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Dreaming in Black and White: Racial-Sexual Policing in *The Birth of a Nation*, *The Cheat*, and *Who Killed Vincent Chin*?

Robert S. Chang[†]

Professor Chang observes that Asians are often perceived as interlopers in the nativistic American "family." This conception of a nativist "family" is White in composition and therefore accords a sense of economic and sexual entitlement to Whites, ironically, even if particular beneficiaries are recent immigrants. Transgressions by those perceived to be "illegitimate," such as Asians and Blacks, are policed either by rule of law or the force of sanctioned vigilante violence. Chang illustrates his thesis by drawing upon the three films referenced.

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INTRODUCTION

America dreams of race in black and white. By this, I mean that the current racial paradigm has become naturalized so that race in America is generally understood to mean black and white.¹ This notion of race limits people's understanding and willingness to engage with the history and current state of Asian Americans in the United States.² Instead of being included as participants in conversations on race, Asian Americans are seen as interlopers.³ Yet this status as interloper is precisely why Asian Americans are important in discussions of race. Our existence disrupts the comfortable binary of the black/white racial paradigm in which the black racial subject is produced by and through its opposition to the white racial subject, and vice versa.⁴ The presence of other racial bodies problematizes this construction of both black and white racial subjects.⁵ Inclusion of

1. Articles that challenge the black/white paradigm prove this point. See, e.g., Robert S. Chang, *Toward an Asian American Legal Scholarship*, 81 CAL. L. REV. 1241, 1265-67 (1993), 1 ASIAN L.J. 1, 25-27 (1994); Cynthia K.Y. Lee, *Beyond Black and White: Racializing Asian Americans in a Society Obsessed with O.J.*, 6 HASTINGS WOMEN'S L.J. 165 (1995); Juan F. Perea, *The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought*, 85 CAL. L. REV. 1213 (1997), 10 LA RAZA L.J. 127 (1998); Deborah Ramirez, *Multicultural Empowerment: It's Not Just Black and White Anymore*, 47 STAN. L. REV. 957 (1995); Frank H. Wu, *Neither Black Nor White: Asian Americans and Affirmative Action*, 15 B.C. THIRD WORLD L.J. 225 (1995).

2. See generally Pat K. Chew, *Asian Americans: The "Reticent Minority and Their Paradoxes*, 36 WM. & MARY L. REV. 1 (1994).

3. Professor Mitsuye Yamada tells a story about the reaction of her Ethnic American Literature class to an anthology compiled by some outspoken Asian American writers:

[One student] blurted out that she was offended by its militant tone and that as a white person she was tired of always being blamed for the oppression of all the minorities. I noticed several of her classmates' eyes nodding in tacit agreement. A discussion of the "militant" voices in some of the other writings we had read in the course ensued. Surely, I pointed out, some of these other writings have been just as, if not more, militant as the words in this introduction? Had they been offended by those also but failed to express their feelings about them? To my surprise, they said they were not offended by any of the Black American, Chicano, or American Indian writings, but were hard-pressed to explain why . . . A little further discussion revealed that they "understood" the anger expressed by the Black and Chicanos and they "empathized" with the frustrations and sorrow expressed by the American Indian. But the Asian Americans?? [sic]

Then finally, one student said it for all of them: "It made me angry. Their anger made me angry, because I didn't even know the Asian Americans felt oppressed. I didn't expect their anger."

Mitsuye Yamada, *Invisibility is an Unnatural Disaster: Reflections of an Asian American Woman*, in THIS BRIDGE CALLED MY BACK: WRITINGS BY RADICAL WOMEN OF COLOR 35, 35 (Cherrie Moraga & Gloria Anzaldua eds., 1981).

4. Toni Morrison makes this point very eloquently in PLAYING IN THE DARK: WHITENESS AND THE LITERARY IMAGINATION (1992). The growing literature on whiteness as a racial formation also attests to this point. See generally NOEL IGNATIEV, HOW THE IRISH BECAME WHITE (1995); ERIC LOTT, LOVE & THEFT: BLACKFACE MINSTRELSY AND THE AMERICAN WORKING CLASS (1995); DAVID R. ROEDIGER, THE WAGES OF WHITENESS: RACE AND THE MAKING OF THE AMERICAN WORKING CLASS (1991) [hereinafter ROEDIGER, WAGES OF WHITENESS]; MICHAEL ROGIN, BLACKFACE, WHITE NOISE: JEWISH IMMIGRANTS IN THE HOLLYWOOD MELTING POT (1996).

5. See Robert S. Chang & Keith Aoki, *Centering the Immigrant in the Inter/National Imagina-*

Asian Americans operates to denature—de-naturalize—the current paradigm.⁶

But what would a racial paradigm look like that was not simply black and white? How do we expand our notion of race in America without resorting to simple platitudes, statements such as “Yellow is not black; yellow is not white.” Even accounts that place yellow between black and white in the racial hierarchy have limited power to explain how the different races have mattered in different ways in history and how racial subordination has been effected in law.⁷

Persons of Asian ancestry were juridically constructed as racially distinct from whites; in that sense, we exist as a racial “Other” to whites.⁸

tion, 85 CAL. L. REV. 1395, 1399-1400 (1997), 10 LA RAZA L.J. 309, 313-14 (1998).

6. The stubbornness of the current racial paradigm is exemplified by a book published by Harvard University Press in 1985, *RACIAL ATTITUDES IN AMERICA*, which “trace[s] the changes in . . . attitudes [toward racial issues] over the past four decades.” HOWARD SCHUMAN, CHARLOTTE STEEH & LAWRENCE BOBO, *RACIAL ATTITUDES IN AMERICA: TRENDS AND INTERPRETATIONS*, at vii (1985). The authors chronicle white attitudes toward blacks and black attitudes toward whites. While there is no problem with limiting the book’s scope, the authors are unreflective about the limitations of their work which excludes, without mention, other races.

7. Although the middleman minority thesis is useful, it is limited in its applications. See IVAN LIGHT & EDNA BONACICH, *IMMIGRANT ENTREPRENEURS: KOREANS IN LOS ANGELES 1965-1982*, at 17-24 (1988) (discussing the middleman minority thesis as a useful beginning point but too restrictive and instead favoring the more expansive concept of immigrant entrepreneurship); but see PYONG GAP MIN, *CAUGHT IN THE MIDDLE: KOREAN MERCHANTS IN AMERICA’S MULTIETHNIC CITIES* 5 (1996), for an argument that middleman minority theory, which had generally been based on cases in preindustrial societies, still retained validity as seen in his study of Korean merchants in contemporary America.

8. The United States Supreme Court’s decisions in *United States v. Ozawa*, 260 U.S. 178 (1922), and *United States v. Thind*, 261 U.S. 204 (1923), established with finality the racial bar on naturalization, holding that persons of Asian ancestry could not become naturalized citizens. These cases were followed shortly by the 1924 Immigration Act that consolidated the racial bar on immigration by prohibiting immigration by those ineligible for citizenship. Immigration Act of 1924, ch. 190, 43 Stat. 153 § 13(c). This racially neutral language had the effect of excluding people purely on the basis of their Asian ancestry. Yet, despite the ease with which persons of Asian ancestry were racialized by the state, Asian Americans never really became part of the racial topography of America. This may be a testament to the success of Asian exclusion which was aimed in part to prevent family formation. Ronald Takaki notes:

One of the law’s provisions prohibited the entry of aliens ineligible to citizenship. “The necessity [for this provision],” a congressman stated, “arises from the fact that we do not want to establish additional Oriental families here.” This restriction closed tightly the gates for the immigration of Chinese women. “We were beginning to repopulate a little now,” a Chinese man said bitterly, “so they passed this law to make us die out altogether.”

RONALD TAKAKI, *STRANGERS FROM A DIFFERENT SHORE: A HISTORY OF ASIAN AMERICANS* 235 (1989).

Nevertheless, in the same way that silences may speak volumes, the forced invisibility—achieved by exclusion from the political body and through the literal exclusion from the geographic body of the nation-state—may reveal an important structural role that persons of Asian ancestry played in the formation of the modern American nation and its racial landscape. As such, Asian Americans have been and continue to be an integral part of the racial landscape of America. In making this claim, I do not intend to deflect attention from the very real crisis that exists in many Black communities. For an excellent discussion of black exceptionalism in American history, see Leslie Espinoza & Angela P. Harris, *Afterword: Embracing the Tar-Baby—LatCrit Theory and the Sticky Mess of Race*, 85 CAL. L. REV. 1585 (1997), 10 LA RAZA L.J. 499 (1998). Nor do I deny the importance of the specific history

However, this doesn't capture the sense in which persons of Asian ancestry were also constructed as a foreign "Other" to (white) Americans.⁹ Introducing this element of foreignness complicates the racial positioning of Asian Americans and reveals a suppressed, and usually unquestioned, national dimension in the way race is conceptualized.¹⁰ Including the axis of nation in examining race allows us to understand the treatment of Asian Americans, Blacks, Latina/os, Native Americans, and Whites as part of a larger national project.

A focal point in this national project is the family. Walter Benn Michaels identifies the family as an important component in the reconceptualization of collective national identity that began in the 1920s:

[I]t was in terms of familial relations (as opposed, say, to economic relations or regional or even generational relations) that the new structures of identity were articulated. America, A Family Matter was the title of Charles W. Gould's nativist polemic of 1922. And, although Horace Kallen's *Culture and Democracy in the United States* (1924) was directed against nativism, Kallen shared Gould's model of national identity; according to him, the very idea of "nationality" was "familial in its essence."¹¹

In this Article, I examine two films, D.W. Griffith's *The Birth of a Nation* (1915) and Cecil B. DeMille's *The Cheat* (1915), that presaged the trend discussed by Michaels. In both films, family operates as a stand-in for both race and nation and offers a convenient way to represent the dangers posed by certain bodies of color who pose a threat to the (white) American family. These dangers necessitate racial-sexual policing, a disciplining of the transgressive sexuality of men of color and white women, in order to preserve the proper racial/national/familial order. I develop my discussion of Asian Americans and race/nation/family through a reading of these two fictional dramas, supplemented by the 1988 documentary,

of Blacks in the United States. But even that specific history is not simply one of White over Black. Such an account does not explain the importation of Chinese workers to replace Black workers in the South during Reconstruction. James Loewen's study of persons of Chinese ancestry in the Mississippi Delta since 1869 is instructive on this score. JAMES W. LOEWEN, *THE MISSISSIPPI CHINESE: BETWEEN BLACK AND WHITE* (2d ed. 1988).

9. In pursuing this line of inquiry, I follow Neil Gotanda whose work on non-Black minorities first explored "foreignness" as a "previously unexamined dimension of the relationship between race and law." Neil Gotanda, "Other Non-Whites" in *American Legal History: A Review of Justice at War*, 85 COLUM. L. REV. 1186, 1188 (1985) (reviewing PETER IRONS, *JUSTICE AT WAR* (1983)).

10. Race and nation are linked in such a way that they are necessarily constitutive of each other. Cf. Peter Fitzpatrick, "We know what it is when you do not ask us": *Nationalism as Racism*, in NATIONALISM, RACISM AND THE RULE OF LAW 3, 23 (Peter Fitzpatrick ed., 1995) ("The instability attending the presence of the excluded, as well as the desperate differences that ensue, are diffractions of the primal significance of racism in the formation of national identity."). This article explores the way in which nativistic racism directed against Asian immigrants and their descendants helped form American national identity.

11. WALTER BENN MICHAELS, *OUR AMERICA: NATIVISM, MODERNISM, AND PLURALISM* 6 (1995) (quoting KALLEN, *CULTURE AND DEMOCRACY IN THE UNITED STATES* 200 (1924; reprint 1970)).

Christine Choy and Renee Tajima's *Who Killed Vincent Chin?*

I.

POLICING THE FAMILY THAT IS "AMERICA": RACIAL-SEXUAL POLICING
IN *THE BIRTH OF A NATION* AND *THE CHEAT*

America is undergoing a national identity crisis, as evidenced by the debate over language, multiculturalism, and immigration.¹² I see this crisis as a struggle over borders, borders that will define our national community and shape our national identity. Patricia Williams, in her new book, captures the sense of where we are headed in the title of one of her chapters: "Unbirthing the Nation."¹³ In trying to understand the present crisis, she "wonder[s] how many of our present cultural clashes are the left-over traces of the immigrant wars of the last century and the beginning of this one."¹⁴ I think her intuition is right, and there is much to learn about our current crisis by studying the late part of the last century and the early part of this one. In addition to various sectional and class conflicts, the North was struggling with immigrants from eastern and southern Europe, the South was struggling with Blacks, the West was struggling with immigrants from Asia, and the Southwest was struggling with Mexicans who had become American through conquest and the legal operation of the Treaty of Guadalupe Hidalgo.¹⁵ Out of this struggle, the country was re-

12. Although I disagree with much of what Arthur Schlesinger, Jr., says, he is correct in noting that:

[A] struggle to redefine national identity is taking place . . . in many arenas—in our politics, our voluntary organizations, our churches, our language—and in no arena more crucial than our system of education. . . . The debate about the curriculum is a debate about what it means to be an American. What is ultimately at stake is the shape of the American future.

ARTHUR M. SCHLESINGER, JR., *THE DISUNITING OF AMERICA: REFLECTIONS ON A MULTICULTURAL SOCIETY* 2-3 (1991). For the role that English-Only plays in the construction of American identity, see Juan F. Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English*, 77 MINN. L. REV. 269 (1992). For immigration, see Kevin R. Johnson, *The New Nativism: Something Old, Something New, Something Borrowed, Something Blue*, in *IMMIGRANTS OUT! THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE IN THE UNITED STATES* 165 (Juan F. Perea ed., 1997); Natsu Saito, *Alien and Non-Alien Alike: Citizenship, "Foreignness" and Racial Hierarchy in American Law*, 76 OR. L. REV. (forthcoming 1997).

13. PATRICIA WILLIAMS, *THE ROOSTER'S EGG: ON THE PERSISTENCE OF PREJUDICE* 57 (1995).

14. *Id.* at 65.

15. See RODOLFO ACUNA, *OCCUPIED AMERICA: A HISTORY OF CHICANOS* 18-20 (3d ed. 1988). Later, Acuna describes the case of Ricardo Rodriguez, who was denied his final naturalization papers in 1896 on the basis that he was not white or African. *Id.* at 38. He eventually won citizenship based on the Treaty of Guadalupe Hidalgo. *Id.* Suzanne Oboler, commenting on this case, notes that:

[T]he very fact that he had had to assert his right to citizenship against a prosecution using racial terms shows that the definition of the domestic boundaries of the national community in black/white terms had also become a legitimate justification for reinforcing nationality to render Mexican Americans invisible both as *citizens* and as *native-born members* of the nation.

SUZANNE OBOLER, *ETHNIC LABELS, LATINO LIVES: IDENTITY AND THE POLITICS OF (RE)PRESENTATION IN THE UNITED STATES* 33 (1995). George Martinez, commenting on this case, rationalizes the discrepancy between the naturalization statute (limited to whites and Africans) and the Treaty of Guadalupe Hidalgo (authorizing citizenship to Mexicans) as standing for the proposition

born in its modern incarnation. The thesis that I will develop is that this rebirth was achieved through a racial compromise, a compromise that is coming back to haunt us today.¹⁶

A. *The Racial Compromise in Black and White*

A classic story of rebirth can be found in D.W. Griffith's *The Birth of a Nation*.¹⁷ In brief, the film tracks the breakup and reunification of the country by following a Northern and Southern family through the Civil War, Reconstruction, and Redemption. My focus is on how a divided North and South come together at the end of the film to restore the proper order with Negroes disarmed and disfranchised. In a key scene, the white Southern family which is being chased by the Negro militia, finds refuge in the cabin of two white union veterans. As they fight off the militia, the intertitle reads: "The former enemies of North and South are united again in common defense of their Aryan birthright." Together, they are ready to fight to the death. When the Negro militia is about to break into the cabin, you see one of the Union vets with his rifle upraised, ready to club to death his young daughter. Likewise, the family patriarch bares his daughter's neck, ready to smash it with his pistol butt. Death by the hands of loved ones was preferable to capture and the (presumed) violation of the white daughters' purity by the Black bodies in the Negro militia.

Klansmen come to the rescue at the last moment and are mythologized as the "defenders of white womanhood, white honor, and white glory, . . . restor[ing] to the South everything it has lost, including its white supremacy." The improper sexual advances of Blacks and Mulattos have been thwarted and the racial sanctity of the white families has been preserved. John Hope Franklin observes that the movie closes with a double marriage, the brother and sister from the Northern family marry the respective sister and brother of the Southern family, achieving through their literal union the symbolic reunification of North and South.¹⁸ The last intertitle reads: "Liberty and Union, One and Inseparable, Now and Forever!" The (re)birth of a nation.

that Mexicans were accorded a quasi-white status that then affected the civil rights strategy for Mexican Americans. George A. Martinez, *The Legal Construction of Race: Mexican Americans and Whiteness*, 2 HARV. LATINO L. REV. 321 (1997). See also George A. Martinez, *Legal Indeterminacy, Judicial Discretion and the Mexican-American Litigation Experience: 1930-1980*, 27 U.C. DAVIS L. REV. 555 (1994).

16. Although an examination of the Southwest and Mexican Americans—and for that matter, Native Americans—is necessary to explore fully the racial compromise on which the nation was reborn after the Civil War, I have limited the scope of my Article to White, Black, and Asian, in part because of the films I have chosen to examine. I recognize the limitations of my choice; nevertheless, I leave the more full discussion to another time.

17. THE BIRTH OF A NATION (Epoch Production Company 1915).

18. JOHN HOPE FRANKLIN, *Birth of a Nation: Propaganda as History*, in JOHN HOPE FRANKLIN, RACE & HISTORY: SELECTED ESSAYS 1938-1988, at 10, 15 (1989).

B. *A Different Sort of Racial Compromise*

The rebirth of this nation, however, required more than the resolution of black/white conflict. I turn now to Cecil B. DeMille's *The Cheat*, which told a parallel story, although on a much smaller scale.¹⁹ It was released in 1915, the same year as *The Birth of a Nation*. Like *The Birth of a Nation* which played on the white public's fear of miscegenation generally and of the black male rapist specifically, *The Cheat* also played on miscegenation fears, but in this case, the sexual transgressor was a Japanese male. Both involve white mob violence directed against men of color. *The Cheat* featured Sessue Hayakawa as Tori,²⁰ a Japanese merchant on Long Island who enters the socialite set through his friendship with a married white woman, Edith Hardy, played by Fannie Ward. Jack Dean played her husband Richard.

During a party hosted by Tori, Tori guides Edith into his parlor to show her his private collection. Gina Marchetti comments that "[w]hen Edith steps into his parlor, she enters a world that offers the forbidden possibility of a meeting of Japan and America within the sexual realm."²¹ Her acceptance of a gift of Japanese cloth evidences "her willingness to be seduced by Tori's wealth and sensuality."²² The potential seduction is interrupted, though, by the entry of a stockbroker who informs her that all her money has been lost. The money was not hers to lose—it belonged to the Red Cross for which she served as treasurer. The stockbroker leaves. She faints, and while she is unconscious, Tori steals a kiss. Her eyelids flutter and she comes to. Is Tori a would-be rapist or a Prince Charming? Although this ambiguity provides the film's dramatic tension, it is ultimately irrelevant to the film's ideological message: Tori's transgressive foreign sexuality must be controlled whether he is the rapacious or seductive foreign "Other."²³

19. My reading of *THE CHEAT* (Jesse L. Lasky Feature Play Co. 1915) stems from my viewing of the film, informed by the readings of the film by SUMIKO HIGASHI, CECIL B. DEMILLE AND AMERICAN CULTURE: THE SILENT ERA 101-112 (1994); and GINA MARCHETTI, ROMANCE AND THE "YELLOW PERIL": RACE, SEX, AND DISCURSIVE STRATEGIES IN HOLLYWOOD FICTION 14-32 (1993).

20. Given the rich tradition in Hollywood of white actors playing in yellowface, I was surprised to find the leading man role in this early film to figure an Asian man who was also played by an Asian actor. This role made Sessue Hayakawa a star and he "became one of the most important male stars on Famous Players-Lasky's roster and preceded Rudolph Valentino as an exotic matinee idol for female filmgoers." HIGASHI, *supra* note 19, at 110. The prominence of this Asian film actor stands in stark contrast to the general treatment of Asians and Asian Americans in Hollywood. See Richard Fung, *Center the Margins*, in MOVING THE IMAGE: INDEPENDENT ASIAN PACIFIC AMERICAN MEDIA ARTS 62, 63 (UCLA Asian American Studies Center & Visual Communications, Southern California Asian American Studies Central, Inc. eds., 1991) ("Asian women have long been featured in Western representation for the pleasure of the white man's eye. Asian men, on the other hand, have not often been portrayed in sexual terms at all.").

21. MARCHETTI, *supra* note 19, at 21.

22. *Id.*

23. The sexual threat represented in a cultural form in the film is policed in the social realm through anti-miscegenation laws. For example, issuance of a marriage license to a white person and a

Edith finds herself in dire straits, and she enters into a bargain where Tori gives her \$10,000 for an unstated exchange. She restores the Red Cross fund and averts her public humiliation. In the meantime, her husband's investments come through and he gives her the money which she claims she lost playing bridge. She then goes to Tori's house to give him the money. Tori refuses, saying that that wasn't the bargain. She says that she would rather kill herself. Tori offers her a gun and tells her to go ahead.

This scene is reminiscent of a scene in *The Birth of a Nation* in which Mae Marsh, playing Pet Sister, jumps off a cliff to her death after being pursued by Gus, the rapacious black soldier. But here, Edith refuses the gun—perhaps the sexual threat of the Japanese man is not so great. After more argument, he forces an embrace. During their struggle he takes an iron from a hot brazier and brands her shoulder. This scene is heavily invested with meaning, as the opening scene shows him branding his possessions. She shoots him in the shoulder and runs off. Her husband Richard then arrives on the scene and is there when the police arrive. Richard knows his wife had been there. He takes the blame and is prosecuted for the shooting of Tori.

After a trial, a jury of his peers pronounces Richard guilty. Edith then takes center stage and reveals the truth, baring her shoulder for all to see. This scene is shot so that the movie audience will see themselves as co-extensive with the courtroom crowd.²⁴ The script calls for the men in the crowd to yell, "Lynch him! Lynch him!" and "urges men to 'right the wrong of the white woman.'"²⁵ The men in the crowd fight each other to get to Tori.²⁶ A movie review in the 1915 Christmas Day edition of *Moving Picture World* describes a moviegoer who responded to this scene by muttering, "I'd like to be part of that crowd."²⁷ Marchetti observes that

Mongolian was forbidden. See MEGUMI DICK OSUMI, ASIANS AND CALIFORNIA'S ANTI-MISCEGENATION LAWS 1, 2 (citing Cal. Stats., 1880, Code Amendments, Ch. 41, Sec. 1, p. 3). In 1905, this was extended to make "marriages between whites and Mongolians 'illegal and void.'" OSUMI, *supra*, at 2 (citing Cal. Stats., 1905, Ch. 481, Sec. 2, p. 554). In 1933, this was extended to include Filipinos. OSUMI, *supra*, at 2 (citing Cal. Stats., 1933, Ch. 104, 105, p. 561). This last amendment to the anti-miscegenation statute was prompted by the decision in *Roldan v. Los Angeles County*, 18 P.2d 706 (1933), which held that Malays were not Mongolians and were therefore not subject to the anti-miscegenation statute. See Recent Decisions, *Marriage: Miscegenation: Cal. Civ. Code §§ 60, 69, 22 CAL. L. REV. 116* (1933) (discussing *Roldan*).

24. MARCHETTI, *supra* note 19, at 14.

25. Script of *THE CHEAT*, quoted in HIGASHI, *supra* note 19, at 108.

26. Movie reviews commented on the power of this scene:

As noted in *Moving Picture World*, "the wrath of the audience bursts forth with elemental fury and there ensues a scene that for tenseness and excitement has never been matched on stage or screen." Equally impressed, the *New York Dramatic Mirror* described the courtroom scene as "one of the most realistic mob scenes that has ever been produced upon the screen."

HIGASHI, *supra* note 19, at 108.

27. *MOVING PICTURE WORLD*, Dec. 25, 1915, at 2384, quoted in MARCHETTI, *supra* note 19, at 10.

"[i]ronically, the 'lynch mob' in *The Cheat* forms within the 'halls of justice,' further legitimizing the viewer's shared perspective with the angry mob."²⁸

The violence in the film is ultimately mediated by the judge who overturns the verdict, pronouncing Richard Hardy a free man. The happy couple walk together down the aisle of the courtroom to the cheers and congratulations of the courtroom crowd as the scene closes, ending the movie. The walk down the aisle evokes a walk down another aisle with which they presumably began their matrimonial union. The courtroom is transformed into a church with the judge as minister and Edith and Richard as newlywed couple. Their union and the violence which polices their union gain legal sanction and religious sanctification. The proper racial order has been restored and blessed. Violence, for the moment, has been deferred, although who knows what violence takes place off screen, after the credits have rolled.²⁹

C. *Boundaries, Transgression, and the Exclusionary Project*

The Birth of a Nation and *The Cheat* are both about maintaining proper boundaries that delineate the national community. In *The Birth of a Nation*, the boundary created between black and white is, by necessity, an internal one, although as Michael Rogin notes: "The original ending of *Birth*, 'Lincoln's solution,' showed masses of Negroes being loaded on ships; they were being sent back to Africa."³⁰ This scene, along with a quote by Lincoln against racial equality, was censored by the film industry's National Board of Review, despite the fact that Lincoln favored emigration and spoke those words.³¹ Griffith had to settle for the less optimal solution of excluding them from the national community through physical terrorization, political disfranchisement and economic disempowerment.

In contrast, the ideological message behind *The Cheat* holds out the possibility that the boundary against Asians may be erected at the geopolitical border. Shortly before the trial scene, the intertitle reads: "East is East and West is West and never the Twain shall meet."³² Tori's possession of Edith, through seduction or rape, cannot be tolerated, especially insofar as Edith represents the femininity (and hence vulnerability) of the

28. MARCHETTI, *supra* note 19, at 15.

29. As a post-script, the movie was re-released in 1918, but with one important change: "Since Japan fought on the side of the Allies during World War I, the villain's ethnic, if not racial, identity was altered in the 1918 reissue that is presently in circulation." HIGASHI, *supra* note 19, at 101 (citation omitted). A few intertitles were changed and Tori emerged as Haka Arakau, the Burmese Ivory King. *Id.* I viewed the 1918 version.

30. MICHAEL P. ROGIN, RONALD REAGAN, THE MOVIE AND OTHER EPISODES IN POLITICAL DEMONOLOGY 194 (1987) (citation omitted).

31. *Id.* at 217 (citations omitted).

32. This intertitle was penciled into the original script by DeMille. HIGASHI, *supra* note 19, at 108.

West. But there is more. The “possibility of a meeting of Japan and America within the sexual realm” contains within it the possible meeting of Japan and America within the familial realm. If Edith and Richard represent the paradigmatic “new” American couple, Tori is a threat to the American family, and hence the very future of America.

The threat posed by Tori is twofold. The danger comes not only from Tori’s interest in Edith; remember that Edith, before coming to her senses, was interested in him. Tori is not only a desiring sexual subject—he is the object of sexual desire. This may be contrasted with the portrayal of Black men in *The Birth of a Nation* in which Black men were constituted as desiring sexual subjects but never seriously the objects of white female sexual desire. This is not to say that Griffith was not worried about white female sexuality. One of his goals “Griffith boasted, ‘was to create a feeling of abhorrence in white people, especially white women, against colored men.’”³³ In *The Cheat*, Edith’s transgressive sexuality must be controlled just as much as Tori’s. In the film, this is achieved through the restoration of family when Edith and Richard are reunited.

The reunion of Edith and Richard, like the marriages at the end of *The Birth of a Nation*, symbolizes the restoration of the proper familial and racial order of the Union or America. Family, in both films, operates as a marker for nation, with whiteness providing the predicate for inclusion. Tori, the racialized foreigner, must be excluded from the American family, and Asians do not have to be let into the interior space of America.

II.

CONSTRUCTING “AMERICA” THROUGH THE UNIFYING IDEOLOGY OF WHITENESS

Thus far, I have focused primarily on the exclusionary aspects of the boundaries constructed in the two films. The exclusionary project, though, is inextricably bound with the inclusionary one. While Blackness and Asianness provided the racial predicate for exclusion in the two films, whiteness became the predicate for inclusion in the family that is America.

A. *The Unifying Force of Economic Anxiety and Entitlement*

Michael Rogin comments on the inclusionary project of *The Birth of a Nation*: “The opposition between North and South in the film, as well as between immigrant and native in the history outside it, had been replaced by the opposition between white and black.”³⁴ Whiteness, understood through its opposition to Blackness, is offered here as a unifying ideology that has the power to transcend region, class, and ethnicity. But unity will come only to the extent that the (white) North and (white) South, and the

33. ROGIN, *supra* note 30, at 219 (quoting Griffith) (citation omitted).

34. *Id.* at 197.

(white) immigrant and (white) native, recognize their common whiteness. This is by no means a given, as whiteness is not a naturally existing phenomenon.³⁵ Whiteness, like any other racial identity, exists as contested terrain and changes over time and space.

The years following the Civil War and into the early 1900s mark an important period during which whiteness was reconfigured in the United States. During this period, immigrants from Ireland (who began arriving in large numbers in the 1840s) and immigrants from southern and eastern Europe (who began arriving in large numbers in the 1890s) were portrayed as racially distinct from (and therefore a threat to) "real" Americans.³⁶ David Roediger describes these immigrants as "not-yet-white ethnics" to acknowledge the ambiguous racial identity attributed to these groups during this period.³⁷ As such, these immigrants faced racist and nativist hostilities, sharing commonalities with Blacks and Asians in the United States.

These commonalities were potentially strengthened by similar class interests as wage laborers. However, with a few notable exceptions, these commonalities did not lead to any cohesion between these outsider groups.³⁸ Instead, "not-yet-white ethnics" worked actively to displace the racism and nativism directed against them by claiming "whiteness" and a proper place in America. Racism, directed against the "not-yet-white ethnics," was displaced onto the "real" racial Other, Blacks; nativism, transformed into nativistic racism, was displaced onto the "real" foreign Other, Asians.³⁹

A stark example comes from the participation of Irish immigrants in Blackface minstrelsy and Asian exclusion. David Roediger comments that:

The early minstrel stage, as the Black choreographer Leni Sloan has recently observed, often featured Irish immigrants beneath the blackface. Irish also took their places in the audience. Thus those most acutely experiencing the wrenching adaptation to urban wage labor helped to organize white working class longings, fantasies and dreams as projections upon supposedly oversexed, lazy and naive Black characters. That these adjectives fit the negative stereotyping of the Irish only made for greater psychic investment in minstrelsy's illusion of white supremacy.⁴⁰

35. For some critical explorations of whiteness, see THEODORE W. ALLEN, *THE INVENTION OF THE WHITE RACE, VOLUME ONE: RACIAL OPPRESSION AND SOCIAL CONTROL* (1994); RUTH FRANKENBERG, *WHITE WOMEN, RACE MATTERS: THE SOCIAL CONSTRUCTION OF WHITENESS* (1993); IAN HANEY LOPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* (1996); DAVID R. ROEDIGER, *TOWARDS THE ABOLITION OF WHITENESS* (1994) [hereinafter ROEDIGER, *ABOLITION OF WHITENESS*].

36. JOHN HIGHAM, *SEND THESE TO ME: IMMIGRANTS IN URBAN AMERICA* 40 (Rev. ed. 1984); ROEDIGER, *ABOLITION OF WHITENESS*, *supra* note 35, at 184.

37. ROEDIGER, *ABOLITION OF WHITENESS*, *supra* note 35, at 184.

38. ROEDIGER, *WAGES OF WHITENESS*, *supra* note 4, at 134.

39. ROEDIGER, *ABOLITION OF WHITENESS*, *supra* note 35, at 189-90.

40. *Id.* at 65.

This illusion of white supremacy and the claim of a shared whiteness created a sense that they were entitled to better treatment than Blacks. This sense of entitlement is evident in an unattributed statement reported by Ronald Takaki by Irish workers, made during that period but containing a timeless quality: "In a country of the whites where [white workers] find it difficult to earn a subsistence," they asked, "what right has the negro either to preference or to equality, or to admission?"⁴¹ This sense of entitlement also determined their attitude toward Chinese and later Asian immigrants: Irish American workers in the West often led the calls for the exclusion of Asian immigrants.⁴²

As I stated earlier, the Irish were not alone in this. Other white immigrant groups participated actively in deflecting racism and nativism onto Asians. An example is typified in the following resolution that was adopted by the United Mine Workers national convention in 1904:

We . . . view with alarm the pouring of cheap Japanese labor into our western States. We believe Americans today, as in 1776, stand for independence and the noblest manhood; the Japanese laborer as we find him in our mines and other industries, stands for neither. . . .

He holds firm allegiance to his native country, and scorns the idea of American citizenship.

Morally and industrially he is a curse to the American nation, and should be excluded from our shores.

Therefore, we pray Congress to enact a law excluding the Japanese as well as the Chinese.⁴³

This resolution was proposed by the Wyoming delegation which represented a largely white immigrant constituency.⁴⁴ Racial exclusivity was

41. RONALD TAKAKI, *A DIFFERENT MIRROR: A HISTORY OF MULTICULTURAL AMERICA* 151 (1993).

42. See ALEXANDER SAXTON, *THE INDISPENSABLE ENEMY: LABOR AND THE ANTI-CHINESE MOVEMENT IN CALIFORNIA* 116-21 (1971). Dennis Kearney, an Irish immigrant and one of the leaders of the Workingmen's Party, exhorted his fellow members:

'Are you ready to march down to the wharf and stop the leprous Chinamen from landing?' 'Judge Lynch is the judge wanted by the workingmen of California. I advise all to own a musket and a hundred rounds of ammunition.' 'I will give the Central Pacific just three months to discharge their Chinamen, and if that is not done, Stanford and his crowd will have to take the consequences.' 'The dignity of labor must be sustained, even if we have to kill every wretch that opposes it.'

Id. at 118 (quoting Kearney) (citations omitted).

43. Minutes of the Fifteenth Annual Convention of the United Mine Workers of America, 18-27 January 1904, 151, quoted in Yuji Ichioka, *Asian Immigrant Coal Miners and the United Mine Workers of America: Race and Class at Rock Springs, Wyoming, 1907*, 6 *AMERASIA* J. 1, 12 (1979).

44. In the two principal coal mining counties in Wyoming, "[i]n 1900 the population . . . was 20,678, which included 6,373 foreign-born persons. Out of this immigrant population, 3,866 originated from outside the British Isles and Canada. Most numerous among the new European immigrants were Austrians, Danes, Finns, Germans, Italians, and Swedes." Ichioka, *supra* note 43, at 3. By 1908, of 1,751 miners, 85.9% were foreign-born, and of these, 39.9% were of southern and eastern European origins. See *id.* at 4. Japanese miners, who by 1908 constituted 19.3% of total miners, were not allowed into the local union until 1907. See *id.* at 1, 4.

made coterminous with American patriotism; native- and foreign-born whites claimed at least a spiritual kinship with the white founding fathers of America.

B. *The Unifying Force of Sexual Anxiety and Entitlement*

The claim to whiteness is not just about asserting a proper place, through race, in the American nation. Remember that these claims were made in the context of a rightful or superior claim to jobs, franchise, and entry into the country. The racial claim of whiteness is used, then, to make economic, political, and physical inroads. It can, however, work in the reverse—economic strength, political power, and mere physical presence may be used to make racial inroads. The connecting point is sexuality.⁴⁵

In a scene in *The Birth of a Nation*, freed Negroes who are now members of the state legislature are shown holding placards that state, "Equal jobs, equal vote, equal marriage," linking economic and political equality with miscegenation, as if one leads inexorably to the other. During this scene, the freed Negroes are shown eyeing the white women in the gallery who are removed for their own protection. Perhaps the greatest danger of equality is the prospect of miscegenation.⁴⁶ Economic, political, and residential integration leads to greater contact between the races which increases the likelihood of interracial marriage.⁴⁷

In *The Cheat*, it was in part the Japanese merchant's class position, wealth, and the sensuality of his possessions (acquired through his wealth), that almost seduced Edith, who embodies a developing consumer culture.⁴⁸ This thesis is supported by the fact that:

Progressives in California believed that economic self-preservation was closely united with racial preservation. It was believed that, if the Japanese were allowed to make economic inroads, it would only be a matter of time before they would make racial inroads. Inter-marriage and propagation of their race would impair the Anglo-Saxon racial purity so important to the Progressives' concept of economic leadership.⁴⁹

45. Cf. Roger Sanjek, *Intermarriage and the Future of the Races in the United States*, in RACE 103, 113 (Steven Gregory & Roger Sanjek eds., 1994) ("It is well documented that Hispanics and Asians become more likely to marry whites with each generation of residence in the United States, and as income and education levels increase.").

46. A fear that motivated resistance to integration of schools was not just that black boys would be sitting next to white girls, but that they might like each other. One hears echoes of this same anxiety in the resistance to gays and lesbians in the military and in the homosexual panic defense. See Francisco Valdes, *Sexual Minorities in the Military: Charting the Constitutional Frontiers of Status and Conduct*, 27 CREIGHTON L. REV. 381 (1994) (gays and lesbians in military); see also Joshua Dressler, *When "Heterosexual" Men Kill "Homosexual" Men: Reflections on Provocation Law, Sexual Advances, and the "Reasonable Man" Standard*, 85 J. CRIM. L. & CRIMINOLOGY 726 (1995) (homosexual panic defense).

47. See Sanjek, *supra* note 45, at 113-15.

48. Edith embodies a developing consumer culture in which "men earn and women spend as a sign of genteel status." HIGASHI, *supra* note 19, at 102.

49. Herbert P. Le Pore, *Prelude to Prejudice: Hiram Johnson, Woodrow Wilson, and the Cali-*

We see that race, nation, economics, and sexuality are linked in such a way that all must be considered in order to make sense of any one part.⁵⁰

The displacement of racism and nativism onto Blacks and Asians proved effective. Rogin notes that "as blacks became a sign of the negative American identity, Progressives took [white] immigrants to the national bosom."⁵¹ We might remember that Thomas Dixon, Jr., a Progressive and the author of *The Clansman*, on which the film was based, was a strong supporter of assimilation for all European immigrants, including Jews who could become white and American through their hatred of Blacks.⁵² Woodrow Wilson, a former schoolmate of Dixon, who was formerly opposed to immigration by non-Nordic Europeans, changed his position by the time he became president of the United States. During his presidency, he favored the immigration and assimilation of the Irish and eastern and southern Europeans.⁵³ Also during his presidency, President Wilson segregated the federal workforce and passed the 1917 Barred Zone Act which eliminated immigration from a geographic zone that included most of India. Granted, there were setbacks in the acceptance of eastern and southern Europeans,⁵⁴ but much of the hostility was deflected onto Blacks and Asians.

To sum up, "not-yet-white ethnics" became white through their opposition to Blacks and Asians.⁵⁵ The attribution of real racial difference and foreignness onto Asian immigrants allowed "not-yet-white ethnics" to become white and not "really" foreign—in other words—American. If we include the national dimension, "not-yet-white ethnics," through their claim to whiteness, became American. And so unity was gained, but through a compromise in which Blacks and Asians were sacrificed.

All of us are paying for this racial compromise today.

fornia Alien Land Law Controversy of 1913, 61 S. CAL. Q. 99, 100 (1979), reprinted in 2 CHARLES MCCLAIN, *ASIAN AMERICANS AND THE LAW: JAPANESE IMMIGRANTS AND AMERICAN LAW* 265, 266 (1994).

50. Peter Kwan describes this sort of analysis as "cosynthesis." See Peter Kwan, *Jeffrey Dahmer and the Cosynthesis of Categories*, 48 HASTINGS L.J. 1257 (1997); see also Peter Kwan, *Invention, Inversion, and Intervention: The Oriental Woman in The World of Suzie Wong*, M. Butterfly, and *The Adventures of Priscilla, Queen of the Desert*, 5 ASIAN L.J. 99 (1998).

51. ROGIN, *supra* note 30, at 195.

52. MICHAELS, *supra* note 11, at 10 ("The Jew in Dixon's Trilogy of Reconstruction is a negro-phobic American hero, a supporter of the Klan.").

53. ROGIN, *supra* note 30, at 195-96.

54. See generally HIGHAM, *supra* note 36.

55. See ROEDIGER, *ABOLITION OF WHITENESS*, *supra* note 35, at 187-90; see also *id.* at 66 ("the extent to which white workers defined themselves by negation - as not Black and not Chinese").

III.

RACIAL-SEXUAL POLICING IN *WHO KILLED VINCENT CHIN?*⁵⁶

Some pay a greater price for this racial compromise than others. The documentary film by Renee Tajima and Christina Choy, *Who Killed Vincent Chin?*,⁵⁷ tells the story of one such person who paid dearly for this racial compromise.

A. *The Standard Account*

Vincent Chin was a 27 year-old Chinese American killed in 1982 by two white Detroit autoworkers. The standard account of the story is of a racially motivated killing involving the conflation of all Asian groups. Ronald Ebens, according to one witness, said "that it was because of people like Chin—Ebens apparently mistook him for a Japanese—that he and his fellow employees were losing their jobs."⁵⁸

Ebens and his stepson, Michael Nitz, were charged with second degree murder, but through a plea bargain, they pleaded no contest to manslaughter. They were given no prison time. Instead, they were each given probation for three years and fines of \$3,780.⁵⁹

When criticized for the light sentence, Judge Charles Kaufman defended himself by saying that:

[I]n Michigan, sentences are tailored to the criminal and not just to the

56. This third film differs from the first two in that it is a documentary. For excellent discussions of the documentary form as it pertains to this film, see Paula C. Johnson, *The Social Construction of Identity in Criminal Cases: Cinema Verite and the Pedagogy of Vincent Chin*, 1 MICH. J. RACE & L. 347, 419-24 (1996); see also Charles Musser, *Film Truth, Documentary, and the Law: Justice at the Margins*, 30 U.S.F. L. Rev. 963 (1996).

57. Although there is no question as to who held Chin and who beat him with a baseball bat, the film complexifies the question of accountability to examine the link between Japan bashing and the physical violence inflicted on his person. See *WHO KILLED VINCENT CHIN?* (The Film Makers Library 1988). Paula Johnson notes that the documentary shows "Detroit-area auto workers take turns destroying Japanese-model cars with baseball bats and sledgehammers. These acts powerfully conjure images of the actual beating death of Vincent Chin." Johnson, *supra* note 56, at 429. For an excellent cultural critique of Japan bashing, see chapter 3, *Bashers and Bashing in the World*, in MASAO MYOSHI, *OFF CENTER: POWER AND CULTURE RELATIONS BETWEEN JAPAN AND THE UNITED STATES* 62 (1991).

Charles Musser reads the question in the film title differently, examining the contrast between Ebens's portrayal of "himself as a good family man who had raised his stepson and been a good husband. He worked hard, played hard, and one night found himself in a barroom brawl where his mind just snapped," and the pre-trial sentencing report that portrayed him "as a bigot, an alcoholic, and a hostile person." Musser, *supra* note 56, at 971-72. Musser notes, "The film's title resonates as the truth exists somewhere in the interstices of these personas, in the accumulations of the roles Ebens has played both consciously and unconsciously." *Id.* at 972.

58. SUCHENG CHAN, *ASIAN AMERICANS: AN INTERPRETIVE HISTORY* 177 (1991). The men were indiscriminate in their use of epithets, also calling him a "Chink." American Citizens for Justice, Confidential Report on the Vincent Chin Case to the U.S. Dep't of Justice, Civil Rights Division, 3 (June 28, 1983) (copy on file with author).

59. See U.S. COMM'N ON CIVIL RIGHTS, *CIVIL RIGHTS ISSUES FACING ASIAN AMERICANS IN THE 1990s*, at 25 (1992). For an excellent, richer account of this case and of the film, see Johnson, *supra* note 56.

crime. According to him, since Ebens and Nitz had no previous criminal record, were longtime residents of the area, and were respectably employed citizens, he thought there was no reason to suspect they would harm anybody again. Hence, the light sentences.⁶⁰

Judge Kaufman also defended the sentences by saying that if it had been a brutal murder, the men would be in prison. The fact that Vincent Chin lingered for four days before dying demonstrated that the Ebens and Nitz had simply been administering a punishment that got out of hand.⁶¹

Asian American communities were outraged by the sentences and organized to seek justice.⁶² The community group American Citizens for Justice was organized two weeks after the light sentences were handed down. They submitted a report to the Civil Rights Division of the United States Department of Justice, setting forth the factual and legal bases supporting the prosecution of Ebens and Nitz for federal civil rights violations.⁶³ These efforts, and that of several California congressmen, led to civil rights charges being brought against the two men.⁶⁴

Although both men were ultimately acquitted of those charges,⁶⁵ the killing of Vincent Chin and the lax treatment of his killers helped to educate Asian American communities and the broader public about anti-Asian violence.⁶⁶ And as I stated earlier, the standard account is one of anti-Asian violence and the conflation of all Asian groups by the mainstream American public, a flattened story of race and/or ethnicity which ignores the dimensions of class, gender, nation, and sexuality.

60. CHAN, *supra* note 58, at 177.

61. See WHO KILLED VINCENT CHIN?, *supra* note 57, (quoting Judge Kaufman). Kaufman was apparently unaware or ignored the fact that Chin's brain had stopped functioning after emergency surgery and that he "lingered" for four days because his body was on a ventilator. See Johnson, *supra* note 56, at 401.

62. See CHAN, *supra* note 58, at 177.

63. See American Citizens for Justice, Confidential Report on the Vincent Chin Case to the U.S. Department of Justice, Civil Rights Division (June 28, 1983) (on file with author).

64. See CHAN, *supra* note 58, at 177.

65. Paula Johnson provides a quick summary of the federal trials:

After a trial by jury, Michael Nitz was acquitted and Ronald Ebens was found guilty and sentenced to twenty-five years in prison. Ronald Ebens appealed. The U.S. Court of Appeals for the Sixth Circuit . . . reversed his conviction . . . The case was remanded for retrial, and Ebens' motion for change of venue . . . was granted. When the case was retried in Cincinnati, Ohio, in 1987, the jury found that the assault was not racially motivated. Ronald Ebens was acquitted.

Johnson, *supra* note 56, at 401-02 (citations omitted). For the reasoning behind the reversal of the conviction, see *United States v. Ebens*, 800 F.2d 1422 (6th Cir. 1986); see also John S. Applegate, *Witness Preparation*, 68 TEX. L. REV. 277, 349-51 (1989).

66. See also Karin Wang, Comment, *Battered Asian American Women: Community Responses from the Battered Women's Movement and the Asian American Community*, 3 ASIAN L.J. 151, 178 (1996) (discussing the Vincent Chin case as "the watershed event that set in motion the first extensive community-based efforts to fight anti-Asian violence.").

B. *A Revisionist Account: The Force of Economic and Sexual Anxiety/Entitlement*

In order for Vincent Chin to become the focal point of organizing and politicizing people about anti-Asian violence, the unsavory parts of the narrative were suppressed. The standard narrative does not include the fact that the encounter between Vincent Chin and the two white autoworkers took place in a strip club where Chin was having a bachelor's party.⁶⁷ In the standard narrative where Chin is a victim of racial violence, we are uncomfortable with Chin's participation in the objectification of women. The standard narrative also does not include the fact that it was Chin who threw the first punch, or the fact that in the parking lot after they were kicked out of the bar for fighting, Chin said, "Come on you chickenshits, let's fight some more." This is not to say that Chin was not a victim of racial violence—my point is that this is not a simple case of an aggressor and victim and mistaken racial/ethnic identification. Bringing in the suppressed details provides a richer story involving race, nation, class, and sexuality.

In the Fancy Pants Lounge, Ebens and Nitz were upset that Chin was enjoying the show. There may have been other showgirls, but one stripper was black, the other white. Chin gave a large tip to the white dancer and a small tip to the black dancer. The black dancer didn't like the way Chin wanted to give her the tip, which we might presume was in her G-string, which is why she only got a small tip. We can imagine then that the white dancer permitted this and got a larger tip. And Ebens and Nitz were unhappy that Chin was enjoying the show. Why did Chin's enjoyment make them unhappy?

My thesis is that Ebens and Nitz were suffering a double displacement. People like Chin were making people like Ebens and Nitz lose their jobs.⁶⁸ But not only that, here was Chin displacing them as (the rightful)

67. In an earlier article, I did not include this information in my discussion of the Vincent Chin case, in part, because I didn't know what to do with that part of the story. See Chang, *Toward an Asian American Legal Scholarship*, *supra* note 1, at 1252-53. This is true of most of this case. See, e.g., Chew, *supra* note 2, at 21; Jerry Kang, Note, *Racial Violence Against Asian Americans*, 106 HARV. L. REV. 1926, 1928 (1993); U.S. COMM'N ON CIVIL RIGHTS, *supra* note 59, at 25. This holds true in most accounts in standard Asian American history texts. See, e.g., CHAN, *supra* note 58, at 176 (fight began in nightclub); TAKAKI, *supra* note 8, at 481 (fight began in bar); *contra* ROGER DANIELS, ASIAN AMERICA: CHINESE AND JAPANESE IN THE UNITED STATES SINCE 1850, at 342 (1988) (noting that the fight began in a topless bar but not analyzing it further). This is not to say that I or any of the other scholars mentioned here were being disingenuous; instead, we were using the example of Vincent Chin to make a limited point about the nature of racist hate violence. My point here is that the example of Vincent Chin lends itself to more complex analysis.

The documentary, *Who Killed Vincent Chin?*, pays careful attention to the events in the topless bar and includes interviews with the two dancers present when the fight began. Paula Johnson provides an excellent analysis of the gendered implications of the fact that Ebens, Nitz, and Chin encountered each other in the strip club. See Johnson, *supra* note 56, at 436.

68. One dancer recalled hearing Ebens say "It's because of you little motherfuckers that we're out of work." WHO KILLED VINCENT CHIN?, *supra* note 57 (quoting Racine Colwell). It should be

consumers of sexual attention. Here, we have economics, race, gender, and sexuality coming together in interesting ways. Loss of jobs entails a loss of masculinity. The loss of masculinity was caused by a racial and foreign other, an Asian man who in many ways was just like them. The bonding that might normally take place between men in a strip club is disrupted by Chin's Asian-ness.⁶⁹ Further, the Asian man may be improperly consuming the sexual attention of a white woman, which, in part, he is able to do because he is doing well, economically, by displacing people like Ebens and Nitz from their jobs. We have, then, a double displacement along with a threat to racial purity, a threat to the very whiteness that provides their sense of place and entitlement in America.⁷⁰

As I noted earlier, Vincent Chin threw the first punch.⁷¹ During the fight that ensues, Ebens hits his own stepson with a chair, causing a gash that required eleven stitches. This fight is broken up and they are forced to leave. They encounter each other in the parking lot. Chin yells, "Come on

noted that at the time, Ebens was employed as a foreman in an automobile plant; his stepson, Michael Nitz, had recently been laid off but was collecting unemployment benefits and, according to his girlfriend, was not unhappy about the situation. Ebens, though, clearly identifies with the laid-off autoworkers. See Johnson, *supra* note 56, at 437 ("The invective expressed by public officials, the frequent public gatherings to bash Japanese auto imports with sledgehammers, and Ronald Ebens' and Michael Nitz's identities as laid-off U.S. autoworkers provide a clear referent for 'we.'").

69. Paula Johnson also makes this point:

On one level, at least, it would seem that Ronald Ebens and Vincent Chin enjoyed a male bond of sorts, as both affirmed their gender identities by participating in women's objectification at the Fancy Pants Lounge as regular entertainment in the time-honored tradition of the bachelor party. . . .

Furthermore, Ebens and Chin seem to find commonality in another ritual display of male aggressiveness—fighting.

Johnson, *supra* note 56, at 436. Mari Matsuda, commenting on this case:

[S]uggest[s] that patriarchy killed Vincent Chin. . . . When white men with baseball bats, hurling racist hate speech, beat a man to death, it is obvious that racism is a cause. It is only slightly less obvious, however, . . . that little boys grow up in this culture with toys that teach dominance and aggression, while little girls grow up with toys that teach about being pretty, baking, and changing a diaper. And the little boy who is interested in learning how to nurture and play house is called a "sissy." When he is a little older he is called a "f-g." He learns that acceptance for men in this society is premised on rejecting the girl culture and taking on the boy culture, and I believe that this, as much as racism, killed Vincent Chin."

Mari Matsuda, *Beside My Sister, Facing the Enemy: Legal Theory Out of Coalition*, 43 STAN. L. REV. 1183, 1189-90 (1991).

70. David Roediger refers to this psychological gain from shared white privilege as the wages of whiteness. See ROEDIGER, *WAGES OF WHITENESS*, *supra* note 4. See also Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1741-45 (1993).

71. The fact that Chin exercised agency and was the first physical aggressor problematizes his status as victim for some. The problem of agency and victimhood has been explored in the context of Battered Women's Syndrome. See, e.g., Holly Maguigan, *Battered Women and Self-Defense: Myths and Misconceptions in Current Reform Proposals*, 140 U. PA. L. REV. 379 (1991); Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1 (1991); Elizabeth M. Schneider, *Describing and Changing: Women's Self-Defense Work and the Problem of Expert Testimony on Battering*, 9 WOMEN'S R. L. REP. 195 (1986). This tension also appears in the context of the cultural defense. See, e.g., Daina Chiu, Comment, *The Cultural Defense: Beyond Exclusion, Assimilation, and Guilty Liberalism*, 82 CAL. L. REV. 1053 (1994); Leti Volpp, *(Mis)Identifying Culture: Asian Women and the "Cultural Defense"*, 17 HARV. WOMEN'S L.J. 57 (1994).

you chickenshits, let's fight some more." Ebens gets a baseball bat, and Chin and his friend Jimmy Choi run away. Chin and Choi's white friends are not menaced.

Ebens and Nitz start their search. They recruit a stranger, a Black man, paying him \$20 to help them, according to him, "find a Chinese guy" and "[bust] his head." The search goes on for twenty or thirty minutes. Chin and Choi are spotted outside a McDonald's restaurant. Ebens and Nitz approach them, using a parked truck to shield their approach. Chin sees them and yells to Choi to run. Choi escapes. Chin does not.

Nitz grabs and holds him in a bear hug. Ebens strikes Chin the first of several blows that would come with the baseball bat, a Louisville Slugger, the Jackie Robinson model. After a few more blows, Chin escapes and runs out into the street but then stumbles, falls. Ebens, standing over him, takes the first of what would be described by one off-duty policeman as homerun swings, striking the top of Chin's head. The off-duty policeman and another who were inside the McDonald's stop and arrest Ebens and Nitz. An ambulance arrives. The driver sees the injuries and believes that it is too late. At the hospital, emergency surgery is performed but the injuries are too great. Chin is in a coma and declared brain dead. Four days later, the life support is unplugged.

C. *All in the Family*

In addition to racial violence and mistaken racial/ethnic identification, Ebens's double displacement—from economic opportunities (through his identification with those autoworkers who have lost their jobs) and from sexual opportunities (through Chin's improper consumption of white female sexual attention)—marks the killing of Vincent Chin as an episode of racial-sexual policing. It is ironic that this racial-sexual policing of the color line was accomplished not just with a baseball bat which symbolizes America,⁷² but that the bat was a Jackie Robinson model, named after the Black man who broke the historic color barrier in major league baseball.⁷³

72. Paula Johnson comments on the filmmakers' use of baseball:

In *Who Killed Vincent Chin?*, this quintessential conception of Americanism materialized itself in perverse, interrelated proportions. First, Vincent Chin is killed by Ronald Ebens' use of a baseball bat; this metaphorical and literal image of an Asian American man being beaten to death by such a fundamental symbol of American life is eerily profound and prophetic. Second, Ronald Ebens is playing baseball when he cannot be reached to learn that Vincent Chin has died . . . Third, Lily Chin provides a searing counter-narrative to baseball-as-apple-pie . . . One of her most vivid memories is of her trip to a major league baseball game to see the Detroit Tigers. She and her husband decided to participate in the American pastime. She recalls the crude encounters with other stadium-goers, whom she says mocked their ethnic features and their language and mimicked as if to slit their throats. They never went back. . . . Lastly, Detroit-area auto workers take turns destroying Japanese-model cars with baseball bats and sledgehammers. These acts powerfully conjure images of the actual beating death of Vincent Chin.

Johnson, *supra* note 56, at 428-29.

73. Although, it is more correct to say that Jackie Robinson was the first *acknowledged* black

Further, this policing action was accomplished by family members, Ebens and Nitz. The fact that Nitz is not Ebens's natural child does not make him any less a part of the family. (Any)one can become part of the family that is America, if you have the right contingent features. Unfortunately for Vincent, he did not have the right/white contingent features.

CONCLUSION

Race, if it is to serve as a basis for exclusion and inclusion, requires that sex be policed.⁷⁴ Racial-sexual policing may be invoked to preserve economic and sexual entitlement. Racial-sexual policing may be driven by economic and sexual anxiety. The three films I have examined each feature episodes of racial-sexual policing.

The first film, *The Birth of a Nation*, presents a standard narrative of race in America and the importance of controlling the Black man's transgressive sexuality. The white female body represents the national body which must be protected from violation. Both in and out of the film, this is achieved legally through anti-miscegenation statutes and extra-legally through lynch-law. This is accompanied by a web of legal and extra-legal methods to protect white privilege from economic and political competition from Blacks, thus preserving the American national body as white. The film also offers the ideology of whiteness as a healing force that is able to reconcile regional (North/South) and class differences, allowing the rebirth of the American nation.

The second film, *The Cheat*, presents a less standard narrative of America, but one that I have argued played an important part of the formation of the modern American nation that was taking place around the turn of the century. In the film, the transgressive sexuality of an Asian man is presented as a threat to a white woman, and through her, the family that is America. In addition to the violence in and out of the film, the family that is America is protected by anti-miscegenation statutes, and more broadly, from economic and political competition by discriminatory taxes,⁷⁵ Alien Land Laws,⁷⁶ licensing laws,⁷⁷ immigration⁷⁸ and naturaliza-

American to have played in major league baseball. SHARON HARLEY, THE TIMETABLES OF AFRICAN-AMERICAN HISTORY: A CHRONOLOGY OF THE MOST IMPORTANT PEOPLE AND EVENTS IN AFRICAN-AMERICAN HISTORY 259 (1995). For a recent popular account on passing in American society and the high likelihood that many "white" Americans have a "black" ancestor, see SHIRLEE TAYLOR HAZLIP, THE SWEETER THE JUICE: A FAMILY MEMOIR IN BLACK AND WHITE (1994).

74. I develop this point further in Robert S. Chang, *Configuring the National Body through Antimiscegenation Law, Lynch Law, and Immigration Restriction* (manuscript on file with author).

75. See CHARLES J. MCCLAIN, IN SEARCH OF EQUALITY: THE CHINESE STRUGGLE AGAINST DISCRIMINATION IN NINETEENTH-CENTURY AMERICA 12-29 (1994).

76. See Dudley O. McGovney, *The Anti-Japanese Land Laws of California and Ten Other States*, 35 CAL. L. REV. 7 (1947). See, e.g., *Terrace v. Thompson*, 263 U.S. 197 (1923) (upholding Washington's Alien Land Law); *Porterfield v. Webb*, 263 U.S. 225 (1923) (upholding California's Alien Land Law).

77. See Su Sun Bai, *Affirmative Pursuit of Political Equality for Asian Pacific Americans: Re-*

tion⁷⁹ restrictions. As discussed earlier, Asian exclusion was very successful.⁸⁰

For the third film, the documentary *Who Killed Vincent Chin?*, we jump ahead many years to 1982. The racial compromise of the earlier era remains in force. Vincent Chin, born in China, was adopted at an early age by a Chinese American couple. The border and the color line are inscribed on his body, marking him as a foreign and racial other, a legitimate target for nativistic racism. Through his construction as a foreigner, he and others who look like him, help define America.⁸¹

America negotiated its earlier national identity crisis through a racial compromise driven, in part, by notions of economic and sexual entitlement/anxiety. As the nation approaches the new millenium, my hope is that we do not renew this racial compromise. The films are cultural documents of what happened⁸² and of what came to be. If we can resist the urges that were nakedly displayed in those films, we might have a chance to enjoy this world that is bursting with color.

claiming the Voting Rights Act, 139 U. Pa. L. Rev. 731, 751 n.95 (1991) ("state licensing requirements foreclosed non-citizen Asian Pacific Americans from becoming attorneys, physicians, teachers, pharmacists, veterinarians, hairdressers, cosmetologists, barbers, funeral directors, peddlers, and hunters").

78. See, e.g., ENTRY DENIED: EXCLUSION AND THE CHINESE COMMUNITY IN AMERICA, 1882-1943 (Sucheng Chan ed., 1991); Hiroshi Motomura, *Immigration Law after a Century of Plenary Power: Phantom Constitutional Norms and Statutory Interpretation*, 100 YALE L.J. 545 (1990); Saito, *supra* note 12.

79. See e.g., BILL ONG HING, MAKING AND REMAKING ASIAN AMERICA THROUGH IMMIGRATION POLICY 1850-1990 (1993); HANEY LOPEZ, *supra* note 35; Charles J. McClain, *Tortuous Path, Elusive Goal: The Asian Quest for American Citizenship*, 2 ASIAN L.J. 33 (1995).

80. See *supra* text accompanying notes 8-10. This did not change in any significant way until the amendments to the immigration laws in 1965. Pub. L. No. 89-236, 79 Stat. 911 (1965). For a discussion of the impact of the amendments on various Asian American communities, see HING, *supra* note 79, at 79-120.

81. See Keith Aoki, *Foreign-ness and Asian American Identities: Yellowface, Propaganda and Bifurcated Stereotypes*, 4 UCLA ASIAN PAC. AM. L.J. (forthcoming 1997) ("A crucial feature of this reciprocal dynamic is that those qualities that 'orientalized others' possess, the 'occidental self/culture/nation' does not, and vice versa—i.e., what we *are*, they are *not*; or conversely, what they *are*, we are *not*."). See also Natsu Saito, *Model Minority, Yellow Peril: Functions of "Foreignness" in the Construction of Asian American Legal Identity*, 4 ASIAN L.J. 71 (1997). As noted before, Neil Gotanda began this discussion of foreignness and other non-whites. For an examination and extension of his ideas, see Symposium, *In Honor of Neil Gotanda*, 4 ASIAN L.J. 1 (1997).

82. I do not mean this literally.

