Introd	lucti	on	80
I.	So	uth Asians in the United States: An Overview	90
	A.	Definitions and Use of Terminology	90
		1. "South Asian American"	90
		2. "Desi" and "DesiCrit"	92
	В.	Changing Demographics and Increasing	
		Visibility	92
		1. Population and Regional Distribution	92

		2. Economic, Educational, and Occupational	_
		Diversity	9
		3. Varying Media Images: From Apu to Sanjay	0
	\mathbf{C}	Gupta to M.I.A. to Bobby Jindal	9
	C.	Racial Ambiguity of South Asian Americans: A	10
II.	Th		10 10
11.	A.		10
	11.		11
		0	11
	В.		11
	ъ.		11
		2. Claims and Ascriptions	11
		3. Preliminary Synthesis: Racialization via Claims	
		, ,	11
	C.		12
III.	To	Be or Not to Be White: Formal Racialization of	
	Sou		12
	A.	U.S. Immigration Policy I: The Yellow Peril and	
			12
	В.	Racial Prerequisite Cases Involving South Asian	
			12
			12
			12
			12
		4. In re Sadar Bhagwab Singh, In re Mohan Singh,	10
	C.		12
	C.	Caucasian but Not White: Ozawa v. United States, United States v. Thind, and the Aftermath	12
	D.	"White by Law" Revisited?: Census Classification	14
	<i>D</i> .		13
IV.	Fre	om Model Minority to "Macaca": Informal	
1 7 .			13
	A.	"How Does it Feel to Be a Solution?": South	
		Asian Americans and the Model Minority	
			13
		1. U.S. Immigration Policy II: State Selection	
			14
		2. Underemployment and the Glass Ceiling	14
		3. Model Minorities, South Asian Politics, and	
		1	14
	В.	Coloring Conservativism: Claims and Negations of	
		I I are a marry Milait are aga	1 4

		1.	Bobby Jindal	149
		2.	Nikki Haley	153
		3.	Intersection of Foreignness, Racial Ambiguity,	
			and the Model Minority Stereotype	155
	C.	Rad	cing Religion: Of Hated Hindoos, Spiritual	100
	٠.	Swamis, and Turbaned Terrorists		
		1.		157
		1.	Hindu Racism	157
		2.	New Age Orientalism: South Asians as	157
		۷٠	Mystical, Exotic Foreigners	159
		3.	Arab and South Asian Americans as	133
		٥.	Turbaned Terrorists	161
	D	Bro	own Skin, Black Masks	163
	υ.	1.	Bengali Harlem	165
		2.	Hip Hop Desis	169
		3.	The N-Word and the M-Word: Anti-Black	103
		Э.		174
V.	Crrs	, tha	Epithets Directed at South Asians	$174 \\ 178$
٧.	•		sis and Conclusion	178
	A.		jor Aims of This Article	
		1.		178
	ъ	2.	Theorizing Racial Ambiguity	179
	В.		oader Implications for American Racial	101
			erarchy	181
		1.	Contextual and Relational Character of	101
		0	Racialization	181
		2.	,	100
		_	Paradigm	182
		3.	Emphasis on Social Meaning of Race	183

INTRODUCTION

"Japanese Beetle!" "Japanese Beetle!" It is the fall of 1979, and my earliest memories of kindergarten class are not so pleasant. Several young children are darting around me in circles, repeatedly yelling, "Japanese Beetle!" At a mere five years of age, I understood all too acutely that I was the object of relentless teasing, but I did not think about how inaccurate this teasing was. While I was aware of my ethnicity, Asian Indian, or South Asian American as I now prefer, it somehow did not register that my classmates had identified me incorrectly.

Looking back, I suspect that the teasing was related to the rising economic competition between the United States and Japan in the late 1970s, particularly in the automotive industry. I

wonder now if any of those kids had parents who worked at the Chrysler plant down the street from my elementary school; that might explain where they learned the racial epithet.

Fast-forward to the winter of 1991, my junior year of high school. The scene is the locker room, after basketball practice. The United States is heavily immersed in the first Persian Gulf War, and Iraqi leader Saddam Hussein is one of the most hated men in America. So this time the insult is "Saddam!" and the perpetrators are my teammates on the Glasgow High School boys' basketball team. One of them warns the others to stop heckling me. "His dad actually might be Saddam!" he cracks.¹

These two memorable incidents from my childhood illustrate that I received my fair share of racial/ethnic teasing, but what is more interesting is how little of it actually involved my own ethnic group.² Growing up in New Castle County, Delaware, from the 1970s to the early 1990s, there were very few people of South Asian descent³ around me.⁴ Delaware's racial climate was defined largely

^{1.} Vinay Harpalani, Ambiguity, Ambivalence, and Awakening: A South Asian Becoming "Critically" Aware of Race in America, 11 Berkeley J. Afr.-Am. L. & Pol'y 71, 71–72 (2009). Additionally, I was labeled as Chinese, Native American, and biracial, and my tenth-grade English teacher sometimes confused me with the one Laotian student in the class. *Id.*

^{2.} This Article refers primarily to "race" rather than "ethnic group" but uses the terms interchangeably because the distinction between the two is not particularly salient for the analysis herein. I do recognize the difference between "race" and "ethnicity." See Vinay Harpalani, Racial Identity, in 3 ENCYCLOPEDIA OF RACE, ETHNICITY, AND SOCIETY 1105, 1105 (Richard T. Schaefer ed., 2008) (noting that "race derives from meanings and perceptions related to observable physical characteristics" while "[e]thnicity . . . corresponds to characterization based on cultural background and characteristics.") (emphasis in original). I also recognize that this difference is often salient. Id. (noting that "within U.S. society, African Americans and Afro-Caribbean immigrants may be classified within the same racial group but have different understandings of their ethnic backgrounds."). Nevertheless, I also recognize that "[o]ften . . . individuals define and understand their racial and ethnic identities in concert; thus, at times it is also useful to combine the two," and "[w]hether racial and ethnic identity should be treated together or separately depends on the groups and issues being considered and on the particular social and historical context." Id. at 1105-06. This Article focuses on race and emphasizes South Asian American racial (physical) ambiguity rather than ethnic (cultural) ambiguity per se. The terms "ethnicity" or "ethnic group" are used here only when quoting other sources or for occasional word variety, rather than to convey a different meaning than "race."

^{3.} Generally speaking, "South Asian descent" refers to ancestry from the Indian subcontinent. For a more detailed definition, see *infra* Part I.A.

^{4.} Harpalani, supra, note 1 at 74.

by its black/white demographics and its history as a border Southern state. Moreover, the implementation of comprehensive school desegregation in New Castle County,⁵ just as I started kindergarten, brought racial conflict to the forefront.⁶ In this local climate, I was a racial chameleon—a malleable target of derision, serving as a scapegoat for whichever group was unpopular at the particular moment.⁷

My ambiguous racial identity is still apparent, even when the intent is not derogatory, and it is often dependent on the local context:⁸ on the predominantly white campus of the University of Delaware, professors and students sometimes referred to me as Italian;⁹ conversely, in the more diverse, urban environments of Philadelphia during graduate school and New York City during law school, I was often mistaken for Puerto Rican.¹⁰ When I visited Arizona, and when I lived in Seattle for two years, people on the street told me I looked Mexican,¹¹ particularly Mexican Americans themselves. Of

^{5.} *Id.*; *see also* Jeffrey A. Raffel, The Politics of School Desegregation: The Metropolitan Remedy in Delaware (1980) (describing implementation of school desegregation in New Castle County, Delaware).

^{6.} Harpalani, supra note 1, at 74. See also RAFFEL, supra note 5.

^{7.} Harpalani, supra note 1, at 73.

^{8.} *Id.* at 73–74. The significance of local racial climates is an undertheorized area in Critical Race Theory. *See* Robert S. Chang, *Keith Aoki's Theory of Racial Microclimes*, 45 U.C. Davis L. Rev. 1913, 1923–24 (2012) ("Race has multiple contingent meanings. Racial orderings are multiple and contextual, temporal as well as temporary. Attention to the local microclime is crucial for understanding how discrimination operates and what kinds of interventions would disrupt or remedy this discrimination. . . . [W]e have to pay more attention to the local. I think that law professors pay too much attention to the federal courts and not enough attention to state courts. Whether we like it or not, there is a whole lot of race jurisprudence taking place in state courts, and the result of state courts' racial jurisprudence, I suggest, has more of an impact in the daily lives of people of color than federal race jurisprudence.").

^{9.} Harpalani, *supra* note 1, at 72. My last name may also contribute to the perception of me as Italian; at least one of my professors at the University of Delaware asked if I was Italian after hearing it. However, I have also been mistaken for Greek and Spanish on occasion. *Id.*

^{10.} This was particularly the case when I was in the company of black friends and peers. *Id.* Also, I am more likely to be labeled as "Puerto Rican" when I grow a goatee, whereas with a full beard, "Arab" or "Middle Eastern" are more common characterizations. This underscores the importance of racialized symbols, particularly for racially ambiguous individuals. *See infra* notes 195–97 and *infra* Part IV.C.

^{11.} Harpalani, *supra* note 1, at 72.

course, in various places, I have been mislabeled as Arab or Middle Eastern, ¹² as have many other South Asian Americans. ¹³

Such racial ambiguity—the changing racial characterization of a person or group, depending on the local and historical context—is an important part of the experience of South Asians in the United States. ¹⁴ More generally, racial ambiguity is significant because: (1) it reveals the social meanings and stereotypes associated with race, which have been lost in recent American formalist race jurisprudence; ¹⁵ and (2) it illustrates how these social meanings change across time and space. ¹⁶ Racial ambiguity itself is not unique to South Asian Americans; ¹⁷ other groups, such as Latinos ¹⁸

^{12.} *Id.* Specifically, references to me have included "Arab," "Palestinian," "Persian," and "Al Qaeda member." These probably reflect terms that Americans most commonly hear in the media and associate with the Middle East.

^{13.} See, e.g., Vijay Prashad, Uncle Swami 8 (2012) (noting that South Asians and Arabs are perceived as sharing the same national background and racial profile as terrorists) [hereinafter Uncle Swami]; Charu A. Chandrasekhar, Note, Flying While Brown: Federal Civil Rights Remedies to Post-9/11 Airline Racial Profiling of South Asians, 10 Asian L.J. 215, 215 (2003) [hereinafter Flying While Brown] ("After nineteen Arab Muslim men hijacked and crashed commercial aircraft into the World Trade Center towers and the Pentagon, people of South Asian, Arab, and Middle Eastern descent have become targets of hundreds of hate crimes and incidents of racial profiling across the country. Racial profilers and perpetrators of hate crimes have particularly discriminated against South Asians, presumably focusing on perceived racial, ethnic, and religious similarities to the hijackers.") (internal citations omitted).

^{14.} See, e.g., Sucheta Mazumdar, Race and Racism: South Asians in the United States, in Frontiers of Asian American Studies: Writing, Research, and Commentary 25 (Gail M. Nomura et al., eds., 1989); Nazli Kibria, Not Asian, Black or White? Reflections on South Asian Americans and Questions of Race and Ethnicity, 22 Amerasia J. 77 (1996); Susan Koshy, Category Crisis: South Asian Americans and Questions of Race and Ethnicity, 7 Diaspora: J. Transnat'l Stud. 285 (1998); Kamala Visweswaran, Diaspora by Design: Flexible Citizenship and South Asians in U.S. Racial Formations, 6 Diaspora: J. Transnat'l Stud. 5 (1997).

^{15.} See Neil Gotanda, A Critique of "Our Constitution Is Color-Blind," 44 STAN. L. REV. 1, 43 (1991) [hereinafter A Critique of "Our Constitution Is Color-Blind"] (citing "examples of 'race' unconnected from its social meaning in legal discourse").

^{16.} See Harpalani, supra note 1; Chang, supra note 8.

^{17.} Asian Indian Americans, by far the largest sub-group of South Asian Americans, are somewhat unique with respect to racial ambiguity. Unlike biracial and multiracial individuals, they are typically described as a single, ethnic group with demographic and cultural commonalities. See, e.g., Manoranjan Dutta, Asian Indian Americans: Search for an Economic Profile, 25 POPULATION REV. 76 (1981). Unlike Latinos, Asian Indians Americans are—by definition—identified with a single country of national origin. Unlike Arab and Middle Eastern Americans, who are racially classified as "white," Asian Indian Americans have, for the most part, not been classified as "white," even though they have always been considered to be "Caucasian." See John Tehranian, Whitewashed: America's Invisible Middle

and Arab Americans,¹⁹ can be racially ambiguous. Biracial and multiracial individuals in our society,²⁰ including President Barack Obama,²¹ also may be racially ambiguous, as reflected by their self-identification and their racial characterization by others. Moreover, ambiguity in racial identification is also becoming part of the discourse of major U.S. Supreme Court cases, such as *Fisher v. University of Texas*.²²

Nevertheless, the dynamics of racial ambiguity are under-theorized in the scholarly literature. Articles dealing with racial ambiguity have focused on a single group or on biracial and multiracial individuals.²³ Focusing on racialization of a single group can be valuable, particularly for a group that has not been studied extensively, such as South Asian Americans. However, racial ambiguity is relational: it can only be understood by considering the positioning of individuals and groups with respect to other groups, and situational changes in such positioning. There has not been a broader attempt to analyze how racially ambiguous individuals and groups are racially characterized in various situations and varying historical

EASTERN MINORITY (2009); Koshy, *supra* note 14, at 286. In the United States, Asian Indians are confused with Native Americans because the latter have historically been called "American Indians." *See infra* note 155 and accompanying text. In other countries, Asian Indian racial categorization has been very different; for example, in England until the 1970s, Asian Indians were thought of as "black." *Id.* For these reasons, racial characterization of Asian Indian Americans, and by extension South Asian Americans, is particularly interesting.

- 18. See, e.g., Kevin R. Johnson, "Melting Pot" or "Ring Of Fire"?: Assimilation and the Mexican-American Experience, 85 CALIF. L. REV. 1259, 1304 (1997) (discussing racial ambiguity of Latinos and specifically Mexican Americans).
- 19. See Nadine Nader, Ambiguous Insiders: An Investigation of Arab American Invisibility, 23 ETHNIC & RACIAL STUD. 37 (2000) (discussing Arab American racial ambiguity).
- 20. Carla K. Bradshaw, *Beauty and the Beast: On Racial Ambiguity*, *in* Racially Mixed People in America 77 (Maria P. Root, ed.,1992) (discussing racial ambiguity of multiracial individuals); Ruth La Ferla, *Generation E.A.: Ethnically Ambiguous*, N.Y. Times, Dec. 28, 2003, *available at* http://www.nytimes.com/2003/12/28/style/generation-ea-ethnically-ambiguous.html?pagewanted=all&src=pm (noting how Latinos, biracial and multiracial peoples, and others are racially ambiguous).
- 21. See, e.g., Is Obama Black, Bi-Racial, or Post-Racial?, Zócalo Public Square (Sep. 07, 2011), http://www.zocalopublicsquare.org/2011/09/07/is-obama-black-bi-racial-or-post-racial/ideas/up-for-discussion/.
- 22. See Transcript of Oral Argument at 32–35, Fisher v. Univ. of Tex., 133 S. Ct. 2411 (2013) (No. 11-345), available at http://s3.documentcloud.org/documents/463375/fisher-vs-university-of-texas-oral-arguments.pdf (Chief Justice John Roberts and Justice Antonin Scalia questioning University of Texas counsel Gregory Garre on how University of Texas classifies students by race, particularly those of multiethnic and multiracial backgrounds).
 - 23. See supra notes 1, 14, and 18.

and political circumstances. Understanding racial ambiguity requires a nuanced consideration of the relationship between physical appearance, racial stereotypes, and media depictions in promoting understandings of race. Such an inquiry must also examine the dynamic nature of formal racial categories and the impact of local contexts in shaping these issues. Socio-historical theories of racialization have focused largely on the creation and malleability of racial categories over time, ²⁴ rather than on how individuals may be racialized differently in different contexts. Critical race theorists have explored the performative aspects of race, ²⁵ but they have not devised a general racialization framework to analyze individual and group racial ambiguity, or incorporated situational performances of race into sociological theories of racialization. ²⁶

In light of these considerations, this Article has two major aims. First, it is a comprehensive analysis of the racial ambiguity of South Asian Americans (Desi)²⁷ an idea that has been introduced previously in sociology and ethnic studies,²⁸ but has not been explored fully or theorized. In particular, this Article expands the limited discourse on South Asian American racialization in legal scholarship,

^{24.} See, e.g., MICHAEL OMI & HOWARD WINANT, RACIAL FORMATION IN THE UNITED STATES (2d ed. 1994); see generally Eduardo Bonilla-Silva, White Supremacy and Racism in the Post-Civil Rights Era (2001) [hereinafter White Supremacy and Racism]; Eduardo Bonilla-Silva, Rethinking Racism: Toward a Structural Interpretation, 62 Am. Soc. Rev. 465 (1996) [hereinafter Rethinking Racism].

^{25.} See generally Devon Carbado & Mitu Gulati, Acting White?: Rethinking Race in Post-Racial America (2013) [hereinafter Acting White?]; Devon Carbado & Mitu Gulati, Working Identity, 85 Cornell L. Rev. 1259 (2000); Camille Gear Rich, Performing Racial and Ethnic Identity: Discrimination by Proxy and the Future of Title VII, 79 N.Y.U. L. Rev. 1134 (2004).

^{26.} See supra note 24; infra Part II.A.1. There have been works that have examined the intersection of these various factors for particular groups, through the lens of history, sociology, and law. See, e.g., Laura E. Gomez, Manifest Destinies: The Making of the Mexican American Race 4 (2007).

^{27.} See supra note 3.

^{28.} See supra note 14. All of these works on South Asian American racial ambiguity have been in the ethnic studies literature. They are quite valuable and insightful, but these works are now dated. They were published prior to September 11, 2001 and do not cover recent developments such as the rise of Governors Bobby Jindal and Nikki Haley. They also do not attempt to theorize racial ambiguity more broadly, beyond South Asian Americans. My critical race autobiographical narrative, Harpalani, supra note 1, is the only law review article that deals directly with South Asian American racial ambiguity (mainly through my personal experiences). See supra note 1 and accompanying text. This Article serves as an expanded theoretical and sociohistorical analysis of the ideas introduced and the works cited there. It also incorporates racialization theory more broadly.

moving beyond the post-September 11, 2001 war on terror,²⁹ immigration law and H-1B visas,³⁰ and the well-known case of *United States v. Thind.*³¹ By doing so, this Article adds another dimension to Critical Race Theory (CRT).³² In addition to the classic CRT writings,³³ and to LatCrit³⁴ (focusing on Latinos), AsianCrit³⁵ (focusing on Asian Americans, and particularly East Asian Americans), and TribalCrit³⁶ (focusing on Native Americans), this Article introduces "DesiCrit"³⁷ (focusing on South Asian Americans as racially

^{29.} See, e.g., Flying While Brown, supra note 13; Ming H. Chen, Alienated: A Reworking of the Racialization Thesis After September 11, 18 Am. U.J. Gender Soc. Pol'y & L. 411 (2010).

^{30.} See, e.g., David C. Yang, Globalization and the Transnational Asian "Knowledge Class", 12 Asian AM. L.J. 137 (2005).

^{31.} See Ian F. Haney Lopez, White by Law: The legal construction of race (1996).

^{32.} See generally Derrick Bell, The Derrick Bell Reader (Richard Delgado & Jean Stefancic eds., 2005); Richard Delgado & Jean Stefancic, Critical Race Theory: An Introduction (1st ed. 2001).

^{33.} See Kimberlé Crenshaw, Neil Gotanda, Gary Peller, & Kendall Thomas, Critical Race Theory: The Key Writings that Formed the Movement (1995); Richard Delgado & Jean Stefancic, Critical Race Theory: The Cutting Edge xiii (2000).

^{34.} See generally LATCRIT, http://www.latcrit.org/index/ (last visited Oct. 29, 2013). LatCrit has existed longer than the other group-specific movements in CRT, and the LatCrit Conference has served as an umbrella for all Critical Race Theorists.

^{35.} See Robert S. Chang, Disoriented: Asian Americans, Law, and the Nation-State 48 (1999).

^{36.} See Bryan McKinley Jones Brayboy, Toward a Tribal Critical Race Theory in Education, 37 The Urban Rev. 425 (2005).

^{37.} See supra note 3. "DesiCrit" is the title of this Article and that term is coined here; however, my previously published critical race autobiography also reflects this notion. See Harpalani, supra note 1. See also prior works in ethnic studies, such as Nazli Kibria, supra note 14. Susan Koshy, Sucheta Mazumdar and Kamala Visweswaran also reflect the DesiCrit tradition espoused here. See supra note 14. Additionally, while my prior article and this one are the only law review articles to focus on South Asian American racial ambiguity, there have been South Asian legal scholars who have contributed to CRT more generally—most notably Professor Mitu Gulati. See supra note 25. Also, Chicago-Kent College of Law has a student-run journal, Satyam, that is devoted generally to South Asians and the law. See Mission Statement, Satyam: Chi.- Kent C. L.'s J. on S. Asia & L., https://sites. google.com/site/chicagokentsatyam/mission-statement (last visited June 22, 2014). Outside of the legal academy, many South Asian American lawyers are playing key roles in various racial justice initiatives, including Anurima Bhargava, Chandra Bhatnagar, Vanita Gupta, and Deepa Iyer. See Anurima Bhargava, Center for Institutional & Soc. Change, http://changecenter.org/about-us/advisoryboard/anurima-bhargava (last visited June 22, 2014); Biography of Chandra Bhatnagar, Am. Civ. Liberties Union, https://www.aclu.org/human-rights/biographychandra-bhatnagar (last visited June 22, 2014); Vanita Gupta, Am. Civ. Liberties

ambiguous beings).38

By analyzing South Asian American racialization, the Article aspires toward its second and more ambitious aim: beginning the synthesis of a general theoretical framework to analyze racial ambiguity of individuals and groups. Given that racialization theory deals with the creation and transformation of racial categories, ³⁹ and racial ambiguity by definition problematizes those categories, this is an almost paradoxical undertaking. But analysis of South Asian American racialization necessitates such an undertaking, and this Article merges sociological theories of racialization with racial ambiguity.

To accomplish this second aim, this Article draws not only from CRT,⁴⁰ but also from sociological theories of racialization,⁴¹ philosophy of race and racial identity,⁴² and whiteness studies.⁴³ By examining the agency of racialized actors, this Article analyzes not only ascriptions of racial status by others,⁴⁴ but also proactive claims to racial status—particularly "whiteness," although also discussed herein are claims to minority status—by such actors.⁴⁵ In addition to the creation of formal categories, this Article also analyzes racialization through symbols and through performative notions of race.⁴⁶ It defines formal and informal modes of racialization,⁴⁷ and applies both in its analysis of South Asian American racial ambiguity, focusing particularly on informal racialization. Finally, this Arti-

Union, https://www.aclu.org/blog/author/vanita-gupta (last visited June 22, 2014); *Deepa Ayer, Executive Director*, S. Asian Americans Leading Together, http://saalt.org/deepa-iyer-executive-director/ (last visited June 22, 2014). While at N.Y.U. School of Law, Professor Derrick Bell himself mentored several South Asian American civil rights and public interest lawyers, including Anjana Samant (another former Derrick Bell Fellow), Reena Arora, and Maneka Sinha. Besides lawyers, South Asian American activists who lead racial justice-focused organizations include Rinku Sen, President and Executive Director of Race Forward: The Center for Racial Justice Innovation and Publisher of website Colorlines.com. *See Rinku Sen*, Colorlines: News for Action, http://colorlines.com/archives/author/rinku-sen/ (last visited June 22, 2014); *Rinku Sen*, Race Forward: Center Racial Just., http://www.raceforward.org/about/board/rinku-sen (last visited June 22, 2014).

- 38. See infra Part V.A.1.
- 39. See supra note 24.
- 40. See infra Parts II.A.2, II.B.1.
- 41. See infra Part II.A.1.
- 42. See infra Part II.B.
- 43. See infra Part II.B.1.
- 44. See infra Part II.B.2.
- 45. Id.
- 46. See supra note 25; infra text accompanying notes 198-99.
- 47. See infra Part II.A.2.

cle highlights the importance of "racial microclimes"⁴⁸—local historical and political climates that impact racialization. It theoretically integrates these various areas to examine the racial ambiguity of South Asian Americans, from the first wave of Asian Indian immigrants in the early 1900s, to the current population of approximately 3.4 million South Asians in the United States.⁴⁹

Part I of this Article serves as an overview. It reviews basic definitions and terminology as used in this Article. Part I also gives a social and demographic profile of South Asians in the United States, and it introduces the idea of racial ambiguity as applied to South Asian Americans. All of this serves to situate the analysis in subsequent sections. Part II lays out the theoretical framework for this analysis, by reviewing and synthesizing insights from CRT, sociological theories of racialization, philosophy of race, and whiteness studies. Drawing upon these various areas, Part II first defines "formal" and "informal" modes of racialization. "Formal" racialization occurs through creation, application, and transformation of legally cognizable racial categories, while "informal" racialization occurs via physical identification, performance of particular behaviors, and through transferrable symbols that have acquired social meanings associated with race and status. While the racial ambiguity of South Asian Americans is apparent through both modes, informal racialization is particularly salient for racially ambiguous groups and individuals. Next, Part II delineates the processes by which both formal and informal racialization operate. It posits that racialization occurs when ambiguous actors make claims to racial statuses, in addition to when they are labeled by ascriptions of racial statuses. Racialization is thus a bidirectional process that involves agency and ascription, in intertwined fashion. Finally, Part II highlights the importance of racial microclimes—local historical and political circumstances that affect racial dynamics and are particularly important for understanding the situational manifestation of racial ambiguity.50

Subsequent Parts apply these concepts to the racialization of South Asian Americans. Part III focuses mainly on whiteness in the formal racialization of South Asian Americans, examining the changing views on whether South Asian Americans are legally "white." This Part gives the early U.S. immigration history of Asian

^{48.} See Chang, supra note 8.

^{49.} Demographic Information, S. Asian Americans Leading Together, http://saalt.org/south-asians-in-the-us/demographic-information/ (last visited Oct 28, 2013).

^{50.} See Chang, supra note 8.

Indians, focusing particularly on their racial characterization. It covers the "racial prerequisite" cases,⁵¹ where in order to gain citizenship, immigrants from South Asia and other countries had to prove they were "white" under the Naturalization Law of 1790.⁵² Particularly important here is the case of *United States v. Thind*,⁵³ where the U.S. Supreme Court ruled that Asian Indians were "Caucasian" but not "white," and thus not eligible for naturalization. Part III also examines the changing Census classification of South Asian Americans and patterns of racial self-identification among South Asian Americans, all of which reflect the theme of racial ambiguity.

Part IV focuses on informal racialization of South Asian Americans, from "model minority," 54 to "macaca." 55 It examines how U.S. immigration policy helped create the model minority stereotype by granting preference to educated immigrants from Asian countries in the 1960s and 1970s—preference that was later curbed.⁵⁶ Part IV also discusses "glass ceiling" effects in employment,⁵⁷ and illustrates how the model minority stereotype contributes to the racialization of black Americans and Latinos through the affirmative action debate.58 Next, Part IV examines claims to status and racial ascriptions involving the two most well-known South Asian American politicians: conservative Republican governors Bobby Jindal of Louisiana and Nikki Haley of South Carolina. Part IV also analyzes the role of religion in the racialization of South Asian Americans, covering aspects of Christianity, Hinduism, and Islam. Finally, this Part examines the racialization of South Asian Americans as "black," focusing on the role of social, political, and historical context and the interplay between agency and ascription.⁵⁹

The Conclusion then synthesizes the major aims above and also lays out the broader implications of this analysis, not only for South Asian Americans, but for American racial hierarchy more generally.

^{51.} See Haney Lopez, supra note 31.

^{52.} Naturalization Act of 1790, ch. 3, 1 Stat. 103 (1790).

^{53. 261} U.S. 204, 214-15 (1923).

^{54.} See infra Part IV.A.

^{55.} See infra Part IV.D.3.

^{56.} See infra Part IV.A.1.

^{57.} See infra Part IV.A.2.

^{58.} See infra Part IV.A.3.

^{59.} See infra Part IV.D.

I. SOUTH ASIANS IN THE UNITED STATES: AN OVERVIEW

To provide the background and context for analyzing South Asian American racial ambiguity, this Part reviews definitions and usage of "South Asian," "Desi," and related terms, presents a social and demographic overview of the South Asian American population, and gives a primer on their ambiguous racial positioning in the United States.

A. Definitions and Use of Terminology

While this Article has operationally defined South Asian Americans, or Desis, in terms of ancestry from the Indian subcontinent,⁶⁰ further elaboration on terminology is useful.

1. "South Asian American"

The term "South Asia" usually refers to the countries of India, Pakistan, Afghanistan, Bangladesh, Sri Lanka, Nepal, Bhutan, and the Maldives Islands.⁶¹ South Asian Americans are Americans who originally trace their ancestry back to these regions; this includes people of South Asian descent who immigrated to the United States from other regions, such as various nations in the Caribbean,⁶² Africa,⁶³ Oceania,⁶⁴ Asia,⁶⁵ Europe,⁶⁶ Canada,⁶⁷ and the Middle

^{60.} See supra note 3.

^{61.} See generally South Asia, Wikipedia, http://en.wikipedia.org/w/index.php?title=South_Asia&oldid=579166163 (last visited Oct. 29, 2013). The United Nations Population Information Network (POPIN) also includes Iran as part of South Asia (which this Article does not) and does not include Bhutan or the Maldives Islands (which this Article does). Id. The South Asian Association for Regional Cooperation (SAARC) includes India, Pakistan, Afghanistan, Bangladesh, Sri Lanka, Nepal, Bhutan, and the Maldives Islands. See Charter of the South Asian Ass'n for Regional Cooperation, Bangl.-Bhutan-India-Maldives-Nepal-Pak.-Sri Lanka, Dec. 8, 1985, available at http://saarc-sdmc.nic.in/pdf/charter.pdf. The World Bank includes these same nations in its definition. Cf. South Asia Overview, The World Bank, http://www.worldbank.org/en/region/sar/overview#3 (last visited June 22, 2014). Nevertheless, Afghanistan and certain regions of Pakistan are sometimes considered part of Central Asia. See Central Asia, Wikipedia.org/w/index.php?title=Central_Asia&oldid=578977255 (last visited Oct. 29, 2013).

^{62.} See Indo-Caribbean, WIKIPEDIA, http://en.wikipedia.org/w/index.php?title =Indo-Caribbean&oldid=574540367 (last visited Oct. 29, 2013). Most notably, people of South Asian descent comprise the largest ethnic group in Guyana and Trinidad and Tobago. *Id*.

^{63.} See Non-Resident Indian and Person of Indian Origin, WIKIPEDIA, http://en.wikipedia.org/w/index.php?title=Non-resident_Indian_and_person_of_Indian_ori

East.⁶⁸ This Article uses the term "South Asian American" broadly, to refer to all Americans of South Asian descent. When relevant, this Article also makes specific references to Asian Indian Americans, Pakistani Americans, Bengali or Bangladeshi Americans, Sri Lankan Americans, and Indo-Caribbean Americans. It also makes reference to specific religious groups—Hindus, Muslims, and Sikhs—when relevant. Nevertheless, most of the specific examples in this Article involve Asian Indian Americans, who are by far the largest demographic subgroup of South Asian Americans.⁶⁹

It is also worth noting that there is a narrower sense of the term "South Asian American" that denotes individuals who choose to identify as a progressive collective, emphasizing their own common experiences in the United States rather than the political conflicts between and within their countries of origin.⁷⁰ Those who identify proactively as "South Asian" tend to be overwhelmingly Asian Indian Americans,⁷¹ but many other Asian Indian Americans tend to disavow identification with South Asian nations other than India, and with Indo-Caribbean Americans.⁷² Part IV.A.3 discusses such differences in self-identification in more detail.

gin&oldid=612546427 (last visited June 22, 2014) [hereinafter *Non-Resident Indian*]. In particular, South Africa has a large South Asian population, *id.*, and Mauritius has a large proportion of South Asians. *See Mauritius*, WIKIPEDIA, http://en.wikipedia.org/wiki/Mauritius (last visited June 22, 2014).

- 64. See Non-Resident Indian, supra note 63. Australia has the largest South Asian population in Oceania, and Fiji has the largest proportion of South Asians. See id.
- 65. See id. Besides the nations that are usually considered part of South Asia, Burma and Malaysia have large South Asian populations, and Singapore has a significant proportion of South Asians. See id.
- 66. See id. South Asians are a particularly large and visible minority group in the United Kingdom, which has the largest South Asian population outside of Asia and the United States. See id.
- 67. See id. Outside of Asia and the Middle East, Canada ranks third in overall South Asian population, behind the United States and the United Kingdom. See id.
- 68. See id. Saudi Arabia and the United Arab Emirates have the largest South Asian populations in the Middle East, and Oman, Qatar, and Bahrain also have significant populations. See id.
- 69. With the exception of "Bengali Harlem," *infra* Part IV.D.1, this Article generally does not make reference to Asian regional ethnic groups within South Asian countries, such as Punjabis, Gujaratis, Sindhis, Bengalis, or Tamils, as these groups are often racialized together in the United States. Even when they are racialized differently, the specific regional ethnic group itself is usually not of particular salience in the racialization process.
- 70. See Prema Kurien, To Be or Not to Be South Asian: Contemporary Indian American Politics, 6 J. Asian Am. Stud. 261, 264–65 (2003).
 - 71. Id. at 262.

^{72.} Id. at 265.

2. "Desi" and "DesiCrit"

The term "Desi" (pronounced DAY-see) refers to people of South Asian descent around the world.⁷³ Desi derives from the Sanskrit word "desha," which means country.⁷⁴ The title of this Article, "DesiCrit," is a portmanteau of "Desi" and "Crit" (short for Critical Race Theory/Theorist). Nevertheless, this Article employs the term "South Asian American" rather than Desi, because the latter is used mainly by South Asians to refer to each other and is less familiar to a broader audience.⁷⁵

B. Changing Demographics and Increasing Visibility

The composition and distribution of the South Asian American population, along with its visibility and portrayal in the media, set the tone for the group's ambiguous racial identity and positioning in America's racial landscape.

1. Population and Regional Distribution

In the 2010 U.S. Census, there were approximately 2.8 million Asian Indian Americans, ⁷⁶ constituting a significant increase from

^{73.} See Ben Zimmer, Here She Comes, 'Desi' Miss America, Wall Street J., Sept. 27, 2013, available at http://online.wsj.com/news/articles/SB10001424052702304 713704579095112813176666; Desi, Wikipedia, http://en.wikipedia.org/w/index.php?title=Desi&oldid=609566497 (last visited Oct. 22, 2013).

^{74.} See supra note 73. "Desha" also has the same meaning in Hindi (pronounced "desh"). The term "Desi" is used commonly in Hindi, Urdu and many other South Asian languages.

^{75.} Depending on the context, Desi can also be considered pejorative, in the sense of denoting someone who is unsophisticated. See Zimmer, supra note 73 ("Like the English word 'country,' 'desi' can also suggest a rustic or unsophisticated background. In India, writes Asian-American studies professor Sunaina Maira of the University of California, Davis, 'desi' is 'sometimes used more pejoratively to index a 'country-bumpkin' sensibility.'"); see also Rohin Guha, Is It Time to Kill off the Word Desi'?, The Aerogram (Oct. 23, 2013), http://theaerogram.com/is-ittime-to-kill-off-the-word-desi/ ("To summarize the vast Indian subcontinent as a single 'motherland' is problematic."). But see Zimmer, supra note 73 ("'[D]esi' has traveled with [South Asians], used not as a put-down but as an expression of ethnic pride."); Radhika Raman, In Defense of the Word 'Desi': Why I Love Being Desi, THE Areogram (Oct. 24, 2013), http://theaerogram.com/defense-desi/ ("Desi, like the word black, is a marker of unity and respect, and in many cases it is an outstretched hand in a new place. Above all, it is about unapologetic, radical self-love and everyday resistance to white supremacy, xenophobia, imperialism, and patriarchy. It is reclamation of the heritage denied to millions through imperialism, forced migration, or economic struggles. It is a marker of who we are in lands that may or may not be foreign to us.").

^{76.} ELIZABETH M. HOEFFEL, SONYA RASTOGI, MYOUNG OUK KIM & HASAN SHAHID, UNITED STATES CENSUS BUREAU, THE ASIAN POPULATION: 2010, at 14

the 2000 (1.7 million),⁷⁷ 1990 (815,447) and 1980 (387,223) Censuses.⁷⁸ Additionally, the 2010 Census reported approximately 364,000 Pakistani Americans,⁷⁹ 129,000 Bangladeshi Americans, 52,000 Nepali Americans, 39,000 Sri Lankan Americans, and 15,000 Bhutanese Americans.⁸⁰ South Asian Americans Leading Together (SAALT), a national, nonpartisan organization, also estimates that there are about 66,000 Indo-Caribbean Americans⁸¹ and reports that overall, there are currently 3.4 million South Asians living in the United States⁸²—the largest population of any nation outside of South Asia.⁸³ South Asian Americans are now the third largest Asian American group, behind Chinese and Filipino Americans, and they are the fastest growing population of all major ethnic groups in the United States.⁸⁴

Immigration accounts for most of this growth: approximately seventy-five percent of the South Asian American population was born outside the United States, and about thirty percent are U.S. citizens.⁸⁵ While non-South Asian Americans tend to lump immigrant and American-born populations together, South Asians in the United States are often keenly aware of the differences between these two groups, referred to jovially as "Fresh Off the Boat" (FOB)

- 78. Karen Leonard, The South Asian Americans 70 (1997).
- 79. Hoeffel, Rastogi, Kim & Shahid, *supra* note 76. *See also Pakistani American*, Wikipedia, http://en.wikipedia.org/w/index.php?title=Pakistani_American&oldid=579292850 (last visited Oct. 29, 2013).
- 80. Hoeffel, Rastogi, Kim & Shahid, *supra* note 76. *See also* Asian American Fed'n & South Asian Americans Leading Together, *A Demographic Snapshot of South Asians in the United States*, Strengthening S. Asian Cmys. in America 1, http://saalt.org/wp-content/uploads/2012/09/Demographic-Snapshot-Asian-American-Foundation-2012.pdf [hereinafter *Demographic Snapshot*].
 - 81. See supra note 80.
- 82. Demographic Information, S. Asian Americans Leading Together, http://saalt.org/south-asians-in-the-us/demographic-information/ (last visited Oct 28, 2013).
 - 83. See Non-Resident Indian, supra note 63.
- 84. Demographic Snapshot, supra note 80, at 1, 2. SAALT reports that between 2000 and 2010, the South Asian population in the United States grew by 81%. Id. at 1.

^{(2012),} available at http://www.census.gov/prod/cen2010/briefs/c2010br-11.pdf. See also Indian American, Wikipedia, http://en.wikipedia.org/w/index.php?title=Indian_American&oldid=578910218 (last visited Oct. 29, 2013).

^{77.} Jessica S. Barnes & Claudette E. Bennett, United States Census Bureau, The Asian Population: 2000, at 9 (2002), available at http://www.census.gov/prod/2002pubs/c2kbr01-16.pdf; Terrance J. Reeves & Claudette E. Bennett, United States Census Bureau, We the People: Asians in the United States 1 tbl.1 (2004), available at http://www.census.gov/prod/2004pubs/censr-17.pdf.

^{85.} Id. at 5.

and American Born Confused Desis (ABCD).⁸⁶ Nevertheless, many South Asian Americans traverse the FOB and ABCD communities.⁸⁷ They are in a liminal and transient state, caught between multiple worlds, both with respect to their own identity as Americans and how they are perceived by other Americans,⁸⁸ all of which contributes to their racial ambiguity.

The regional distribution of the South Asian American population also contributes to its racial ambiguity. The states with the largest populations of South Asian Americans are California, New York, New Jersey, Texas, and Illinois.⁸⁹ Most Asian Indian and Pakistani Americans reside in major cities such as New York, Chicago, Houston, Los Angeles, and Washington, D.C.,⁹⁰ although prominent Asian Indian communities also exist in other areas, such as Edison, New Jersey, and Jersey City, New Jersey.⁹¹ Even in those particular metropolitan areas, South Asian American residence patterns are skewed. According to the 2000 Census, in New York City, sixty-two percent of South Asians resided within particular neighborhoods in the Borough of Queens: Flushing, Richmond Hill, East Elmhurst,

- 87. Additionally, FOBs may become ABCDs, particularly if they have come to the United States at a younger age—before adulthood.
- 88. See, e.g., Vijay Prashad, The Karma of Brown Folk (2000) [hereinafter The Karma of Brown Folk]; Bandana Purkayastha, Negotiating Ethnicity: Second-Generation South Asian Americans Traverse a Transnational World 3–4 (2005).
 - 89. Demographic Snapshot, supra note 80, at 2.
- 90. *Id.* In the past thirty-five years, there have also been several books published specifically on Indian American immigrant communities in some of these areas. *See* Maxine P. Fisher, The Indians of New York City: A Study of Immigrants from India (1980); Johanna Lessinger, From the Ganges to the Hudson: Indian Immigrants in New York City, xiii (1995); Padma Rangaswamy, Namaste America (2000) (focusing on the Indian immigrant community in Chicago); Shalini Shankar, Desi Land: Teen Culture, Class, and Success in Silicon Valley (2008) (focusing on South Asian American youth in the Silicon Valley region of California).

^{86.} See Vidya Kurella, The Big Divide: ABCD vs. FOB, http://www.abcdlady.com/2005-10/art3.php (last visited Oct. 29, 2013). A different view of ABCD is that of "American Born Confident Desi." See Pramit Pal Chaudhuri, The American Born Confident Desi, Hindustan Times (Sept.17, 2007), http://www.hindustantimes.com/News-Feed/IndiansAbroad/The-American-Born-Confident-Desi/Articlel-248249.aspx ("Today Indian-American youth have taken so many strides in defining an identity that the letter C more accurately means 'confident.'"). As part of their own identity development any so-called ABCDs may grow from being "confused" to being "confident": indeed, such a transition reflects my own personal journey. See Harpalani, supra note 1.

^{91.} See Deborah N. Misir, The Murder of Navroze Mody: Race, Violence, and the Search for Order, 22 Amerasia J. 55, 56 (1996) (noting that "Indians are no longer . . . anonymous or invisible" in northern New Jersey).

Queens Village, Briarwood, Astoria, Jackson Heights, Forest Hills, and Corona. This skewed regional distribution means that South Asians are much more visible and familiar in some regions than they are in others, augmenting the prospect for varying racial identification in different local settings.⁹²

2. Economic, Educational, and Occupational Diversity

Another important factor that contributes to this ambiguity is the economic, educational, and occupational diversity within the South Asian American population. South Asian American communities possess exceptionally high median levels of income and educational attainment.⁹³ In 2000, 63.9% of Asian Indians and 54.8% of Pakistani Americans age twenty-five and older held bachelor's degrees—more than any other Asian/Pacific Islander group surveyed by the U.S. Census.⁹⁴ Moreover, Asian Indian families had a median income of over \$70,000 per year; only Japanese Americans surpassed this mark.⁹⁵

However, these aggregate data tend to mask economic barriers faced by particular segments within the South Asian American population. Chhaya Community Development Corporation reported, in a 1996 study, that the South Asian American home ownership rate in New York City (twenty-two percent) was lower than that of white (forty-two percent), Asian (thirty-five percent), and black (twenty-nine percent) Americans.

Together, these data suggest that an economic divide exists within the South Asian American population. If New York City is any indication, perhaps this divide falls at least partly along urban/suburban residential lines. This also suggests how economic differences might contribute to the racial ambiguity of South Asian Americans: on one hand, there are relatively educated and affluent suburban South Asians who reside in predominantly white areas, and on the other hand, there are less educated and affluent South Asian Americans residing near and among predominantly black and Latino communities.⁹⁶

^{92.} See infra Part II.C. (highlighting importance of "racial microclimes").

^{93.} Reeves & Bennett, *supra* note 77, at 12 & 12 fig.9, 15 & 15 fig.12.

^{94.} Id. at 12 & 12 fig.9.

^{95.} *Id.* at 16 & 16 fig.13.

^{96.} Professor Nitasha Tamar Sharma discusses this residential divide with respect to the cultural influences of hip hop on South Asian American youth—particularly on their racial identities. See Nitasha Tamar Sharma, Hip Hop Desis: South Asian Americans, Blackness, and Global Race Consciousness 99, 105 (Ronald Radano, et. al. eds., 2010) (comparing influence of hip hop on South Asian youth from predominantly minority urban neighborhoods and those from

Related to this economic divide are the varying occupational niches of South Asian Americans. On the one hand, there are educated professionals: physicians, engineers, and computer programmers. Asian Indians comprise the largest non-white segment of the American medical community; they account for one out of every twenty physicians (five percent).⁹⁷ Asian Indian Americans also account for seven percent of information technology workers and three percent of engineers in the United States.⁹⁸ The representation of South Asians in these occupations is far greater than their proportion in the population overall (around one percent).⁹⁹ South Asian American educated professionals also form part of the basis for the model minority stereotype.¹⁰⁰

On the other hand, South Asian Americans are also well known for occupying particular working class niches that are not typically associated with academic success. For example, in 2002, approximately 16,000 of New York City's 40,000 licensed taxicab drivers were of South Asian descent. South Asian Americans also constitute nearly half of motel owners in the United States, and

predominantly white suburban neighborhoods). See *infra* Part IV.D.2 for a more detailed discussion of Professor Sharma's book.

The residential divide within the South Asian American population also highlights the importance of racial microclimes in shaping racial identity. See infra Part II.C. Additionally, the economic divide among South Asian Americans also brings to mind the racial divide between honorary whites and the collective black. See infra note 208 and accompanying text; see also infra Part II.B.1.

- 97. See Steve Raymer, Indian Doctors Help Fill US Health Care Needs, YaleGlobal Online (Feb. 16 2004), http://yaleglobal.yale.edu/content/indian-doctors-help-fill-us-health-care-needs.
- 98. See Jason Richwine, Indian Americans: The New Model Minority, FORBES (February 24, 2009, 2:45 PM), http://www.forbes.com/2009/02/24/bobby-jindal-indian-americans-opinions-contributors_immigrants_minority.html.
 - 99. See supra Part.I.B.1.
- 100. See Richwine, supra note 98, for an uncritical account of the model minority stereotype as applied to South Asian Americans. For a more critical analysis, see *infra* Parts IV.A–B.
- 101. See Elizabeth Kolsky, Less Successful than the Next: South Asian Taxi Drivers, WNYC Online (March 2002), http://www.modelminority.com/joomla/index.php?option=com_content&view=article&id=328:less-successful-than-the-next-south-asian-taxi-drivers-&catid=47:society&Itemid=56; see also Lizzie Widdicombe, Thin Yellow Line, New Yorker, Apr. 18, 2011, at 72, 75, available at http://www.newyorker.com/reporting/2011/04/18/110418fa_fact_widdicombe ("More than ninetyper cent of today's cabbies [in New York City] are immigrants, and the most common place of origin is South Asia—Bangladesh, Pakistan, India").
- 102. Aarti Virani, Why Indian Americans Dominate the U.S. Motel Industry, Wall St, J. India Real Time (June 11, 2012, 10:53 AM), http://blogs.wsj.com/indiareal time/2012/06/11/why-indian-americans-dominate-the-u-s-motel-industry/; see also Tunku Varadarajan, A Patel Motel Cartel?, N.Y. Times Mag., July 4, 1999, http://

they are found in large numbers as gas station and convenience store owners.¹⁰³ These two roles are associated with entrepreneurship and upward mobility, though typically not with educational attainment and social status.

These divergent educational, economic, and occupational trends also partly reflect different waves of South Asian immigration to the United States. South Asian immigrants from the 1960s and 1970s came to the United States through immigration preferences based on occupational skills, along with their children. ¹⁰⁴ In contrast, for Indian immigrants from the late 1980s and afterwards, who came to the United States largely through family immigration preferences rather than occupational skills preferences, ¹⁰⁵ only twenty percent "had more than a high school education and 9 percent were unemployed," and these later waves of South Asian immigrants included "far fewer professionals than in earlier waves."

The interplay between these different socioeconomic groups of South Asian Americans is complex. While the data indicate educational, economic, and occupational divides, the lines between various segments of the South Asian American population may be blurred. These divides may even exist within the same families.

www.nytimes.com/1999/07/04/magazine/a-patel-motel-cartel.html?pagewanted=all&src=pm ("According to the latest figures from the Asian American Hotel Owners Association (A.A.H.O.A.), slightly more than 50 percent of all motels in the United States are now owned by people of Indian origin.").

103. This phenomenon has occurred for over twenty years. See, e.g., Donatella Lorch, An Ethnic Road to Riches: The Immigrant Job Specialty, N.Y. Times, Jan. 12, 1992, http://www.nytimes.com/1992/01/12/nyregion/an-ethnic-road-to-riches-the-immigrant-job-specialty.html?src=pm&pagewanted=1 (estimating that "about 40 percent of [New York City's gas] stations are run or owned by South Asians"). Also, during his 2008 Presidential campaign, Vice President Joe Biden (then Senator from Delaware) received criticism for his remark that "you cannot go to a 7-Eleven or a Dunkin' Donuts unless you have a slight Indian accent." See Biden Explains Indian-American Remarks, NBC News, July 7, 2006, http://www.nbcnews.com/id/13757367/ns/politics/t/biden-explains-indian-american-remarks/#.UceXTZyDn 2Y. Senator Biden also alluded to the economic diversity among Asian Indian Americans. Id. (Margaret Aitken, a Biden spokeswoman noted that Senator Biden's comment reflected the fact that the "Indian-American community in Delaware . . . has primarily been made up of engineers, scientists and physicians, but more recently, middle-class families are moving into Delaware.").

104. Edward S. Rubenstein, *Bad News About Those Model South Asian Immigrants*, VDARE.COM (June 22, 2004, 1:00 AM), http://www.vdare.com/articles/national-data-by-edwin-s-rubenstein-305; *see also infra* Part IV.A.1.

105. See supra note 104. Part IV.A.1. Family immigration preferences allow immediate family members and close relatives from countries abroad to reunite with naturalized U.S. citizens. See generally Maxine P. Fisher, Creating Ethnic Identity: Asian Indians in the New York City Area, 7 URB. ANTHROPOLOGY 271, 271–74 (1978).

106. Rubenstein, supra note 104.

South Asian Americans cannot be placed in a simple socioeconomic niche as a group, or even as a series of subgroups. Together with their physical ambiguity,¹⁰⁷ this socioeconomic ambiguity also contributes to the varying racial characterizations of South Asian Americans.

3. Varying Media Images: From Apu to Sanjay Gupta to M.I.A. to Bobby Jindal

Media images of South Asian Americans also influence their ambiguous racial characterization. Some of these images reinforce one or more stereotypes of South Asian Americans. For example, the cartoon character Apu Nahasapeemapetilon (Apu) on *The Simpsons* has a Ph.D. in computer science but works at a convenience store. ¹⁰⁸ Apu, who is probably the most widely-viewed South Asian image in the United States, ¹⁰⁹ also has a stereotypical Indian accent, and his marriage was arranged. ¹¹⁰

The prominence of Asian Indian American physicians, part of the model minority stereotype, is reinforced by the high profile of Dr. Sanjay Gupta, CNN's award-winning, widely-respected chief medical correspondent.¹¹¹ In contrast to Apu, Dr. Gupta—who is probably the most widely-viewed real person of South Asian descent in the United States—was born in the United States, has an American accent, and is married to a white American woman via personal choice rather than familial arrangement.¹¹² Moreover, Dr. Gupta's suave and sophisticated public image is the antithesis of Apu's awk-

^{107.} See supra notes 1, 8-14, and accompanying text.

^{108.} See Apu Nahasapeemapetilon, Wikipedia, http://en.wikipedia.org/w/index.php?title=Apu_Nahasapeemapetilon&oldid=574869748 (last visited Oct. 30, 2013).

^{109.} I base this assertion on the following: "[The Simpsons] has broadcast 552 episodes and the 25th season began on September 30, 2012. [It] is the longest-running American sitcom, the longest-running American animated program, and . . . the longest-running American scripted primetime television series." The Simpsons, Wikipedia, http://en.wikipedia.org/w/index.php?title=The_Simpsons&oldid=613106810 (last visited June 22, 2014).

^{110.} Apu Nahasapeemapetilon, Wikipedia, supra note 108. South Asian Americans have criticized *The Simpsons* for portraying these stereotypes. *Id.*

^{111.} Sanjay Gupta, WIKIPEDIA, http://en.wikipedia.org/w/index.php?title =Sanjay_Gupta&oldid=597002127 (last visited Mar. 4, 2014). In 2009, Dr. Gupta was offered the position of Surgeon General of the United States by President Barack Obama, but he declined this position. *Id.*

^{112.} See KolorBlind Couple of the Month (November '12): Sanjay Gupta and Rebecca Olson, KolorBlind Mag (Nov. 5, 2012), http://kolorblindmag.com/2012/11/05/kolorblind-couple-of-the-month-november-12-sanjay-gupta-and-rebecca-olson/.

wardness; in 2003, Dr. Gupta was named one of *People's* sexiest men alive, ¹¹³ and in 2011, he was named one of the "10 Most Influential Celebrities" by *Forbes*. ¹¹⁴ The contrast in media images between Apu and Gupta also plays upon the common stereotypes and caricatures of South Asian Americans: while Apu exhibits stereotypical FOB traits, ¹¹⁵ Dr. Gupta is the consummate American Born *Confident* Desi. ¹¹⁶

Bollywood¹¹⁷—India's film industry—has influenced perceptions of South Asians in the United States, although Bollywood has a distinctly Indian identity. In addition to Bollywood, *Slumdog Millionaire* also generally raised the profile of South Asians in the United States, although it was a British film and a distinctly Indian cultural project.¹¹⁸ But South Asian Americans themselves have also become more prominent in American television and entertainment, although not always in roles that emphasize their South

Nevertheless, others have also noted the contrast between South Asian Americans in the media who represent dignified intellectuals versus awkward foreigners. See, e.g., The White Indians, N+1 Magazine (Apr. 15, 2013), http://nplusonemag.com/white-indians (contrasting Dr. Sanjay Gupta as a "soft-spoken but intense professional . . . alert-eyed and firm-jawed" with television images of South Asians that depict "gestures of the standard fawning coolie of yore: palms clasped together, head shaking from side to side, mumbling . . . through an apologetic smile crowned with an anachronistic mustache" or "a cartoon auntie flinging her sari over her shoulder as she hovers over a pot").

^{113.} Simply the Best: A Portfolio of Men We Love, People Magazine, Dec. 1, 2003, available at http://www.people.com/people/archive/article/0,,20148754,00.html; see also Debra Bell, 10 Things You Didn't Know About Sanjay Gupta, U.S. News & World Report (Jan. 9, 2009), http://www.usnews.com/news/obama/articles/2009/01/09/10-things-you-didnt-know-about-sanjay-gupta.

^{114.} Dorothy Pomerantz, *Slide Show: The 10 Most Influential Celebrities*, FORBES (Jan 12, 2011, 3:20 PM), http://www.forbes.com/2011/01/12/most-influential-celebrities-business-media_slide_9.html.

^{115.} See supra note 86.

^{116.} See id.; see also CNN Buzzfeed, Why Dr. Gupta Is a Boss, YouTube (July 10, 2013), http://www.youtube.com/watch?v=teyA5MLKMOQ&hpt=hp_bn8. It should be noted that other prominent South Asians in American media combine aspects of the FOB and ABCD (in the "confident" sense) images. For example, CNN commentator/host and Time editor-at-large Fareed Zakaria, a foreign affairs expert, was born in India and has a noticeable (if slight) accent, but has the same well-respected command of foreign affairs that Gupta has of medicine. See Fareed Zakaria, Wikipedia, http://en.wikipedia.org/w/index.php?title=Fareed_Zakaria&oldid=578732387 (last visited Oct. 30, 2013). Perhaps Zakaria's accent actually gives him more credibility in an area such as foreign affairs.

^{117.} Bollywood, Wikipedia, http://en.wikipedia.org/w/index.php?title=Bollywood&oldid=579268226 (last visited Oct. 30, 2013).

^{118.} Slumdog Millionaire, Wikipedia, http://en.wikipedia.org/w/index.php?title=Slumdog_Millionaire&oldid=579202628 (last visited Oct. 30, 2013). I also thank Alex Gorman for his insights about Bollywood and Slumdog Millionaire.

Asian American identity. For example, Aziz Ansari, 119 Mindy Kaling,¹²⁰ Kalpen Suresh Modi ("Kal Penn")¹²¹ and Naveen Andrews¹²² all have prominent television roles and are well known in acting and comedy, but their characters are assimilated and largely racially invisible. 123 Aasif Mandvi 124 and Janina Gavankar 125 are in similar positions, although they take on South Asian and other roles and are less "racially invisible" than the others. In contrast, British-born recording artist Mathangi "Maya" Arulpragasam, known as "M.I.A.," emphasizes political themes that bring attention to her South Asian (Tamil) background. 126 In 2008 and 2009, M.I.A. was named one of the world's 100 most influential people by both Esquire and Time. 127 Thus her cultural and political influence appear to be widespread, perhaps more than the South Asian American entertainers noted earlier. Moreover, M.I.A. is also widely known and recognized for her innovative musical style, which combines hip hop, alternative, and other genres, thereby drawing upon a mix of influences from various ethnic and cultural traditions.

The contrast between Ansari, Kaling, Penn, and Andrews on one hand, and M.I.A. on the other, reflects another aspect of South Asian American racial ambiguity: the varying degrees of emphasis

^{119.} *Aziz Ansari*, Wikipedia, http://en.wikipedia.org/w/index.php?title =Aziz_Ansari&oldid=578350457 (last visited Oct. 30, 2013).

^{120.} Mindy Kaling, Wikipedia, http://en.wikipedia.org/w/index.php?title =Mindy_Kaling&oldid=597016660 (last visited Mar. 4, 2013).

^{121.} *Kal Penn*, Wikipedia, http://en.wikipedia.org/w/index.php?title =Kal_Penn&oldid=579055309 (last visited Oct. 28, 2013).

^{122.} Naveen Andrews, Wikipedia, https://en.wikipedia.org/w/index.php?title =Naveen_Andrews&oldid=577670906 (last visited Oct. 30, 2013).

^{123.} See Harpalani, supra note 1, at 78 (discussing experience of being "racially invisible" as a South Asian American). Racially invisibility is also related to honorary whiteness. See infra note 208 and Parts II.B & IV.B. Of course, neither racial invisibility nor honorary whiteness preclude experiences of racism. See infra Part IV.B. Kal Penn has written about his experiences with racial discrimination. See Kal Penn, The "Hilarious" Xenophobia of Time 's Joel Stein, Huffington Post, (July 2, 2010, 4:22 PM), http://www.huffingtonpost.com/kal-penn/the-hilarious-xenophobia_b_634264.html. Additionally, Mindy Kaling recently discussed how she serves as a role model to "little Indian girls out there who look up to [her]." Shawna Malcom, Thoroughly Modern Mindy Kaling, Parade (Sept. 28, 2013, 5:05 AM), http://www.parade.com/167806/shawnamalcom/thoroughly-modernmindy-kalings-house-rules/.

^{124.} See Aasif Mandvi, Wikipedia, http://en.wikipedia.org/w/index.php?title =Aasif_Mandvi&oldid=579313105 (last visited Oct. 30, 2013).

^{125.} Janina Gavankar, Wikipedia, http://en.wikipedia.org/w/index.php?title=Janina_Gavankar&oldid=579923491 (last visited Nov. 11, 2013).

^{126.} M.I.A. (rapper), WIKIPEDIA, http://en.wikipedia.org/w/index.php?title =M.I.A._(rapper)&oldic=579346545 (last visited Oct. 29. 2013). 127. Id.

on one's ethnic, cultural, and political identities, all of which can readily be racialized by oneself or others. Of course, physical appearance also plays a prominent role in the racialization of South Asian American celebrities. Most recently, this came into play in September 2013, when Nina Davuluri, a relatively dark-skinned South Asian American woman, was named winner of the 2014 Miss America pageant. Pageant.

Other South Asian Americans have gained prominence and attention in various arenas. Mira Nair¹³⁰ and M. Night Shyamalan¹³¹ are known as American film directors, with the former emphasizing more Indian ethnic themes in her work and the latter being more "racially invisible" or ambiguous.¹³² Deepak Chopra is a famous media personality for his promotion of alternative medicine and New

^{128.} See *infra* Part II.B.2 for a discussion of the distinction between racialization by self and others. Also, religious identity can also be racialized. *See infra* Part IV.C.

^{129.} Davuluri's racial appearance came into play in two ways. First, there were many overtly racist comments referring to her as an "Arab," a "foreigner," a "terrorist," a "member of Al-Qaeda," and "Miss 7-11." See Ryan Broderick, A Lot of People Are Very Upset That an Indian-American Woman Won the Miss America Pageant, Buzzfeed (Sept. 16, 2013, 12:33 AM), http://www.buzzfeed.com/ryanhatesthis/alot-of-people-are-very-upset-that-an-indian-american-woman; Samhita Mukhopadh yay, Miss America Nina Davuluri Is Not a Symbol of Progress, The Nation (Sept. 18, 2013), http://www.thenation.com/article/176258/miss-america-nina-davuluri-notsymbol-progress#axzz2fhQ3fMiG. Second, South Asian commentators noted that Davuluri was too dark-skinned to be named Miss India. See, e.g., Lakshmi Chaudhry, Miss America Nina Davuluri: Too 'Indian' to Ever Be Miss India, FIRST POST (Sept. 16 2013, 12:27 IST), http://www.firstpost.com/living/miss-america-nina-davuluritoo-indian-to-ever-be-miss-india-1111477.html (noting that "in India, we prefer our beauty queens strictly vanilla—preferably accessorized with blue contact lenses"); Tunku Varadarajan, Miss America, Meet India's 'Dark' Side, Daily Beast, (Sept. 17, 2013, 1:50 PM), http://www.thedailybeast.com/articles/2013/09/17/missamerica-meet-india-s-dark-side.html (noting "that Davuluri is too dark, too dusky, for the conventional standards of Indian beauty."); see also Maura Judkis, Miss America Fights Post-Pageant Racism with a Beauty Queen's Poise, WASH. POST, Sept. 22, 2013, http://www.washingtonpost.com/lifestyle/style/miss-america-fights-postpageant-racism-with-a-beauty-queens-poise/2013/09/22/a90590ac-22f8-11e3-966c-9c4293c47ebe_story.html. For a brief discussion of light-skinned bias in South Asian societies, see *infra* note 160 and accompanying text.

^{130.} *Mira Nair*, Wikipedia, http://en.wikipedia.org/w/index.php?title=Mira_Nair&oldid=576486796 (last visited Oct. 30. 2013).

^{131.} M. Night Shyamalan, Wikipedia, http://en.wikipedia.org/w/index.php?title=M._Night_Shyamalan&oldid=579472756 (last visited Oct. 30, 2013).

^{132.} Shyamalan contends that Hinduism, Christian theology, Zen Buddhism, and Native American spirituality have all influenced his work. *See* Stephen Humphries, *A Different Take*, Christian Science Monitor (July 28, 2004), http://www.csmonitor.com/2004/0728/p15s01-almo.html.

Age spirituality, which reflect East Indian religious imagery. ¹³³ Vijay Singh is known to golf fans and American sports fans more generally. ¹³⁴ Beyond his name and accent, Singh's ethnic identity itself is not prominent in the media, although sports commentators have noted his relatively dark skin color in relevant circumstances. ¹³⁵ Other South Asians competing in major North American sports leagues include Brandon Chillar ¹³⁶ in the National Football League and Manny Malhotra ¹³⁷ in the National Hockey League, both of whom are of mixed-race heritage (half white and half South Asian). ¹³⁸ Sim Bhullar recently became the first basketball player of Indian descent to sign an NBA contract, ¹³⁹ not long after pitchers Rinku Singh and Dinesh Patel became the first Indian-born players to sign MLB contracts. ¹⁴⁰ Additionally, Mohini Bhardwaj, who is

^{133.} Deepak Chopra, Wikipedia, http://en.wikipedia.org/w/index.php?title =Deepak_Chopra&oldid=579339231 (last visited Oct. 30, 2013). For a more critical view of Chopra, see The Karma of Brown Folk, supra note 88 and Part IV.C.2.

^{134.} Vijay Singh, Wikipedia, http://en.wikipedia.org/w/index.php?title=Vijay_Singh&oldid=578737219 (last visited Oct. 30, 2013).

^{135.} See Jason Whitlock, Don't be a PGA Tour Pig, ESPN PAGE 2, http://espn.go.com/page2/s/whitlock/030514.html (last visited Oct. 30, 2013) (referring to Vijay Singh as a "dark-skinned professional golfer" and a "redneck in blackface"). Whitlock was criticizing Singh for stating that Annika Sorenstam, a female golfer, should not be allowed to play on the PGA Tour. Id.

^{136.} Brandon Chillar, Wikipedia, http://en.wikipedia.org/w/index.php?title=Brandon_Chillar&oldid=600202606 (last visited June 22, 2014); Brandon Chillar's Heritage, Hot for the Pack (July 16, 2010), http://packerplayers.blogspot.com/2010/07/brandon-chillars-heritage.html. Former NFL players Bobby Singh and Sanjay Beach are also of South Asian heritage. Desis in the NFL, Superbowl Edition, Sepia Mutiny (Feb. 5, 2006), http://sepiamutiny.com/blog/2006/02/05/desis_in_the_nf/.

^{137.} Trevor Pardy, *Malhotra Making NHL History*, CBC Sports (Mar. 30, 2009, 2:35 PM), http://www.cbc.ca/sports/hockey/malhotra-making-nhl-history-1.8289 55; *Manny Malhotra*, Wikipedia, http://en.wikipedia.org/w/index.php?title=Manny_Malhotra&oldid=613151806 (last visited June 22, 2014).

^{138.} See supra notes 136-37.

^{139.} Lakshmi Gandhi, Sim Bhullar Is Now NBA's Biggest, First Indian-Descent Player, NBC News, http://www.nbcnews.com/news/asian-america/sim-bhullar-now-nbas-biggest-first-indian-descent-player-n145431. As of yet, no South Asian American is known to have played in the NBA, although the NBA is aggressively looking for Indian basketball stars to help market itself in India. See Pete Thamel, Wanted: 1.2 Billion Basketball Fans, Sports Illustrated, May 6, 2013, http://sport-sillustrated.cnn.com/vault/article/magazine/MAG1207525/1/index.htm; Pete Thamel, So Much Potential, So Far to Go for Young Basketball Prospect, N.Y. Times, July 16, 2011.

^{140.} Jon Cooper, *Tale of Pitchers from India Gets Hollywood Treatment*, MLB.COM, June 18, 2013, http://mlb.mlb.com/news/article.jsp?ymd=20130617&content_id=50906342&c_id=pit. Neither Singh nor Patel has pitched in the major leagues to date.

also half white and half South Asian, was a 2004 U.S. Olympic silver medalist in gymnastics, ¹⁴¹ and Raj Bhavsar won a bronze medal as part of the 2008 U.S. gymnastics team. ¹⁴²

South Asian Americans have also made a mark in business, although generally not in a manner that emphasizes their racial or ethnic background. In 2012, five Indian Americans—Bharat Desai, Romesh Wadhwani, Kavitark Ram Shriram, Manoj Bhargava, and Vinod Khosla—all made the *Forbes* list of richest Americans. Satya Nadella was recently named as CEO of Microsoft, replacing Bill Gates. Other South Asian Americans in business are known for more dubious reasons, such as Raj Rajaratnam and Rajat Gupta, of whom were convicted of securities fraud and conspiracy, stemming from an insider trading scheme. Media images of Rajaratnam and Gupta perpetuate racial stereotypes of Asian Americans as evil and greedy. Other South Asian Americans as evil and greedy.

Additionally, the election of Bobby Jindal as Governor of Louisiana in 2007¹⁴⁷ and Nikki Haley as Governor of South Carolina in 2010¹⁴⁸ both raised the political profile of South Asian Americans. Ironically, while these two most prominent South Asian American politicians are both conservative Republicans, the majority of South

^{141.} *Mohini Bhardwaj*, Wikipedia, http://en.wikipedia.org/w/index.php?title =Mohini_Bhardwaj&oldid=606508982 (last visited June 22, 2014).

^{142.} Raj Bhavsar, Wikipedia, http://en.wikipedia.org/w/index.php?title=Raj_Bhavsar&oldid=576620064 (last visited June 22, 2014). Before Bhardwaj and Bhavsar, Alexi Grewal was the first South Asian American to win a U.S. Olympic medal; he won the gold medal in cycling at the 1984 Summer Olympics. Alexi Grewal, Wikipedia, http://en.wikipedia.org/w/index.php?title=Alexi_Grewal&oldid=5962 03694 (last visited June 22, 2014). Several other South Asian Americans have also become accomplished in other sports. See generally Harsh Kalan, Best Indian American Athletes, MensXP, http://www.mensxp.com/special-features/today/10052-best-indian-american-athletes-p2.html (last visited June 22, 2014).

^{143.} Dominic Rushe, Satya Nadella Named Microsoft CEO as Bill Gates Steps Down as Chairman, The Guardian, Feb. 4, 2014, http://www.theguardian.com/technology/2014/feb/04/microsoft-satya-nadella-new-ceo.

^{144.} *Raj Rajaratnam*, Wikipedia, http://en.wikipedia.org/w/index.php?title=Raj_Rajaratnam&oldid=578327302 (last visited Oct. 30, 2013).

^{145.} Rajat Gupta, Wikipedia, http://en.wikipedia.org/w/index.php?title=Rajat_Gupta&oldid=578915763 (last visited Oct. 30, 2013).

^{146.} See Farah Mahdzan & Norlinda Ziegler, Negative Stereotyping of Asian Americans, Modelminority.com (July 4, 2001), http://modelminority.com/joomla/index.php?option=com_content&view=article&id=58:negative-stereotyping-of-asian-americans&catid=44:media&Itemid=56 (noting stereotypes of Asian American men as "evil and greedy").

^{147.} See infra Part IV.B.1.

^{148.} See infra Part IV.B.2.

Asian Americans are Democrats,¹⁴⁹ a contrast which further illustrates the ambiguous position of South Asians in America. Both Jindal and Haley draw upon their ethnic identity and are characterized by others in various ways based on their racial ambiguity. In Part VI.B, this Article discusses Jindal and Haley in more detail, along with other South Asian American elected officials.¹⁵⁰

C. Racial Ambiguity of South Asian Americans: A Primer

For several reasons, South Asians in the United States present an ideal group to examine the dynamics of racial ambiguity. Part I.B profiled the variety of niches they have occupied in this nation's social and political landscape, along with their increasing visibility and prominence in American society. In spite of this increasing visibility, there is no dominant theme to South Asian American media representation; in fact, there are a variety of racial stereotypes that contribute to their ambiguity in various (and often contrasting) ways. Additionally, South Asian Americans' diverse physical features and their variety of cultural and religious practices contribute to

South Asians also received more dubious attention in December 2013, when Indian diplomat Devyani Khobragade was arrested and charged with fraud, for allegedly underpaying her housekeeper. Jeremy Carl, *Did India Overreact to Diplomat's Arrest?*, CNN.com, Jan. 20, 2014, http://www.cnn.com/2013/12/20/opinion/carl-india-dispute-privilege/index.html?hptHP_t4. Khobragade's arrest and subsequent treatment by U.S. authorities led to public outcry in India and protest by the Indian government. *Id*.

^{149.} See infra Part II.B.

^{150.} Besides elected officials, two of President Obama's highest ranking presidential appointees have been South Asian Americans. From May 2010 until June 2011, Neal Katyal served as Acting Solicitor General of the United States. See Neal Katyal, Wikipedia, http://en.wikipedia.org/w/index.php?title=Neal_Katyal&oldid =579114355 (last visited Oct. 30, 2013). Also, on May 23, 2013, Obama appointee Sri Srinivasan was confirmed by the Senate to sit on the U.S. Court of Appeals for the District of Columbia Circuit, becoming the first federal appellate judge of South Asian descent ever. See Juliet Eilperin, Sri Srinivasan Confirmed to Judicial Seat in Unanimous Senate Vote, Washington Post, May 23, 2013, http://www.washing tonpost.com/blogs/post-politics/wp/2013/05/23/sri-srinivasan-to-get-confirmation-vote-thursday-afternoon/. Additionally, on November 14, 2013, President Obama nominated Dr. Vivek H. Murthy to serve as Surgeon General of the United States. Steve Kenny, Obama Selects Health Policy Advocate as Surgeon General, N.Y. Times, Nov. 14, 2013, http://www.nytimes.com/2013/11/15/health/obamaselects-health-policy-advocate-as-surgeon-general.html?smid=fb-share&_r=0. However, this nomination has been held up by opposition from the National Rifle Association, due to "Dr. Murthy's view of gun violence as being a public health issue." Matt Haarington, Gun Violence Is A Public Health Issue, Social Justice Solutions, June 20, 2014, http://www.socialjusticesolutions.org/2014/06/20/gun-violencepublic-health-issue/.

their racial ambiguity, as reflected in both changing formal racial classification and through informal modes of racialization.¹⁵¹

Perhaps as much as any group, South Asians in the United States illustrate the subtle racial dynamics of American society, due to the peculiarly ambiguous and ambivalent position that South Asians occupy in America's racial hierarchy. This position yields a plethora of conflicting social and political identities. Even from a purely formal perspective, South Asians' placement within American racial categorization schemes has always been ambiguous. In the 1923 case *United States v. Thind*, the Supreme Court ruled that Asian Indians were not "white persons" under the Naturalization Law of 1790, and thus not eligible for citizenship. 152 Yet, in the 1970 Census, Asian Indians were classified as "white." 153 Even South Asian self-identification with American racial categories has been in constant flux, between "white," "black," "brown," and other designations.¹⁵⁴ Moreover, the labeling of indigenous Americans as "Indian" had also long led to confusion about the racial classification of South Asians in the United States. 155

^{151.} See *infra* Part II.A.2 for precise definitions of "formal" and "informal" racialization. Also, see Part III for an account of the formal racialization of South Asian Americans, and Part IV for an account of their informal racialization.

^{152.} See infra Part III.C.

^{153.} See infra Part III.D.

^{154.} Hekmat Elkhanialy & Ralph W. Nicholas, Racial and Ethnic Self-Designation, Experiences of Discrimination, and Desire for Legal Minority Status Among Indian Immigrants in the U.S.A., in Immigrants From the Indian Subcontinent in the U.S.A.: Problems and Prospects 41–50 (Hekmat Elkhanialy & Ralph W. Nicholas, eds., 1976) [hereinafter Racial and Ethnic Self-Designation]. Elkhanialy and Nicholas report the following from a survey of 159 Indian immigrants to the United States:

In a preliminary test of our questionnaire, we tried to inquire into racial identity using the contemporary American racial designations of "White" and "Black." . . . [T]here was so much resistance to answering such a question about race with skin color, that we changed the question to "what would you consider your color to be? 1. White 2. Black 3. other (specify)". Only 11 percent chose White and only 3 percent Black, 70 percent wrote in "Brown." A further 8 percent named another color such as "Blue" or "Olive," and 8 percent would not name a color, but frequently commented on the undesirability of using skin color as a criterion of race.

Id. at 45.

^{155.} See Girindra Mukerji, The Hindu in America, OVERLAND MONTHLY, Apr. 1908, at 303, 303 ("Columbus, mistaking [America] . . . for India, named the aborigines [of America] Indians. . . . The people of India . . . had been classed with the aborgines [sic] of some other race . . . [and] were made known to European people as dressed up in blankets, feathers and tattooed all over the body."); see also Harpalani, supra note 1, at 72 ("There were the ululations and references to rain dances—stereotypically associated with Native American groups—that I sometimes

Many authors note that a variety of contrasting influences characterize the racial experiences of South Asian Americans, resulting in a distinctive ambivalence in racial identity and relationships to other racial groups. ¹⁵⁶ All immigrant and autonomous groups encounter tensions between traditional cultural practices and those of the dominant (white American) society. Professor Bandana Purkayastha has examined how South Asian Americans negotiate this tension in their socialization and identity development. ¹⁵⁷ This bicultural navigation, in conjunction with the noted variety of racialized experiences, also lays the backdrop for South Asian racial ambiguity.

America's social and racial hierarchies also intersect with this immigrant experience. On the one hand, South Asian immigrants are heavily influenced by negative stereotypes of African Americans, 158 which are reinforced through juxtaposition with images of successful South Asian Americans as "model minorities." Conservative South Asian American commentators, such as Dinesh D'Souza, 159 cite this success to argue that racism is no longer a barrier and that African Americans are responsible for their own lots in American society. South Asian societies also have a long history of endemic caste and color bias, incorporating light skin privilege into

heard in the park or at school. These came from kids who seemed to confuse American and Asian Indians.").

More recently, the New York Police Department Quality Assurance Division found that crime reports sometimes misclassify Asian Indian Americans as "American Indians" and Police Commissioner Raymond Kelly issued a memo to help correct this problem. Rocco Parascandola, NYPD Commissioner Kelly Issues Memo to Clarify Indians Are Asian, N.Y. Daily News, Sept. 13, 2013, http://www.nydailynews.com/new-york/nypd-issues-memo-clarify-indians-asian-article-1.1454467.

156. See supra note 14.

157. See Purkayastha, supra note 88; see also Jaicy M. John, South Asian American Youth Negotiate Ethnic Identities, Discrimination, and Social Class (2009) (unpublished Ph.D. dissertation, City University of New York Graduate Center) (on file with author).

158. Mazumdar, supra note 14; Amritjit Singh, African Americans and the New Immigrants, in Between the Lines: South Asians and Postcoloniality 93, 104 (Deepika Bahri & Mary Vasudeva eds., 1996); see also infra Part IV.D.

159. Dinesh D'Souza, The end of racism: Principles for a multiracial society (1995).

their religious and cultural mores, 160 and these factors reinforce racist attitudes and distancing from black Americans. 161

At the same time, South Asian Americans experience overt discrimination and more subtle forms of racism. These experiences include hate crimes, 162 racial profiling, particularly in the wake of the September 11, 2001 attacks, 163 and "glass ceilings" in hiring. 164 The Immigration Act of 1965 brought a wave of educated, technically-trained professionals from India, including engineers, scientists, physicians, and computer programmers. 165 However, more recently, there has been an influx of working class South Asian immigrants—taxi drivers, motel owners, and shop keepers—that has created intragroup tensions and complicated racial and class identities. Professor Sunaina Maira has written about the adoption and creation by South Asian American youth of new, hybrid cultural styles that incorporate hip hop and other genres, 166 and Ajay Nair and Professor Murali Balaji have also described South Asian American participation in hip hop. 167 Moreover, Professor Nitasha Tamar Sharma has explicitly linked South Asian American hip hop to

Nevertheless, the racial characterization of these early immigrants, mainly lower caste laborers, was amorphous from the beginning and at times even borrowed from the notions of the caste system.

- 161. See Mazumdar, supra note 14.
- 162. See Misir, supra note 91.
- 163. See Flying While Brown, supra note 13.
- 164. See infra Part IV.A.2.
- 165. See infra Part IV.A.1.
- 166. Sunaina M. Maira, Desis in the House: Indian American Youth Culture in New York City (2002).
- 167. Ajay Nair & Murali Balaji, Desi Rap: Hip Hop and South Asian America (Ajay Nair & Murali Balaji eds., 2008).

^{160.} See Peter Robb, The concept of race in South Asia 2–3 (Peter Robb, ed., 1995). While color and caste bias existed and still exist in South Asian societies, the delineation of race in the United States and caste in South Asia occurred through different sociohistorical processes. In the United States, skin color and other physical features were used to create a system of slavery for purposes of economic exploitation and racial subordination. Race, as a means of physical identification based on skin color and other features, was central and fundamental to the creation of this system. Conversely, in South Asia, occupational classification and related sociocultural factors were used to create the caste hierarchy. Both ethnicity and skin complexion were related to hierarchy but were not the fundamental or essential components. See Koshy, supra note 14, at 294–301. However, the introduction of Western notions of race did significantly influence and reformulate the existing caste hierarchy, and various factions on the South Asian subcontinent have contributed to the racialization of caste and religion for oppressive, political ends. Id.

"global race consciousness" and engagement with blackness. 168 These cultural phenomena illustrate the nexus between black, Latino, and South Asian youth in urban communities.

Additionally, the emergence of South Asian progressive political movements has captured attention, and Vijay Prashad has called for solidarity between South Asian and black Americans, are joinder to Dinesh D'Souza. There is also the question of how South Asians fit into the larger Asian American identity which has historically focused on East Asian (Japanese, Chinese, and Korean) immigrants. Moreover, all of this complexity stands along the growing prominence of figures such as Bobby Jindal, who was a potential Republican Vice Presidential candidate in 2008 and 2012 and could be a Presidential contender in 2016, and South Carolina Governor Nikki Haley, both of whom increase the visibility of South Asian Americans.

Various scholars have discussed the racial ambiguity of South Asian Americans in this context. My opening anecdote comes from a personal Critical Race Theory autobiographical narrative which deals with the topic. 173 In the realm of ethnic studies, Professor Nazli Kibria argues that South Asian Americans do not fit well into the American black/white racial hierarchy or the Asian American category; she characterizes South Asians in the United States as "ambiguous nonwhites." 174 Also, Professor Susan Koshy examines

^{168.} Sharma, *supra* note 96. See *infra* Part IV.D.2. for a more detailed discussion of Professor Sharma's book.

^{169.} VIJAY PRASHAD & BIJU MATHEW, eds., Satyagraha in America: The Political Culture of South Asians in the U.S., 25 Amerasia Journal, Special Issue (1999/2000) (discussing South Asian American youth involvement in progressive activism and politics). For the past fifteen years, in various cities, there has also been a weeklong "Youth Solidarity Summer" (YSS) camp for radical and progressive South Asian American youth. See Vivek, Happy Birthday, Youth Solidarity Summer!, Pass the Roti on the Left Hand Side (Feb. 14, 2007), http://www.passtheroti.com/posts/373 (last visited Oct. 30, 2013). I attended YSS in New York City in the summer of 2000, where I met Professors Vijay Prashad and Biju Mathew, and other South Asian American activists.

^{170.} VIJAY PRASHAD, EVERYBODY WAS KUNG FU FIGHTING: AFRO-ASIAN CONNECTIONS AND THE MYTH OF CULTURAL PURITY XII (2001); THE KARMA OF BROWN FOLK, supra note 88.

^{171.} D'Souza, supra note 159.

^{172.} A Part, Yet Apart: South Asians in Asian America (Lavina Dhingra Shankar & Rajini Srikanth eds., 1998) [hereinafter A Part, Yet Apart].

^{173.} Harpalani, supra note 1.

^{174.} Kibria, *supra* note 14, at 78. This Article largely agrees with Professor Kibria's characterization, but it argues that South Asian Americans can be honorary whites as well. *See infra* note 208 and accompanying text and Parts IV.A and IV.B.

the changing racial classification of South Asian Americans, contrasting them with British South Asians.¹⁷⁵ These contributions lay the groundwork for theorizing the racial ambiguity of South Asian Americans

II. THEORIZING RACIAL AMBIGUITY

As noted earlier, racial ambiguity has been undertheorized in scholarship on racialization. Sociological theories of racialization have focused mainly on the creation and transformation of racial categories over time, ¹⁷⁶ rather than on malleable racialization of ambiguous individuals and groups in different situations. Nevertheless, sociological theories of racialization provide a good foundation to analyze racial characterization of ambiguous individuals and groups. Additionally, CRT, whiteness studies, and historical and philosophical perspectives on race add a number of insights on racialization. This Part begins the creation of a theoretical framework to analyze racial ambiguity, by (1) explicating "formal" and "informal" modes of racialization, (2) defining both "claims to" and "ascriptions of" racial status, and (3) highlighting the role of "racial microclimes." The rest of the Article then applies these concepts to analyze the racial ambiguity of South Asian Americans.

A. Racialization Processes

Racialization theory has focused on the historical and political processes—including laws—that create official racial classifications. ¹⁷⁸ Building on this work, this Article also examines racialization that occurs informally—not only through classification by the government or other source of authority, but also by individual actors applying racial stereotypes in particular situations. Such informal modes of racialization are particularly germane for racially ambiguous groups and individuals, and more generally for the post-*Brown* era when formal racial categories have a diminished role in law and policy.

^{175.} Koshy, *supra* note 14, at 307–11. While British South Asians comprise the largest minority group in Britain (2.9%) and have transitioned from a "black" identity in the 1960s and 1970s to a "British Asian" identity in the 1980s, South Asian Americans are a smaller, more diffuse group that still occupies an ambiguous racial position. *Id.*

^{176.} See, e.g., Omi & Winant, supra note 24.

^{177.} See Chang, supra note 8.

^{178.} See, e.g., Omi & Winant, supra note 24, at 53–76.

1. Sociological Theories of Racialization

Sociological theories of racialization focus on the creation and transformation of racial categories, which are central to understanding the racialization of individuals. Perhaps the most widely cited work on the sociohistorical formation of racism is Omi and Winant's treatise, *Racial Formation in the United States*. ¹⁷⁹ They define "racial formation" as, "the sociohistorical process by which racial categories are created, inhabited, transformed, and destroyed. ¹⁸⁰ Racial formation is described in terms of "historically situated racial projects, which are interpretations and explanations of the racial dynamics in a society that serve to reallocate resources to various racial groups. Racism is constituted by those racial projects that "create or reproduce structures of domination based on essentialist categories of race." ¹⁸²

Building on Omi and Winant's ideological conception of racial formation, Bonilla-Silva¹⁸³ outlines a theory of racism that is both structural and process-oriented: the "racialized social systems" framework. Within this framework, racialized social systems are societies that allocate material and social rewards differentially by race. Such societies develop a particular "racial structure": The set of social relations, cultural practices, and tacit and explicit assumptions, based on physical distinctions, which govern the social construction of racial groups within the society. "Racial ideology" refers to the expression of this racial structure in the norms and values of the society, and it serves as "the organizational map that guides actions of racial actors in society." Bonilla-Silva notes that most competition within a racialized social system contains a racial component, often of distinct character, which represents "racial contestation." Racial contestation reveals political interests of various

^{179.} See generally id.

^{180.} *Id.* at 55. Omi and Winant also define race as "a concept which signifies and symbolizes social conflicts and interests by referring to various types of human bodies." *Id.* Racialization, as posited in this Article, is similar to Omi and Winant's concept of racial formation, but includes not only the creation, inhabitation, transformation, and destruction of formal racial categories, but also social meanings associated with race.

^{181.} Id.

^{182.} *Id.* at 194. Racial essentialism is the presumption that racial categories are fixed and have unique identifying attributes, rather than being socially constructed and dependent on social and historical context.

^{183.} Rethinking Racism, supra note 24.

^{184.} Id.

^{185.} Id.

racial groups in a society, and can serve to perpetuate the differential allocation of resources by race.

2. Formal and Informal Modes of Racialization

This Article extends Omi and Winant's racial formation theory and Bonilla-Silva's racialized social systems framework to show how racial structure and ideology are expressed situationally for racially ambiguous groups and individuals (specifically South Asian Americans). First, it posits that racialization occurs via "formal" and "informal" modes. 186 Formal racialization refers to the creation and application of official racial classification schemes by the government or another source of authority;¹⁸⁷ for example, the determination of who was "white" under the Naturalization Law of 1790, as analyzed by Professor Ian Haney Lopez. 188 Formal racialization provided many exclusive privileges before the Civil Rights movement through designation as "white." Conversely, membership in a category other than "white" led to denial of those rights. Actors made claims to formal whiteness in order to acquire citizenship, and they were also ascribed with non-white racial identity in denving those claims. In the post-Civil Rights era, formal racialization no longer serves as the primary demarcator of racial hierarchy, although it is still relevant. 189

"Informal" racialization refers to racial characterizations that do not involve official classification schemes, but rather situational characterizations based on social meanings associated with race—meanings which are rooted in the racial ideology of a society. ¹⁹⁰ These characterizations can be based on physical features such as skin color. For those with darker skin or other physical attributes, ascription is often the basis for racialization, leading to racial stere-

^{186.} Formal and informal racialization are implicit in racial formation theory and the racialized social systems framework. This Article merely makes those concepts explicit, in order to highlight the phenomenon of racial ambiguity.

^{187.} This Article deals with racial classification by the government. But other authorities may also create formal racial classification schemes, such as private companies or universities which ask applicants to identify their race on applications. One can think of formal racialization as requiring the racialized individual to check a box identifying his or her race, or as having a government or private official identify and record the individual's race (including a judicial determination).

^{188.} See infra Part III.B.

^{189.} In fact, classification as non-white can confer certain benefits, such as inclusion in affirmative action programs, although these may dissipate if the neoconservative racial project of colorblindness prevails.

^{190.} See Rethinking Racism, supra note 24.

otyping, profiling, hate crimes, and other manifestations of racial oppression. Black Americans are the most widely recognized group that is stigmatized based on skin color and other bodily criteria, but other groups are also affected. For example, "foreignness"¹⁹¹ is attributed to Asian Americans based on racial physiognomy. Lighter skin generally serves as a marker of status,¹⁹² and darker skin can serve to negate status. For individuals with lighter skin—especially those who are perceived as "white"—status may be manifested through everyday experiences of white privilege.¹⁹³

Formal and informal racialization are related and may overlap. Formal racialization is also rooted in ideology and racial stereotypes, which are used to create official racial categories and classify individuals. The key difference between the two modes is that formal racialization involves government or other authority applying an officially sanctioned racial classification scheme, whereas informal racialization involves situational racial characterizations that do not necessarily invoke authority and do not involve direct application of existing racial classification schemes; for example, the model minority stereotype of Asian Americans. While there is overlap between formal and informal racialization, this Article emphasizes official categories for the former and racialized symbols for the latter. Informal racialization is particularly important for understanding racial ambiguity, which inherently problematizes the ap-

^{191.} See Neil Gotanda, Comparative Racialization: Racial Profiling and the Case of Wen Ho Lee, 47 UCLA L. Rev. 1689, 1694 (2000) [hereinafter Comparative Racialization] (noting that "foreignness is a crucial dimension of the American racialization").

^{192.} See e.g., Suzanne G. Fegley, Margaret B. Spencer, Tyhesha N. Goss, Vinay Harpalani & Nicole Charles, Colorism Embodied: Skin Tone and Psychosocial Well-Being in Adolescence, in Developmental Perspectives on Embodiment and Consciousness 281, 285–87 (Willis F. Overton, Ulrich Müller & Judith L. Newman eds., 2008).

^{193.} See, e.g., Robert Jensen, The Heart of Whiteness: Confronting Race, Racism and White Privilege (Lawrence Ferlinghetti & Nancy J. Peters, eds., 2005); Tim Wise, White Like Me 3 (2005); Peggy McIntosh, White Privilege: Unpacking the Invisible Knapsack, Peace & Freedom, July-Aug. 1989, at 10.

^{194.} See infra Part IV.A. Another example distinguishing formal and informal racialization comes from college applications. Here, formal racialization could occur when an applicant checks a box that directly identifies her/his race, whereas informal racialization could occur if the applicant offers direct or indirect information about her/his racial/ethnic background in a personal statement. The self-identification box on the application represents a formal racial classification scheme, whereas information in the personal statement may only informally refer to race or offer indirect information that is correlated with race (e.g., from which part of the world or country the applicant hails, experiences or activities in which the applicant has been involved).

plication of formal categories and requires one to focus on racialized symbols.

In that vein, informal racialization can occur via material symbols that are not physical or bodily features; for example, Professor Vijay Prashad discusses how the turban is a material symbol associated with Muslim terrorists. Beyond material artifacts, informal racialization can involve other statuses that may be linked to race, including class, religion, and achievement, via symbols that represent either desirable or undesirable statuses—all reflective of racial ideology. In its analysis of South Asian American racialization, this Article emphasizes particular racialized symbols, including religion and educational achievement, and explores how these racialized symbols interact with formal racialization. Informal racialization also occurs via the performance of race that may draw upon such symbols. CRT scholars have engaged in such analyses by examining the performative aspects of race; for example, Professor Camille Rich provides such a performative definition of race:

Race/ethnicity performance is defined as any behavior or voluntarily displayed attribute which, by accident or design, communicates racial or ethnic identity or status. It covers racially and ethnically coded indicia such as hairstyles and other aesthetic choices, as well as dialect, language choice, and accent."¹⁹⁹

By viewing race as "performance," one can begin to create a conceptual framework to examine racialization that moves beyond the creation and transformation of formal racial categories. Analyzing "race as performance" also illuminates racial stereotypes and the underlying social meanings associated with racial classification in the real world, outside the context of legal doctrine. The relationship between performance and racialization is key to understanding racial ambiguity, which is essentially manifested through situational racialized performance and through interpretations of such performance.

Moreover, as conceived in this Article, informal racialization posits that race can be a transferable entity. Racial status in this vein

^{195.} See Uncle Swami, supra note 13.

^{196.} See infra Part IV.C.

^{197.} See infra Parts IV.A, IV.B.1.

^{198.} See generally Devon Carbado & Mitu Gulati, Working Identity, 85 CORNELL L. Rev. 1259 (2000).

^{199.} Rich, supra note 25, at 1139-40.

is a form of social capital²⁰⁰ or symbolic capital.²⁰¹ Racial identity and status then become a privileged resource that can be allocated and withdrawn, that can be claimed and contested by racial actors in various situations (when that resource is "whiteness"), or that can be ascribed as a mark of stigmatization. Individuals of all categorical racial groups—e.g., black, white, Asian American—have the ability to claim racial statuses or to be ascribed with them by others.²⁰² In this way, racial actors who are not formally classified as "white" can still access some of the privileges associated with whiteness, regardless of their categorical racial identification. Similarly, racial actors who are not formally classified as black or "foreign" can have black-

200. See Pierre Bourdieu, The Forms of Capital, in Handbook of Theory and RESEARCH FOR THE SOCIOLOGY OF EDUCATION, 241, 248 (John G. Richardson ed., 1986) [hereinafter The Forms of Capital] ("Social capital is the aggregate of actual or potential resources which are linked to possession of a durable network of more or less institutionalized relationships of mutual acquaintance or recognition—or in other words, to membership in a group ").

201. See Pierre Bourdieu, Distinction: A Social Critique of the Judgment OF TASTE 291 (Richard Nice trans., Harvard Univ. Press 1984) (1979) [hereinafter DISTINCTION] (defining "symbolic capital" as "reputation for competence and an image of respectability and honourability [sic] that are easily converted into political positions"). Social and symbolic capital are related to one another and to economic capital. Acquisition of competence or respect (symbolic capital) can lead to broader institutional relationships and networks (social capital), and vice versa. Both of these can also emanate from, or lead to, greater economic capital.

202. By focusing on blackness, whiteness, and foreignness, rather than on the categorical classification of the racial actor, the emphasis is again on the social meaning of race: the attributes that constitute whiteness or blackness can vary in different situations. It is important to note, however, that this inquiry should not reify racial stereotypes, but rather acknowledge their prevalence and importance in existing racial status hierarchies. One should not assume that the attributes that constitute blackness, whether they are speech patterns or other cultural behaviors, are those which are possessed by most, or even many, black Americans. Rather, they are just the symbols that represent blackness in particular situations.

This concept of race captures the malleability and multiplicity of racial identities that is particularly salient for racially ambiguous individuals and groups. For example, ambiguous racial actor Barack Obama has been racialized as "black," "white," "mixed," "Arab," or "foreign." In President Obama's case, we can postulate that his blackness derives from his appearance, heritage, self-identification, and ascription by the media. His whiteness, however, may derive from his educational background, manner of speaking, and other cultural ways of presenting himself to mass audiences. Obama's mixed-race identity, like blackness, also derives from his heritage and appearance, although Obama's own claim to mixed-race identity is particularly important. Until recently, mixed-race identity has been subsumed by blackness, and often still is in public discourse. Therefore, Obama is discussed as a mixed-race individual primarily when he employs this identity in particular situations. Finally, the misidentification of Obama as "Arab" or "Muslim" derives largely from his Arabic name, although his appearance and international upbringing also play a role.

ness and foreignness ascribed onto them, either as a means of oppression or to negate privileges associated with whiteness.²⁰³

B. Racial Status, Contestation, and Agency

After considering socio-historical processes of racialization, theorizing racial ambiguity involves: (1) elucidating specific racial status hierarchies in a society; and (2) examining the agency of ambiguous racial actors in determining their racial status. This Article posits that both formal and informal racialization occur through "claims to" and "ascriptions of" racial statuses. These claims and ascriptions represent racial contestation.²⁰⁴ The racial structure and ideology of a society,²⁰⁵ determines how such claims and ascriptions operate. As such, although no longer central to the legal construction of race,²⁰⁶ racial status hierarchies are still important in understanding racialization processes and racial ambiguity.

1. Whiteness and Racial Capitalism

Philosopher Charles Wade Mills begins his prize-winning book, *The Racial Contract*, by declaring that "white supremacy is the unnamed political system that has made the modern world what it is today."²⁰⁷ Racial hierarchy is key to understanding racialization and racial dynamics more generally. Sociologist Eduardo Bonilla-Silva designates three categories to describe the emerging American racial hierarchy: (1) "Whites"; (2) "Honorary Whites"; and (3) "Collective Black."²⁰⁸ Professor Bonilla-Silva's distinction between "Whites" and "Honorary Whites" underscores the distinction between formal racial categories and informal aspects of racialization. Formal and informal aspects of whiteness can elucidate racial hierarchy and illustrate how it is subtly reproduced in everyday life.²⁰⁹

^{203.} There are also situations where ambiguous actors may claim non-white racial identities to confer benefits; for example, to gain access to civil rights protections or affirmative action programs. *See infra* Part III.D. Another example is that of South Asian American males claiming blackness (indirectly, through symbols associated with hip hop) as stereotypic masculinity. *See infra* Part IV.D.2.

^{204.} See Rethinking Racism, supra note 24.

^{205.} Id.

^{206.} See A Critique of "Our Constitution Is Color-Blind," supra note 15, at 2–3.

^{207.} CHARLES WADE MILLS, THE RACIAL CONTRACT 1 (1997).

^{208.} Eduardo Bonilla-Silva, From Bi-Racial to Tri-Racial: Towards a New System of Racial Stratification in the USA, 27 Ethnic & Racial Stud. 931, 931 (2004) [hereinafter From Bi-Racial to Tri-Racial]. Within this scheme, Bonilla-Silva characterizes South Asian Americans (Asian Indians) as "Honorary Whites." Id. at 933.

^{209.} Historians have also examined whiteness in this light, finding that white privilege can be manifested in complex ways. See, e.g., MARY FRANCES BERRY, THE

To analyze the status hierarchies and social meanings associated with race, critical race theorists have focused on the definition of whiteness as a formal category. Professor Cheryl I. Harris's famous article, *Whiteness as Property*, examined attributes of whiteness from the lens of property theory. Professor Harris discusses whiteness not only as a legal status, 11 but also in terms of social relations, identity, 12 and as a privileged status—such as Homer Plessy's reputation as a white man—constituting a property right. Additionally, Professor Ian Haney Lopez's work, *White by Law* illustrates how the racial standard for naturalization, which essentially consisted of legal classification as a "free, white person," played a large role in the social construction of racial categories.

Building on this work, Professor Nancy Leong has described "racial capitalism,"²¹⁵ which she defines as "the process of deriving social and economic value from the racial identity of another person."²¹⁶ Professor Leong focuses primarily on how white individuals and predominantly white institutions derive value from non-white identities.²¹⁷ Nevertheless, the idea of racial capitalism applies to both white and non-white individuals capitalizing from both white and non-white identities; indeed, one can posit that non-white peo-

Pig Farmer's Daughter and Other Tales of American Justice: Episodes of Racism and Sexism in the Courts from 1865 to the Present (1999) (describing criminal cases in 19th century America where black defendants were acquitted for crimes, even against white individuals, because they had gained the favor of more powerful and influential white citizens). Professor Berry's analysis here also underscores the historical importance of race (specifically whiteness) as social capital, coupled with other forms of status.

- 210. Cheryl I. Harris, Whiteness as Property, 106 HARV. L. REV. 1707, 1709 (1993).
 - 211. Id. at 1716-18.
 - 212. Id. at 1737.
 - 213. *Id.* at 1747.
- 214. See, e.g., HANEY LOPEZ, supra note 31. There have also been many sociological studies of whiteness. The explication of whiteness and its consequences has provided a dynamic venue for debate, and scholars have delineated the concept of whiteness and its relationship to racial hierarchy in various ways. See, e.g., GEORGE LIPSITZ, THE POSSESSIVE INVESTMENT IN WHITENESS 2–3 (2006). Additionally, some commentators have also focused on current, everyday manifestations of white privilege. See supra note 193 and accompanying text.
- 215. Nancy Leong, Racial Capitalism, 126 HARV. L. REV. 2151 (2013); see also Mitchell F. Crusto, Blackness as Property: Sex, Race, Status, and Wealth, 1 STAN. J. CR. & C.L. 51 (2005).
 - 216. Leong, *supra* note 215, at 2152.
 - 217. Id.

ple make claims to whiteness in order to accrue capital as well.²¹⁸ Professor George Lipsitz's notion of the "possessive investment"²¹⁹ in whiteness can be extended to racial groups who are presently classified as non-white. These groups also strive for the social and material advantages afforded by whiteness, even when they simultaneously claim other racial identities.²²⁰ Moreover, for non-white individuals and groups, claims to whiteness are also opposed and negated in various ways, often contingent on local or national political circumstances. These phenomena increasingly occur in less racially explicit terms, as part of the "colorblind racism"²²¹ of the post-Civil Rights era. A reflexive view of racial status—one that highlights claims to statuses such as whiteness, along with negations of those claims—can shed light on "colorblind racism" and its consequences.

2. Claims and Ascriptions

Philosopher Kwame Anthony Appiah has distinguished between "ascriptions" of racial status, which involve labeling of the racialized actor by other people, and "identifications" of status, which involve "a shaping role for the label in the intentional acts" of the racialized actor.²²² Scholarship on whiteness and racial capitalism raises the question of how much agency individuals—particularly those who are racially ambiguous—have in determining their own racial characterization.²²³ The role of agency in racialization adds another dimension to analysis of the performance of race.

^{218.} See generally id.; see also id. at 2153 ("A person of any race might engage in racial capitalism").

^{219.} Lipsitz, supra note 214.

^{220.} This also highlights the notion that racial identity can be viewed as a form of capital. *See The Forms of Capital, supra* note 200 and accompanying text; DISTINCTION, *supra* note 201 and accompanying text; Leong, *supra* note 215 and accompanying text.

^{221.} White Supremacy and Racism, *supra* note 24, at 137–91; *see also* Eduardo Bonilla-Silva, Racism Without Racists: Color-Blind Racism and the Persistence of Racial Inequality in America (3d ed. 2010).

^{222.} Kwame Anthony Appiah, *Race, Culture, Identity: Misunderstood Connections, in Color Conscious* 30, 81 (Kwame Anthony Appiah & Amy Gutmann eds., 1996).

^{223.} For example, President Barack Obama has, at various times, characterized himself as black or of mixed heritage, referred to his "white grandmother" to emphasize his connection to white Americans, and highlighted his international upbringing; his campaign has even referred to the President as "O'Bama" to tout his Irish heritage. See Byron Tau, "O'Bama" Campaign Touts His Irish Heritage, POLITICO (Feb. 17, 2012, 2:39 PM), http://www.politico.com/politico44/2012/02/obama-campaign-touts-his-irish-heritage-114862.html.

[Vol. 69:77

Building on Professor Appiah's distinction and on Professor Harris's notion of whiteness as property and Professor Leong's idea of racial capitalism, this Article examines the role of ambiguous racial actors in racialization processes. It contends that racialization, whether formal or informal, can operate through "claims" and "ascriptions" by racially ambiguous individual actors that involve racial statuses.²²⁴ The key difference between claims and ascriptions is agency: the former involve choice of the racialized actor, while the latter do not. As such, individuals can make claims to racial status (usually whiteness, although non-whiteness may be subject to such status claims). These claims are often racially invisible: American immigrant groups often assimilate by acquiring material and social capital and tacitly adopting the social and cultural practices of the white majority without any direct attribution to race. Racially ambiguous individuals have greater ability to make such claims, owing to their ability to "blend in."

Racialization also occurs through ascriptions²²⁵ of racial statuses (usually "non-whiteness" as noted by Professor Leong)²²⁶ to persons by other individual and state actors. This Article contends that ascriptions of non-whiteness can serve to negate claims to honorary whiteness by people of color.²²⁷ Groups such as South Asian Americans are usually racially invisible when treated as honorary whites (which, at least for the more educated and privileged mem-

^{224.} Professor Laura Gomez makes a similar distinction between race and ethnicity in her analysis of Mexican American experiences. *See* Gomez, *supra* note 26, at 2 (using "race" to denote "group membership . . . assigned by others" and "ethnicity" to denote "group membership . . . chosen by members of the ethnic group"). This Article does not employ this framework because it deals with race not only as group membership, but also as transferrable capital. *See supra* notes 215–20. The analysis in this Article also does not focus on the race/ethnicity distinction, although it does acknowledge this distinction. *See supra* note 2.

^{225.} I use the term "ascription" in the same sense as Professor Appiah, *supra* note 222. Professor Bandana Purkayastha also uses the term in a similar sense. *See* Purkayastha, *supra* note 88, at 26 (noting "external ascriptions that South Asian Americans mentioned most often" in their discussion of racial and ethnic experiences).

^{226.} See Leong, supra note 215, at 2154 ("[T]he commodity of nonwhiteness is exploited for its market value.").

^{227.} This occurs when particular non-white individuals or groups are explicitly contrasted with particular white Americans, based on skin color, religion, language, or other features. Parts III and IV give examples of such ascriptions that involve South Asian Americans. There are also situations where ascription of non-whiteness can confer benefits; for example in affirmative action programs. *See infra* Part III.D.

bers of the community, is much of the time). ²²⁸ It is only when they are marked as the "other" that their race becomes explicit. In America, "blackness" has historically been the primary "other" category, ²²⁹ and groups such as South Asian Americans have at times been labeled as "black" to negate their honorary whiteness. ²³⁰ However, as noted "otherness" can take different forms, depending on the group being racialized: for example, Arab and South Asian Americans are often portrayed as "foreigners" and "terrorists. ²³¹ Professor Gotanda contends that "[f] oreignness is a crucial dimension of the American racialization, ²³² and along with blackness and whiteness, it is an entity that can be applied across groups. This Article explores all of these various racial statuses with respect to South Asian Americans.

Both claims of and ascriptions to racial status are racial projects as described by Professors Omi and Winant.²³³ Such claims and ascriptions can "create or reproduce structures of domination based on essentialist categories of race."²³⁴ Applying Professor Bonilla-Silva's racialized social systems framework,²³⁵ claims and ascriptions are also rooted in a society's "racial structure" (the set of social relations, cultural practices, and tacit and explicit assumptions, based on physical distinctions, that govern the social construction of racial groups within the society), and its "racial ideology" (the expression of this racial structure in the norms and values of the society, which serves as "the organizational map that guides actions of racial actors in society"²³⁶). Claims and ascriptions also represent "racial contestation"—competition for status in a racialized social system.²³⁷

3. Preliminary Synthesis: Racialization via Claims and Ascriptions

As noted, claims and ascriptions to racial statuses can occur through either formal or informal racialization. Historically, the most salient grounds for racial contestation were formal claims (to

^{228.} See, e.g., Harpalani, supra note 1, at 78 ([In] the . . . environment of a college campus . . . I had . . . the ability to be racially invisible. I could just fit in with the predominantly white crowd").

^{229.} See George Yancey, Who Is white? Latinos, Asians, and the New black/Nonblack Divide (2003).

^{230.} See infra Part IV.D.3.

^{231.} See infra Part IV.C.

^{232.} Comparative Racialization, supra note 191.

^{233.} See supra Part II.A.1.

^{234.} Omi & Winant, *supra* note 24, at 194.

^{235.} White Supremacy and Racism, *supra* note 24, at 37–44.

^{236.} Id. at 44.

^{237.} Id.

whiteness) and formal ascriptions (of non-whiteness), which involved conflicts over government racial classification by courts, executive agencies, and legislatures.²³⁸ More recently, however, informal racialization has become the primary ground for racial contestation. Honorary whiteness reflects access to material resources and to social capital239 and symbolic capital.240 As such, Pierre Bourdieu's notion of class tastes and distinctions²⁴¹ is transposed on the racial hierarchy and assimilation processes.²⁴² Claims to honorary whiteness by non-white immigrants may involve adopting the cultural practices and values of white Americans—through language,²⁴³ membership in particular social groups, and participation in activities that are associated with high status, or just with appearing more "American." These claims can confer privileges and serve as a "distinction" 245 from black Americans and even from their own groups.²⁴⁶ The acquisition of symbolic capital associated with race is perhaps the most salient ground currently for racial contestation, as it is the most malleable, reflexive, and dynamic expression of racialization. Non-white actors—particularly those who are racially ambiguous—have greater agency to make claims to sym-

^{238.} See infra Part III.

^{239.} See Distinction, supra note 201 (defining "social capital").

^{240.} See id. (defining "symbolic capital").

^{241.} *Id*.

^{242.} Professor Nancy Leong presents a complex and nuanced analysis of racial identity as a form of capital, emphasizing the commodification and exchange value of racial identity and association. *See* Leong, *supra* note 215. This Article implicitly adopts Professor Leong's analysis, but differs in focus in three ways: (1) it emphasizes racial ambiguity rather than racial identity more generally; (2) it focuses on South Asian Americans (although it posits broader implications); and (3) it emphasizes the symbolic rather than the economic value of race, as the focus here is more on racialized symbols and their association with status hierarchies than on commodification. Nevertheless, this Article does cover commodification to an extent. *See infra* Part IV.C.2. Professor Leong also does not focus on assimilation, which this Article does in Parts III.B (legal whiteness), IV.A & IV.B (Honorary Whiteness), and IV.D.1 & IV.D.2 (claims to blackness).

^{243.} See H. Samy Alim & Geneva Smitherman, Articulate While Black: Barack Obama, Language, and Race in the U.S. 52 (2012).

^{244.} See Acting White?, supra note 25, at 27 (noting that in order to appear more "American," Chinese Americans might "change their names to more American-sounding ones . . . [and/or] . . . display American flags on their cars and lockers").

^{245.} See DISTINCTION, supra note 201; see also supra note 200 and accompanying text.

^{246.} See Acting White?, supra note 25, at 29 ("With respect to racial distancing, a Latina who is bilingual might refuse to speak Spanish. A black person might avoid associating with other black people. A Korean American might change her name from Mi-Young to Julie").

bolic capital, which depends on acquisition of material or cultural resources rather than on racial physiognomy or formal classification.²⁴⁷

However, such assimilation is often challenged through ascriptions of "otherness" which is the ascription of religion, culture, language, and other statuses to negate claims to whiteness. For example, Christianity may serve as honorary whiteness²⁴⁸ and Islam as otherness,²⁴⁹ although religion, language, and other characteristics do not always constitute racialized symbols. This Article employs Omi and Winant's criteria: religion, language, achievement, and other factors constitute honorary whiteness only when they are part of a project that creates or reproduces racial hierarchy.²⁵⁰

C. Racial Microclimes

The final step in theorizing racial ambiguity is consideration not only of how racialization operates on a national level, in society at large, but also how it is expressed in local environments within the society—each with its own history and politics. Citing the late Professor Keith Aoki, Professor Robert Chang discusses the idea of "racial microclimes"—local settings with particular social and political dynamics that affect racialization processes.²⁵¹ Professor Chang notes, "Race has multiple contingent meanings. Racial orderings are multiple and contextual, temporal as well as temporary. Attention to the local microclime is crucial for understanding how discrimination operates and what kinds of interventions would disrupt or remedy this discrimination."²⁵²

^{247.} As they become widespread among a particular ethnic group, such symbolic claims to honorary whiteness" might also have led to formal classification as "white"—particularly for European ethnic groups. See Matthew Frye Jacobson, Whiteness of a Different Color: European Immigrants and the Alchemy of Race (1998); Jonathan W. Warren & France Winndance Twine, White Americans, the New Minority? Non-Blacks and the Ever-Expanding Boundaries of Whiteness, 28 J. Black Stud. 200, 202 (1997).

^{248.} See Sarah Gualtieri, Becoming "White": Race, Religion and the Foundations of Syrian/Lebanese Ethnicity in the United States, 20 J. An. Ethnic Hist. 29 (2001) (noting that Arab immigrants have argued for "inclusion in the 'white race'" based on their Christianity).

^{249.} See id.; see also, e.g., Sina A. Muscati, Arab/Muslim 'Otherness': The Role of Racial Construction in the Gulf War and the Continuing Crisis with Iraq, 22 J. Muslim minority Aff. 131 (2002); Nader, supra note 19.

^{250.} See text accompanying *supra* notes 181–82 (describing Omi and Winant's notion of "racial projects").

^{251.} Chang, supra note 8.

^{252.} Id. at 1914.

While racial microclimes are important in understanding racialization more generally, they are particularly important in delineating informal racialization and in understanding the phenomenon of racial ambiguity among individuals and groups. By definition, racial ambiguity entails differential racialization based on local context, and thus moves beyond the focus on how "race operates on a national level." ²⁵³

Thus, this Article examines racial projects (i.e., claims and ascriptions to racial status) not only in whole societies, but also in particular racial microclimes. The expression of racial structure and ideology can vary by local context, and this becomes particularly important for racialization of ambiguous actors. While racial microclimes are important when examining formal racialization, they are also indispensable to understanding informal racialization. By its very nature, informal racialization is more malleable and dynamic than formal racialization. Depending on the local climate, history, and politics, different racial statuses and symbols can become salient, emphasizing various aspects of the society's racial ideology. Thus, when analyzing informal racialization, it is particularly important to pay attention to local racial dynamics—and this significance is augmented further for the most malleable racial actors: racially ambiguous individuals and groups.

In sum, this Article integrates all of these ideas to examine the racial ambiguity of South Asian Americans, beginning in the next Part.

III. TO BE OR NOT TO BE WHITE: FORMAL RACIALIZATION OF SOUTH ASIAN AMERICANS

The first significant wave of immigrants from South Asia to the United States came in the early 1900s,²⁵⁵ settling largely on the

^{253.} Id. (discussing Омі & Winant, supra note 24).

^{254.} See infra Part IV.D.3 (describing the influence of local racial climates on ascriptions of the anti-black epithet "macaca" to South Asian American college student S.R. Sidarth).

^{255.} Professor Sripati Chandrasekhar notes that the "earliest record of the presence of an Asian Indian in North America" comes from a "colonial diary" which documented that "[i]n 1790 an Indian from Madras visited Salem, Massachusetts" Sripati Chandrasekhar, A History of United States Legislation with Respect to Immigration from India, in From India to America: A Brief History of Immigration, Problems of Discrimination, Admission & Assimilation 11, 12 (Sripati Chandrasekhar ed., 1982) [hereinafter A History of United States Legislation]. Professor Vinay Lal notes that dating back to the 1600s, there were some slaves

West coast. Some of these early Asian Indian immigrants were students, ²⁵⁶ but most were laborers and farmers. ²⁵⁷ Additionally, although the majority of these early immigrants were Sikh, ²⁵⁸ they were called "Hindoos." ²⁵⁹ The misidentification of this first wave of South Asian immigrants would portend their racial ambiguity and scapegoating in the United States. The racial ambiguity of early South Asian immigrants to the United States is captured in an essay by Saint Nihal Singh in 1909:

All the Hindoos who come to America have hair varying in hue from brownish-black to purplish or an intense ravenblack. . . . The hide of the Hindoo varies from the dull, pale, sallow-brown of a Mexican to the extreme black of an African. The man who hails from the highlands of northwestern Hindustan [India] is a shade darker than olive. A few coming from Kashmir have fair skins, light hair and blue eyes. Those who come from the low plains have darker complexions and an extremely sun-burnt appearance. . . . This type of countenance is distinctly Aryan, as all the Hindoos who come to the land of the Stars and Stripes are descended from the same branch of the human family as the Anglo-Saxons. 260

from India who were brought to the American colonies and intermarried and assimilated into the black American population, changing their names and converting to Christianity. Vinay Lal., The Other Indians: A Political and Cultural History of South Asians in America 13 (2008). Professor Lal also gives examples of the "handful of Indians" who came to the United States during the 1800s. *Id.* at 14–15. Nevertheless, he acknowledges that the "first significant presence of Indians in the United States can be dated back to 1899–1900" *Id.* at 15. The 1900 U.S. Census reported 2050 Indians residing in the United States. *Id.* at 17.

256. See Mukerji, supra note 155, at 304 (noting that "[t]he year 1901–1902 brought the first pioneer Hindu students to the schools of the Pacific Coast"). Also, Professor Lal chronicles the radical activism of this early wave of students, particularly in the Ghadr ("revolutionary" or "mutiny") Movement which advocated the independence of India from British rule. See Lal., supra note 255, at 23–30.

257. Ronald Takaki, Strangers from a Different Shore: A History of Asian Americans 294, 302–08 (1989). Also, some of the early Asian Indian immigrants were street peddlers in San Francisco and Oakland, while others worked in the silver mines of Nevada. *See Mukerji*, *supra* note 155, at 306.

258. For a basic description of Sikhism, see *Sikh*, WIKIPEDIA, https://en.wikipedia.org/w/index.php?title=Sikh&oldid=579216268 (last visited Oct. 31, 2013).

259. Id. See also Agnes Foster Buchanan, The West and the Hindu Invasion, Overland Monthly, Apr. 1908, at 308, 309, available at http://www.saadigitalarchive.org/item/20111101-444 ("The Hindus and the Hindu Invasion is the latest racial problem with which we of the West have to deal.").

260. Saint Nihal Singh, *The Picturesque Immigrant from India's Coral Strand*, 30 Out West 43, 44–45 (1909), *available at* http://www.saadigitalarchive.org/item/20110714-239.

The number of different characterizations in this one statement illustrates how South Asian racial identification can be molded by description. Professor Karen Leonard notes that racial classification of early South Asian immigrants from Punjab, ascertained by court clerks when issuing marriage licenses, often involved criteria such as skin color.²⁶¹ Accordingly, these immigrants were categorized as 'brown,' 'black,' and 'white.'262 This set the stage for the legal racialization of South Asian Americans, another realm fraught with racial ambiguity.

U.S. Immigration Policy I: The Yellow Peril and the Pacific Barred Zone

While they were ambiguous in appearance and racial characterization, early Asian Indian immigrants were also racialized jointly with other Asian immigrants as "foreigners." In 1907, the Japanese and Korean Exclusion League, a San Francisco organization founded two years earlier, changed its name to the Asiatic Exclusion League in response to the "anticipated flood of immigration from India."263 The Asiatic Exclusion League opposed all East and South Asian immigration to the United States, and it was successful in its lobbying efforts.²⁶⁴

^{261.} Karen Leonard, Making Ethnic Choices: California's Punjabi-Mexi-CAN-AMERICANS 68 (2010) [hereinafter Making Ethnic Choices]. Professor Leonard also documents and describes marriages between Asian Indian immigrant men and Mexican American women in California during the early 20th century. Id. The physical resemblance between Asian Indian and Mexican Americans—another facet of South Asian American racial ambiguity-may well have facilitated these linkages. See Benjamin Gottlieb, Punjabi Sikh-Mexican American Community Fading into History, Wash. Post, August 13, 2012, http://www.washingtonpost .com/national/on-faith/punjabi-sikh-mexican-american-community-fading-intohistory/2012/08/13/cc6b7b98-e26b-11e1-98e7-89d659f9c106_story.html (quoting Professor Karen Leonard) ("Punjabi men chose Mexican women for a host of other reasons: Physically, Mexican women at the time were thought to resemble Punjabis . . . [and] [b]oth communities also shared a rural way of life, cooked similar types of food and had a similar material culture."). For other examples of the physical resemblance between Mexican and South Asian Americans, see supra note 18 and text accompanying supra note 11.

^{262.} See supra note 261. These examples also blur the distinction between formal and informal racialization. See supra Part II.A2.

^{263.} See Harold S. Jacoby, U.S. Strategies of Asian Indian Immigration Restriction 1882–1917, in From India to America: A Brief History of Immigration, Problems of Discrimination, Admission and Assimilation 35, 36 (Sripati Chandrasekhar ed., 1982).

^{264.} Id. The Chinese Exclusion Act of 1882 had already ended immigration from China. See infra note 265 and accompanying text. Thus, the Asiatic Exclusion League focused on Japanese, Korean, and Indian immigrants. On the surface, the

The U.S. government employed various means to exclude different Asian groups. Congress had already enacted the Chinese Exclusion Act of 1882 to exclude Chinese immigrants, 265 while President Theodore Roosevelt utilized his executive influence to coax the Japanese government into curbing immigration—the socalled "Gentlemen's Agreement," 266 Indian exclusion was attained through the actions of an executive agency, the Bureau of Immigration and Naturalization, which considered petitions for admission to the United States. Initial rejections of Asian Indians were based on physical and health reasons; Muslim immigrants also faced exclusion based on charges of polygamy.²⁶⁷ The Immigration Act of 1917²⁶⁸ created the "Pacific Barred Zone," 269 defined by geographic criteria to exclude immigrants from India, the East Indies, much of China (even though Chinese immigrants were already excluded), and Afghanistan.²⁷⁰ This Act ended South Asian immigration to the United States for several decades.

Immigration law thus constructed a notion of race based on geographic criteria. South Asian and East Asian Americans were jointly racialized as part of the "Yellow Peril" phenomenon

grouping of early Asian Indian immigrants with Japanese and Koreans in the 1900s resembles the current model minority myth. *See infra* Part IV.A. However, the original "Yellow Peril" did not involve stereotypic high achievers, but rather low wage immigrant workers who presented economic competition for working class whites. *See generally* Takaki, *supra* note 257, at 179–354 (describing experiences of Japanese, Chinese, Korean, Indian, and Filipino immigrants to the United States in the late 1800s and early 1900s.).

265. Chinese Exclusion Act, ch. 126, 22 Stat. 58 (1882).

266. See A History of United States Legislation, supra note 255, at 17–18; Jacoby, supra note 263, at 35, 36.

267. See Jacoby, supra note 263, at 37.

268. Immigration Act of 1917, ch. 29, 39 Stat. 874 (1917).

269. See A History of United States Legislation, supra note 255, at 18.

270. Id.

271. See Min Song, Pakhar Singh's Argument with Asian America, in A Part, Yet Apart: South Asians in Asian America 82 (Lavina Dhingra Shankar & Rajini Srikanth eds., 1998) ("At the start of the twentieth century, there were many compelling legal and linguistic reasons why South and East Asians might think of themselves as a single race."); Mukerji, supra note 155, at 305–06 (noting that "[t]he American, especially the inhabitant of the Western coast, sees the spectre [sic] of another 'yellow peril'" due to influx of Asian Indian immigrants in early 20th century). Professor Song also notes that in 1924, the California Alien Land Law was expanded to take away property rights from "Hindus," after first being passed in 1920 to target Japanese farmers. Min Song, supra note 275. Professor Song discusses this law in the context of the 1925 Pakhar Singh murder case in southern California, where a Punjabi Sikh farmer shot and killed two white men who had exploited him. Id. at 79–86; see also Karen Leonard, The Pakhar Singh Murders: A Punjabi Response to California's Alien Land Law, 11 Amerasia J. 75 (1984).

which would portend the model minority stereotype several decades later.²⁷² This joint formal racialization of Asian and South Asian Americans contradicted the pseudoscientific racial classification schemes of the time, which typically classified Asian Indians as "Caucasian"²⁷³ and East Asians as "Mongolian."²⁷⁴ The difference between South Asians and East Asians in terms of pseudoscientific racial classification also became significant for formal racialization, as courts dealt precariously with definitions of "white." Those South Asian immigrants who were already in the United States before immigration restrictions would soon encounter further racial ambiguity under the law.²⁷⁵

B. Racial Prerequisite Cases Involving South Asian Americans Prior to 1922

While the Immigration Acts of 1917 and 1924 ended South Asian immigration to the United States for the next thirty years, ²⁷⁶ those South Asians who were already in the United States sought citizenship. The legal battles over this citizenship status are another important chapter on South Asian American racial ambiguity, as

^{272.} See infra Part IV.A.

^{273.} See Haney Lopez, supra. note 31, at 87.

^{274.} Id. at 84.

^{275.} Also, Professor Hemant Shah describes the "Hindu Conspiracy": an alleged insurrectionist plot to overthrow British rule in India. The plot supposedly involved German conspirators along with Indian nationalists and some white Americans. In the United States, 105 people were indicted for conspiracy and violation of neutrality laws as part of the "Hindu Conspiracy" trial that took place in 1917 and 1918. While the details of this case are beyond the scope of this article, two points are of relevance: (1) Professor Shah notes the racialization of the alleged crime in the media. Although German operatives were the central agents in the scheme, the trial was dubbed the "Hindu Conspiracy" by the San Francisco Chronicle. This characterization played on negative sentiments promoted by the Asiatic Exclusion League and the general anti-immigrant fervor of the time; and (2) it is noteworthy that the trial took place just as the United States became directly involved in World War I. While there was not an explicit racial linkage between Germans and Asian Indians, negative sentiments towards the former likely promoted marginalization of the latter. See Hemant Shah, Race, Nation, and Citizenship: Asian Indians and the Idea of Whiteness in the U.S. Press, 1906–1923, 10 HOWARD J. OF COMM. 249 (1999); see also Joan M. Jensen, Passage from India: Asian Indian IMMIGRANTS IN NORTH AMERICA 213 (1988) (noting how scholars in the second half of the twentieth century reinterpreted "Hindu Conspiracy" in a more positive light).

^{276.} In 1946, the Luce-Celler Act created a small immigration quota of Asian Indians and permitted their naturalization; in 1965 the 1952 McCarran-Walter Act completely supplanted the 1790 Naturalization Law, removing all race restrictions to citizenship. *See infra* Part IV.A.1.

they essentially centered upon whether South Asians were "white." The first Congressional act addressing citizenship was the Naturalization Law of 1790, which restricted citizenship and naturalization to "free, white persons." While amendments to this restriction later granted citizenship rights to blacks and Native Americans, the racial restriction remained in law until 1952 and continued to be the standard for citizenship for most non-European immigrants. To be eligible for citizenship, Asian and South Asian Americans had to demonstrate, if challenged, that they were "white persons," essentially making a claim to formal whiteness.

In a series of "racial prerequisite" cases starting in 1878, U.S. courts decided which groups did and did not fit under this definition, thus determining who was eligible for citizenship.²⁸⁰ The courts employed four primary standards to determine who was and was not "white": (1) congressional intent; (2) common knowledge; (3) scientific evidence; and (4) legal precedent.²⁸¹ As noted, South Asians presented a particular dilemma here, for unlike other Asian immigrants, most authorities considered them to be "Caucasian," thus belonging to the same racial group as European immigrants and white Americans.²⁸² Several court cases dealt with this dilemma.

1. In re Balsara and United States v. Balsara

The first racial prerequisite case involving a South Asian was *In re Balsara*.²⁸³ The Circuit Court for the Southern District of New York deemed that Bhicaji Balsara, a Parsi rather than a Hindu, Sikh, or Muslim, was probably not white; they suggested that the Congress which passed the original act intended the term to include only "those races whose emigrants had contributed to the building up on this continent of the community of people which declared itself a new nation."²⁸⁴ Thus, the court used a standard of congressional intent, admitting that its "interpretation is unscientific, and, it may be, not always of easy application."²⁸⁵ However, it also noted the need for a more authoritative pronouncement on the issue, and

^{277.} Naturalization Act of 1790, ch. 3, 1 Stat. 103 (1790).

^{278.} See Haney Lopez, supra note 31, at 1.

^{279.} Id.

^{280.} Id.

^{281.} Id. at 63.

^{282.} Id. at 89.

^{283. 171} F. 294 (C.C.S.D.N.Y. 1909).

^{284.} Id. at 295.

^{285.} Id.

it ruled that Balsara could tentatively attain citizenship, because he "appears to be a gentleman of high character and exceptional intelligence." ²⁸⁶

The following year, in 1910, the Second Circuit Court of Appeals heard Balsara's case.²⁸⁷ The Second Circuit ruled that Balsara was indeed white, stating, "We think that the words ["free, white persons"] refer to race and include all persons of the white race, as distinguished from the black, red, yellow, or brown races"²⁸⁸ Here, the court rendered a different interpretation of congressional intent in the 1790 naturalization law, stating that Congress intended to exclude Africans and Native Americans.²⁸⁹

2. United States v. Dolla

In another 1910 case, the Fifth Circuit also ruled that Abba Dolla was white,²⁹⁰ but not by any of the four prevailing standards. Instead, the court cited Dolla's light skin color, noting that the "skin of his arm," which had been covered from sun exposure, "was sufficiently transparent for the blue color of the veins to show very clearly." The Fifth Circuit also noted that Dolla was the owner of a plot in a "white cemetery" in Savannah, Georgia. Thus, both physical and social criteria played a role in the formal construction of whiteness.

3. In re Mozumdar

The notion of caste, morphed by Western racial theories, also played into the racial prerequisite cases, as illustrated with *In re Mozumdar*.²⁹³ Mozumdar stated in his petition, "I am a high-caste Hindu of pure blood belonging to . . . the warrior or ruling caste The high caste Hindus always consider themselves to be members of the Aryan race." ²⁹⁴ The District Court for the Eastern

^{286.} Id. This example also illustrates how value judgments entered into courts' reasoning.

^{287.} United States v. Balsara, 180 F. 694 (2d Cir. 1910).

^{288.} Id at 696.

^{289.} Id. at 695.

^{290. 177} F. 101, 102 (5th Cir. 1910).

^{291.} *Id.* The court's reasoning here brings to mind the "blue vein" test that restricted membership in many elite black social clubs to light-skinned black Americans during the 19th and early 20th centuries. *See* Fegley et al., *supra* note 192, at 286 (noting that for that for black social groups such as "the Blue Vein Society of Nashville . . . the lightness of one's skin mainly determined membership.").

^{292. 177} F. at 102.

^{293. 207} F. 115 (E.D. Wash. 1913).

^{294.} Id. at 116-17.

District of Washington agreed with Mozumdar's racialization of caste, based on legal precedent and his testimony regarding his heritage. It also noted a "line of demarcation between the different castes and classes," implying that lower caste Asian Indian immigrants may not be eligible for citizenship.²⁹⁵ Thus, caste could also play a role in formal racialization of early South Asian immigrants to the United States.

4. In re Sadar Bhagwab Singh, In re Mohan Singh, and In re Thind

The next three rulings yielded contradictory positions. District courts in both *In re Mohan Singh*²⁹⁶ and *In re Thind*²⁹⁷ relied on legal precedent, and, in the case of the former, scientific evidence, to declare that Asian Indians were white. However, with *In re Sadar Bhagwab Singh*,²⁹⁸ the District Court for the Eastern District of Pennsylvania cited congressional intent and common knowledge to rule that Singh was not white. Its position was that substituting "Caucasian" for "white" is problematic, noting:

[U]se of the substitute may lead us away from the right meaning. When long looked for Martian immigrants reach this part of the earth, and in due course "a man from Mars" applies to be naturalized, he may be recognized as white within the meaning of the act of Congress, and admitted to citizenship; but he may not be a Caucasian.²⁹⁹

As these cases show, the lower federal courts used a variety of standards and modes of reasoning—sometimes bordering on the absurd—to resolve the racial ambiguity of South Asian Americans under the law

C. Caucasian but Not White Ozawa v. United States, United States v. Thind, and the Aftermath

In 1922, a racial prerequisite case reached the U.S. Supreme Court. In *Ozawa v. United States*, ³⁰⁰ the Supreme Court ruled that Takao Ozawa, a Japanese immigrant, was not white. The Court deemed that "white" was synonymous with "Caucasian," ³⁰¹ and that

^{295.} Id. at 117.

^{296. 257} F. 209 (S.D. Cal. 1919).

^{297. 268} F. 683 (D. Or. 1920).

^{298. 246} F. 496 (E.D. Pa. 1917).

^{299.} Id. at 500.

^{300.} See 260 U.S. 178 (1922).

^{301.} See id. at 198 (noting that "the words 'white person' are synonymous with the words 'a person of the Caucasian race'").

because Ozawa was "clearly of a race which is not Caucasian," he was not eligible for citizenship. 302

The Supreme Court's ruling in *Ozawa* would suggest that South Asians, who were classified as "Caucasian," would thus be considered "white" and eligible for citizenship. However, in *Ozawa*, the Justices did leave room for change, stating:

The determination that the words "white person" are synonymous with the words "a person of the Caucasian race" simplifies the problem, although it does not entirely dispose of it. Controversies have arisen and will no doubt arise again in respect of the proper classification of border line cases. The effect of the conclusion that the words "white person" means a Caucasian is not to establish a sharp line of demarcation . . . but rather a zone of more or less debatable ground 303

The very next year, in 1923, the Supreme Court heard the case of an Asian Indian seeking U.S. citizenship: Bhagat Singh Thind.³⁰⁴ Thind's case was heard on appeal from the Oregon District court, which had ruled that he was "white" and thus eligible for naturalization. United States v. Thind would be the determining case for South Asian racial classification under the 1790 Naturalization Act. 305 The question posed in this case was: "Is a high caste Hindu of full Indian blood, born at Amritsar, Punjab, India, a white person . . . ?"306 In spite of the Ozawa ruling just a few months earlier, the Court ruled that Asian Indians were not "white." Although the Justices acknowledged that Asian Indians were "Caucasian," they applied a common knowledge standard, arguing that Thind did not fit the common usage of the term "white." The Court stated: "It may be true that the blond Scandinavian and the brown Hindu have a common ancestor in the dim reaches of antiquity, but the average man knows perfectly well that there are unmistakable and profound differences between them to-day "307 Here, the Court contrasted "blond" and "brown" to justify its pronouncements about common knowledge. It ruled that the term "Caucasian" was synonymous with "white" only as accorded by popular and common understanding, and that South Asians did not fit this standard—thus denying citizenship to Bhagat Singh Thind.

^{302.} Id.

^{303.} Id.

^{304.} United States v. Thind, 261 U.S. 204 (1923).

^{305.} Naturalization Act of 1790, ch. 3, 1 Stat. 103 (1790).

^{306. 261} U.S. at 206.

^{307.} Id. at 209.

Ironically, in its decision in *Thind*, the Supreme Court correctly noted that "the term 'Aryan' has to do with linguistic and not at all with physical characteristics." Nevertheless, the Court affirmed common racist sentiments disfavoring the naturalization of South Asians. Additionally, *Thind* represented a transition in the Court's primary standard for defining whiteness: the standard shifted from a "scientific" understanding—based on classification and physical features—to a "common" understanding based on the average person's supposed perceptions. 309 In constructing this common understanding, the Court appealed not only to physical criteria, linking color with racial status, but also to a series of symbolic linkages between race, caste, and religion—all of which now played into its legal definition of whiteness.

Asian Indians in the United States felt *Thind*'s impact. Between 1923 and 1927, at least sixty-five Asian Indian Americans were stripped of their U.S. citizenship.³¹⁰ These included Akhay Kumar Mozumdar, who had earlier been granted citizenship.³¹¹ After *Thind*, there were also four other racial prerequisite cases involving Asian Indians,³¹² each holding that Asian Indians were not "white," citing either legal precedent or common knowledge.³¹³

Although *Thind* definitively ruled that South Asians were not "white," there was continued debate on the issue. In 1926, Ray E. Chase and S.G. Pandit published a booklet examining the *Thind* decision, concluding that "[w]ith [a]ll [d]ue [d]eference to the Supreme Court of the United States, [w]e [s]uggest [t]hat [i]ts [d]ecision in the [c]ase of United States v. Thind . . . [w]as

^{308.} Id. at 210.

^{309.} See Haney Lopez, supra note 31, at 90.

^{310.} *Id.* at 91 (citing David Roediger, Towards the Abolition of Whiteness 182 (1994)). Professor Haney Lopez does note that "[t]o their credit, some courts resisted these efforts [to strip Asian Indian Americans of citizenship], usually on jurisdictional grounds." *Id.* at 246 n.41. He gives the example of United States v. Sakharam Ganesh Pandit, 15 F.2d 285 (9th Cir. 1926) (dismissing challenge to citizenship that had been previously granted, on claim preclusion grounds). Pandit later co-authored a pamphlet criticizing the *Thind* decision. *See* Ray E. Chase & S.G. Pandit, An Examination of the Opinion of the Supreme Court of the United States Deciding Against the Eligibility of Hindus for Citizenship (1926).

^{311.} United States v. Mozumdar, 296 F. 173 (S.D. Cal. 1923).

^{312.} See United States v. Ali, 7 F.2d 728 (E.D. Mich. 1925); United States v. Gokhale, 26 F.2d 360 (2d Cir. 1928), vacated, 278 U.S. 662 (1928); Wadia v. United States, 101 F.2d 7 (2d Cir. 1939); Kharaiti Ram Samras v. United States, 125 F.2d 879 (9th Cir. 1942). Additionally, In re Feroz Din held that Afghanis were not white. 27 F.2d 568 (N.D. Cal. 1928).

^{313.} See Haney Lopez, supra note 31, at 207–08.

[e]rroneous."³¹⁴ Chase and Pandit quoted from the 1797 edition of the *Encyclopedia Britannica* to illustrate that the framers of the Naturalization Law intended the term "white" to include Asian Indians.³¹⁵ They also stated that "[a]ny expert in biology and sociology could have saved the court from falling into . . . error."³¹⁶

Additionally, in a congressional committee hearing in 1939, Rep. William R. Poage (D-Tex.) criticized the Supreme Court's ruling in *Thind*, stating that "everybody who has gone to high school in the United States knows that Indian people are Caucasian people . . . and were at least technically known of the white race "317

Ironically, Bhagat Singh Thind himself was granted citizenship in New York in 1936, where naturalization examiners chose not to challenge his application³¹⁸—perhaps because there was less local animus against South Asians on the east coast.³¹⁹ It is also quite likely that material criteria played a role in decisions by local naturalization examiners, and that some light-skinned South Asians may have "passed" in the citizenship test—thus highlighting the importance of local racial microclimes, even when applying formal criteria for racialization.

In addition to their centrality in formal racialization, the racial prerequisite cases also illustrate the symbolic status values associated with race. Professor Sucheta Mazumdar contends that by making legal claims to whiteness, Asian Indian immigrants in the racial prerequisite cases failed to "mak[e] common cause with other Asians who were barred from citizenship on grounds of race—such

^{314.} See Chase & Pandit, supra note 310, at 1.

^{315.} *Id.* at 3 ("white . . . includes almost all the inhabitants of Europe; *those of Asia on this side of* . . . *the Ganges*" (quoting 10 Encyclopaedia Britannica 508 (3d ed. 1797))).

^{316.} *Id.* at 13. Chase and Pandit also contended that "Hindus' racial and physiological assimilability with other whites is an established fact of anthropology and ethnology," and that "[t]he opinion of the court . . . seems to be discussing not cultural, but biological assimiliation[] [sic] . . . [and] . . . assumes that a high degree of physical homogeneity is desirable." *Id.* at 14.

^{317.} See Premdatta Varma, Indian Immigrants in USA: Struggle for Equality 121 (1995).

^{318.} See Vinay Harpalani, United States v. Bhagat Singh Thind (1923), in 2 Asian Am. Hist. & Culture: An Encyclopedia 363, 363 (Huping Ling & Allan Austin eds., 2010). Thind would go on to become a Sikh spiritual leader and author of numerous books. *Id.*

^{319.} The Asian Indian population was much larger on the west coast in the early 20th century. *See supra* notes 255–64 and accompanying text. Thus, on the east coast there was less economic competition between Asian Indian immigrant workers and other groups.

as . . . Ozawa."³²⁰ Designation as "black" would have also allowed citizenship,³²¹ but no Asian Indian immigrants pursued this route to naturalization. Professor Mazumdar attributes this to racist attitudes of Asian Indian immigrants, based on the amalgamation of caste and racial theories of Aryan supremacy.³²² Professor Susan Koshy critiques Professor Mazumdar's view, noting that the appellants used the legal options open to them; she contends that the legal definition of blackness was more tightly established by the 1900s, and that formal claims to whiteness provided more legal ground for argument.³²³ Thus, Professor Koshy views the decision to pursue legal whiteness as a strategic decision rather than a reflection of racist attitudes.³²⁴

It is quite possible that both racist sentiments and legal strategy played into South Asian immigrants' claims to formal whiteness rather than formal blackness. These choices further reflect racial ambiguity and also the ambivalent racial positioning of South Asians in the American racial landscape. For the time being, South Asians in the United States were denied citizenship rights under the racial construction rendered in the *Thind* decision. This would not change until after World War II, when ironically, South Asian Americans would face another dilemma involving claims to formal racial status.

D. "White by Law" Revisited?: Census Classification of South Asian Americans

After World War II, several political factors, including the Cold War and the need to create better relations with Asian countries coalesced to bring about changes in U.S. immigration and naturalization policies,³²⁵ which gradually reopened South Asian immigration.

The *Thind* decision became obsolete with the Immigration Act of 1946 (Luce-Celler Act), which created a small immigration quota of Asian Indians and permitted their naturalization.³²⁶ The Immigration Act of 1952 (McCarran-Walter Act) completely supplanted

^{320.} Mazumdar, supra note 14, at 30.

^{321.} See Haney Lopez, supra note 31, at 51.

^{322.} Mazumdar, supra note 14, at 30.

^{323.} See Koshy, supra note 14, at 291–92 (citing Haney Lopez, supra note 31, at 51–52).

^{324.} See id. at 291-92.

^{325.} See The Karma of Brown Folk, supra note 88, at 69–82.

^{326.} Act of July 2, 1946, ch. 534, Pub. L. No. 79-483, 60 Stat. 416 (repealed 1952); see also A History of United States Legislation, supra note 255, at 22–23.

the 1790 Naturalization Law, removing all race restrictions to citizenship.³²⁷ The Immigration and Nationality Act of 1965 (Hart-Celler Act) raised annual immigration visas to 29,000 per country (with a ceiling of 170,000 for Eastern hemisphere nations), and family reunification was allowed independent of quotas.³²⁸ It also created a preference system for immigration which favored highly-skilled, professional workers, such as engineers and scientists,³²⁹ who helped build America's technological infrastructure in the wake of the Cold War.³³⁰

With the breakdown of Jim Crow laws and immigration barriers, the changing racial structure of the United States prompted shifts in racial ideology and contestation. While material and symbolic dimensions of race, along with existing racial stratification, continued to perpetuate racial hierarchy in America, legal whiteness and otherness became less prominent. Nevertheless, for South Asian Americans legal racialization—via Census classification rather than court decisions—continued to be a salient issue, intersecting not only with other expressive modes of racialization, but also with the structural and ideological dimensions of race.

Professor Susan Koshy examines the Census classification of South Asians in the United States from 1910 to 1990.³³¹ In the 1910 and 1920 Censuses, the category of "other" on the Census form was designated for South Asians, with the sub-categories of "Non-White Asiatic/Hindu" in 1910 and "Hindu" in 1920 intended for enumerators and listed in Census publications.³³² The category of "Hindu" itself appeared on the 1930 and 1940 Census forms, reflecting the formal racialization of religion. In 1950 and 1960, the Census Bureau returned to the "other" designation on the form, with subcategories (for enumerators and Census publications only) of

^{327.} Pub. L. No. 82-414, 66 Stat. 163 (1952); see also A History of United States Legislation, supra note 255, at 23-24.

^{328.} Pub. L. No. 89-236, 79 Stat. 911 (1965); see also A History of United States Legislation, supra note 255, at 24-26.

^{329.} See Fisher, supra note 105.

^{330.} The Karma of Brown Folk, *supra* note 88, at 69–82 (discussing how the fact that Americans feared that the Soviet Union had become more technologically advanced, particularly after the launch of Sputnik I in 1957, led to immigration policies favoring scientists and engineers from Asian countries).

^{331.} Koshy, *supra* note 14, at 293–94. *See also* Sharon M. Lee, *Racial Classification in the U.S. Census: 1890–1990*, 16 ETHNIC & RACIAL STUD. 75, 78 (1993) (discussing racial categories in each U.S. Census from 1890 to 1990).

^{332.} Koshy, *supra* note 14 at 293–94.

"Non-White/Asiatic Indian" in 1950 and "Non-White/Hindu" in $1960.^{333}$

Then, after the post-1965 wave of immigration began, South Asians were suddenly designated as "White" on the 1970 Census form, in spite of the fact that they were specifically counted as non-white in the previous Census, and in spite of the 1923 *Thind* decision.³³⁴ Why did this change occur? Professor Koshy contends that the designation of South Asian Americans as "White" prevented them from receiving the protected minority status conferred by recent civil rights legislation.³³⁵ Here, formal whiteness was actually used to deny certain rights to South Asian Americans.

Following the 1970 Census, South Asian Americans again exercised some agency over their own racialization. In a twist of irony with respect to *Thind* and the other racial prerequisite cases,³³⁶ the decisions were now whether to: (1) challenge their formal classification as "White" and seek separate enumeration in the Census as "Asian" or "Asian Indian"; and (2) seek legal minority status, which would qualify South Asian Americans for the protections of civil rights legislation and aspects of federal affirmative action programs.³³⁷ Whereas the racial prerequisite cases involved formal claims to whiteness, South Asian Americans now had to consider the opposite—making formal claims to non-whiteness.

Representatives of the Chicago-based India League of America (ILA) and the New York-based Association of Indians in America (AIA), took slightly different positions on the issue. ILA recommended separate enumeration,³³⁸ but was unsure whether to seek

^{333.} Id.

^{334. 261} U.S. 204 (1923). Of course, the Census Bureau and Office of Management and Budget were not necessarily bound by *Thind*, which just interpreted the Naturalization Law of 1790. Nevertheless, the disparity in South Asian American racial classification illustrates the importance of historical and political context in determining how the racial ambiguity of South Asian Americans plays out in particular situations.

^{335.} Koshy, *supra* note 14, at 294.

^{336.} See supra Parts III.B-C.

^{337.} See Fisher, supra note 105, at 279–81. The two separate issues—separate enumeration and legal minority status—also illustrate different dimensions of formal racialization.

^{338.} See Hekmat Elkhanialy & Ralph W. Nicholas, Overview and Recommendations, in Immigrants From the Indian Subcontinent in the U.S.A.: Problems and Prospects 7 (Hekmat Elkhanialy & Ralph W. Nicholas, eds., 1976) (recommending "that 'Indic' be added as an answer to the question on race in the 1980 Census"). The authors also recommended "that the term 'Asian' not be used in Census questions" because it would lead to confusion and undercounting of Asian Indian Americans. Id.

minority status for the group.³³⁹ Part of the reason for this reluctance was a sense of pride and the desire to promote feelings of self-sufficiency and avoid any backlash to minority status.³⁴⁰

Conversely, AIA supported both separate enumeration and recognition of the minority status of South Asian Americans.³⁴¹ AIA took this position for several reasons: (1) South Asian Americans experience discrimination relative to white Americans; (2) this discrimination would become more prevalent in times of economic hardship; and (3) future South Asian immigrants, admitted largely on family rather than occupational preferences, would have less education and endure more economic hardship than the immediate post-1965 professional immigrants.³⁴²

Eventually, South Asian Americans succeeded in their lobbying efforts. First, they were successful with respect to separate enumeration in the Census. In 1977, through Statistical Directive 15 of the Office of Management and Budget (OMB), their racial classification was changed from "White" to "Asian Indian" for the 1980 Census. The category changed slightly by including "Asian or Pacific Islander" in addition to "Asian Indian" in the 1990 Census, and to "Asian Indian" again in the 2000 Census. The 2010 Census form also listed "Asian Indian" along with other Asian

^{339.} *Id.* (noting that "the question of whether [Asian Indian Americans] would benefit from . . . classification as a minority . . . is far from settled").

^{340.} Cf. Immigrants From the Indian Subcontinent in the U.S.A.: Problems and Prospects 50 (Hekmat Elkhanialy & Ralph W. Nicholas, eds., 1976) (noting that "additional legal protection against discrimination [to be gained from legal minority status] . . . must be weighed against a now incalculable backlash in employers' attitudes and the wider areas of informal social life"). Elkhanialy and Nicholas also note that "[i]t is uncertain" whether Asian Indian Americans could "obtain legal recognition . . . as a disadvantaged minority" because as a group, they are "so patently advantaged in education, occupation, and income" Id.

^{341.} See Fisher, supra note 105, at 79-81.

^{342.} Id. at 281.

^{343.} Visweswaran, *supra* note 14, at 18.

^{344.} Koshy, *supra* note 14, at 294. *See also* Lee, *supra* note 331 (discussing racial categories in each U.S. Census from 1890 to 1990).

^{345.} Major Differences in Subject-Matter Content Between the 1990 and 2000 Census Questionnaires, U.S. CENSUS BUREAU, http://www.census.gov/population/www/cen2000/90vs00/index.html (last visited June 30, 2014). The main difference between the 1990 and 2000 Census questionnaires was that in the latter, "Pacific Islander" was designated as a separate category from "Asian." The "Asian" category had sub-groups including "Asian Indian" and also had an "Other Asian" write-in option.

groups, but had an "Other Asian" category which listed "Pakistani" as one of the examples.³⁴⁶

Beginning in 1982, South Asian Americans gained legal minority status and were included in federal affirmative action programs.³⁴⁷ They were able to establish historical discrimination in part because the 1917 Exclusion Act had prohibited immigration from the Indian subcontinent.³⁴⁸ These included set-aside programs and discounted bids for public contracts.³⁴⁹

Nevertheless, the racial ambiguity of South Asian Americans continues to transcend formal categorization. In the 1990 Census, in spite of the separate category of "Asian or Pacific Islander/Asian Indian," twenty-five percent of South Asian Americans indicated their racial identification as "White," and five percent as "Black." Such diversity in formal racial identification sets the stage for an even more complex plethora of racial identities by which South Asian Americans are informally racialized.

IV. FROM MODEL MINORITY TO "MACACA": INFORMAL RACIALIZATION OF SOUTH ASIAN AMERICANS

While the specific informal manifestations have varied widely, informal racialization of South Asian Americans has commonly involved "foreignness"³⁵¹—due not only to perceptions of Asian Americans as "foreigners" but also because of their own ambivalence in identity. In *The Karma of Brown Folk*, Professor Vijay Prashad discusses a "girmit consciousness" among first generation South Asian immigrants to the United States: the idea that their "home" is their country of origin and that they live "in America" but

^{346.} See The 2010 Census Questionnaire: Seven Questions for Everyone, POPULATION REFERENCE BUREAU (Apr. 2009), http://www.prb.org/Articles/2009/questionnaire.aspx. The 2010 Census questionnaire disaggregated all Asian and Pacific Islander groups and listed each one separately, with an "Other Asian" option to write in any group not listed.

^{347.} Visweswaran, *supra* note 14, at 18; *see also* Yen Le Espiritu, Asian American Panethnicity 125 (1992).

^{348.} Visweswaran, *supra* note 14, at 18; *see also* Espiritu, *supra* note 347. See *supra* notes 268–71 for a discussion of the Immigration Act of 1917 and its impact.

^{349.} Visweswaran, *supra* note 14, at 18–19.

^{350.} Taz Ahmed, Sepia Mutiny for Good Mental Health, Sepia Mutiny (Nov. 1, 2006), http://sepiamutiny.com/blog/2006/11/01/sepia_mutiny_go/.

^{351.} See Comparative Racialization, supra note 191 (noting that "[f] or eignness is a crucial dimension of the American racialization").

are not "of America." This attitude is due in part to socialization in native countries, but it is also reinforced through various experiences after immigration. The racial ambiguity of South Asian Americans allows for various characterizations, emphasizing different aspects of "foreignness." Additionally, informal racialization of South Asian Americans also tells a story about blackness and its role, even beyond black Americans, in American racial hierarchy.

A. "How Does It Feel to Be a Solution?": Racialization of South Asian Americans and the Model Minority Stereotype

Current formal racial classification schemes often place South Asian Americans under the broader rubric of Asian Americans or Asian/Pacific Islanders.³⁵³ Some Asian and South Asian American scholars have fully or partly embraced this classification to emphasize the common experiences of various Asian groups and attempt to build coalitions between Asian American communities. 354 Other scholars have questioned South Asian Americans' place in the larger context of Asian America. Rajiv Shankar argues that while "Asian American" as a category has been "ratified by formal usage,"355 "South Asian Americans . . . [have] too many differences and divergences [which] keep them 'apart' from the established Asian American (i.e., East/Southeast Asian American) identity."356 Lavina Dhingra Shankar and Rajini Srikanth contend that Asian American consciousness developed in the 1960s, as a response to racial characterization of Asian immigrants as "Oriental." "Oriental" was typically "associated with 'slant eyes' . . . [and] . . . 'yellow skin,'" and the term "Asian American" was a "defiant response" and "became a term of political empowerment."357 However, South Asians

^{352.} The Karma of Brown Folk, *supra* note 88, at 102. Prashad paraphrases W.E.B. Du Bois here, who stated that he was "in Harvard but not of it." W.E.B. Du Bois, *A Negro Student at Harvard at the End of the 19th Century*, 1 The Mass. Rev. 439, 443 (1960). Professor Kamala Visweswaran discusses a similar notion—that of "flexible citizenship." Visweswaran, *supra* note 14, at 18.

^{353.} See supra Part III.D.

^{354.} See, e.g., ESPIRITU, supra note 347, at 175 (arguing that "[p]an-Asian unity is necessary if Asian Americans are to contest systems of racism and inequality in American society"); Visweswaran, supra note 14, at 6 (noting importance of considering "the process of 'Asianization[]'... the ways in which Asian groups become Asian as defined against, and in relation to, each other").

^{355.} A PART, YET APART, supra note 172, at xii.

^{356.} Id.

^{357.} Id. at 4.

were excluded because "the racial dimension implicit in the term 'Asian American' automatically excluded all non-Mongoloids."³⁵⁸

Nevertheless, the model minority stereotype—the idea of Asian immigrants as successful and upwardly mobile due to cultural factors³⁵⁹—augments the collective, informal racialization of all Asian Americans, in spite of physical and cultural differences. South Asians, along with other Asian Americans, are stereotyped as successful minorities—in contrast to African Americans, Latinos, and Native Americans.³⁶⁰

The term "model minority" was first used by sociologist William Petersen in 1966, to describe the success of Japanese Americans.³⁶¹ Professor Roger Daniels comments that Petersen:

[D]eveloped the phrase "model minority," using the term "model" in two senses: first, as a way of praising the superior

358. Lavindra D. Shankar & Rajini Srikanth, *Introduction: Closing the Gap? South Asians Challenge Asian American Studies, in* A Part, Yet Apart: South Asians In Asian America 4 (Lavina Dhingra Shankar & Rajini Srikanth eds., 1998) [hereinafter *Closing the Gap*]. Shankar and Srikanth note that this exclusion was not an "obvious or relevant issue . . . as there were relatively few South Asians in America" in the 1960s. *Id.* at 4–5. Nevertheless, the perception that South Asians were not a part of the larger Asian American rubric continued. In 2000, the Pan-Asian American Community House, a cultural resource center for Asian American students, opened at the University of Pennsylvania. *See History of PAACH*, Pan-Asian Am. Cmty. House, http://www.vpul.upenn.edu/paach/about_history (last visited Nov. 5, 2013). PAACH was created through campus activism by Asian American students, and South Asian students in particular requested that the name include the term "Pan-Asian" so that South Asians would feel included.

359. For a description of the model minority stereotype generally, see Takaki, *supra* note 257, at 474–84; Frank H. Wu, Yellow: Race in America Beyond Black and White 39–77 (2002). For background on its application to South Asian Americans, see The Karma of Brown Folk, *supra* note 88, at 1–9.

360. The model minority stereotype ignores the structural and historical differences between different immigrant groups and between African Americans, Native Americans, and immigrants to America. See John U. Ogbu, Minority Education and Caste: The American System in Cross-Cultural Perspective (1978) (distinguishing between three types of minority groups: (1) autonomous minorities (groups who have not been subordinated or overcame subordination through assimilation, such as many white ethnic groups); (2) immigrant (or "voluntary") minorities (groups who emigrated to host country voluntarily, for social, economic, or political reasons, such as most Asian Americans); and (3) caste-like (or "involuntary") minorities (groups who came to host country as captives (African Americans) or through conquest (Native Americans, Puerto Ricans, and some Mexican Americans)). Professor Ogbu argued that the latter groups (caste-like or involuntary minorities) tend to be relegated to the most menial jobs and the lowest social positions. Id. at 23–24.

361. William Petersen, Success Story, *Japanese American Style*, N.Y. Times Mag., Jan. 6, 1966, at 20.

performance of Japanese Americans; and second, as a way of suggesting that other ethnic groups should emulate the Japanese American example. The unstated major premise of Petersen's argument was that Horatio-Alger-bootstrap-raising was needed for success by such "non-achieving" minorities as blacks and Chicanos, rather than the social programs of Lyndon Johnson's "Great Society."362

The model minority stereotype soon became a popular notion to explain the success of various Asian immigrant groups, 363 including South Asian Americans. 364 Professor Daniels also notes how conservative theorists, most notably Thomas Sowell, adopted the idea that "non-achieving" minorities should rely solely on their own efforts to attain success, rather than on government intervention.³⁶⁵

The model minority stereotype is also linked to the idea of "foreignness." Professor Gary Okihiro discusses how Asian presence in the United States has been viewed as a "yellow peril" (emphasizing material/physical racialization and economic competition) and a "peril of the mind" (emphasizing threats to white privilege and supremacy by Asian American educational and occupational success). 366 Professor Okihiro's connection here is important, as both the "Yellow Peril" and the model minority are linked to U.S. immigration policy in important ways.³⁶⁷

^{362.} Roger Daniels, Asian America: Chinese and Japanese in the United STATES SINCE 1850, at 318 (1988).

^{363.} See id.; see also Takaki, supra note 257, at 474–84; Wu, supra note 359. For an empirical analysis of the model minority stereotype, see Grace Kao, Asian Americans as Model Minorities? A Look at Their Academic Performance, 103 Am. J. Educ. 121 (1995). Professor Kao concludes that "it is conceivable that parents [of Asian Americans] encourage their children to overachieve to offset the effects of perceived discrimination." Id. at 151. Professor Kao also notes that "South Asians seem to be especially well equipped to succeed"; however, she also contends her results "challenge the model minority image by demonstrating that Asians are not uniformly advantaged educationally and economically " Id.

^{364.} See The Karma of Brown Folk, supra note 88.

^{365.} See Daniels, supra note 362 (citing Thomas Sowell, Race and Econom-ICS (1978); ESSAYS AND DATA ON AMERICAN ETHNIC GROUPS (Thomas Sowell ed., 1978)).

^{366.} Gary Okihiro, Margins and Mainstreams: Asians in American History AND CULTURE 141-47 (1994).

^{367.} See supra Part III.A and infra Part IV.A.1. In a sense, the model minority is a creation of the state, similar to the Pacific Barred Zone, which jointly racialized various Asian American groups. See supra Part III.A. However, the model minority did not create any formal legal designation that classified these groups together. While the occupational skills preferences of the Immigration Act of 1965 mainly impacted Asian immigration, they applied to all groups, and educated immigrants from all countries could benefit from them. Thus, this Article conceives of the

While there is an extensive scholarly literature on the model minority,³⁶⁸ the analysis here will focus on its role in the racialization of South Asian Americans. The model minority stereotype is important in elucidating the racial ambiguity of South Asian Americans, and particularly in illustrating their relationship to other groups in America's racial hierarchy. Drawing upon W.E.B. Du Bois's question about African Americans, "How does it feel to be a problem[?]"³⁶⁹ Professor Vijay Prashad asks about South Asian Americans, "How does it feel to be a solution?"³⁷⁰ This question will be the focus of Parts IV.A and IV.B, which highlight the interplay between the model minority stereotype, U.S. immigration policy, and the notion of "Honorary White" status discussed by Professor Eduardo Bonilla-Silva.³⁷¹

1. U.S. Immigration Policy II: State Selection and the Model Minority

Conservative South Asian analysts such as Dinesh D'Souza embraced and perpetuated the model minority stereotype and also employed it to contrast Asian Americans with African Americans and Latinos, arguing that the latter are responsible for their lack of success.³⁷² Conversely, Professor Vijay Prashad discusses how the model minority myth was created as "the result of state selection whereby the U.S. state, through the special-skills provisions in the 1965 Immigration Act, fundamentally reconfigured the demography of South Asian America."³⁷³ The 1965 Immigration Act included occupational skills preferences for scientists, engineers, and other technically-trained professionals, all in an effort to boost U.S. scientific and technological capacity in the wake of the Cold War.³⁷⁴ Thus, many immediate post-1965 South Asian immigrants came to this country with educational capital that African Americans and Latinos generally lacked. Also, most of these educated South Asian immigrants had the ability to speak fluent English, which is an official language in India. Thus, the immediate post-1965 South Asian

model minority as informal racialization; it was created in part through government action, but it does not directly reflect government racial classification.

^{368.} See, e.g., supra notes 359-64.

^{369.} W.E.B. Du Bois, Souls of Black Folk 7 (Brent Hayes Edwards ed., 2007).

^{370.} The Karma of Brown Folk, supra note 88, at viii.

^{371.} See From Bi-Racial to Tri-Racial, supra note 208; see also supra Part II.B.

^{372.} See D'Souza, supra note 159.

^{373.} The Karma of Brown Folk, supra note 88, at 4; see also Tayyab Mahmud, Genealogy of a State-Engineered "Model Minority": "Not Quite/Not White" South Asian Americans, 78 Denv. L. Rev. 657, 679 (2001).

^{374.} See supra notes 329–30 and accompanying text.

immigrants often did not go through the more transient enclave status of many immigrant groups, much less the long-term residential segregation of many black and Latino communities. Their while they experienced various forms of discrimination, the immediate post-1965 immigrants were structurally situated for success and mobility. They had quick access to honorary whiteness, which was augmented because of the growing "model minority" stereotype of Asian Americans. Immediate post-1965 South Asian immigrants have thus been able to socially and economically assimilate relatively quickly into predominantly white communities, even while many of them maintain distinct cultural identities. The benefits that once would have been gained by formal classification as "Whites" were now accrued largely through symbolic status as honorary whites.

However, the status of South Asian Americans as honorary whites is in flux—contingent upon both the material and symbolic racial attributes they possess, and the local political and historical circumstances. Congress gradually tightened the occupational skills preferences of the 1965 Immigration Act; for example, the Immigration and Nationality Act Amendments of 1976³⁷⁷ and the Health Professions Educational Assistance Act of 1976³⁷⁸ both required immigrants to secure employment in the United States before immigrating.³⁷⁹ The Immigration Act of 1990³⁸⁰ placed more stringent demands on employers,381 and through the 1980s and 1990s, the number of South Asian immigrants entering via the occupational skills preference steadily decreased and became "almost negligible" by the mid-1990s.³⁸² Most skilled professionals from South Asia, such as computer programmers, now come to the United States on temporary H1-B visas, earning modest wages, lacking benefits, and leaving after a few years when their employers no longer desire their services. 383

^{375.} See generally Douglas Massey & Nancy Denton, American Apartheid (1993).

^{376.} See also supra notes 93–95 (noting educational and economic success of a large percentage of South Asian Americans) and notes 97–98 (noting occupational success of a large percentage of South Asian Americans) and accompanying text.

^{377.} Immigration and Nationality Act Amendments of 1976, Pub. L. No. 94-571, 90 Stat. 2703 (1976).

^{378.} Pub. L. No. 94-484, 90 Stat 2243 (1976).

^{379.} See The Karma of Brown Folk, supra note 88, at 77–78.

^{380.} Pub. L. No. 101-649, 104 Stat 4978 (1990).

^{381.} See The Karma of Brown Folk, supra note 88, at 78.

^{382.} Id.

^{383.} Id. at 80-81.

Nevertheless, immigration from South Asian countries continues to expand overall mainly due to the family preferences of the 1965 Immigration Act rather than the occupational skills preferences. Hand the occupational skills preferences. Hand the economic and educational advantages of the immediate post-1965 immigrants. Hand these newer immigrants have been able to capitalize instead on the larger community's success and draw on ethnic, social, and economic networks as an alternative form of social capital; for example, in forming and maintaining businesses. However, South Asian Americans of all class backgrounds face challenges that are hidden by the "model minority" myth.

2. Underemployment and the Glass Ceiling

South Asian immigrants face discrimination in employment, but rather than unemployment, the more prevalent issue has been underemployment—accepting positions for which they are overqualified and underpaid, with little opportunity for advancement.³⁸⁷ This "glass ceiling" effect—an invisible barrier to professional upward mobility—has also been documented quantitatively by Professor Marilyn Fernandez.³⁸⁸ Her study found that even when controlling for several factors, U.S.-born Asian Indians were less likely to advance to management positions (and receive corresponding increases in salary) than white Americans of similar educational backgrounds.³⁸⁹ Because the Asian Indians in the sample were born in the United States, this glass ceiling effect more likely reflects racial discrimination than language or national origin, al-

^{384.} See Fisher, *supra* note 105, at 273, for a listing of all of the family and occupational preferences of the 1965 Immigration Act. Professor Prashad illustrates that the percentage of South Asian immigrants entering the United States based on family preferences in the mid-1990s was much greater than those entering on employment preferences. *See* The Karma of Brown Folk, *supra* note 88, at 78–79 (listing immigration numbers from India and Pakistan by preference provision for 1994, 1995, and 1996).

^{385.} See supra notes 101–03 and accompanying text (noting working class occupational niches for South Asian Americans).

^{386.} See supra Part I.B.2 (noting educational, economic, occupational, and language challenges faced by South Asian Americans).

^{387.} See Dutta, supra note 17.

^{388.} Marilyn Fernandez, Asian Indian Americans in the Bay Area and the Glass Ceiling, 41 Soc. Persp. 1, 119 (1998) (using 1990 U.S. census data for employment and earnings in the San Francisco Bay Area to examine the glass ceiling effect on Asian Indian employment).

^{389.} Id. at 142.

though Professor Fernandez acknowledged that other factors could also explain the phenomenon.³⁹⁰

Professor Fernandez interviewed professional Asian Indians in the Bay Area to gain a sense of their perception and understanding of professional advancement. As stated by one of her interviewees, "When you are brought into a company, you work extremely hard to make it in the company. But, within five years of entering a company, an Asian may move up a notch or two. On the other hand, your white colleagues would move up five notches."391 Many others who were interviewed expressed similar sentiments.

The role of race is also salient in perceptions of discrimination. In one survey, South Asians reported skin color as the factor that they perceived as the most frequent basis for discrimination. Other commonly reported factors included foreign birth, accent, and choice of clothing.392 All of which can form the basis for ascription and informal racialization.

Model Minorities, South Asian Politics, and People of Color Coalitions

Over the past several decades, the "model minority" stereotype has also shaped the discourse on one of the most contentious issues in American racial politics: the debate over race-conscious admissions policies in higher education. In her book, The Retreat from Race, Professor Dana Takagi notes how the idea of "model minority" provided a rejoinder to proponents of race-conscious affirmative action policies.³⁹³ Takagi observes that "[t]o many whites, Asian American achievement sounded an encouraging note . . . [a]ngered by black criticism of the 'white establishment,' some whites pointed to Asian American achievement as evidence that racial minorities could get ahead in America, if only they would 'try.' "394 Professor Takagi further discusses how conservatives coopted the "model minority" stereotype, along with claims of discrimination against Asian Americans in college admissions, to attack affirmative action policies.³⁹⁵

^{390.} Id. at 142-43.

^{391.} Id. at 119.

^{392.} Racial and Ethnic Self-Designation, supra note 154, at 48.

^{393.} See generally Dana Y. Takagi, The Retreat From Race 109–39 (1998).

^{394.} Id. at 59.

^{395.} Id. at 115–16; see also Arthur Hu, Part I: The End of Asian Quotas, ASIAN WEEK (June 2, 1989); Part II: Affirmative Action after Asian Quotas, ASIAN WEEK (June 23, 1989).

The role of Asian Americans in affirmative action continues to be a charged issue—one that has recently implicated South Asian American identity and ambiguity. In 2012, when the U.S. Supreme Court heard the case of Fisher v. University of Texas, 396 the ambiguity inherent in South Asian American racial identity politics became a part of the affirmative action debate. Three Indian American groups—the Indian American Forum for Political Education (IAFPE), the National Federation of Indian Associations (NFIA), and the Global Organization of People of Indian Origin (GO-POI)—joined an amicus brief opposing race-conscious admissions policies at the University of Texas at Austin.³⁹⁷ The groups argued that "Asian Americans are the new Jews," 398 because race is used as a "minus factor" against them in college admissions, 399 and that modern initiatives to promote diversity through race-conscious admissions policies are no different than past discriminatory policies that excluded Jews from many universities. 400 One could argue that similar to Jews and other white ethnics, 401 these Indian American organizations seek to gain honorary white status for South Asian Americans.

Conversely, several South Asian organizations signed on to an amicus brief in *Fisher* which supported race-conscious policies. These included South Asian Americans Leading Together (SAALT), the South Asian Network (SAN), and the South Asian Bar Association chapters from northern and southern California. This brief argued that Asian Americans continue to face racial dis-

^{396. 133} S. Ct. 2411 (2013).

^{397.} Brief Amicus Curiae of the Louis D. Brandeis Center for Human Rights under Law, et al., Fisher v. Univ. of Tex. at Austin, 133 S. Ct. 2411 (2013) (No. 11-345), 2012 WL 1961252; *Indian-Americans Help Make a Case Against Affirmative Action*, Voices of NY (June 20, 2013, 3:28 PM), http://webcache.googleusercontent.com/search?q=cache:si4NrmIUpCYJ:www.voicesofny.org/2012/06/indian-americans-help-make-a-case-against-affirmative-action/.

^{398.} Brief Amicus Curiae of the Louis D. Brandeis Center for Human Rights under Law, et al., *supra* note 397, at 3.

^{399.} Id.

^{400.} Id. at 4.

^{401.} See, e.g., Noel Ignatiev, How the Irish Became White 1–3 (1995).

^{402.} See Brief of Amici Curiae Members of Asian American Center for Advancing Justice, et al. at 1–24, Fisher v. Univ. of Tex. at Austin, 133 S. Ct. 2411 (2013) (No. 11-345), 2012 WL 3418826 (listing South Asian organizations); see also South Asian Americans Leading Together, Supreme Court Watch: Fisher v. UT Austin and the South Asian Community (June 27, 2013), http://saalt.org/supreme-court-watch-fisher-v-ut-austin-and-the-south-asian-community/.

^{403.} Brief of Amici Curiae Members of Asian American Center for Advancing Justice, et al., *supra* note 402, at 16–17.

crimination and benefit from race-conscious policies, which help to break down racial stereotypes by facilitating interactions between students of diverse groups. 404

With respect to South Asian American identity, it is interesting to note that the three organizations which signed on to the antiaffirmative action brief all emphasized "Indian" identity, while those which supported race-conscious policies preferred the broader "South Asian" designation. Professor Prema Kurien discusses the divide between two types of Indian American political organizations: those which focus on a pan-South Asian identity, and those which focus on a Hindu (or "Indic") identity. 405 According to Professor Kurien, "[m]embers of South Asian organizations characterize themselves as . . . progressive (some also use the term, 'leftist.'), inclusive, and oriented towards social change, with a primary focus on domestic American issues."406 Professor Kurien further asserts that

Groups that are lumped together, such as "blacks," "Asians," "Native Americans," and "Latinos," have developed ethnic solidarity by voluntarily adopting the ascribed category and by reinterpreting the history of individual groups to create a common heritage . . . [and] . . . [t]his is the same logic that explains the formation of South Asian groups in the United States 407

The positions of various Indian and South Asian organizations on Fisher may extend Professor Kurien's analysis by another step; the same forces which serve to unify all South Asian groups and may also signify a progressive outlook in building coalitions with other people of color.408

Additionally, Professor Kurien notes that "[m]embers of Hindu, or Indic, groups . . . maintain that it is disadvantageous for India to be lumped together with other countries in South Asia."409

^{404.} Id. at 4-5.

^{405.} Kurien, supra note 70, at 262-63. Kurien classifies SAN and SAALT as South Asian organizations. Id. at 267-69.

^{406.} Id. at 264. 407. Id. at 277.

^{408.} See also Vinay Harpalani, Diversity Within Racial Groups and the Constitutionality of Race-Conscious Admissions, 15 U. Pa. J. Const. L. 463, 483 n.71 (2012) (describing people of color coalitions on college campuses).

^{409.} Kurien, supra note 70, at 265. Additionally, Professor Vijay Prashad discusses the presence of Hindutya, an ideological movement that promotes Hindu cultural nationalism, in the United States. See The Karma of Brown Folk, supra note 88, at 133-56. This movement includes the Vishwa Hindu Parishad, an organization which promotes Hindu solidarity around the world, and the Bharatiya

Again, perhaps organizations focused on a Hindu or Indic identity also do not see the value in forming coalitions with African American and Latino groups and thus are apt to oppose race-conscious policies.

The choices that South Asian American organizations make on issues like affirmative action, and the coalitions these groups choose to build will all have broader implications for their informal racialization. These types of racial identifications and coalitions constitute yet another manifestation of South Asian American racial ambiguity. Some South Asian American individuals and organizations may exercise their agency to create broad "people of color" coalitions, while others may claim honorary white status. The challenges for the former are to overcome vast social, cultural, and historical differences among various groups. The latter also will face challenges, as the next Section illustrates that honorary white status can not only be claimed, but it can also be negated.

B. Coloring Conservatism: Claims and Negations of Honorary Whiteness

Beyond the affirmative action debate, conservative South Asian American political inclinations have become much more visible, in spite of the fact that South Asian Americans identify primarily with the Democratic Party. In a 2012 national representative survey of 3042 Asian Americans (which included 386 Asian Indians),⁴¹⁰ fifty percent of Asian Indians identified as "Democrat," while only three percent identified as "Republican," and forty-seven percent identi-

Janata Party (BJP), which held control of the Indian parliament from 1996 to 2004, the Rashtritya Swayamsevak Sangh, an ideological Hindu nationalist organization in India, and Bajrang Dal, which Professor Prashad describes as a "violent 'street gang.'" Id. at 134; see also Bajrang Dal, Wikipedia, http://en.wikipedia.org/w/index.php?title=Bajrang_Dal&oldid=576392288 (last visited Nov. 6, 2013); Bharatiya Janata Party, Wikipedia, http://en.wikipedia.org/w/index.php?title=Bharatiya_Ja nata_Party&oldid=580076773 (last visited Nov. 6, 2013); Rashtriya Swayamsevak Sangh, Wikipedia, http://en.wikipedia.org/w/index.php?title=Rashtriya_Swayamse vak_Sangh&oldid=579740939 (last visited Nov. 6, 2013); Vishva Hindu Parishad, Wikipedia, http://en.wikipedia.org/w/index.php?title=Vishva_Hindu_Parishad&oldid=577949870 (last visited Nov. 6, 2013). Additionally, Professor Prashad contends that Hindu Students Council (HSC) chapters at many universities promote a more gentle version of the same ideology, functioning as "'cultural' organizations" in "multicultural space[s] opened up in the liberal academy." The Karma of Brown Folk, supra note 88, at 144.

410. Karthik Ramakrishnan & Taeku Lee, *Public Opinion of a Growing Electorate: Asian Americans and Pacific Islanders in* 2012, Nat'l Asian Am. Survey 30 (Oct. 8, 2012), http://www.naasurvey.com/resources/Home/NAAS12-sep25-election.pdf.

fied as "Independent/Non-Partisan."⁴¹¹ Over ninety percent of Asian Indians reported voting for President Barack Obama in 2008, and eighty-eight percent had a favorable rating of Obama in 2012 (as compared to thirty percent favorability for Republican candidate Mitt Romney). ⁴¹² Asian Indians had similar views of Democrats and Republicans in Congress, ⁴¹³ and two of the three Asian Indian Americans elected to Congress have been Democrats: Rep. Dilip Singh Saund (D-Cal.), who served from 1957 to 1963, and Rep. Ami Bera (D-Cal.), who was elected in 2012. ⁴¹⁴ Additionally, most South Asian American state legislators have been Democrats, ⁴¹⁵ including Kumar P. Barve, ⁴¹⁶ Aruna Miller, ⁴¹⁷ Sam Arora, ⁴¹⁸ Saqib Ali (all from Maryland), ⁴¹⁹ Upendra J. Chivukula (New Jersey), ⁴²⁰ Swati

^{411.} Id. at 8.

^{412.} Id. at 11-12.

^{413.} Sixty-six percent of Asian Indians had a favorable view of Democrats in Congress, while only twenty-five percent had a favorable view of Republicans. *Id.* at 12.

^{414.} See List of Asian Pacific Americans in the United States Congress, WIKIPEDIA, http://en.wikipedia.org/w/index.php?title=List_of_Asian_Pacific_Americans_in_the_United_States_Congress&oldid=564402821 (last visited Nov. 6, 2013). Rep. Bobby Jindal (R-La.), who served in Congress from 2004 to 2007, is the only member of Congress of Indian descent who served as a Republican. *Id.* Additionally, Rep. Tulsi Gabbard (D-Haw.), a Democrat, is the first Hindu member of Congress. *Id.*

^{415.} Nimi McConigley, for example, became the first Indian-born person to serve in the Wyoming state legislature in 1994. Rebecca Martinez & Nina McConigley, "Cowboys and East Indians" Author Nina McConigley Shares About Her Own Life as an Indian American, Wyoming Public Media (Oct. 25, 2013, 3:37 PM), http://wyomingpublicmedia.org/post/cowboys-and-east-indians-author-nina-mcconigley-shares-about-her-own-life-indian-american; Nimi McConigley, Wikipedia, http://en.wikipedia.org/w/index.php?title=Nemi_McConigley&oldid=517698183 (last visited July 1, 2014). Also, in 2013, Kshama Sawant, a socialist, surprised many observers when she was elected to the Seattle City Council. See Manuel Valdes, Socialist Kshama Sawant Elected to Seattle City Council, Huffington Post, Nov. 15, 2013, http://www.huffingtonpost.com/2013/11/16/socialist-kshama-sawant-seattle_n_4287516.html; see also Kshama Sawant, Wikipedia, http://en.wikipedia.org/w/index.php?title=Kshama_Sawant&oldid=615167846 (last visited July 1, 2014).

^{416.} Delegate Kumar P. Barve, MARYLAND HOUSE OF DELEGATES, http://msa.maryland.gov/msa/mdmanual/06hse/html/msa12183.html (last visited Nov. 6, 2013). Barve is currently the Majority Leader of the Maryland House of Delegates, a position he has held since 2003.

^{417.} Aruna Miller, http://www.arunamiller.com/ (last visited Nov. 6, 2013).

^{418.} Delegate Sam Arora, Maryland House of Delegates, http://msa.maryland.gov/msa/mdmanual/06hse/html/msa15451.html (last visited Nov. 6, 2013).

^{419.} *Delegate Saqib Ali*, Maryland House of Delegates, http://msa.maryland.gov/msa/mdmanual/06hse/former/html/msa14612.html (last visited Nov. 6, 2013).

Dandekar (Iowa),⁴²¹ Satveer Chaudhary (Minnesota),⁴²² Raj Goyle (Kansas),⁴²³ and Jay Goyal (Ohio).⁴²⁴

Ironically however, the two most prominent South Asian American politicians on the national scene are both conservative Republicans: Louisiana Governor Piyush "Bobby" Jindal⁴²⁵ and South Carolina Governor Nikki Haley.⁴²⁶ Both Jindal and Haley have been noted as potential Republican presidential or vice presidential candidates. Both have embraced colorblindness⁴²⁷ as a strategy to deal with race issues, and both have employed the "model minority" stereotype in their political rhetoric. Both fit well with Professor Bonilla-Silva's notion of "Honorary Whiteness." Nevertheless, a close look at Jindal and Haley's political campaigns reveals the precarious status of honorary whiteness.

1. Bobby Jindal

The budding political career of Louisiana Republican Governor Piyush "Bobby" Jindal illustrates well how informal racialization processes are contingent upon not only national politics but also local racial microclimes. Jindal, a former Rhodes Scholar with a reputation as a "whiz kid," is the relatively dark-skinned son of Indian immigrants. In 2007, Jindal—a conservative Republican—was elected as governor of Louisiana and he was mentioned as a potential future Republican presidential candidate. However, it was his first unsuccessful Louisiana gubernatorial campaign, in 2003, that most visibly incorporated a variety of racialized symbols, representing both whiteness and non-white identities in various forms.

In 2003, Jindal ran for Louisiana Governor on an ultra-conservative platform laden with appeals to the religious right. A con-

^{420.} Assemblyman Upendra Chivukula, New Jersey General Assembly, http://www.njleg.state.nj.us/members/bio.asp?Leg=202 (last visited Nov. 6, 2013).

^{421.} Senator Swati A. Dendekar, Iowa Legislature, https://www.legis.iowa.gov/Legislators/legislator.aspx?GA=84&PID=200 (last visited Nov. 6, 2013).

^{422.} Savteer Chaudhary, Wikipedia, http://en.wikipedia.org/w/index.php?title =Satveer_Chaudhary&oldid=571681820 (last visited Nov. 6, 2013).

^{423.} *Raj Goyle*, Wikipedia, http://en.wikipedia.org/w/index.php?title=Raj_Goyle&oldid=554605934 (last visited Nov. 2013).

^{424.} *Jay Goyal*, Wikipedia, http://en.wikipedia.org/w/index.php?title=Jay_Goyal&oldid=572947676 (last visited Nov. 6 2013).

 $^{425.\} Bobby\ Jindal.$ Governor, http://www.bobbyjindal.com/ (last visited Nov. 6, 2013).

^{426.} Haley for Governor, http://www.nikkihaley.com/home/ (last visited July 3, 2014).

^{427.} See Ian F. Haney Lopez, "A Nation of Minorities": Race, Ethnicity, and Reactionary Colorblindness, 59 Stan. L. Rev. 985 (2007).

^{428.} See From Bi-Racial to Tri-Racial, supra note 208 and accompanying text.

vert to Catholicism from his Hindu upbringing, Jindal used the Ten Commandments in his radio ads, repeatedly emphasized his Christian faith, and highlighted his anti-abortion rights stance during the gubernatorial campaign. In this way, Jindal used religion as a form of honorary whiteness—to emphasize his commonality with the conservative white Louisiana electorate, a group that, only twelve years ago, had nearly elected former Ku Klux Klan leader David Duke to the very office Jindal sought. Indeed, Jindal's own choice of the name "Bobby" serves as a form of capital which allows him to be identified as "American" more readily. 429

Jindal's rhetoric also emphasized the American dream, presenting the United States as a land of equal opportunity and hard work is the only key to success. Jindal attributed his own rise to prominence primarily to his immigrant work ethic, drawing upon the "model minority" stereotype. When asked about the role of race in his campaign, Jindal downplayed its significance, stating, "[i]t is not about being black, white or brown. It is about being red, white and blue." He thus used the rhetoric of patriotism to present the vision of a colorblind America and employed his own achievement and social mobility as a form of racial capital. Mirroring his politics, Jindal's message reflected a classic neoconservative racial project: African Americans are responsible for their own lot in society and should work hard to overcome it. 431

Jindal's campaign touched upon some interesting dynamics within the South Asian American community, including the divide between Indian and pan-ethnic South Asian organizations noted earlier. He received substantial financial and political support from numerous Asian Indian groups around the country and abroad. Many of these organizations did not agree with his policies, but ethnic and national ties, along with Jindal's status as a ris-

^{429.} This Article does not criticize Bobby Jindal or Nikki Haley for this choice; it merely points out that their names affects how they are perceived.

^{430.} More recently, Jindal has suggested that racism continues because members of minority groups "plac[e] far too much emphasis on our 'separateness,' our heritage, ethnic background, skin color, etc." David Edwards, *Jindal: Racism Persists Because Minorities Cling to Their Heritage*, The Raw Story (Aug. 25, 2013), http://www.rawstory.com/rs/2013/08/25/jindal-racism-persists-because-minorities-cling-to-their-heritage/.

^{431.} See text accompanying supra note 362.

^{432.} See Kurien, supra note 70, at 262-63.

^{433.} Parthiv N. Parekh, *The Bobby Jindal Irony*, Khabar (Nov. 2003), http://www.khabar.com/magazine/editorial/the_bobby_jindal_irony.aspx (noting that for Jindal's 2003 gubernatorial campaign, "over a third of the contributions, amounting to about \$400,000 came from Indian-Americans").

ing political star, prompted them to support his candidacy. 434 However, Jindal incurred the wrath of Muslim and Pakistani American organizations when he stated that he was "not a Muslim." 435 Ashraf Abassi, the President of the Pakistani American Congress, reacted by saying of Jindal, "He was saying that he is qualified for the job because he's not a Muslim. He looked like the brown guy from the Indian subcontinent, so he wanted to tell his white club he's not a Muslim." 436

These comments suggest that Muslim and Pakistani American groups perceived Jindal's statement as an attempt to contrast his own honorary whiteness (Christianity) with Islam, perhaps all in an effort to compensate for the fact that he did not appear to be white. International tensions between India and Pakistan also likely played a role in these sentiments. The Pakistan Chamber of Commerce, Pakistani-American Community Association of Louisiana and Patriot Muslim American reacted by actively supporting Jindal's opponent, white Democrat and Lieutenant Governor Kathleen Blanco.⁴³⁷ They raised \$50,000 for Blanco's campaign.⁴³⁸

It is also interesting that despite his ultra-conservative politics, Jindal obtained nine percent of the black vote in Louisiana in 2003; hardly a substantial figure, but still double the percentage that Louisiana Republicans typically receive. Jindal was endorsed by Ray Nagen, the black mayor of New Orleans, and the Black Organization for Leadership Development (BOLD), which cited his creativity and capacity for new leadership. A variety of factors, ranging from local politics to Jindal's record, may account for this support, but despite his colorblind rhetoric, Jindal's racial background may have also played a role. If black voters were at all motivated by the desire to elect a non-white candidate, Jindal may have knowingly or unknowingly capitalized on his minority status—in a manner simi-

^{434.} See id. (noting that Jindal's policies are "anti Indian-American").

^{435.} In Run for Governorship: Pakistanis Line Up to Defeat Indian, DAILY TIMES (Pakistan) (Nov. 11, 2003) [hereinafter In Run for Governorship], http://archives.dailytimes.com.pk/national/11-Nov-2003/in-run-for-governorship-pakistanis-line-up-to-defeat-indian; Associated Press, Jindal's Heritage Touches Nerve, Сарітої WATCH (Nov. 10, 2003) [hereinafter Jindal's Heritage Touches Nerve], http://capitolwatch.reallouisiana.com/html/42BA3191-8835-43FC-AF69-6A5308FCF2C1.shtml.

^{436.} In Run for Governorship, supra note 435.

^{437.} Id.

^{438.} Id.

^{439.} Ronald Walters, *East Indian Loses LA Governor's Race*, The Sacramento Observer, Nov. 25, 2003, http://www.sacobserver.com/government/commentary/112503/bobby_jindal.shtml (last visited Dec. 31, 2003).

^{440.} Jindal's Heritage Touches Nerve, supra note 435.

lar to the growing number of black, Latino, and Asian American conservatives.

In the end, Jindal could not overcome his racial appearance and background. Despite his meteoric rise and lead in the polls immediately prior to the election, Jindal lost to Blanco in a close race. Although polls indicated that Jindal led by as many as ten points in the weeks leading up to the election, analysts suggested that rural whites in Louisiana in particular were unwilling to vote for a "foreigner."⁴⁴¹ In fact, one of Blanco's campaign ads exploited Jindal's foreignness: it depicted his photograph and stated "Wake Up Louisiana! Before it's too Late!"⁴⁴² Any honorary whiteness Jindal gained from his identification with Christianity and with the "model minority" stereotype could easily be negated by simple racial imagery.

However, Jindal ultimately benefited from his 2003 gubernatorial campaign, gaining statewide recognition and national exposure, even capitalizing on his own minority status. As a socially and politically conservative candidate of color, in the same vein as black conservatives like Condoleeza Rice, Jindal was exalted by the Republican party. In 2004, he won a seat in the U.S. House of Representatives from the heavily conservative First Congressional District of Louisiana. In this position, he was also able to capitalize on the Hurricane Katrina disaster and its racial overtones. State and federal executive officials, such as Governor Blanco and former Federal Emergency Management Agency Director Michael Brown, bore the brunt of media criticism for the poor response to Katrina. Congressman Jindal, in his legislative position, avoided such criticism, and he expanded his own political capital by taking an active role in federal relief efforts to rebuild his home state.

Governor Blanco did not seek re-election in 2007, and Bobby Jindal easily won the Louisiana gubernatorial race. Governor Jindal soon reached national prominence: 2008 Republican presidential nominee John McCain considered him as a potential running mate, 444 as did Mitt Romney four years later. 445 Jindal himself has

^{441.} Adam Nossiter, *Did Racism Beat Jindal*?, AsianWeek (Dec. 5, 2003), http://www.asianweek.com/2003/12/05/did-racism-beat-jindal/.

^{442.} Id.

^{443.} See Brad Wilmouth, NBC's Lisa Myers Reports on Governor Blanco's Katrina Mistakes, NewsBusters (Oct. 9, 2005), http://newsbusters.org/blogs/brad-wilmouth/2005/10/09/nbcs-lisa-myers-reports-governor-blancos-katrina-mistakes#ixz z37xbZXHI9; 'Can I Quit Now?' FEMA Chief Wrote as Katrina Raged, CNN.COM (Nov. 4, 2005), http://www.cnn.com/2005/US/11/03/brown.fema.emails/.

^{444.} Adam Nagourney, McCain to Meet 3 Possible Running Mates, N.Y. TIMES, May 21, 2008, http://www.nytimes.com/2008/05/21/us/politics/21cnd-mccain

been mentioned as a contender for the Republican presidential nomination in 2016.

All of these changes, within a short time span, illustrate how the process of racialization depends on racial microclimes; the particular historical and political circumstances in any situation can be outcome determinative. These circumstances changed in Louisiana between 2003 and 2007, but perhaps just as important was the change in Jindal's visibility. Racial scapegoating is much easier when the target is unfamiliar, as Jindal was in 2003. By 2007, Jindal had become much more well-known, particularly in his home state of Louisiana. Superficial racial stereotypes and characterizations can be quite powerful, but they are less so for individuals who are more familiar to the public at large. By achieving wide-ranging familiarity, Jindal was able to cement his honorary white status.

2. Nikki Haley

In 2010, similar to Bobby Jindal three years earlier, Nikki Haley was elected as a conservative, Republican governor of a southern state—South Carolina. Born Nimrata Randhawa to South Asian (Sikh) immigrant parents, 446 Haley identifies with the Tea Party Movement and converted to Christianity from Sikhism. 447 She "frequently credits her different heritage with helping her get beyond race and finding problems that many have in common."

Nevertheless, in June 2010, Haley's racial identity became an issue in her gubernatorial campaign. One of her opponents in the primary, South Carolina State Senator Jake Knotts, referred to both

[.]html?hp&_r=0 (noting that Jindal met with eventual Republican presidential nominee John McCain as a possible vice presidential candidate).

^{445.} See Chris Cillizza, The Case for Bobby Jindal to Be Vice President, Washington Post, July 18, 2012, http://www.washingtonpost.com/blogs/the-fix/post/the-case-for-bobby-jindal-to-be-vice-president/2012/07/18/gJQAtAlctW_blog.html (noting that Bobby Jindal was on the "short list" of Mitt Romney's potential vice presidential candidates).

^{446.} Uncle Swami, supra note 13, at 95-96.

^{447.} Haley does maintain some ties to Sikhism; since converting to Christianity in 1997, she has "occasionally attended Sikh services at her parents' request." Sarah Pulliam Bailey, S.C. Gov. Race Heats Up over Haley's Religion, Christian Today (June 16, 2010), http://blog.christianitytoday.com/ctpolitics/2010/06/sc_gov_race_hea.html.

^{448.} Indian-American Gov. Slammed for Saying She's White, USA Today, July 28, 2011, http://usatoday30.usatoday.com/news/politics/2011-07-28-south-carolina-governor-racial-ID_n.htm.

Haley and President Barack Obama as "ragheads."⁴⁴⁹ The South Carolina Republican party called upon Knotts to apologize, and he issued a statement claiming that his comments "were intended in jest"⁴⁵⁰ and apologizing to both Haley and Obama for the "unintended slur."⁴⁵¹

Haley's racial self-identification itself became a political issue in July 2011, when she was criticized by the South Carolina Democratic Party because her race was listed as "White" on her 2001 voter registration. Leading Dick Harpootlian, the party chair, noted that Haley's racial self-identification did not matter, but noted that "Haley has been appearing on television interviews where she calls herself a minority—when it suits her When she registers to vote she says she is white. She has developed a pattern of saying whatever is beneficial to her at the moment. Haley also signed South Carolina's restrictive voter identification bill into law, and the state Democratic Party questioned whether inconsistency in her racial identification might make Haley ineligible to vote. Executive Director Matt Moore said that Harpootlian's comments were "just more theatrics and that's all there is to it."

Similar to Jindal, Haley's racial characterization illustrates the transient position of South Asian Americans as honorary whites. Haley's racial background formed the basis for the comments by Knott, and she was also criticized for her self-identification as "White." The ambiguous position of South Asian Americans here also illustrates the contrary nature of race in American society: racial identity has become more malleable and context-dependent, but it can still be very salient and can be exploited for political gains or attacks.

^{449.} See Brian Montopoli, S.C. Lawmaker Refers to Obama and Nikki Haley as "Raghead," CBS News (June 4, 2010), http://www.cbsnews.com/8301-503544_162-20006815-503544.html.

^{450.} Id.

^{451.} Id.

^{452.} Siddhartha Mahanta, *Indian Nikki Haley Says She Is White*, MOTHER JONES (July 29, 2011, 11:30 AM), http://www.motherjones.com/mojo/2011/07/indian-nikki-haley-says-she-is-white%20.

^{453.} Id.

^{454.} Id.

^{455.} Haley spokesman Trey Walker said the governor's office did not plan to respond to the Democrats. *Indian-American Gov. Slammed for Saying She's White, supra* note 448. Also, "[State Election Commission spokesperson Chris Whitmire] and Dean Crepes, the Lexington voter registration and election director, said people can list anything they want for race on voter forms." *Id.*

3. Intersection of Foreignness, Racial Ambiguity, and the Model Minority Stereotype

More broadly, the ascent of Jindal and Haley in conservative Republican ranks raises another question: why have there not been similar high profile conservative politicians from other Asian American groups? No East Asian American conservative politician has attained the prominence of Jindal or Haley, and none has been noted as a potential Republican presidential candidate. Conversely, at least one Latino, Senator Marco Rubio of Florida, is considered to be a serious contender for the 2016 Republican presidential nomination, and African Americans such as Herman Cain and Dr. Benjamin Carson have been touted as Republican presidential contenders, as have Gen. Colin Powell and Dr. Condoleeza Rice in the past. 458

In the Democratic Party, there has not been a major East Asian or South Asian American presidential candidate. Of course, President Barack Obama is a Democrat, and in the past, there have been other prominent black Democratic presidential candidates, such as Rev. Jesse Jackson and Rev. Al Sharpton. Additionally, former New Mexico Governor and Energy Secretary Bill Richardson, a Latino, ran for the Democratic nomination in the 2008 presidential election. African Americans and Latinos have a longer history in America than Asian Americans and are more well-established politically. Thus, candidates from these groups may generally be able to draw upon a wider base of support. But together, these observations still lead to two questions of particular relevance for this Article: (1)

^{456.} I thank Stephanie Yu, a student in Professor Devon Carbado's Advanced Critical Race Theory Workshop at UCLA School of Law in Spring 2013, for indirectly raising this question in her response paper to my article draft. See Stephanie Yu, DesiCrit: Theorizing the Racial Ambiguity of South Asian Americans (Apr. 10, 2013) (unpublished reaction paper) (on file with author) ("[I]t does not seem to me that [East] Asian politicians adopt the same symbols of whit[e]ness as Jindal and Haley. Rather, these [East] Asian politicians are elected in constituencies that have majority [East] Asian populations.").

^{457.} See Nate Cohn, Marco Rubio's 2016 Chances Are Alive and Well, New Republic (Aug. 1, 2013), http://www.newrepublic.com/article/114122/marco-rubio-2016-his-presidential-hopes-are-still-alive.

^{458.} Alexandra Jaffe, Ben Carson Would 'Listen' to Calls for White House Bid in 2016, The Hill (Oct. 11, 2013, 4:33 PM), http://thehill.com/blogs/ballot-box/presidential-races/328047-ben-carson-obamacare-slavery-both-evil; Walter C. Jones, Herman Cain Leads Morris News Presidential Poll Among Republicans, Florida Times-Union (Oct. 18, 2011), http://jacksonville.com/news/georgia/2011-10-17/story/herman-cain-leads-morris-news-presidential-poll-among-republicans#ixzz2iyT3ep Gw ("Many urged Colin Powell and Condoleezza Rice to be [the Republican Presidential nominee] . . . [and] . . . [n]ow, Cain could give them their chance.").

Why are the most prominent and visible South Asian American politicians in the Republican party, in spite of the fact that most South Asian Americans identify as Democrats?;⁴⁵⁹ and (2) Why have there been no prominent East Asian American Presidential candidates in either party?

One can debate the reasons, but this Article posits that "foreignness," racial ambiguity, and the model minority stereotype all intersect to play a role. First, East Asian Americans can often unambiguously be ascribed as "foreign" due to their physical appearance.460 Thus, it may be more difficult for them to be accepted as national Presidential candidates, or even politicians representing wider constituencies. 461 Second, the racial ambiguity of South Asian Americans may actually be of benefit here; they do not unambiguously appear "foreign," and stereotypically Caucasian features may make them more palatable as more prominent political candidates. When comparing the experiences of East and South Asian Americans, the latter's racial ambiguity itself may augment the honorary whiteness" necessary to be a viable Presidential contender. Third, the model minority stereotype, in conjunction with this honorary whiteness, makes South Asian Americans such as Bobby Jindal and Nikki Haley particularly appealing to the Republican Party—which emphasizes self-help and individualism in its conservative ideology. As stereotypical "model minorities"—the successful children of Indian immigrants—Jindal and Haley's personal stories, along with their political positions, fit well with Republican ideology. Their status also allows them to serve as prominent symbols of racial diversity-similar to Rubio, Cain, and Carson-in a party that is otherwise predominantly white.

^{459.} See supra notes 410-13.

^{460.} Closing the Gap, supra note 358 (discussing the physical caricature of Asian Americans as "'Oriental' . . . associated with 'slant eyes' . . . or 'yellow skin'"—features that South Asian Americans usually lacked).

^{461.} See Yu, supra note 456 ("[East] Asian politic[i]ans are elected in constituencies that have majority [East] Asian populations."). There are some exceptions: Gary Locke, a Chinese American, was elected as governor of the state of Washington and served from 1997 to 2005. See Gary Locke, Wikipedia, http://en.wikipedia.org/w/index.php?title=Gary_Locke&oldid=578563721 (last visited Nov. 6, 2013). Also, Shien Biau "S.B." Woo, another Chinese American, was elected as lieutenant governor of Delaware and served from 1985 to 1989. See Chinese American Hero: SB Woo, Asian Week (June 23, 2009), http://www.asianweek.com/2009/06/23/chinese-american-hero-sb-woo/.

C. Racing Religion: Of Hated Hindoos, Spiritual Swamis, and Turbaned Terrorists

Informal racialization of South Asian Americans has also occurred through various religious referents, involving particular views of Christianity (as an advanced feature of Western civilization), Hinduism and Buddhism (as exotic and mystic religions), and Islam (as a dangerous ideology that forms the basis of terrorism). This process has involved linkages between racial and religious stereotypes, along with misidentification of religious symbols. It is also interesting to note the contrasting stereotypes associated with various religions on the South Asian subcontinent. These different religious images all play into the racial ambiguity of South Asian Americans in various ways.

1. The Hated Hindoo and the Dotbusters: Anti-Hindu Racism

As noted earlier, the first wave of immigrants from South Asia to the United States came in the early 1900s and settled on the West Coast. Although the majority of them were Sikh faith, they were referred to as "Hindoos." 463 Racialization of early South Asian immigrants generally appealed to religion, employing Christianity to draw a contrast between South Asians and Europeans. When justifying its position against South Asian immigration, the Asiatic Exclusion League (AEL) appealed to Biblical creation and the Protestant ethic. 464 It claimed that while South Asians were of the same race as Europeans, significant differences had emerged between the two groups: the Aryan race was divided, such that Western Aryans, who represented modern Europeans, were "Lords of Creation," and the Eastern Aryans, representing modern South Asians (or at least those from northern India and Pakistan), were "slaves of Creation."465 Accordingly, while the founders of America "pressed to the west, in the everlasting march of conquest, progress, and civilization," those who went to South Asia "became enslaved, effeminate,

^{462.} See, e.g., Joshua Eaton, Yes, the Navy Yard Shooter Was a Buddhist, Religion Dispatches Mag. (Sept. 18, 2013), http://www.religiondispatches.org/archive/atheologies/7306/yes_the_navy_yard_shooter_was_a_buddhist_a_theologies/ ("In the popular imagination, Buddhism is a religion of peace and Islam is one of war.").

^{463.} See supra notes 255-59 and accompanying text.

^{464.} TAKAKI, supra note 257, at 298.

^{465.} Id.

caste-ridden, and degraded."⁴⁶⁶ Hence, while AEL conceded that Europeans and 'Hindoos' were members of the same racial group, it depicted the latter as a degraded form of the European races, not worthy of citizenship and equal status in America. In creating this racial characterization, AEL linked Christianity to notions of "progress" and "civilization."⁴⁶⁷

Negative sentiment towards these early immigrants soon began to build, spurred by economic competition with other groups. Asian Indians were widely described as cheap, 468 filthy laborers who took jobs away from working class whites. In September 1907, there was a major riot against South Asian immigrant workers in Bellingham, Washington. 469 The *San Francisco Chronicle* reported this incident as "Workingmen Driving Out the Hated Hindoo." Subsequently, there were similar uprisings in several cities along the West coast. 471

These riots foreshadowed later acts of violence against South Asian Americans, which occurred after the post-1965 rise in the South Asian American population. The most infamous set of incidents involved the "Dotbusters," an anti-South Asian gang in the Jersey City, New Jersey area. During 1987 and 1988, the Dotbusters were responsible for several hate crimes against South Asian Americans, including the well-known murder of Navroze Mody. The "Dotbusters" specifically targeted Asian Indian Americans for violence, motivated by jealousy of Indian economic success and by the perception of Asian Indians as a "separate, alien group." The

^{466.} *Id.* For a broader historical account of how South Asians were racialized in European thought, see Vanita Seth, Europe's Indians: Producing Racial Difference, 1500–1900 (2010).

^{467.} Takaki, *supra* note 257, at 298.

^{468.} See Buchanan, supra note 259, at 311 ("The Hindus live together in colonies... and their living expenses are nominal... not exceed[ing] \$3 a month per capita... a white man must starve on such an allowance."). Buchanan's essay was actually more sympathetic to the plight of these early South Asian American immigrants than many others.

^{469.} Gerald N. Hallberg, *Bellingham, Washington's Anti-Hindu Riot, in* The Northwest Mosaic: Minority Conflicts in Pacific Northwest History 140 (James A. Halseth & Bruce A. Glasrud eds.,1977).

^{470.} Workingmen Driving Out the Hated Hindoo, S.F. Chron., Sept. 6, 1907, at 1.

^{471.} See LAL, supra note 255, at 20–22.

^{472.} Misir, supra note 91.

^{473.} *Id.* at 59–60; *see also* Michael Marriott, *In Jersey City Indians Face Violence*, N.Y. Times, Oct. 12, 1987, at B1, *available at* http://www.nytimes.com/1987/10/12/nyregion/in-jersey-city-indians-protestviolence.html?pagewanted=print&src=pm (quoting teenage boys from New Jersey as saying "it's white people against the Hindus").

Dotbusters drew upon the bindi, a "traditional red dot worn by some Hindu, married women"⁴⁷⁴ as a sign of fidelity, for their name. Professor Vijay Prashad discusses other well-known hate crimes that targeted South Asian Americans even prior to September 11, 2001; for example, in September 1998, Rishi Maharaj, a South Asian American of Caribbean descent, was beaten by a racist gang in South Ozone Park, Queens, New York.⁴⁷⁵ Of course, more such attacks occurred after September 11, 2001.⁴⁷⁶

What is noteworthy about these incidents here is that many of them have occurred in areas where South Asian American populations are particularly large and visible, such as Jersey City, New Jersey and Queens, New York. The visibility of South Asians in these racial microclimes probably offsets their racial ambiguity to an extent; I doubt that I would have been referred to as "Japanese Beetle" in Jersey City, as I was in Newark, Delaware. However, having a defined racial identity comes at a price: increased risk of specific (as opposed to general) racial targeting and hate crimes. More broadly, these incidents illustrate the importance of racial microclimes.

2. New Age Orientalism: South Asians as Mystical, Exotic Foreigners

South Asians in America have also been racialized informally as mystical, exotic foreigners, also based on Hindu and Buddhist religious symbolism. Professor Prashad describes how notions of South Asian spirituality and exoticism have been used to reinforce the image of South Asians as foreigners. This began in the late 19th and early 20th centuries, when Indian spiritual leaders such as Swami Vevekananda and Swami Abhedananda introduced India's spiritual traditions to American audiences. In more recent years, various "New Age Orientalists," such as Bhagwan Shree Rajneesh, Maharishi Mahesh Yogi, and his most famous student, Deepak Chopra, have capitalized on this practice, marketing faith as a means to obtain profit. In contrast to the Hindu/Indic-centered organizations and the Hindutva movement, New Age Orientalists do not seek

^{474.} See Misir, supra note 91, at 73 n.2.

^{475.} THE KARMA OF BROWN FOLK, supra note 88, at 88–89.

^{476.} See Uncle Swami, supra note 13, at 3–8. Post-September 11, 2001 racialization of South Asian Americans is discussed in IV.C.3.

^{477.} See supra note 1 and accompanying text.

^{478.} See also Misir, supra note 91 (noting that "Indians are no longer discursively anonymous or invisible" in northern New Jersey).

^{479.} THE KARMA OF BROWN FOLK, supra note 88, at 47–68.

^{480.} See Mukerji, supra note 155, at 306-07.

^{481.} See supra note 409 and accompanying text.

to unify Asian Indians or Hindus, but rather to market Eastern spiritual traditions to a Western audience. According to Professor Prashad, their presentation of South Asia as a land of spirituality and wonder neglects the immense material poverty and suffering present on the subcontinent, not to mention the adverse material conditions faced by ethnic minorities in America. Moreover, Professor Prashad contends that New Age orientalism can actually reinforce the social systems that perpetuate this poverty, by emphasizing harmony and individual change rather than the social upheaval necessary to bring about systemic changes.

Nevertheless, the New Age Orientalism that Professor Prashad describes also illustrates South Asians' agency in their own informal racialization. The various spiritual leaders have drawn upon their "foreignness" as a form of "racial capital" 484 to market their faith as an exotic commodity to a largely white liberal audience.

Moreover, such commodification is not limited to South Asian spiritual leaders. Mass consumer outlets such as Urban Outfitters have, in the recent past, sold "clothing and artifacts . . . with Hindu religious symbols, gods and goddesses, and even mere random Hindi letters that amount to [g]ibberish." Media images such as that of the "Swami" as a sports prognosticator—popularized by ESPN's Chris Berman—also perpetuate this exoticism. As these examples illustrate, racialization of South Asians as mystical foreigners, via religious symbols, involves both agency and ascription.

^{482.} The Karma of Brown Folk, supra note 88, at 58-62.

^{483.} *Id.* Professor Prashad contrasts the tame, socially ambivalent message of New Age orientalism with the social activism inherent in the philosophy of Mahatma Gandhi, contending that New Age Orientalism contributes to the exoticization of South Asia and discourages action that can lead to political involvement and change. *Id.*

^{484.} See Leong, supra note 215.

^{485.} Vinay Harpalani, Mocking Religion at the Altar of the Almighty Dollar, The Daily Pennsylvanian, Sept. 22, 2000 [hereinafter Mocking Religion], http://www.thedp.com/article/2000/09/mocking_religion_at_the_altar_of_the_almighty_dollar.

^{486.} See Chris Berman, WIKIPEDIA, http://en.wikipedia.org/w/index.php?title =Chris_Berman&oldid=579059880 (last visited Oct. 28, 2013); see also Mocking Religion, supra note 485. In this column, I protested The Daily Pennsylvanian (DP) (independent student newspaper at the University of Pennsylvania) Online Swami Challenge, which had students, faculty, staff, and other participants dress up as a "swami" and predict the results of football games. Other students and student organizations joined my protest and called for the DP to discontinue its use of "swami" imagery, and the DP soon complied with this request.

^{487.} Other South Asian traditions and artifacts have also been objects of cultural appropriation by Westerners. Most notably, the "Take Back Yoga" campaign has addressed the divide between Western practice of yoga and yoga's ancient ori-

3. Arab and South Asian Americans as Turbaned Terrorists

Since September 11, 2001, both hate crimes⁴⁸⁸ and racial profiling⁴⁸⁹ have involved the joint classification of Arab and South Asian Americans as terrorists. Several legal scholars have discussed these phenomena in depth.⁴⁹⁰ This Article will summarize the racialization processes involved.

Professor Ming Hsu Chen argues that rather than "racialization," the term "alienation"—which she defines as "a process by which citizens and states construct an identity for a target group in opposition to those who share membership within a putatively legal community"—more aptly captures the joint profiling of Arab and South Asian Americans.⁴⁹¹ Nevertheless, Professor Chen focuses her proposal on formal legal remedies such as immigration and anti-discrimination law;⁴⁹² she acknowledges that a racialization framework is "not wholly inaccurate" even if it is "insufficient" for a complete explanation of profiling.⁴⁹³ As this Article focuses on racialization, and particularly informal racialization,⁴⁹⁴ it posits that a focus on the joint racialization of Arab and South Asian Americans is a useful lens to further elucidate South Asian American racial ambiguity.

The racial project linking Arab and South Asian Americans has proceeded through a threefold informal racialization: (1) equating Islam with terrorism through ideological misarticulation⁴⁹⁵; (2) equating "Arab" with "Muslim" through conflation of language and ethnicity with religion; and (3) grouping together Arabs and South

gins and traditions. See Paul Vitello, Hindu Group Stirs a Debate over Yoga's Soul, N.Y. Times, Nov. 27, 2010, http://www.nytimes.com/2010/11/28/nyregion/28yoga.html?src=me&ref=homepage&_r=1&; see also On Making Fun of White People Who Love Chai Tea Lattes (Feb. 27, 2014, 4:56 PM), Literal Lizard, http://abcdf3m.tumblr.com/post/78041751740/on-making-fun-of-white-people-who-love-chaitea-lattes (noting that "chai means tea" and thus "chai tea" is redundant).

- 488. See Uncle Swami, supra note 13, at 3–8.
- 489. See Flying While Brown, supra note 13; Chen, supra note 29.
- 490. See supra note 489; see also Muneer Ahmad, Homeland Insecurities: Racial Violence the Day After September 11, 20 Soc. Text 72 (2002); Sunita Patel, Performative Aspects of Race: "Arab, Muslim, and South Asian" Racial Formation After September 11, 10 Asian Pac. Am. L.J. 61 (2005).
 - 491. Chen, *supra* note 29, at 421–22.
 - 492. Id. at 436.
 - 493. Id. at 414.
- 494. Professor Chen draws upon Professor Omi and Winant's notion of racialization, focusing on the creation of racial categories. *See supra* Part II.A.1. In contrast, this Section focuses on informal racialization, focusing on the role of religious symbols. *See supra* Part II.A.2.
 - 495. See Muscati, supra note 249; Nader, supra note 19, at 50.

Asians based on superficial similarities in physical appearance and cultural symbols (such as the turban). In particular, Sikh Americans have been the victim of discrimination and hate crimes after being mistaken for Arab or Muslim. This occurs not only because of their turbans, but also because of their long beards, both of which are Sikh religious symbols.

It is also noteworthy here that in spite of the fact that Arab and South Asian Americans are frequently racialized together, the federal government places the two groups in entirely different racial categories. South Asian Americans are included in the "Asian/Pacific Islander" category, while Arab Americans are classified as "White." This disparate categorization again reflects the decreased significance of formal racialization and increased importance of informal criteria used to socially construct race.

^{496.} See Uncle Swami, supra note 13 (noting that material criteria which designate a Muslim terrorist include "olive skin, turbans, head scarves, facial hair"). Ironically, in a previous generation, turbans allowed some African Americans to identify themselves as "Indian" and avoid Jim Crow laws to an extent. See infra note 522. In these contexts, the turban was associated merely with being Indian or from the Orient, not with Islam or terrorism. This illustrates the historical and situational malleability of racial symbols such as the turban.

^{497.} See Lily Kuo, Sikhs, Often Mistaken for Muslims, Call for Better Understanding of Their Religion, Filipinos Abroad (Aug. 7, 2012), http://www.filipinosabroad.com/sikhs-often-mistaken-for-muslims-call-for-better-understanding-of-their-religion; Shaun Tandon, Year After Massacre, Threat Persists for US Sikhs, Yahoo! News Sing. (Aug. 2, 2013), https://sg.news.yahoo.com/massacre-threat-persists-us-sikhs-142547547.html.

^{498.} See Kuo, supra note 497 ("As testament of their faith, Sikh men often keep their beards long and wear turbans to cover their uncut hair."). Professor Vinay Lal gives another examples of how Sikhism has been misunderstood in the United States. See, e.g., Vinay Lal, Sikh Kirpans in California Schools: The Social Construction of Symbols, Legal Pluralism, and the Politics of Diversity, 22 Amerasia J. 57 (1996) (discussing how kirpans, small knives which Sikhs carry as religious symbols, caused controversy in California schools). Additionally, for an eloquent personal account of the discrimination faced by Sikh Americans, see Jaideep Singh, My Journey to Sikh Studies, Sikh & Punjabi Language Studies (Dec. 12, 2009), http://www.sikhfoundation.org/sikh-punjabi-language-studies/my-journey-to-sikh-studies-by-dr.-jaideep-singh/; see also Erica Pearson, Half of Asian American Students in City Middle and High Schools Have Been Bullied, New Survey Reveals, N.Y. Daily News, Sept. 5, 2013, http://www.nydailynews.com/new-york/education/asian-american-students-city-middle-high-schools-bullied-new-survey-reveals-article-1.1446530 (noting frequency of bullying against Sikh American youth).

^{499.} Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity, 62 Fed. Reg. 58, 781–90 (Oct. 30,1997); see also Tehranian, supra note 17.

D. Brown Skin, Black Masks⁵⁰⁰

Both formal and "Honorary" whiteness have played a large role in the racialization of South Asian Americans. Throughout their history in America, various commentators have labeled South Asians as "Brown" 501—a color designation also often used to refer to Arab and Middle Eastern Americans, Latinos, and African Americans. Additionally, notions of blackness itself have impacted the racial identity of South Asian Americans in various ways, in spite of the ambivalent relationship between black and South Asian Americans.

The tension between South Asian and African American communities was most famously captured in Mira Nair's film, *Mississippi Masala*, which featured an Indian American woman in a relationship with a black man. For Although academic discourse draws parallels between their experiences, these two groups have often had a tense relationship on the ground. Professor Sucheta Mazumdar contends that South Asians in the United States "are black, but have sought to prove over and over again that they are white, ferring to "disjuncture between . . . South Asians' own perceptions of race and those of the majority. Color biases have long existed within South Asian communities, for leading to marginalization of dark-skinned South Asian Americans, and these negative sentiments may also be transferred to black communities more gener-

^{500.} The title of this section derives from the book, *Black Skin*, *White Masks* (1952), by post-colonial critical scholar Frantz Fanon. Francis Assisi has also used the title "Brown Skin, Black Mask" for an article about South Asian Americans and hip hop. *See* Francis C. Assisi, *Brown Skin*, *Black Mask*, Indolink.com, http://www.indolink.com/Living/America/a84.php.

^{501.} See United States v. Thind, 261 U.S. 204, 209 (1923) (referring to "the brown Hindu"); The Karma of Brown Folk, supra note 88 (analogizing "Karma of Brown Folk" to W.E.B. Du Bois's "Souls of Black Folk").

^{502.} See Missisippi Masala, Wikipedia (Oct. 26, 2013), http://en.wikipedia.org/w/index.php?title=Mississippi_Masala&oldid=578782923.

^{503.} See The Karma of Brown Folk, supra note 88.

^{504.} Mazumdar, supra note 14.

^{505.} *Id.* at 25–26. Professor Mazumdar also contends that "in any white majority context, the dark-skinned South Asian is identified as black." *Id.* at 25. For a critique of Professor Mazumdar's argument, see Koshy, *supra* note 14, at 288–290.

^{506.} See supra notes 160–61 and accompanying text, and supra note 505. Also, after Nina Davuluri was named Miss America in September 2013, several commentators noted that she was too dark-skinned to ever win the Miss India pageant. See supra note 129. There is also a grassroots movement to combat light-skinned bias in Indian media and society. See Dark Is Beautiful, FACEBOOK, http://www.darkisbeautiful.in/ (last visited July 7, 2014).

ally. 507 South Asian Americans are also influenced by negative stereotypes of African Americans, which are prevalent in the media. 508 Professor Amritjit Singh contends that "Asian Indian and Pakistani adults at social gatherings . . . [often hold the] . . . very American view . . . [that] . . . 'black' is almost a synonym for violent crime and drugs." 509 Nevertheless, Professor Singh also notes that "at some of these same gatherings . . . one or two younger people protest this view . . . [because] . . . [u]nlike their parents, they have African American friends and have developed a better understanding of how racism and poverty operate in American society." 510

South Asian American youth identification with blackness, on cultural and political terms, has been a popular topic in recent scholarship.⁵¹¹ Moreover, many South Asian Americans can identify with experiences of racial discrimination.⁵¹²

This Section discusses two accounts of proactive South Asian American identification with African Americans: one from the past and one more recent. First, it reviews Professor Vivek Bald's new book, *Bengali Harlem*, which describes marriages and relationships between South Asian male immigrants and African American women in the early 20th century.⁵¹³ These immigrants exercised

^{507.} See Mazumdar, supra note 14.

^{508.} See Robert M. Entman and Andrew Rojecki, The Black Image in the White Mind: Media and Race in America (2000).

^{509.} Singh, supra note 158, at 98.

^{510.} Id.

^{511.} See Sharma, supra note 96 (discussing South Asian American hip hop, blackness, and race consciousness); see also The Karma of Brown Folk, supra note 88, at 8 (showing picture of Bangladeshi youth in New York City who call themselves the "Bangla niggers").

^{512.} See supra Parts III.D, IV.A.2. My mother tells the story of how she could not find a job when she first came to the United States in the early 1970s because of her accent and her insistence on wearing a sari, even though she was much more qualified than candidates who were hired. She contended that many white Americans passed her over for less qualified candidates, and that it was a black man who hired her for her first job.

^{513.} See generally Vivek Bald, Bengali Harlem and the Lost Histories of South Asian America (2012). Most of the marriages and relationships discussed by Professor Bald were in New York or other cities in the Eastern half of the United States. Similarly, Professor Karen Leonard describes marriages between early South Asian (Punjabi) immigrants on the West coast, who were almost exclusively male, and white, black, and Mexican women. See Making Ethnic Choices, supra note 261, at 62–78. Professor Leonard notes that "[t]he printed pamphlet of the Imperial Valley Hindustanee Welfare and Reform Association contained a clause warning [Punjabi] men not to marry 'colored' women,' possibly motivated by desire to avoid "white prejudice against blacks." Id. at 69. Nevertheless, several of the Punjabi male immigrants she writes about did marry black women. Id.

agency in identifying with black communities,514 although they may have done so because they were denied access to white communities. Second. this Section discusses Professor Nitasha Tamar Sharma's book, Hip Hop Desis, 515 which examines South Asian American youth participation in hip hop culture—particularly as this phenomenon represents a claim to "blackness" and signifies a larger race consciousness. Such race consciousness is in tension with stereotypes about black masculinity that are also reflected through hip hop, and South Asian hip hop artists engage both of these. Finally, this Section also covers direct ascriptions of blackness to South Asians, from the "n-word" to the "m-word" ("macaca"). Such ascriptions directly depict American racial hierarchy; they reveal as much about the racial position of black Americans as that of South Asian Americans—for whom they are usually just temporary negations of honorary white status. In the public realms, political expediency often motivates these ascriptions of blackness, which play on long-standing white animus to achieve independent political goals. These ascriptions highlight the importance of racial microclimes, as they are usually due to local historical and political circumstances. Moreover, such ascriptions of blackness also underscore the continuing significance of the black-white paradigm in American racial hierarchy; not in terms of racial categories and groups per se, but with respect to the social meaning of race.

1. Bengali Harlem

As noted earlier, the first major wave of South Asian immigration to the United States was in the early 1900s, but traveling peddlers from India had come to the United States before then, selling various goods from India. Through examining Census and demographic data and conducting interviews and historical investigation, Professor Bald describes Bengali peddlers and merchants who settled in black communities in various Southern cities, 17 includ-

^{514.} South Asian Americans' ability to capitalize on their racial ambiguity does not necessarily involve making a conscious claim to any racial status. For example, Professor Sudhir Venkatesh, a sociologist at Columbia University, may well have capitalized on South Asian American racial ambiguity in his research. Professor Venkatesh is well known for his scholarship on urban gangs, and in his ethnographic research, he was able to gain access to those gangs as a participant-observer. See Ariel Kaminer, Columbia's Gang Scholar Lives on the Edge, N.Y. TIMES, Nov. 30, 2012, at MB1, available at http://www.nytimes.com/2012/12/02/nyregion/sudhir-venkatesh-columbias-gang-scholar-lives-on-the-edge.html.

^{515.} Sharma, supra note 96.

^{516.} See, e.g., BALD, supra note 513, at 31.

^{517.} Id. at 35.

ing New Orleans, Charleston, Memphis, Chattanooga, Galveston, Dallas, Birmingham, Atlanta, and Jacksonville. 518 These immigrants both sold goods and provided an infrastructure for others to pass through these cities on business.⁵¹⁹ Professor Bald identifies almost fifty South Asian peddlers and merchants who settled in New Orleans between 1885 and 1908.520 He also notes that in the midst of these peddlers from India, black Americans learned that they could pass for Indian—"that it was possible to move across the line between 'Negro' and 'Hindoo'"—and that doing so provided for safer passage while traveling in the Jim Crow South (even though Indians did not have access to all of the areas that white Southerners did. and even though they ultimately lived in segregated black spaces).⁵²¹ Thus, South Asians' racial ambiguity was also employed by black Americans (at least those who were themselves racially ambiguous in appearance), who could exercise some agency in their racial identities in order to partially avoid the barriers of Jim Crow.522

Eventually, Professor Bald notes that in New Orleans, "a core group of Bengali Muslim peddlers married local women of color" and became a part of the local black community. He identifies twenty-five Indian men who married African American, Creole, Cuban, or mixed-race women between 1891 and 1928. Professor Bald contends further that "[t]he lives of Bengali Muslim peddlers and their descendants became embedded within black communities and entwined with their histories. Similarly, Professor Bald documents a "network of Indian ex-sailors in the Detroit neighborhood of the black Bottom" in the early decades of the twentieth

^{518.} Id. at 35-36.

^{519.} Id. at 35.

^{520.} Id. at 34-35.

^{521.} Id. at 50-52.

^{522.} A notable example of such passing is musician Korla Pandit (born John Roland Redd), who claimed to be an Indian born in New Delhi, but who was actually African American. See R.J. Smith, The Many Faces of Korla Pandit, L.A. MAG., June 2001, at 73. Additionally, Tanvi Misra notes how wearing a turban allowed some African Americans to pass as "Indian" and thus avoid Jim Crow laws to an extent. Tanvi Misra, How Turbans Helped Some Blacks Go Incognito in The Jim Crow Era, Code Switch Blog (July 19, 2014, 5:32 AM), http://www.npr.org/blogs/codeswitch/2014/07/19/332380449/how-turbans-helped-some-blacks-go-incognito-inthe-jim-crow-era?utm_source=facebook.com&utm_medium=social&utm_campaign=npr&utm_term=nprnews&utm_content=20140719.

^{523.} BALD, *supra* note 513, at 53.

^{524.} Id. at 76.

^{525.} Id. at 88.

century.⁵²⁶ Most of these Indian men were Muslim, and Professor Bald notes that they influenced the development of African American Muslim groups such as the Moorish Science Temple and the Nation of Islam.⁵²⁷ While some of these Indian Muslim men stayed within their own ethnic social circles, others married African American women and became socially and politically enmeshed within the local black communities.⁵²⁸

Professor Bald also tells the story of Mustafa "John" Ali, a Bengali sailor who jumped ship in Baltimore, went back to India, then again went to Baltimore and married an African American woman and raised a family in the 1930s, then moved around the United States and eventually went back to his home village in India. ⁵²⁹ Ali's great granddaughter, Brittany Jones, ⁵³⁰ explained why she believed Ali came to identify with African Americans:

From the way my grandfather [Mustafa "John" Ali's son] explains it, when my great-grandfather came to the U.S., you could be one of two things—black or white. He obviously couldn't be white, so he was categorized as black. Professor Bald's theory is that African-Americans provided support networks for Bengali immigrants and I think that was definitely true for my great grandfather. He didn't "look black", but I think the bigger point is that he also didn't "look white." ⁵³¹

Jones's analysis here focuses on the ascription of her grandfather as non-white, in the context of the black-white binary in American race relations. While such ascriptions limited the choices of these Bengali immigrants, these immigrants also exercised agency in becoming a part of black American communities.

Of course, Professor Bald's book is entitled *Bengali Harlem*, and he documents the same phenomenon in New York City. He notes that by the 1930s, "an increasing number of Indian Muslim ex-seaman were marrying within local communities of color . . . one-third [of the Indian male population in uptown Manhattan] had married

^{526.} Id. at 154.

^{527.} *Id.* Professor Bald also notes that the 1920s were the peak of Marcus Garvey's influence in black American communities. *Id.* Thus, black nationalism influenced the development of these organizations.

^{528.} *Id.* at 155.

^{529.} Id. at 121.

^{530.} Id. at 278.

^{531.} E-mail from Brittany D. Jones to author (Mar 6, 2013, 11:30 PM CST) (on file with author). Professor Bald interviewed Brittany's grandfather in his research for *Bengali Harlem*. BALD, *supra* note 513, at 278. Jones's e-mail was a response to my inquiry about whether her great-grandfather's appearance played any role in his connection to black Americans communities.

and were living with their Puerto Rican, African American, or West Indian spouses."⁵³² Like the Indian immigrants in New Orleans, Detroit, and other cities, these men became an integral part of their local black communities.

The remarkable stories that Professor Bald tells in *Bengali Harlem* illustrate further how South Asian Americans' racial ambiguity is molded and manifested in various situations, and how both agency and ascription, along with local racial microclimes,⁵³³ play a role in this racialization process.⁵³⁴ All of this tells a larger story about the history of American racial hierarchy. Race in America has often centered on a black-white paradigm, not necessarily in terms of groups involved,⁵³⁵ but with respect to social dynamics and how

^{532.} BALD, *supra* note 513, at 166.

^{533.} Other South Asian Americans, particularly those who grew up in the South or border South, have stories of identification with African Americans. Kiran Ahuja, Executive Director of the white House Initiative on Asian Americans and Pacific Islanders, grew up in Savannah, Georgia and attended Spelman College, a historically black institution for women. See Kiran Ahuja, Executive Director of the white House Initiative on Asian Americans and Pacific Islanders—Biography, U.S. Dep't of Educ., http://www2.ed.gov/news/staff/bios/ahuja.html (last visited Nov. 6, 2013). Also, in 2011, Kamala D. Harris, who is of mixed-race heritage, became the first black and first South Asian Attorney General of California. Ms. Harris graduated from Howard University, a historically black institution, and is a member of Alpha Kappa Alpha, the oldest black sorority. See About Attorney General Kamala D. Harris, Kamala Harris (last visited Nov. 6, 2013), http://www.kamalaharris.org/inner.asp?z=565E58; see also Harpalani, supra note 1 (describing experiences growing up with black friends and involvement in black organizations in graduate school and law school).

^{534.} It may be noteworthy that practically all of the Indian men Professor Bald discusses in *Bengali Harlem* were Muslim. This may be due to the religious demographics of Indian peddlers, merchants, and sailors, or it could be telling of how Hindu caste and color biases affected identification with black communities. See Koshy, *supra* note 14, at 295–99, for a critical discussion of the latter. In her book on Punjabi male immigrants to California in the early twentieth century, Professor Karen Leonard also notes that "[s]even of the nine northern black wives were married to Punjabi Muslims, one to a Hindu, and one to a Sikh." Making Ethnic Choices, *supra* note 261, at 69.

^{535.} For critiques of the black-white binary construction of race, see Robert S. Chang, Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space, 1 Asian L.J. 1, 27 (1994) ("[C]ritical race scholarship tends to focus on the black-white racial paradigm, excluding Asian Americans and other racial minorities . . . [to] focus on the black-white racial paradigm . . . [and to] ignore[] the complexity of a racial hierarchy that has more than just a top and a bottom."); Robert S. Chang & Catherine E. Smith, John Calmore's America, 86 N.C. L. Rev. 739, 760 (2008) (noting the black-white paradigm as "the 'bipolar conception of race' that frames the discussion in terms of black and white relationships."); Juan F. Perea, The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought, 85 Calif. L. Rev. 1213, 1219 (1997) ("Many scholars of race")

other groups, such as South Asian Americans, can fit in. Moreover, it complicates the role of agency and ascription in this process, showing how the two are not fully separable—as racial actors' agency in defining their racial identities occurs in a wider context full of racial ascriptions. While racially ambiguous actors such as many South Asian Americans may have more choices than others, these choices vary across time periods and racial microclimes.

2. Hip Hop Desis

In a very different historical context, Professor Nitasha Tamar Sharma also gives an account of South Asian Americans relating to black American communities and claiming aspects of "Blackness." ⁵³⁶ In the past twenty years, hip hop music and culture have been mass-marketed across the United States and the world, becoming a predominant genre of popular entertainment. Hip hop is rooted in both the real and the fictionalized experiences of urban black American youth. ⁵³⁷ This connection has lead some observers to charge that South Asian and other youth who engage hip hop are "trying to be black." ⁵³⁸ Professor Sharma contends that such accusations are rooted in a notion of white normativity, which equates "American" with "White." ⁵³⁹ These accusations also underscore the continuing significance of the black-white paradigm of race in America ⁵⁴⁰—even for individuals who are not classified or identified as black or white.

reproduce this paradigm when they write and act as though only the black and the white races matter for purposes of discussing race and social policy with regard to race. . . . If one conceives of race and racism as primarily of concern only to blacks and whites, and understands 'other people of color' only through some unclear analogy to the 'real' races, this just restates the binary paradigm with a slight concession to demographics."). These authors make valid points about how blackwhite relationships have framed the discourse on American racism, and how this can marginalize particular forms of racism experienced by Asian Americans and Latinos. Nevertheless, they focus on racial categories and groups, rather than transferrable social meanings associated with race, which this Article posits are key to informal racialization.

- 536. Sharma, supra note 96.
- 537. See generally The Vibe History of Hip Hop 3 (Alan Light ed., 1999).
- 538. See Raesham Chopra Nijhon, Making Brown Like Dat: South Asians and Hip Hop, in Desi Rap: Hip Hop and South Asian America 79, 97 (Ajay Nair & Murali Balaji eds., 2008) (noting that "people are asking [South Asian American hip hop artists] '[w]hy aren't you being Indian?'" and thus are implicitly asking "[w]hy are you trying to be black?").
 - 539. Sharma, *supra* note 96, at 98.
- 540. Cf. id. at 98 (noting that "white normativity" is rooted in "a belief in the black and white binary").

Nevertheless, Professor Sharma contends that South Asian American identification with hip hop and blackness is more nuanced and complex:

The cross racial identifications of hip hop desis are not rooted in ephemeral, theoretical, or romantic notions of connection . . . they are based on their knowledge of the historical and global forces that have shaped how South Asians and blacks came to the Americas. Through their critical awareness of power, cross-racial interactions, and hip hop music, these desis engage difference. . . . By making race—taking an active part in the process of racialization—individuals stake out new racial meanings ⁵⁴¹

Professor Sharma notes that the race consciousness of some South Asian American hip hop artists began in part as a rebellion against their parents' anti-black prejudices, particularly when they brought black friends to their homes.⁵⁴² According to Professor Sharma, many South Asian hip hop artists were particularly influenced by black friends and peers, and racial microclimes were important in this process. Some artists, such as MC Rawj⁵⁴³ and Karmacy's KB,⁵⁴⁴ both from Richmond, California, grew up in predominantly black neighborhoods, where they socialized with black friends and listened to hip hop, while simultaneously learning and negotiating their own identities as South Asian Americans. 545 Professor Sharma also notes that some South Asian American youth in the Bay Area—the "home of the black Panthers" 546—were exposed to "an explicit black consciousness . . . about history and oppression, which contrasted with desi family conversations focused on studies, marriage, and careers."⁵⁴⁷ Additionally, hip hop itself directly exposed these youth to messages about racial identity and oppression.⁵⁴⁸ Black peers from childhood and college were also an

^{541.} Id. at 91.

^{542.} See id. at 97; see also supra text accompanying notes 509-10.

^{543.} Sharma, supra note 96, at 99-100.

^{544.} Id. at 195.

^{545.} Id.

^{546.} Id. at 102.

^{547.} Id.

^{548.} *Id.* at 106–07, 203–12. My own experience can also attest to this, as I listened to the race-conscious lyrics of KRS_ONE and Boogie Down Productions, Stetsasonic, and Public Enemy in the late 1980s. *See* Vinay Harpalani, *A Battle for the Soul of Hip Hop*, Daily Pennsylvanian (Nov. 17, 2000) [hereinafter *Soul of Hip Hop*], http://www.thedp.com/article/2000/11/a_battle_for_the_soul_of_hip_hop.

"important"⁵⁴⁹ influence for South Asian American hip hop artists growing up in predominantly white, suburban areas, helping these artists "to better understand themselves as racial beings."⁵⁵⁰

Hip hop artists such as Sri Lankan American D'Lo,⁵⁵¹ and multiethnic Das Racist⁵⁵² have rapped about progressive social issues related to race, gender, and sexuality. Moreover, progressive hip hop can have a more generalized anti-assimilationist theme,⁵⁵³ which is rooted in the black Power movement.⁵⁵⁴ South Asian hip hop artists draw upon this anti-assimilationist theme, sometimes in deliberately overstated ways. For example, Karmacy, which may be the best known South Asian American hip hop group to American audiences,⁵⁵⁵ playfully asserts that they will "go classically to India and bring it to your room"⁵⁵⁶ in their best known song, "Passage to India."⁵⁵⁷ Later in the song, Karmacy's lyrics take this anti-assimilationist theme even further, purporting that they will assimilate various American icons into Indian culture:

We'll make a ballerina stop mid-pirouette

^{549.} Sharma, *supra* note 96, at 108.

^{550.} Id.

^{551.} *Id.* at 146–55; *see also Bio: D'Lo*, D'Loco Kid Productions, http://dlocokid.com/bio/ (last visited Nov. 7, 2013).

^{552.} Das Racist included two South Asian Americans and one member of Afro-Cuban and Italian descent. *See Das Racist*, WIKIPEDIA, http://en.wikipedia.org/w/index.php?title=Das_Racist&oldid=580339904 (last visited Nov. 7, 2013).

^{553.} See Soul of Hip Hop, supra note 548 ("Hip hop is essentially about a particular mentality—one of resistance to oppression and assimilation, of carving out your own space, of showing pride in who you are and letting the world know about it. And it's about having fun the whole time."). For helping me develop this insight, I also thank Brijesh Dave. In the fall of 1999, I interviewed Brijesh, who was then a law student at the University of Pennsylvania, for a class project on South Asian Americans, racial identity, and hip hop—the project that began this Article. During our conversation, Brijesh told me that he thought hip hop was inherently "anti-assimilationist"; it was about "big upping your peeps" (i.e., giving credit and recognition to one's own community and heritage).

⁵⁵⁴. See Patricia Hill Collins, From Black Power to Hip Hop: Racism, Nationalism, and Feminism $98-101 \ (2006)$.

^{555.} Sharma, *supra* note 96, at 9. Karmacy consists of four members: KB, Sammy, Swap, and Nimo. Swap and Nimo were undergraduate students at the University of Pennsylvania when I was a graduate student there, so I became familiar with the group early on, around the fall of 1999. As part of the class project noted in *supra* note 553, I also interviewed Nimo, who would work on dance-drama performances with children from the slums of India. *See* Nipun Mehta, *Finding Nimo: A Rap Star's Journey With 16 Slum Children*, Huffington Post (May 6, 2012, 3:28 PM), http://www.huffingtonpost.com/2012/05/06/finding-nimo-a-rap-stars-n_14906 43.html.

^{556.} Sharma, *supra* note 96, at 78.

^{557.} Id. at 80.

And break into a twenty minute Bharata Natyam set Then we'll make a troubadour, famous like Elton John Sing a memorial song for Nusrat Fateh Ali Khan And we'll make the Nobel committee recognize they ignored him

And give the peace prize to Gandhi post-mortem We'll make an avid cricket player out of Sammy Sosa And give Martha Stewart a recipe for samosas 'Cause I, I, I, I, I... We're on a passage to India⁵⁵⁸

Such playful exaggeration and bravado is another feature of hip hop, evident in many verbal jousts between artists over the years. 559

More significantly, South Asian American hip hop artists draw from the anti-assimilation themes of hip hop, rooted in black pride and consciousness, and they apply these themes to their own social and cultural contexts. As Professor Sharma notes, hip hop artists such as Karmacy "operate as culture brokers who translate between generations of American South Asians," as they incorporate South Asian cultural themes into their songs. But even this assertion of South Asian cultural heritage has its roots in "wider urbanish black consciousness," with "South Asians turning to black musical forms to express their racial and American senses of self." Moreover, Professor Sharma argues that hip hop gives these South Asian

^{558.} Karmacy, Passage to India, YouTube (May 5, 2007), http://www.youtube .com/watch?v=UnqYiKm4y0E. These lyrics, performed by K.B., can be verified by listening to the song on YouTube; the cited lyrics occur from 2:30 to 2:55. Various websites have erroneous lyrics, possibly because those transcribing the lyrics did not understand the South Asian cultural referents: Bharata Natyam is a classical Indian dance). See Bharata Natyam, Wikipedia, http://en.wikipedia.org/w/index .php?title=Bharata_Natyam&oldid=608905859 (last visited May 30, 2014); Nusrat Fateh Ali Khan is a deceased Pakistani musician. Nusrat Fateh Ali Khan, Wikipedia https://en.wikipedia.org/w/index.php?title=Nusrat_Fateh_Ali_Khan&oldid=5798 04463 (last visited Nov. 7, 2013). "Passage to India" also makes references to India's obsession with cricket and to samosas, which may be the most well-known Indian food. Additionally, the song notes Mahatma Gandhi's omission among Nobel Peace laureates. See Natalie Wolchover, Top 5 Nobel Prize Goof-Ups, LiveS-CIENCE (Oct. 5, 2011, 11:08 AM), http://www.livescience.com/16391-top-5-nobelprize-goof-ups.html ("In 2006, Geir Lundestad, Secretary of the Norwegian Nobel Committee, said, 'The greatest omission in our 106-year history is undoubtedly that Mahatma Gandhi never received the Nobel Peace prize. Gandhi could do without the Nobel Peace prize. Whether Nobel committee can do without Gandhi is the question.").

^{559.} See The Vibe History of Hip Hop, supra note 537, at 84–85.

^{560.} See Sharma, supra note 96, at 11.

^{561.} Id. at 197.

American artists "an analytics to comprehend American race politics." 562

Of course, the above accounts highlight artists who themselves have a deep engagement with hip hop music and culture. Many other South Asian Americans, like American youth more generally, listen to commercial hip hop without a deeper engagement with its roots, and without a critical lens on commercial hip hop's misogynistic and homophobic content.⁵⁶³ Professor Sharma acknowledges that many South Asian American college students listen to hip hop music because "they 'liked the beats'" or enjoyed dancing to it, "but they did not really 'understand the words.'" Moreover, Professor Sharma also notes how race and gender stereotypes play into South Asian Americans' affinity for hip hop. For South Asian American males, this occurs through "a desire for black masculinity,"565 manifested through "racialized aesthetics" and "ethnic and gendered performances" such as wearing particular styles (e.g., sagging jeans) and using slang. 566 In this sense, South Asian American males' claim to blackness may be motivated by racial stereotypes involving masculinity and "coolness." South Asian American women involved in hip hop can also accept stereotypic notions of black masculinity, articulated when explaining their preference for dating black men.⁵⁶⁷ These examples illustrate that claims to racial statuses can be motivated not just by conventional desires for higher general social positioning, but also by racially stereotyped statuses related to masculinity and peer group status related to "coolness."

Professor Sharma's analysis of these phenomena is more complex and nuanced and cannot be fully elaborated in this Article. Nevertheless, in line with the main theme of this Article, Professor Sharma also discusses how South Asian American racial ambiguity plays into the lives of hip hop desis. One South Asian American artist, Vivek from Connecticut, noted how he "is sometimes (mis)identified as a black man and his black peers often treat him like 'one of their own.' "568 Professor Sharma notes that this is due to his skin color, hairstyle (closely-cropped), clothing, mannerisms,

^{562.} *Id.* Professor Sharma also notes the connection between South Asian and Latinos through hip hop. *Id.* ("Chicanos and desis are linked as Brown youth").

^{563.} See Soul of Hip Hop, supra note 548 (noting that "hip hop has never been free from the misogyny and homophobia that pervade American society").

^{564.} Sharma, *supra* note 96, at 196.

^{565.} Id. at 161.

^{566.} Id. at 162.

^{567.} Id. at 162, 179.

^{568.} Id. at 114.

and social relationships with black people.⁵⁶⁹ This example also problematizes the distinction between agency and ascription.

More generally, Professor Sharma argues that because of their racial ambiguity, South Asian American youth have "learned to 'do race' with twists and turns, stepping in and out of the racial molds prescribed . . . by the larger society."⁵⁷⁰ These racial performances take several forms, including superficial engagement with hip hop and its incorporation of race and gender stereotypes; a deeper engagement of black consciousness; and also transposition of hip hop's anti-assimilationist themes onto South Asian cultural contexts.

3. The N-Word and the M-Word: Anti-Black Epithets Directed at South Asians

Ascriptions of blackness to South Asian Americans have occurred since the initial wave of South Asian immigration to the United States in the early twentieth century. Professor Ronald Takaki notes that while association with other Asian groups was more common, at times the early Asian Indian immigrants were associated with black Americans.⁵⁷¹ For example, one Sikh immigrant noted how a white man said to him, "Come here, slave," and stated that whites ruled and enslaved India.⁵⁷² Professor Ronald Takaki also notes that at times, early Indian immigrants were referred to as "niggers,"⁵⁷³ and Professor Bandana Purkayastha notes that this racial epithet is still directed at South Asian American youth.⁵⁷⁴

In a more public realm, such racial ascriptions can also serve particular political ends. For example, in 1965, Indian Prime Minister Lal Bahadur Shastri and Pakistani President Mohammed Ayub Khan were scheduled to visit the United States. However, after both leaders expressed opposition to the Vietnam War, President Lyndon Johnson cancelled their visits, remarking, "After all, what would Jim Eastland [the conservative Senator from Mississippi] say

^{569.} Id.

^{570.} Id. at 113.

^{571.} Takaki, *supra* note 257, at 295.

^{572.} Id.

^{573.} Id. at 296.

^{574.} See Purkayastha, supra note 88, at 29 (discussing the experience of a South Asian medical student who was called "nigger" as a child); see also supra text accompanying notes 568–69 (describing a South Asian hip hop artist who is "sometimes (mis)identified as a black man").

if I brought those two niggers over here."⁵⁷⁵ President Johnson's remark was not widely reported in 1965, as it would be today. His racialization of the two South Asian leaders drew upon appeasement of Southern segregationist sentiment, which was apparently a more viable reason than the leaders' opposition to the Vietnam War.

The most recent such public episode that gained nationwide attention was the "macaca" incident during the 2006 campaign of former Virginia Senator George Allen. Senator Allen was touted not only as an easy winner in the Senatorial election, but also as a frontrunner for the 2008 Republican Presidential nomination.⁵⁷⁶ This changed dramatically when S.R. Sidarth, a twenty-year-old campaign volunteer for Allen's Democratic opponent, Jim Webb, was assigned to track and videotape Allen's rallies across the state of Virginia. At an August 11, 2006 rally in the rural town of Breaks, Virginia, Allen referred to Sidarth, who is a relatively dark-skinned Asian Indian American, by stating, "Let's give a welcome to Macaca, here. Welcome to America and the real world of Virginia."577 Sidarth was the only non-white person at the rally and caught the incident on videotape. Appealing to a rural Virginia electorate, Allen had employed the device of material racialization to label Sidarth as both "black" and "foreign," in an attempt to associate these characteristics with his opponent's campaign and imply a separation between South Asian Americans and "real" America.

However, Allen did not anticipate the power of internet media—an issue that President Johnson did not have to deal with. Videotape of this incident spread quickly and widely on YouTube, and media soon reported that "macaca" referred to macaques—a species of monkey—and was considered an anti-black racial epithet in French-speaking countries.⁵⁷⁸ Although Senator Allen denied knowing about this usage, reporters soon learned that his mother was from francophone Tunisia, and that Allen himself spoke French relatively well.⁵⁷⁹ The incident prompted attention to Allen's dubious racial past, which included opposition to a state Martin Luther King, Jr. holiday and a display of a Confederate flag on

^{575.} Richard N. Goodwin, *President Lyndon Johnson: The War Within*, N.Y. TIMES MAG., Aug. 21, 1988, at 34, 36 (alteration in original); *see also* Mazumdar, *supra* note 14.

^{576.} Frank Rich, The Year of 'Macaca,' N.Y. TIMES, Nov. 12, 2006, at C12.

^{577.} Tim Craig & Michael D. Shear, *Allen Quip Provokes Outrage*, *Apology*, WASH. POST, Aug. 15, 2006, at A01.

^{578.} Editorial, *The Un-American Senator*, L.A. Times, Aug. 21, 2006, at B10. 579. *Id.*

his living room wall.⁵⁸⁰ Senator Allen repeatedly apologized for the comment, but his campaign crumbled, and he lost a very close election, decided by a mere 7,000 votes out of over 2.3 million.⁵⁸¹ Allen's loss also gave the Democrats a one seat majority in the Senate, thus shifting the entire balance of power. Moreover, because of this collapse, Allen decided not to run for President in 2008.⁵⁸²

The "macaca" incident illustrates how informal racialization can simultaneously employ a multiplicity of racial symbols. The media's portrayal of Sidarth, the young man labeled as "macaca," illustrated the ongoing contestation between honorary whiteness and non-whiteness in this process. For example, journalists pointed out that Sidarth was born in Virginia, as if this made him less deserving of the epithet than someone who was not. Essentially, Sidarth's status as a native born American became a form of honorary whiteness which was used to negate his "foreignness." At the same time, media pundits such as Tim Russert of "Meet The Press" noted Sidarth's educational achievements—he was a straight-A student and scored a 1550 out of 1600 on the SAT⁵⁸³—thus invoking the model minority stereotype. Again, one can ask whether these accomplishments made Sidarth less deserving of the racial epithet, or if he would be any more deserving if he was not a high achiever. More importantly though, this point illustrates that blackness is ideologically situated in opposition to the model minority and to particular forms of honorary whiteness—those depicting success and achievement. These qualities can be used to negate blackness and reclaim whiteness.

Thus, while the "macaca" incident shows the racial ambiguity and malleable racial positioning of South Asian Americans, it also underscores the assumed and stereotypic position of black Americans at the bottom of the racial status hierarchy.⁵⁸⁴ Additionally, the "macaca" incident once again underscores the importance of racial microclimes. Senator Allen made this remark to a conservative, ru-

^{580.} David D. Kirkpatrick, 2 Ex-Acquaintances of Senator Allen Say He Used Slurs, N.Y. Times, Sept. 26, 2006, at A20.

^{581.} Where The Newspaper Stands, Daily Press (Nov. 10, 2006), http://articles.dailypress.com/2006-11-10/news/0611100140_1_recount-macaca-attorney-gener al-election.

^{582.} Tim Craig, *The What If of Allen Haunts the GOP Race*, Wash. Post, Feb. 6, 2008, http://www.washingtonpost.com/wp-dyn/content/article/2008/02/05/AR 2008020503237.html?sid=ST2009081303022.

^{583.} Randy L. Harrington, Senator Allen Trapped the Brown Skin Monkey, AMER. CHRON. (Aug. 26, 2006), http://www.americanchronicle.com/articles/viewArticle.asp?articleID=12896 (last visited May 14, 2007).

^{584.} See From Bi-Racial to Tri-Racial, supra note 208, at 933 (noting the emergence of a "Collective Black" at the bottom of America's racial hierarchy).

ral Virginia audience; he may not have done so in a more diverse, urban setting. Racial ascriptions of blackness to South Asian Americans are particularly illustrative of how racial hierarchy operates in various racial microclimes.⁵⁸⁵

585. Of course, racial dynamics vary between nations as well. Professor Susan Koshy notes that the ambiguity of South Asian Americans can, in some contexts, also be compounded by relative racial invisibility in the United States, as demonstrated by the Louise Woodward case. Louise Woodward was an au pair from an England who was charged with the care of eight-month old Matthew Eappen, the son of Deborah Eappen, a white American, and Sunil Eappen, a South Asian American. Woodward was accused and convicted of second-degree murder when Matthew Eappen died of head injuries caused by a skull fracture. Subsequently, Woodward's conviction was reduced to manslaughter by the judge in the case. Professor Koshy illustrates that, while the effect of Sunil Eappen's race on public sentiment was invisible and unspoken in the United States, the result was quite different in England. South Asians in England have been classified as "black," and most come from working class backgrounds under similar circumstances as the Afro-Caribbean population in England. This, of course, is in contrast to the different histories of blacks and South Asians in the United States. Public sentiment in England strongly favored Woodward, and the English media depicted Deborah Eappen as a bad mother and a traitor to her race. In contrast, the issue of race was principally absent from the case in U.S. media, and public sentiment in America also favored Woodward. Professor Koshy asks whether this would have been the case if both of Matthew Eappen's parents had been white. See Koshy, supra note 14, at 311-15.

Racial invisibility seems to parallel honorary whiteness, occurring in more privileged environments, at times when assimilation is relatively easy. See Harpalani, supra note 1, at 78 ("[During my undergraduate years,] my racial ambiguity now played a new role. With the so-called prosperity of the Clinton years and the politically correct environment of a college campus, there was no reason for anyone to scapegoat me. I had an advantage that my black peers from high school could not have received—the ability to be racially invisible. I could just fit in with the predominantly white crowd, and tacitly, I was expected by students, professors, and everyone else to assimilate in this manner."). More broadly, the different portrayals of Woodward case in the two countries reflect not only the racial ambiguity of South Asians, but also, more importantly, the marginality of South Asians in both societies. See Koshy, supra note 14, at 311–15.

Nevertheless, as noted throughout this Article, honorary whiteness can be negated—sometimes in subtle ways. One illustration is the recent case of Dharun Ravi, an Indian teenager from New Jersey who set up a webcam to spy on the sexual encounters of his gay roommate, Tyler Clementi, at Rutgers University. Clementi committed suicide soon thereafter, and Ravi was convicted of a bias crime. Progressive bloggers, including members of LGBT communities, argued that like many black youth, Ravi was especially targeted because he is a person of color. *See, e.g.*, Beth Leonard, *How We Lose When Hate Crimes Win*, PrettyQueer (Mar. 23, 2012), http://www.prettyqueer.com/2012/03/23/how-we-lose-when-hate-crimes-win/#more-3004. For another example of the negation of honorary whiteness, see Henna Budhwani, *Race Relations on the Playground: White Nanny to South Asian Family*, Huffington Post, Aug. 20, 2013, http://www.huffingtonpost.com/henna-budhwani-phd-mph/race-relations-on-the-playground_b_3759039.html (describ-

Ascriptions of blackness denoted in this Section can be different from the previously discussed racial ascriptions in that they do not necessarily posit the racialized actor (South Asian American in these cases) to be categorically a member of the ascribed race (black Americans here). President Lyndon Johnson probably did not think that the Prime Ministers of India and Pakistan were "black;" he merely used an anti-black epithet to disparage them because it was politically viable and convenient at the time, and because the social meaning of blackness was understood and salient in the context. 586 Conversely, when I am labeled as, "Italian," "Arab," "Mexican," or "Puerto Rican," 587 these ascriptions probably occur because the individuals who refer to me by these ascriptions often actually think I am a member of the given group.

V. SYNTHESIS AND CONCLUSION

This Article has analyzed the racial ambiguity of South Asian Americans, examining their various formal racial classifications and informal racial characterizations from the early 1900s to the present. This Part synthesizes the major aims of the analysis above, and then concludes this Article by positing the implications of this analysis for understanding of racial hierarchies more broadly.

A. Major Aims of this Article

The two major aims of this Article have been to: (1) provide a comprehensive account of the racialization of South Asian Americans (or Desis) with a focus on their racial ambiguity, and introduce DesiCrit in the process; and (2) begin the synthesis of a general theoretical framework to analyze racial ambiguity of individuals and groups.

1. Defining "DesiCrit"

This Article has focused on the racial ambiguity of South Asian Americans to situate their racialization in legal scholarship and race scholarship more generally. This analysis is self evident in the sections above, along with the theoretical synthesis summarized in Part

ing how an onlooker at Wald Park in Vestavia Hills, Alabama described Budhwani's children, both South Asian American, as "poor . . . biracial . . . [with an] . . . unwed mother [who] is so lazy" when the children were with their white nanny).

^{586.} See supra note 575 and accompanying text. It is unclear whether Senator George Allen's knew S.R. Sidarth's South Asian heritage when he made the "macaca" remark. See text accompanying supra notes 576–85.

^{587.} See supra notes 9-13 and accompanying text.

V.A.2. Nevertheless, the notion of "DesiCrit" merits further discussion. While it is introduced through the analysis above, the Article can still posit a more direct answer to the question: what exactly is DesiCrit, and how does it relate to other group-based movements in Critical Race Theory? There may be various potential answers to these questions, and I will give my own view as the author of this Article.

In one sense, I view DesiCrit as an opportunity for South Asian Americans to become more race conscious—to become aware of their own ambiguous racial characterization and identity, and to critically observe and engage this phenomenon. That is why my notion of DesiCrit has focused specifically on the racial ambiguity of South Asian Americans and the various racialized positions we occupy in American society. Nevertheless, I also view DesiCrit as a broader race consciousness—one that may be created by the racial ambiguity and related experiences of South Asian Americans, but one that teaches us about racial identity and hierarchy more broadly. Thus, I do not see DesiCrit as limited to South Asian Americans, even as it focuses on our racial ambiguity. Part V.A.2 highlights the lessons of DesiCrit for racial ambiguity more generally, and Part V.B discusses its implications for understanding racialization and racial hierarchy even beyond racial ambiguity.

In fact, my hope is that DesiCrit would not only impel South Asian Americans to think about their own racial ambiguity and their own racial positioning, but also to build coalitions with other racial/ethnic groups. South Asian Americans can become directly involved in organizations of those groups, and in broad people of color coalitions and race-conscious groups that include white people.⁵⁸⁸ This type of interplay and exchange will serve Critical Race Theory—and particularly its activist roots—more than an isolated DesiCrit movement focused on South Asians.

2. Theorizing Racial Ambiguity

Additionally, this Article has begun the process of creating a theoretical framework to examine racial ambiguity by laying out and applying its basic features. When applying this framework to South Asian Americans, our racial ambiguity stands out with respect to both formal and informal racialization—because of our physical appearance, our positioning in American racial hierarchy, and our

^{588.} At various times, I personally have been involved in black, Asian American, South Asian American, and Latino organizations, along with broad people of color coalitions and predominantly white organizations interested in racial justice. *See* Harpalani, *supra* note 1.

various relationships to other groups. This ambiguity allows a variety of claims to racial statuses by South Asian Americans, and also various ascriptions of racial status on to us by others. How these claims and ascriptions play out is often dependent on the particular racial microclime where they occur, and the role of agency versus ascription in determining racial status is not always clear.

First, the Article builds on sociohistorical theories of racialization to delineate formal and informal modes of racialization. Formal racialization involves government or other authority applying an officially sanctioned racial classification scheme, while informal racialization involves situational racial characterizations that do not necessarily invoke authority and do not involve direct application of existing racial classification schemes. It acknowledges that formal and informal racialization are related and may overlap to an extent, but this Article emphasizes government categories for the former and racialized symbols for the latter. While the racial ambiguity of South Asian Americans has been manifested through both formal and informal racialization, the latter is particularly important, as it inherently problematizes the application of formal categories and requires one to focus on racialized symbols. The growing scholarly literature on performative aspects of race includes various groups, 589 and it focuses on informal racialization. In the same vein as the analysis of racial ambiguity here, this literature problematizes racial categorization while underscoring the significance of race. With the diminishing formal role of race under the law, informal racialization has taken on a more significant role in explaining racial identity and inequality. This Article contributes to the explication of informal racialization of South Asian Americans, but such explication is useful and salient for a variety of individuals groups, particularly those with more ambiguous racial identities.

Second, this Article builds on theories of whiteness, racial capitalism, and racial hierarchy to argue and illustrate that formal and informal racialization occur through claims by minority group members to various statuses in America's racial hierarchy, and via ascriptions of these statuses onto minority group members. It highlights the agency of South Asian Americans in making claims to various racial statuses, with varying motivations for doing so. Through its analysis of different historical contexts and different racial microclimes, this Article has illustrated that South Asian Americans make claims to racial status in a variety of social hierarchies, including conventional hierarchies of social positioning in America (e.g.,

embracing the "model minority" stereotype and seeking honorary whiteness as a status); and racially stereotyped hierarchies of masculinity and peer status (e.g., pursuing blackness through association with hip hop music, slang, and fashion). Such claims might also be motivated by a desire for economic gain and notoriety (e.g., South Asian spiritual leaders who employ "foreignness" and exoticism, to market Eastern faiths to Western audiences), by a desire to belong to a community when limited options for doing so are available (e.g., South Asian Americans in Bengali Harlem), or by the desire to create cross-racial communities with common political goals (e.g., South Asian American artists discussed in *Hip Hop Desis*). The Article also discusses ascriptions of racial statuses to South Asian Americans, and linkages between agency and ascription. The variety of claims and ascriptions covered here emanate directly from South Asian American racial ambiguity, and they illustrate the interplay between agency and ascription in understanding racial ambiguity among other groups and individuals.

Finally, this Article has highlighted the notion of racial microclimes—local settings with particular social and political dynamics that affect racialization processes. It has shown how such microclimes are important in understanding how the racial ambiguity of South Asian Americans plays out in particular contexts. The same is of course true for other racially ambiguous groups and individuals.

B. Broader Implications for American Racial Hierarchy

By theorizing and analyzing South Asian American racial ambiguity, this Article also contributes general insights to Critical Race Theory and racialization theory, which have broader implications for understanding American racial hierarchy.

1. Contextual and Relational Character of Racialization

First, this Article highlights the contextual and relational character of racialization. It illustrates that one cannot fully understand the racial portrayal and positioning of South Asian Americans without considering the experiences of African Americans and other minorities. Similarly, one also cannot understand the position of any group just by examining binary relationships between white Americans and other groups.⁵⁹⁰ The dominant position of whites is

^{590.} See Paulette M. Caldwell, The Content of Our Characterizations, 5 MICH. J. RACE & L. 53, 63–64 (1999) ("[M]uch of what passes for critique of the black-white construction of race does little more than substitute alternative binary or other

taken for granted to the extent that the juxtaposition of whites with any other group is generally not questioned, but the process of racialization requires us to analyze relationships between all different groups, not just through analysis of white relationships with each group.

Additionally, the relational aspects of racialization are often dependent on the particular racial microclime and on the historical and political context, as illustrated by Bobby Jindal's 2003 gubernatorial campaign and by the "macaca" incident. This is important not only in theorizing racial ambiguity and understanding racialization more generally, but also in negotiating the increasingly complex political dynamics of race. Delineating how racial microclimes operate is also an important step in theorizing "microracialization" (at the local level) and distinguishing it from "macroracialization" (at the societal/national level).

2. Continuing Salience of the Black/White Paradigm

Second, and related, the analysis in this Article illustrates that while the demographics and dynamics of racialization in America have become increasingly complex, the black-white paradigm of American race relations still has salience, even for groups who do not fit into "black" or "white" formal categories. Professor Kamala Visweswaran contends that there is a tendency "to cast the racial identities of immigrant Asian groups as symbolically 'whitened' or 'blackened' . . . or to place Asian groups too quickly in a mediating position between blacks and whites." ⁵⁹¹ Nevertheless, one reason for continued salience of the black-white paradigm is that black and white are the two racial statuses with the most salient social meanings in America, ⁵⁹² and these meanings are readily transferred on

constructions . . . [;] challenging the prevailing paradigm does so only by articulating the claims of other subordinates in comparison with African Americans . . . and dominant whites.").

^{591.} Visweswaran, *supra* note 14, at 6.

^{592.} See Leslie Espinoza & Angela P. Harris, Afterword: Embracing the Tar-Baby—LatCrit Theory and the Sticky Mess of Race, 85 Calif. L. Rev. 1585, 1596 (1997), 10 La Raza L.J. 499, 510 (1998) ("The claim [of my argument for 'black exceptionalism'] is, quite simply, that African Americans play a unique and central role in American social, political, cultural, and economic life, and have done so since the nation's founding. From this perspective, the 'black-white paradigm'... is no accident or mistake; rather it reflects an important truth."); see also Mari Matsuda, Beyond and Not Beyond Black and White: Deconstruction Has a Politics, in Crossroads, Directions, and a New Critical Race Theory 395 (Francisco Valdes et al. eds., 2002) ("When we say we need to move beyond black and white, this is what a whole lot of people say or feel or think: 'Thank goodness we can get off that paradigm, because those black people make me feel so uncomfortable.'").

to other groups. When viewing race as a transferrable entity rather than a category, and emphasizing social meaning rather than classification, many examples in this Article highlight the continuing relevance of the black-white paradigm. There have been important calls by other Latino and Asian American critical race scholars to move beyond the black-white paradigm and examine other groups, ⁵⁹³ and by focusing on South Asian American racialization, this Article acknowledges and responds to these calls. But ironically, this Article's focus on South Asian American racial ambiguity, in conjunction with its emphasis on transferrable symbols and social meanings, still illustrates the continuing significance of the black-white paradigm.

3. Emphasis on Social Meaning of Race

Finally, by considering informal racialization in depth, this Article posits racial identity as a transferrable entity and focuses on social meaning and racial symbols, as alluded to already, rather than categorical classification. Although formal racialization is still important, racially ambiguous groups such as South Asian Americans, can simultaneously possess attributes of whiteness, "foreignness," and "blackness," and may attempt to claim or rebuke these attributes. Additionally, attributes of these various racial statuses can be ascribed onto racially ambiguous actors. This Article contends that the future of Critical Race Theory and racialization theory lies not only in examining other groups and creating notions such as DesiCrit, but rather in showing how race is salient as a form of transferrable capital (or as a negation of such capital) rather than just as a category. "Post-racial" America, if anything, reflects only the declining significance of racial categorization itself: the symbols, stereotypes, and social meanings associated with race are still salient.⁵⁹⁴ And at a time when the U.S. Supreme Court, through its formalist, "colorblind" jurisprudence, 595 is de-emphasizing race, it is important as ever to emphasize these powerful social meanings and their continuing effects.

^{593.} See supra note 535.

^{594.} President Barack Obama's comments on the death of Trayvon Martin, in the wake of his killer's acquittal, illustrate this salience. *See, e.g.*, Charles M. Blow, Op-Ed., *Barack and Trayvon*, N.Y. Times, July 20, 2013, at A19, *available at* http://www.nytimes.com/2013/07/20/opinion/blow-barack-and-trayvon.html.

^{595.} See Christopher W. Schmidt, Brown and the Colorblind Constitution, 94 CORNELL L. REV. 203, 206 (2008).