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TO BE WHITE, BLACK, OR BROWN? SOUTH ASIAN AMERICANS AND THE RACE-COLOR DISTINCTION

VINAY HARPALANI*

INTRODUCTION: COLORING RACE

People often use *race* and *color* terminology interchangeably in common parlance. When the renowned African American scholar W.E.B. Du Bois stated that “the problem of the twentieth century is the problem of the color line,”¹ he was referring to rampant and overt racism faced by African Americans and non-European peoples all over the world. Within the United States, color terminology often dominates racial discourse due to common use of color-based racial designations such as “Black” and “White.” Color is thus often used as a synonym for race,² but while the two do overlap, color is also distinct from race as colorism is from racism.³

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1. W.E.B. DU BOIS, *SOULS OF BLACK FOLK* 13 (Brent Hayes Edwards ed., 2007) (1903).

2. See, e.g., A. LEON HIGGINBOTHAM, *IN THE MATTER OF COLOR: RACE AND THE AMERICAN LEGAL PROCESS* (1978) (discussing history of racism within American law). When using the term “color” in analysis, this Essay is referring primarily to skin color rather than race. Nevertheless, the terminology is confounded because: 1. Specific colors such as Black and White are also used to refer to race, both in this Essay and in other sources; 2. Other sources use the term “color” as either a synonym for race, a metaphor for race, or a connection to race in some symbolic way beyond skin color; and 3. This Essay does cite sources which use specific colors in the sense employed in number two above.

3. Typically, “colorism” refers to hierarchies based on skin color *within* particular racial groups, while “racism” denotes hierarchies *between* racial groups. For different perspectives on color and colorism, see MARGARET L. HUNTER, *RACE, GENDER, AND THE POLITICS OF SKIN TONE*, (2005); *SHADES OF DIFFERENCE, WHY SKIN COLOR MATTERS* (Evelyn Nakano Glenn ed., 2009) [hereinafter *SHADES OF DIFFERENCE*]; NINA G. JABLONSKI, *LIVING COLOR: THE BIOLOGICAL AND SOCIAL MEANING OF SKIN COLOR* (2012); KATHY RUSSELL, MIDGE WILSON, & RONALD HALL, *THE COLOR COMPLEX (REVISED): THE POLITICS OF SKIN COLOR IN A NEW MILLENNIUM* (2013); *COLOR*

The relationship between race and color is complex: the two are intertwined, and it can be difficult to tease apart. However, one group that illuminates the distinction between the two is South Asian Americans—peoples in the United States whose ancestry derives from the Indian subcontinent.⁴ South Asian Americans are a group that does not fit neatly within the dominant racial categories of Black and White and have a racially ambiguous identity within the United States.⁵ This is partly because of the large variety of skin tones within the group. Because South Asian Americans have been classified in various racial categories and vary significantly in skin tone, their experiences can uniquely relay how race is related to color.

Recent events in the media illustrate South Asian American racial ambiguity and color variation. For example, in February 2015, the experiences of South Asian Americans gave new meaning to Michael Jackson's song, "Black or White."⁶ First, Louisiana Governor and 2016 Presidential hopeful Bobby Jindal quipped, "You mean I'm not White?" when asked about a commissioned portrait that depicted him with lightened skin tone.⁷ Jindal blamed the criticism of his lightened image on the liberals' obsession with race describing the controversy as "silly" and calling for "the end of race in America."⁸ Just one week later in Madison, Alabama, police officers beat and severely injured Sureshbhai Patel—a fifty-seven-year-old immigrant grandfather who had only been in the United States for one week—after a suspicious caller identified him as "a skinny Black guy."⁹ These two incidents show that in different contexts, South Asian Americans can be viewed as "Black" or "White." Other color labels, such as "Brown," are also sometimes used for South Asian

MATTERS: SKIN TONE BIAS AND THE MYTH OF A POST-RACIAL AMERICA (Kimberly Jade Norwood, ed., 2014).

4. See Vinay Harpalani, *DesiCrit: Theorizing the Racial Ambiguity of South Asian Americans*, 69 N.Y.U. ANN. SURV. OF AM. L. 77 (2013–14). "South Asian" refers to ancestry from the Indian subcontinent including the countries of India, Pakistan, Bangladesh, Sri Lanka, Nepal, Bhutan, the Maldives Islands, and sometimes Afghanistan. See *id.* at 90 n.61 and accompanying text. This Essay refers mainly to "South Asian Americans" as a whole, although in some instances it refers to "Asian Indian Americans" when that is the relevant group. Additionally, the term "desi" refers to people of the South Asian diaspora. See *id.* at 92.

5. *Id.*

6. Michael Jackson, *Black or White*, on DANGEROUS (Epic Records 1991).

7. Jeremy Diamond, *Bobby Jindal: 'You Mean I'm Not White?'*, CNN, Feb. 10, 2015, <http://www.cnn.com/2015/02/09/politics/jindal-left-obsessed-with-race/>.

8. *Id.*

9. Peter Holley, Abby Phillip & Abby Ohlheiser, *Alabama Police Officer Arrested after Indian Grandfather Left Partially Paralyzed*, WASH. POST, Feb. 12, 2015, <http://www.washingtonpost.com/news/morning-mix/wp/2015/02/11/alabama-cops-leave-a-grandfather-partially-paralyzed-after-frisk-goes-awry/>

Americans.¹⁰ Contrary to Michael Jackson's lyrics;¹¹ however, it *does* matter how South Asian Americans are labeled—or how we choose to label ourselves.

Such contrasting racial identities are not new for South Asian Americans. Elsewhere, I have written in depth about South Asian American racial ambiguity both in my personal experience,¹² and more broadly as part of the history of racial classification in America.¹³ Building on my recent presentation at the very successful and enlightening *Global Perspectives on Colorism* conference at Washington University in St. Louis,¹⁴ this essay focuses specifically on the role of color in delineating South Asian American racial identities. Race and racism are extremely complex phenomena, and skin color and colorism are only one aspect of racial hierarchy and racialization.¹⁵ Nevertheless, color is the most common visual feature and symbol associated with race, and the relationship between the two is revealing—particularly for a group such as South Asian Americans. As noted earlier, South Asian Americans possess a wide range of skin tones, but due to our ambiguous positions in

10. See generally VIJAY PRASHAD, *THE KARMA OF BROWN FOLK* (2000) (referring to South Asian Americans as “Brown Folk”).

11. See Lyrics to *Black or White*, *supra* note 6 (“It don’t matter if you’re black or white.”), https://play.google.com/music/preview/Tdrnpaf7dfaosyttfoiqpigfv2y?lyrics=1&utm_source=google&utm_medium=search&utm_campaign=lyrics&pcampaignid=kp-lyrics.

12. 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).

13. See Harpalani, *supra* note 4. For other works that deal with South Asian American racial ambiguity, see Nazli Kibria, *Not Asian, Black or White? Reflections on South Asian American racial identity*, 22 *AMERASIA J.* 77 (1996); Susan Koshy, *Category Crisis: South Asian Americans and Questions of Race and Ethnicity*, 7 *DIASPORA* 285 (1998); 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, Russell Endo, Stephen H. Sumida, & Russell C. Leong, eds., 1989); Kamala Visweswaran, *Diaspora by design: Flexible citizenship and South Asians in U.S. racial formations*, 6 *DIASPORA* 5 (1997).

14. See *Global Perspectives on Colorism*, 2015, <http://law.wustl.edu/harris/pages.aspx?ID=10184>. This conference is believed to be the first conference in the United States to focus on colorism internationally. See Neil Schoenherr, *Global Conference to Address Social, Psychological Harm of Colorism* (Mar. 12, 2015), <http://news.wustl.edu/news/Pages/global-colorism-conference.aspx>.

15. This Article uses the term *racialization* to describe the “creation, inhabitation, transformation, and destruction of formal racial categories [and of] . . . social meanings associated with race.” See Harpalani, *supra* note 4, at 110 n.180. The definition posited here derives from Professors Michael Omi and Howard Winant’s concept of *racial formation*: “the sociohistorical process by which racial categories are created, inhabited, transformed, and destroyed.” See MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES* 55 (2d ed., 1994). Because racial ambiguity inherently obscures racial categories, it is also necessary to consider the creation and application of social meanings associated with race in immediate situations. See Harpalani, *supra* note 4, at 111–15 (distinguishing between *formal racialization*, which involves the application of official racial categories derived from some authority, and *informal racialization*, which involves situational racial characterizations based on stereotypes).

America's racial landscape—a venue defined largely by the Black-White paradigm—our experiences complicate the link between race and color in interesting ways. This essay explores how color intersects with other factors—including both local and national politics—to determine the racial characterization of South Asian Americans.

First, Part I briefly examines the relationship between race and color more generally, and asserts that skin color is the primary physical feature associated with race. In many cases, color has become a metaphor for race, but race is a social and political status that involves many dimensions beyond color. Traditionally, racial status has been associated with ancestry, but it has evolved to incorporate many other components often based on stereotypes and other forms of status. This essay further argues that individual actors can make claims to racial statuses, or can have those statuses ascribed on to them by others,¹⁶ and that skin color—or in the case of Jindal's portrait, presentation of one's skin color—is a part of this process. Color is thus an important component of the social construction of race, but it is by no means solely or even primarily determinative of race. Rather, social and political factors related to the situation and/or local environment play a large role.¹⁷

Second, Part II analyzes the role of skin color in the characterization of South Asian Americans as “White.” It takes a historical approach, starting with the racial prerequisite cases—where Whiteness was a legal status necessary for naturalization as a U.S. citizen—and proceeding up to Bobby Jindal's recent comment and the notion of “honorary Whiteness.”¹⁸ This Part examines both claims and ascriptions with respect to Whiteness, highlighting how skin color has usually not been the determining factor in whether South Asian Americans were considered to be “White.”

Third, Part III considers skin color in relation to the characterization of South Asian Americans as “Black.” Ascriptions of Blackness onto South

16. See Harpalani, *supra* note 4, at 117–19 (defining “claims” and “ascriptions” with respect to racial statuses). The concept of “ascription” comes from Kwame Anthony Appiah, *Race, Culture, Identity: Misunderstood Connections*, in *COLOR CONSCIOUS* 30, 81 (Kwame Anthony Appiah & Amy Gutmann eds., 1996).

17. Situational factors can involve the immediate circumstances, the broader historical and political context, or a combination of both. Local environment refers to the “racial microclimate:” the social and political dynamics of the local setting. See Robert S. Chang, *Keith Aoki's Theory of Racial Microclimates*, 45 U.C. DAVIS L. REV. 1913, 1923–24 (2012); Harpalani, *supra* note 4, at 121–22.

18. This notion derives from Professor 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). Within this scheme, Professor Bonilla-Silva characterizes South Asian Americans (Asian Indians) as “Honorary Whites”—referring to individuals who receive many of the privileges and benefits of being White without actually being classified as such. *Id.*

Asian Americans can result from misidentification, which may have been the case in the aforementioned incident involving Sureshbhai Patel. Such ascriptions can also serve to denigrate South Asian Americans as the “other”—through association with Black people. This Part examines the role of skin color in such ascriptions, and also in claims to Blackness by South Asian Americans. Although the latter are far less common than claims to Whiteness or ascriptions of Blackness, this Part highlights a recent example: the revelation by Vijay Chokal-Ingam—the relatively dark-skinned brother of Indian-American actress and comedian Mindy Kaling¹⁹—that he pretended to be Black on his medical school applications.²⁰ Similar to Whiteness, this Part concludes that, while skin color can play a role in characterizations of South Asian Americans as Black, other factors are more significant.²¹

Fourth, Part IV considers other color and race-linked identities attributed to South Asian Americans—including “Brown.” This Part illustrates that, for all of these identities, there are facets that are much more significant than skin color.

Finally, the Conclusion discusses implications of the above for understanding race and racism, and also colorism as a phenomenon distinct from racism—one of the important aims of the *Global Perspectives on Colorism* conference.²²

I. UNDER COLOR OF LAW

From a legal standpoint, race and color are related, but distinct bases for discrimination. The terms “race” and “color” appear only once in the United States Constitution. Neither term is in the text of the Fourteenth Amendment—the source from which most constitutional litigation on race discrimination arises. Rather, it appears in the Fifteenth Amendment, which reads: “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of *race, color, or previous condition of servitude.*”²³ Although the United States Supreme Court has never considered the difference between “race”

19. *Mindy Kaling*, WIKIPEDIA, http://en.wikipedia.org/wiki/Mindy_Kaling.

20. Michael D. Nguyen, *Mindy Kaling's Brother: I Posed As Black to Get Into Med School*, NBC NEWS, Apr. 7, 2015, <http://www.nbcnews.com/news/asian-america/mindy-kalings-brother-i-posed-black-get-med-school-n337026>.

21. See *supra* note 17 and accompanying text.

22. See Schoenherr, *supra* note 14 (“Colorism, the practice of discrimination based on skin tone even among people of color, is rarely addressed publicly and is uniquely different from racism.”).

23. U.S. Const. amend XV, § 1 (emphasis added).

and “color” in this context, one can infer that the Framers of the Amendment intended the two to have different meanings—otherwise, the rule against surplusage and presumption against redundancy are violated.²⁴ During its debate on the Fifteenth Amendment, Congress considered several other terms to add to the text. For example, Michigan Senator Jacob Howard offered an amendment to the language to protect voting rights specifically for “persons of African descent.”²⁵ Additionally, Representative John Bingham of Ohio, a radical Republican, wanted to add the terms “nativity,” “property,” and “creed” to the amendment to expand its protection.²⁶ The “nativity” provision would prevent discrimination against naturalized citizens (as opposed to native born citizens). Discussion of the terms “race” and “color” during these debates does not reveal any clear distinction, although one might infer that the Framers thought about “race” largely in terms of ancestry, while “color” might have denoted physical appearance (i.e., visible skin color).²⁷

The distinction between “race” and “color” is clearer in the context of Title VII employment discrimination.²⁸ The Equal Employment Opportunity Commission (EEOC) Compliance Manual on Title VII

24. See *Marbury v. Madison*, 5 U.S. 137, 174 (1803) (“[A] negative or exclusive sense must be given to [words in the Constitution], or they have no operation at all”). It cannot be presumed that any clause in the Constitution is intended to be without effect.”).

25. Cong. Globe, 40th Cong., 3d Sess., 1009 (1869) (“African descent . . . is popularly . . . understood as a person who has African blood in his veins It designates what is commonly known as the negro, or some person having colored blood in his veins to the amount of at least one eighth.”).

26. Cong. Globe, 40th Cong., 3d Sess., H. p. 1427 (1869). The “nativity” provision would prevent discrimination against naturalized citizens (as opposed to native born citizens). Bingham wanted to add the “nativity” and “property” provisions because some states, such as Rhode Island, discriminated on these bases with respect to voting rights. *Id.*

27. The well-known ante-bellum case of *State v. Cantey* suggests such a distinction. 2 Hill (SC) 614, 615 (1835) (distinguishing between “negro blood” and “negro features and complexion”). Additionally, the Civil Rights Act of 1866, which served as prelude to the Fourteenth Amendment, also contained “race” and “color” as part of its text. 14 Stat. 27-30, Apr. 9, 1866 (“[A]ll persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and such citizens, of every *race* and *color* . . . shall have the same right, in every State and Territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence, inherit, purchase, lease, sell, hold, and convey real and personal property, and the full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens”) (emphasis added). For more general information on the relationship between the Fourteenth Amendment and the Civil Rights Act of 1866, see HORACE EDGAR FLACK, THE ADOPTION OF THE FOURTEENTH AMENDMENT 44–52 (1908); WILLIAM E. NELSON, THE FOURTEENTH AMENDMENT: FROM POLITICAL PRINCIPLE TO JUDICIAL DOCTRINE (1988).

28. 42 U.S.C. §§ 2000 et. seq. (2001). See also Taunya Lovell Banks, *Colorism: A Darker Shade of Pale*, 47 UCLA L. REV. 1705 (2000); Trina Jones, *Shades of Brown: The Law of Skin Color*, 49 DUKE L.J. 1487 (2000); Cynthia E. Nance, *Colorable Claims: The Continuing Significance of Color Under Title VII Forty Years After Its Passage*, 26 BERKELEY J. EMP. & LAB. L. 435 (2005).

contains guidelines, which define race discrimination and color discrimination.²⁹ Title VII race discrimination includes actions that discriminate on the basis of ancestry, physical characteristics, race-linked illness, culture, perception (i.e., discrimination based on perceived rather than actual race), association (i.e., discrimination based on having interracial marriage, friendship, etc.), “race plus” (i.e., specific discrimination against a particular racial subgroup, such as Black women with children), and “reverse” racial discrimination (i.e., discrimination against White persons).³⁰ Color discrimination under Title VII is more narrowly defined as discrimination on the basis of “lightness, darkness, or other color characteristic of the person.”³¹ The Compliance Manual also notes that “[e]ven though race and color clearly overlap, they are not synonymous . . . color discrimination can occur between persons of different races or ethnicities, or between persons of the same race or ethnicity.”³²

While Title VII race and color discrimination claims do overlap, color is defined exclusively in terms of visual appearance (i.e., skin color), while race is more complex and can involve various characteristics and perceptions (i.e., racial stereotypes about behavior). This Essay conceptualizes race as a status—a social and political demarcator that can yield privileges or disadvantages.³³ Individual or group actors can claim racial statuses, or such statuses can be ascribed onto them by others.³⁴ Thus, claims and ascriptions constitute a framework for understanding how racial statuses and identities are conferred.³⁵ Color plays a significant role in this process, as it is the physical trait most commonly associated with race. The example of South Asian Americans illustrates this well as it allows us to tease apart color-designated racial categories (i.e., “Black” and “White”) from actual skin color variation and to analyze the relationship between the two.

29. EEOC COMPLIANCE MANUAL (BNA) § 15 (Apr. 2006), available at <http://www.eeoc.gov/policy/docs/race-color.pdf>.

30. *Id.*

31. *Id.*

32. *Id.* In practice, courts have mainly applied Title VII color discrimination to claims of skin color bias among members of the same group. *See id.* at 15-6 (citing *Walker v. Sec’y of the Treasury*, 713 F. Supp. 403, 405-08 (N.D. Ga. 1989), *aff’d* 953 F.2d 650 (11th Cir. 1992) (distinguishing race and color discrimination and upholding cause of action for suit by light-skinned Black person against dark-skinned Black person).

33. This definition builds on my prior work, which discusses “racial status” in terms of “capital” and “privileged resource[s].” *See Harpalani, supra* note 4, at 11314.

34. *See supra* note 16 and accompanying text.

35. *Id.*

II. NOT QUITE WHITE

The starting point for analyzing the relationship between race and color for South Asian Americans is the Naturalization Law of 1790,³⁶ which was the first Congressional Act to address citizenship. This Act restricted the privilege of naturalization to “free, White persons.”³⁷ Later amendments to this law granted citizenship rights to Blacks and Native Americans, but for most non-European immigrants, the “White person” standard remained until the middle of the twentieth century.³⁸ To become naturalized as United States citizens, Asian and South Asian immigrants had to demonstrate, if challenged, that they were “White persons” under the meaning in this statute.³⁹ In other words, these immigrants had to make claims to Whiteness.

Beginning in the late nineteenth century, federal courts decided a series of “racial prerequisite” cases to determine which groups fit under the definition of “White persons”—thus establishing eligibility for citizenship.⁴⁰ Professor Ian Haney López analyzes these cases in his book, *White By Law*,⁴¹ where he notes that federal courts employed various combinations of four different standards to decide who was “White:” Congressional intent, common knowledge, scientific evidence, and legal precedent.⁴² South Asian immigrants presented a particular dilemma because, unlike most other Asian immigrants, they were deemed to be “Caucasian” and “Aryan.”⁴³

The first wave of immigrants from the Indian subcontinent came to the United States in the early twentieth century, and the first racial prerequisite case that involved a South Asian immigrant was *In re Balsara*.⁴⁴ The district court found that Bhicaji Balsara was probably not “White,” but the court resisted a definitive ruling and allowed him to tentatively attain citizenship because he “appear[ed] a gentleman of high character and exceptional intelligence.”⁴⁵ The Second Circuit Court of Appeals ruled that Balsara was White, opining that the words “free, White person” meant

36. Naturalization Law of March 26, 1790 (1 Stat. 103).

37. *Id.*

38. See IAN F. HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* 1 (1996).

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.* at 63.

43. *Id.* at 89.

44. 171 F. 294 (C.C.S.D.N.Y. 1909), *aff'd sub nom. United States v. Balsara*, 180 F. 694 (2d Cir. 1910).

45. *Id.* at 295. This example also illustrates how value judgments entered into courts’ reasoning.

“all persons of the [W]hite race, as distinguished from the black, red, yellow, or brown races[.]”⁴⁶ Although it used the language of color, the court here was not referring to skin color directly, but rather to racial groups designated by color.

The next racial prerequisite case involving a South Asian immigrant actually did involve assessment of skin color. In *United States v. Dolla*, the Fifth Circuit Court of Appeals ruled that Abba Dolla was White citing his light skin color. The court noted that the “skin of his arm . . . was sufficiently transparent for the blue color of the veins to show very clearly.”⁴⁷ The Fifth Circuit also cited other criteria; for example, it noted that Dolla owned a white cemetery plot in Savannah, Georgia.⁴⁸ Dolla’s claim to Whiteness also included various forms of evidence to show his connections to the White community in Savannah;⁴⁹ nevertheless, his skin color was the primary basis for the court’s ruling.⁵⁰ The court even noted that Dolla’s face and hands were several shades darker, but that his arms, which were covered from sun exposure, were sufficiently light to demonstrate that he was White.⁵¹

While *Balsara* and *Dolla* yielded the same result, the reasoning was different—the latter appealed directly to skin color when assessing race, while the former did not. Besides *Dolla*, no racial prerequisite cases involving immigrants from any group involved visual assessment of skin color.⁵² This anomaly was probably due to local custom and racial dynamics.⁵³ Professor Vivek Bald notes that this emphasis on skin color was “more in line with the daily practices of southern segregation than any

46. *Id.* at 696.

47. *United States v. Dolla*, 177 F. 101, 102 (5th Cir. 1910). 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 nineteenth and early twentieth centuries. See Suzanne G. Fegley et al., *Colorism Embodied: Skin Tone and Psychosocial Well-Being in Adolescence*, in *DEVELOPMENTAL PERSPECTIVES ON EMBODIMENT AND CONSCIOUSNESS* 281, 286 (Willis F. Overton, Ulrich Muller & Judith L. Newman eds., 2008) (noting that for Black social groups such as “the Blue Vein Society of Nashville . . . the lightness of one’s skin mainly determined membership.”).

48. *Dolla*, 177 F. 101 at 102.

49. See VIVEK BALD, *BENGALI HARLEM AND THE LOST HISTORIES OF SOUTH ASIAN AMERICA* 60–61 (2013) (noting that Dolla “offered to produce a series of (presumably white) leading citizens to attest to his good character . . . and ‘a leading white physician’ . . . who would confirm that he was ‘of pure Caucasian blood.’”).

50. *Id.* at 61.

51. *Id.*

52. See HANEY LÓPEZ, *supra* note 38, at 203–08 (Appendix A listing basis for rulings in all racial prerequisite cases).

53. See sources cited in *supra* note 17 for a definition of “racial microclimes” and for further discussion of how local environment can impact racial dynamics.

legal precedent.”⁵⁴ Professor Bald also suggests, based on historical records, that in spite of the Fifth Circuit’s ruling and Dolla’s own arguments, that Abba Dolla was more connected to Savannah’s Black community than to its White community.⁵⁵ While skin color did play a role in defining Whiteness, courts were typically more interested in the social and political implications of defining particular groups and individuals as White, and thus eligible for citizenship.

Several other lower federal courts also considered the question of whether South Asian immigrants were White and come to different conclusions. *In re Akhay Kumar Mozumdar* (1913) involved “a high-caste Hindu of pure blood[,]” who claimed that “high caste Hindus always consider themselves members of the Aryan race.”⁵⁶ In his petition, Mozumdar also distinguished between “high caste Hindus[,]” “sihks . . . of mixed blood[,]” “[t]he laboring class, those who do the rough manual labor [and] are not high-caste Hindus at all, but . . . hav[e] quite a different religion and a different ancestry[,] . . . aborigines of the country, or the hill tribes,” and “descendants of the invaders . . . of the Mohammedan faith.”⁵⁷ Consequently, the court noted that there is a “line of demarcation between the different castes and classes,”⁵⁸ implying that those of lower castes may not be White.

Based on this reasoning, District Court for the Eastern District of Washington found that Akhay Kumar Mozumdar was White.⁵⁹ The court analogized this demarcation to the question of “where does daylight end or darkness begin?” It further noted that in India, “populations of all the races are mixed to a large extent” and “[t]he number of individuals white enough to prove that their blood is quite pure is very restricted.”⁶⁰ Interestingly, the court also referenced the relationship between “caste” and “color” noting the two are no longer synonyms, even if they “used to be in Sanskrit.”⁶¹ Thus, while the court acknowledged some relationship between caste, skin color, and Whiteness, it found that the former two qualities were no longer “pure” enough to determine the latter.

54. BALD, *supra* note 49, at 61.

55. *Id.* at 61–62.

56. *Id.* at 116–17.

57. *Id.*

58. *Id.* at 117.

59. *In re Akhay Kumar Mozumdar*, 207 F. 115 (E.D. Wash. 1913).

60. *Id.*

61. *Id.*

Three other racial prerequisite cases involving South Asian immigrants yielded varying results. The court ruling on *In re Sadar Bhagwab Singh*⁶² found that South Asian petitioners were not White, citing Congressional intent and common knowledge.⁶³ However, in two subsequent cases, *In re Mohan Singh*⁶⁴ and *In re Bhagat Singh Thind*,⁶⁵ courts relied on legal precedent to find that the petitioners were White.⁶⁶ While all of these courts agreed that South Asian immigrants were Caucasian, the court in *In re Sadar Bhagwab Singh* noted that this was not necessarily equivalent to White: “[w]hen . . . Martian immigrants reach this part of the earth, and ‘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 Caucasian.”⁶⁷

In 1922, the Supreme Court, in *Ozawa v. United States*, disagreed with the ruling in *Singh*.⁶⁸ The Supreme Court ruled that “White” was synonymous with Caucasian; thus, Takao Ozawa, a Japanese immigrant, was not White because he was “clearly of a race which [was] not Caucasian.”⁶⁹ However, the Court noted that its ruling “[did] not entirely dispose of [the problem] . . . but rather [established] a zone of . . . debatable ground.”⁷⁰ This ruling was important because, the very next year, the Supreme Court heard Bhagat Singh Thind’s case,⁷¹ which originated in the state of Washington. The question posed: “Is a high-caste Hindu of full Indian blood, born at Amrit Sar, Punjab, a white person . . . ?”⁷² Contrary to its own ruling in *Ozawa* just a few months earlier, the Court redacted the equivalence between “Caucasian” and “White,” holding that Asian Indians did not fit the common person’s understanding of the term “White”: “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

62. 246 F. 496 (E.D. Pa. 1917).

63. See HANEY LÓPEZ, *supra* note 38, at 206.

64. 257 F. 209, 213 (S.D. Cal. 1919).

65. 268 F. 683, 684 (D.Or. 1920).

66. See HANEY LÓPEZ, *supra* note 38, at 206.

67. 246 F. at 500. The court’s reasoning is absurd and its inference is logically incorrect. If there are individuals who are White but not Caucasian (as in the court’s example of “a man from Mars”), it does not follow that there are necessarily individuals who are Caucasian but not White (all Caucasians could still be White, as other courts had found).

68. 260 U.S. 178 (1922).

69. *Id.* at 198.

70. *Id.*

71. *United States v. Bhagat Singh Thind*, 261 U.S. 204 (1923).

72. *Id.* at 206.

profound differences between them to-day.”⁷³ Although it did not rely on skin color for its ruling, the Court supported its common knowledge standard by contrasting the “blond Scandinavian” and “brown Hindu.” The Court also suggested that these were the extremes of the Caucasian race to justify its departure from pseudoscientific racial classifications.⁷⁴ Also, after *Thind*, at least sixty-five Asian Indian Americans were stripped of their U.S. citizenship⁷⁵ because they were not White.

Ironically, Bhagat Singh Thind himself attained citizenship in 1936 after going to New York where naturalization examiners did not challenge his application.⁷⁶ Thind’s experience highlights the importance of local racial dynamics. During the first half of the twentieth century, the South Asian American population was much larger on the west coast, leading to greater economic competition between South Asian immigrant workers and other groups.⁷⁷ This could explain why Thind’s petition for citizenship was challenged in Washington but not in New York.⁷⁸

For South Asian Americans, the question of Whiteness did not end. After World War II, Congress acted to change U.S. immigration law. Several political factors, including the Cold War and the need to improve relations with Asian countries, prompted Congress to reopen immigration from South Asian countries.⁷⁹ The Immigration Act of 1946 (“Luce-Celler Act”) rendered *Thind* obsolete by creating a small immigration quota of Asian Indians and permitting their naturalization.⁸⁰ The Immigration Act of 1952 (“McCarran-Walter Act”) removed all race restrictions to citizenship⁸¹ superseding the Naturalization Law of 1790. The most significant legislative action was the Immigration and Nationality Act of 1965 (“Hart-Celler Act”), which raised annual immigration visas, allowed

73. *Id.* at 209 (emphasis added).

74. *Id.* at 209-10. In *Thind*, the Supreme Court also noted correctly that “the term Aryan has to do with linguistic and not at all with physical characteristics.” *Id.* at 210.

75. HANEY LÓPEZ, *supra* note 38, at 91 (citing DAVID ROEDIGER, TOWARDS THE ABOLITION OF WHITENESS 182 (1994)).

76. 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 later become a Sikh spiritual leader and author of many books. *Id.*

77. See Harpalani, *supra* note 4, at 122–25, 255–64 and accompanying text.

78. *Id.* at 132.

79. See PRASHAD, *supra* note 10, at 69–82.

80. 60 Stat. 416, 8 U.S.C.A.703 (1946); see also 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, 22–23 (S. Chandrasekhar ed.) (1982).

81. 66 Stat. 163 (1952); see also Chandrasekhar, *supra* note 80, at 23–24.

family reunification independent of quotas,⁸² and created a preference system that favored highly skilled, professional immigrants, such as engineers and scientists.⁸³ Soon thereafter, in 1970, the United States Census Bureau would once again raise the question of Whiteness for South Asian Americans.⁸⁴

South Asian immigrants to the United States did not appear in significant numbers until the early twentieth century and were not designated in the census until 1910. In the 1910 and 1920 censuses, South Asians were classified under the “other” category on the census form. This included sub-categories of “Non-white Asiatic/Hindu” in 1910 and “Hindu” in 1920, which was intended for enumerators and listed in census publications.⁸⁵ For the 1930 and 1940 censuses, “Hindu” appeared as a separate category on the census forms. In 1950 and 1960, the Census Bureau returned to the “other” designation on the form and included sub-categories—for enumerators and census publications only—of “Non-white/Asiatic Indian” in 1950 and “Non-white/Hindu” in 1960.⁸⁶ But the most surprising change came after the post-1965 wave of immigration began, when South Asians were suddenly designated as “White” on the 1970 Census form—in spite of the specific designation as “Non-White” in the previous Census, and in spite of the 1923 *Thind* decision.⁸⁷

Why were South Asian Americans now suddenly classified as White in the Census? As Professor Susan Koshy notes, classification as White prevented South Asian Americans from receiving protected minority

82. 79 Stat. 911 (1965); see also Chandrasekhar, *supra* note 80, at 24–26.

83. See Maxine P. Fisher, *Creating Ethnic Identity: Asian Indians in the New York City Area*, 7 URBAN ANTHROPOLOGY 271, 271–74 (1978). The preference system of the 1965 Immigration Act had two other important consequences. First, educated immigrants from Asian countries helped build America’s scientific and technological infrastructure—a significant national interest in the wake of the Cold War and competition with the Soviet Union. See PRASHAD, *supra* note 10, at 4, 69–82 (discussing how American fear 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). Second, the children of these educated immigrants possessed the advantages of relatively privileged home and school environments: many of them became high academic achievers and became the basis of the “model minority” stereotype of Asian Americans. See *id.*; Tayyab Mahmud, *Genealogy of a State-Engineered “Model Minority”*: “Not Quite/Not White” *South Asian Americans*, 78 DENVER L. REV. 657 (2001).

84. Koshy, *supra* note 13, at 293–94.

85. *Id.*

86. *Id.*

87. 261 U.S. 204 (1923). Of course, the Census Bureau was not bound by *Thind*, which just interpreted the Naturalization Law of 1790, 1 Stat. 103. Nevertheless, these divergent formal classifications illustrate the racial ambiguity of South Asian Americans.

status conferred by 1960s civil rights legislation.⁸⁸ Here, the classification of South Asian Americans as White had nothing to do with skin color, ancestry, common knowledge, or any other standard that came to bear in the racial prerequisite cases. Moreover, in a twist of irony, South Asian Americans were not attempting to claim Whiteness, as in the racial prerequisite cases. Rather, Whiteness was ascribed by the Census to the detriment of South Asian Americans.

South Asian Americans did challenge this classification, seeking both separate census enumeration and minority status to qualify for protections of civil rights legislation and aspects of federal affirmative action programs.⁸⁹ South Asian American organizations discussed and debated the issue and recognized that South Asian Americans would continue to face discrimination, particularly in times of economic hardship.⁹⁰ Moreover, these organizations realized that future South Asian immigrants, admitted mainly based on family preferences rather than occupational preferences, would have less education and endure more economic hardship.⁹¹

Ultimately, South Asian Americans succeeded. In 1977, the Census Bureau changed the racial classification from White to “Asian Indian,” which became effective for the 1980 Census.⁹² Later, this would change to “Asian or Pacific Islander/Asian Indian” for the 1990 Census,⁹³ “Asian/Asian Indian” again in the 2000 Census.⁹⁴ In 2010, “Asian Indian” was one of several Asian groups listed on the census form.⁹⁵ Also, starting in 1982, South Asian Americans gained protected minority status and were

88. Koshy, *supra* note 84, at 294.

89. See Fisher, *supra* note 83, at 279–81. The two separate issues—separate enumeration and legal minority status—also illustrate different dimensions of formal racialization.

90. *Id.* at 281.

91. See *id.*

92. Visweswaran, *supra* note 13, at 18.

93. Koshy, *supra* note 13, at 294. See also Sharon Lee, *Racial Classification in the U.S. Census: 1890–1990*, 16 *ETHNIC & RACIAL STUDIES* 75, 78 (1993) (discussing racial categories in each U.S. Census from 1890 to 1990).

94. 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.” U.S. Census Bureau, *Major Differences in Subject-Matter Content Between the 1990 and 2000 Census Questionnaires*, Census 2000 (2000) <http://www.census.gov/population/www/cen2000/90vs00/index.html>. The “Asian” category had sub-groups including “Asian Indian” and also had an “Other Asian” write-in option. *Id.*

95. 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. See Population Reference Bureau, *The 2010 Census Questionnaire: 20 Questions for Everyone* (Apr. 2009) <http://www.prb.org/Articles/2009/questionnaire.aspx>.

included in certain federal affirmative action programs⁹⁶—including set-asides and discounted bids for public contracts.⁹⁷

Although South Asian Americans are not formally classified as White, there is the notion that the group has attained a status of “honorary Whiteness.”⁹⁸ Segments of South Asian American communities have economic and educational privileges and are very successful,⁹⁹ but other segments are still striving for success,¹⁰⁰ or are struggling.¹⁰¹ The model minority stereotype of Asian and South Asian Americans is well known;¹⁰² however, while this is a racial characterization and related to honorary Whiteness,¹⁰³ it is not rooted in skin color, but rather in other symbols associated with success.¹⁰⁴

In fact, “honorary Whiteness” refers to the attainment of benefits and privileges of being White without formal classification as such.¹⁰⁵ Skin color and physical appearance can negate honorary Whiteness if used to characterize an individual as non-White. This leads right back to Jindal’s lightened portrait and his quip about being White.¹⁰⁶ The history of South Asian Americans illustrates that there have always been consequences for racial classification and characterization whether based on skin color or other criteria.¹⁰⁷ Jindal himself should have learned this during his initial Louisiana gubernatorial campaign, in 2003, when he lost to Democrat Kathleen Blanco in a close race marred by racist overtones. Polls indicated that Jindal led by as many as ten points in the weeks leading up to the election, and analysts suggested that rural White Louisianans were unwilling to vote for a “foreigner.”¹⁰⁸ Moreover, one of Blanco’s campaign ads showed Jindal’s photograph next to a message stating “Wake Up

96. See Visweswaran, *supra* note 13, at 18. See also YEN LE ESPIRITU, ASIAN AMERICAN PANETHNICITY 125 (Sucheng Chan ed., 1992).

97. See *id.* at 18–19.

98. See Bonilla-Silva, *supra* note 18 and accompanying text.

99. See Harpalani, *supra* note 4, at 96 (noting high representation of South Asian Americans in certain skilled professions).

100. See *id.* at 96–97 (noting high representation of South Asian Americans in certain working class occupations).

101. See *id.* at 143–44 (noting underemployment among educated South Asian American professionals).

102. See *id.* at 138–42.

103. See *id.* at 138–42, 147–54.

104. See *id.*

105. See generally Bonilla-Silva, *supra* note 18.

106. See generally Diamond, *supra* note 7.

107. See generally Harpalani, *supra* note 4.

108. See Adam Nossiter, *Did Racism Beat Jindal?*, ASIAN WEEK (Dec. 5, 2003), <http://www.asianweek.com/2003/12/05/did-racism-beat-jindal/>.

Louisiana! Before it's too Late!”¹⁰⁹ It is particularly ironic and problematic that Jindal later responded to his lightened portrait by denying the significance of race.

Another South Asian American Republican Governor,¹¹⁰ also from a southern state, recently faced a controversy about racial identity. In 2011, South Carolina Governor Nikki Haley—born Nimrata Randhawa¹¹¹—was criticized by the South Carolina Democratic Party when it was disclosed that her race was listed as “White” on her 2001 voter registration.¹¹² South Carolina’s Democratic Party chair, Dick Harpootlian, stated that Haley’s racial self-identification did not matter, but claimed that Haley “calls herself a minority—when it suits her [but] . . . says she is white . . . [when] beneficial to her at the moment.”¹¹³ The state Democratic Party also questioned whether Haley’s inconsistent racial identification might render her ineligible to vote in South Carolina, based on the state’s restrictive voter identification bill, which she herself signed into law.¹¹⁴

Haley’s racial identity was also an issue one year earlier in her successful 2010 gubernatorial campaign. One of her Republican primary opponents, South Carolina State Senator Jake Knotts, referred to both Haley and President Barack Obama as “ragheads”¹¹⁵ in a stereotypic reference to turbans worn for various reasons on the Indian subcontinent and in the Middle East.¹¹⁶ This incident led to an apology to both Haley

109. *See id.*

110. It is ironic that the two most prominent South Asian American politicians in America, Louisiana Governor Bobby Jindal and South Carolina Governor Nikki Haley, are both conservative Republicans. South Asian Americans identify primarily with the Democratic Party. In a 2012 national representative survey of 3042 Asian Americans, which included 386 Asian Indians, fifty percent of Asian Indians identified as “Democrat,” while only three percent identified as “Republican,” and forty-seven percent identified as “Independent/Non-Partisan.” Karthik Ramakrishnan & Taeku Lee, *Public Opinion of a Growing Electorate: Asian Americans and Pacific Islanders in 2012*, NAT’L ASIAN AM. SURVEY 8, 30 (Oct. 8, 2012), available at <http://www.naasurvey.com/resources/Home/NAAS12-sep25-election.pdf>.

111. *See* VIJAY PRASHAD, UNCLE SWAMI 95–96 (2012).

112. *See* Siddhartha Mahanta, *Indian Nikki Haley Says She Is White*, MOTHER JONES (July 29, 2011, 3:30 PM), <http://www.motherjones.com/mojo/2011/07/indian-nikki-haley-says-she-is-white%20>.

113. *Id.*

114. *See id.*

115. *See* Brian Montopoli, *S.C. Lawmaker Refers to Obama and Nikki Haley as “Raghead”*, CBS NEWS (June 4, 2010, 11:13 AM) http://www.cbsnews.com/8301-503544_162-20006815-503544.html.

116. *See* PRASHAD, *supra* note 111, at 8 (noting the turban as one racial symbol that designates a Muslim terrorist). Ironically, in the early and mid-twentieth century, turbans allowed some African Americans to identify themselves as “Indian” and thus avoid Jim Crow laws to an extent. *See* 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/2014/07/17/332380449/how-turbans-helped-some-blacks-go-incognito-in-the-jim-crow-era>. In this context, the turban was associated merely with being Indian or from the Orient, not with Islam or terrorism. *See generally id.*

and Obama from the South Carolina Republican Party.¹¹⁷

Both Jindal and Haley are out of step with the majority of Americans, and with South Asian Americans more specifically. Also, most South Asian Americans do not self-identify as White with respect to race or color. In a 1976 survey of 159 Indian immigrants, conducted during the census reclassification debate, Professors Hekmat Elkhaniyaly and Ralph Nicholas reported:

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.¹¹⁸

Data from the 1990 census suggests a greater degree of assimilation to the Black/White paradigm: 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.¹¹⁹ The greater acceptance of these two dominant racial categories might reflect changes in the structure of the South Asian American population, which, by 1990, included many more individuals who were born or raised in the United States. Nevertheless, most South Asian Americans still did not identify with these racial categories.

No data is available on the relationship between skin color and racial identification. One can reasonably speculate that skin color is one of many factors that play a role in self-identification by race, and also in the ascription of racial identity. However, many other historical and political factors, along with local racial dynamics, were more important in determining when and where South Asian Americans could be “White.”

117. See Monopoli, *supra* note 115.

118. Hekmat Elkhaniyaly & 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 USA: PROBLEMS AND PROSPECTS* 41–50 (Hekmat Elkhaniyaly & Ralph W. Nicholas eds., 1976).

119. Taz, *Sepia Mutiny Good for Mental Health*, *SEPIA MUTINY* (Nov. 1, 2006), http://sepiamutiny.com/blog/2006/11/01/sepia_mutiny_go/ [<http://perma.cc/T2S3-XDEY>].

III. OCCASIONALLY BLACK

While South Asian Americans are less frequently characterized as Black than as White, these experiences with Blackness are informative—not just about South Asian American racialization, but also about the social meaning of Blackness more generally. For South Asian Americans, the relationship between dark skin color and Blackness is more apparent than that between light skin and Whiteness—although, in both cases there are many other factors at play. Additionally, rather than legal claims or formal classifications of Whiteness, the most common experiences with Blackness are informal, situational ascriptions.¹²⁰ When South Asian Americans are characterized as Black, it is usually not by choice.

The most recent such ascription noted in media—described in the Introduction—occurred in February 2015 when police officers in Madison, Alabama severely beat and injured fifty-seven-year-old immigrant Sureshbhai Patel after a suspicious caller reported him to be “a skinny Black guy.”¹²¹ It is noteworthy that Alabama Governor Robert Bentley apologized to India’s government after this incident¹²²—a measure of contrition rarely taken towards Black American families and communities victimized by police brutality. The officer who beat Patel was arrested and tried twice for assault in federal court, with both trials resulting in deadlocked juries and mistrials.¹²³

There have been ascriptions of Blackness to South Asian Americans since the early twentieth century. Professor Ronald Takaki notes that, at times, early South Asian immigrants to the United States were called “niggers,”¹²⁴ and Professor Bandana Purkayastha describes how this racial

120. Professor Sucheta Mazumdar notes that in the racial prerequisite cases, South Asian Americans could have pursued citizenship by arguing they were Black rather than White, but none chose to pursue this route. Mazumdar, *supra* note 13, at 25. Professor Mazumdar attributes this to racism, but Professor Koshy argues it was a strategic decision because the legal definition of Whiteness provided more ground for argument. Koshy, *supra* note 13, at 291–92 (citing Haney López, *supra* note 38, at 51–52).

121. See Holley et al., *supra* note 9.

122. Elahe Izadi, *Alabama Governor Apologizes to Indian Government for Police Use of Force against Grandfather*, WASH. POST, Feb. 18, 2015, <http://www.washingtonpost.com/news/morning-mix/wp/2015/02/18/alabama-governor-apologizes-to-indian-government-for-police-use-of-force-against-grandfather/>.

123. Brian Lawson, *Madison Police officer Eric Parker still waiting for word on third civil rights trial*, WHNT NEWS (Dec. 22, 2015), <http://whnt.com/2015/12/22/madison-police-officer-eric-parker-still-waiting-for-word-on-third-civil-rights-trial/>. Federal prosecutors have stated that they intend to again try the officer “on the charge that he violated the civil rights of 57-year-old Sureshbhai Patel, by using excessive force while acting as a police officer.” *Id.*

124. RONALD TAKAKI, *STRANGERS FROM A DIFFERENT SHORE: A HISTORY OF ASIAN AMERICANS* 296 (1989).

epithet is still sometimes directed at South Asian Americans.¹²⁵ In 1965, President Lyndon B. Johnson cancelled the visits of Indian Prime Minister Lal Bahadur Shastri and Pakistani President Mohammed Ayub Khan after both South Asian leaders made statements opposing the Vietnam War. President Johnson, however, cited a different reason for the cancellations: “After all, what would Jim Eastland [the conservative senator from Mississippi] say if I brought those two niggers over here.”¹²⁶

All of these negative ascriptions of Blackness involved color in one sense: the South Asian American individuals were identified as non-White—probably owing in part to their average darker skin tone as compared to most White Americans. One cannot determine precisely from these incidents whether relatively dark-skinned South Asians are more likely to be labeled as Black than relatively light-skinned South Asians. But as the example with President Johnson shows, social and political context play a larger role in these ascriptions than skin color.

Another well-known incident involving ascription of Blackness onto a South Asian American occurred in 2006 and was partly attributed to skin color: the “macaca” incident. Virginia Senator George Allen was touted not only as a shoe-in for his Senatorial re-election that year, but also as a frontrunner for the 2008 Republican Presidential nomination.¹²⁷ That all changed when S.R. Sidarth, a twenty-year-old University of Virginia student and campaign volunteer for Allen’s Democratic opponent, Jim Webb, began to track and videotape Allen’s rallies across the state of Virginia. On August 11, 2006, at a rally in the rural town of Breaks, Virginia, Allen referred to Sidarth, who is a relatively dark-skinned Asian Indian American, as “macaca.”¹²⁸ In front of the entire crowd, where Sidarth was the only non-White person, Allen further stated to him, “[w]elcome to America and the real world of Virginia.”¹²⁹ Unlike President Johnson, however, Senator Allen had to deal with the presence and power of the internet. Sidarth caught the incident on videotape, and it

125. See BANDANA PURKAYASTHA, *NEGOTIATING ETHNICITY: SECOND-GENERATION SOUTH ASIAN AMERICANS TRAVERSE A TRANSNATIONAL WORLD* 29 (2005) (discussing the experience of a South Asian medical student who was called “nigger” as a child.).

126. Richard N. Goodwin, *President Lyndon Johnson: The War Within*, *NEW YORK TIMES MAGAZINE*, Aug. 21, 1988, at 34, 36, available at <http://www.nytimes.com/1988/08/21/magazine/president-lyndon-johnson-the-war-within.html?pagewanted=all>. [<http://perma.cc/H7L8-DP5T>].

127. Frank Rich, *The Year of ‘Macaca’*, *N.Y. TIMES*, Nov. 12, 2006, § 4, at 12, available at http://www.nytimes.com/2006/11/12/opinion/12rich.html?_r=0 [<http://perma.cc/94M4-J5TN>].

128. Tim Craig & Michael D. Shear, *Allen Quip Provokes Outrage, Apology*, *WASH. POST*, Aug. 15, 2006, at A01, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/08/14/AR2006081400589.html> [<http://perma.cc/3UMT-9ANR>].

129. *Id.*

went viral on YouTube. Media reported on the incident and learned that “macaca” referred to macaques—a species of monkey—and was an anti-Black racial epithet used in French-speaking countries.¹³⁰ Senator Allen repeatedly apologized for the comment, most notably on the television program, *Meet the Press*, where host Tim Russert asked him why he made those statements “towards a dark-skinned American.”¹³¹ Allen’s campaign soon crumbled, and he lost a very close election—decided by a mere seven thousand votes out of over 2.3 million.¹³²

Beyond the fact that S.R. Sidarth was identifiably non-White, it is hard to say if his skin color itself prompted Senator Allen to call him “macaca.” The local racial dynamics¹³³—the fact that Senator Allen made this remark to a rural, conservative predominantly White audience—may have played a larger role. However, there is little doubt that Sidarth’s relatively dark skin tone influenced media coverage and discussion of the incident. The relationship between racialization and skin color can be complicated. In the “macaca” incident, skin color had a secondary effect—on media discourse—even if Allen’s remark was not motivated directly by skin color.

There are other accounts of ascriptions of Blackness to South Asian Americans, which perhaps also involve skin color,¹³⁴—although, again, other situational factors play a role. Recent scholarship also focuses on South Asian Americans’ proactive identification with African Americans—

130. *The Un-American Senator*, L.A. TIMES, Aug. 21, 2006, at B10., available at <http://articles.latimes.com/2006/aug/21/opinion/ed-allen21> [<http://perma.cc/4JNQ-P6VK>]. Allen’s comments also suggest that the epithet denoted Siddarth as a foreigner. See text accompanying Craig & Shear, *supra* note 128.

131. *George Allen Claims He “Made Up” Macaca (Macaque)*, YOUTUBE (Sept. 17, 2006), <https://www.youtube.com/watch?v=wRfP3vj8G18> [<http://perma.cc/4SJP-BEVV>] (originally aired on *Meet the Press*, NBC).

132. *Where The Newspaper Stands*, DAILY PRESS, Nov. 10, 2006, available at http://articles.daily.press.com/2006-11-10/news/0611100140_1_recount-macaca-attorney-general-election [<http://perma.cc/4SJP-BEVV>]. Senator Allen’s loss also gave the Democrats a one seat majority in the Senate, shifting the balance of power. *Democrats Win Control of Senate*, NBC NEWS (Nov. 9, 2006, 3:12 AM), http://www.nbcnews.com/id/15620405/ns/politics/t/democrats-win-control-senate/#.Vhc0R_IvHbC. Also, because of this defeat, Allen decided not to run for President in 2008. See Tim Craig, *The ‘What If’ of Allen Haunts the GOP Race*, WASH. POST (Feb. 6, 2008), available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/02/05/AR2008020503237.html>.

133. See generally sources cited in *supra* note 17 for discussion of the impact of local racial dynamics.

134. See Henna Budhwani, *Race Relations on the Playground: White Nanny to South Asian Family*, HUFFINGTON POST (Aug. 20, 2013), available at http://www.huffingtonpost.com/henna-budhwani-phd-mp/relations-on-the-playground_b_3759039.html [<http://perma.cc/N4RH-LWRF>] (describing how onlooker at Wald Park in Vestavia Hills, Alabama described her children (both South Asian American) as “poor . . . biracial [with an] . . . unwed mother [who] is so lazy” when the children were with their White nanny).

particularly for youth who are interested in hip hop culture and emulate media images of Blackness.¹³⁵ In a sense, one can view this phenomenon as a partial *claim* to Blackness, albeit an informal rather than a formal or legal one. Additionally, in *Bengali Harlem*, Professor Vivek Bald describes how South Asian male immigrants in the early twentieth century—particularly Bengali peddlers—married African American women and became immersed in Black communities across the country.¹³⁶ Of course, one reason for this phenomenon is that these may have been denied access to White communities.¹³⁷ In any case, the role of color in these instances was probably similar to the ascriptions described earlier: if South Asian immigrants lacked access to White communities, it was probably because their appearance—and especially their skin color—marked them as non-White.¹³⁸

One recent instance has been different as it involved a South Asian American made a claim to Blackness and identified himself (falsely) as Black—partly based on his skin color. Vijay Chokal-Ingam, brother of South Asian American actress and comedian Mindy Kaling,¹³⁹ reported that in 1999, he pretended to be Black on his medical school applications, in an attempt to benefit from affirmative action.¹⁴⁰ On his website, www.almostblack.com,¹⁴¹ Chokal-Ingam reports that his “skin is naturally

135. See NITASHA TAMAR SHARMA, HIP HOP DESIS: SOUTH ASIAN AMERICANS, BLACKNESS, AND GLOBAL RACE CONSCIOUSNESS 99, 105 (2010) (discussing South Asian American hip hop, Blackness, and race consciousness). Most recently, in the wake of the Sureshbhai Patel beating and recent publicized incidents of police violence against African Americans, some South Asian American activists have begun family and community conversations about race—particularly about the “Black Lives Matter” movement. See API Resistance, *Bringing it Home: South Asians Talking To Our Parents About Sureshbhai Patel, Police Brutality, And Black Lives Matter*, AEROGRAM (Nov. 25, 2015), available at <http://theaerogram.com/bringing-home-south-asians-talking-parents-sureshbhai-patel-police-brutality-black-lives-matter/>; Sameer Rao, *READ: When South Asian-American Activists Talk ‘Black Lives Matter’ With Their Parents*, COLORLINES (Dec. 2, 2015), available at <https://www.colorlines.com/articles/read-when-south-asian-american-activists-talk-black-lives-matter-their-parents>.

136. BALD, *supra* note 49, at 75–77. Most of the marriages and relationships discussed by Professor Bald were in New York or other cities in the Eastern half of the U.S. See *id.* at 7 (noting that Bengali peddlers settled “in working-class neighborhoods from New York to Baltimore to Detroit . . . many married local women here . . . [.]”).

137. *Id.* But see Misra, *supra* note 116 (noting that some African Americans were able to circumvent Jim Crow laws by wearing turbans and posing as South Asian immigrants).

138. See also Harpalani, *supra* note 4, at 167.

139. Mindy Kaling, *supra* note 19. Kaling is best known for the show, *The Mindy Project*. *Id.*

140. Vijay Chokal-Ingam, *Documentation and Proof*, ALMOST BLACK, <http://almostblack.com/documentation-for-almost-black/> [<http://perma.cc/Q7PC-F3BM>] [hereinafter *Documentation*].

141. Vijay Chokal-Ingam, *The True Story Of An Indian American Who Got Into Medical School Pretending To Be An Indian American*, ALMOST BLACK, <http://almostblack.com> [<http://perma.cc/CYA5-CYD6>] [hereinafter *True Story*].

dark,”¹⁴² and that he “shaved [his] head” and “trimmed [his] long Indian eyelashes,” all in an effort to appear Black.¹⁴³ Besides relying on his relatively dark skin and noted changes in his appearance, Chokal-Ingam reported that on his applications, he listed his race as Black or African American,¹⁴⁴ used his middle name, JoJo, as his first name,¹⁴⁵ highlighted the time he and his family spent in Africa before moving to the United States,¹⁴⁶ and listed his membership in the Organization of Black Students at his undergraduate institution—the University of Chicago.¹⁴⁷

Chokal-Ingam applied to twenty-two medical schools and was accepted to one,¹⁴⁸ contending that he was accepted because he “said [he] was Black.”¹⁴⁹ This statement is misleading: although his website states that the Indian American applicant (“Vijay”) was rejected and the African American applicant (“JoJo”) was accepted, Chokal-Ingam only applied to medical school once as “JoJo.” He never applied to medical school as an Indian American and, thus, was never rejected as such.¹⁵⁰ The medical school that accepted Chokal-Ingam, Saint Louis University, contends that race played no role in his admission.¹⁵¹ Moreover, although Chokal-Ingam

142. Vijay Chokal-Ingam, *FAQ*, ALMOST BLACK, <http://almostblack.com/faq> [<http://perma.cc/CK46-W9D5>] [hereinafter *FAQ*].

143. Chokal-Ingam, *True Story*, *supra* note 141.

144. *Id.*

145. *Id.*

146. Nguyen, *supra* note 20.

147. Chokal-Ingam, *Documentation*, *supra* note 140.

148. *Id.*

149. Chokal-Ingam, *True Story*, *supra* note 141.

150. Relatedly, on his website, Chokal-Ingam claims that many Indian Americans, White Americans, and others are rejected from medical school because of affirmative action. *See id.* This is also misleading. *See Gratz v. Bollinger*, 539 U.S. 244, 303 (2003) (Ginsburg, J., dissenting) (citing to Goodwin Liu, *The Causation Fallacy: Bakke and the Basic Arithmetic of Selective Admissions*, 100 MICH L. REV. 1045, 1049 (2002) (“In any admissions process where applicants greatly outnumber admittees, and where white applicants greatly outnumber minority applicants, substantial preferences for minority applicants will not significantly diminish the odds of admission facing white applicants.”))

151. *See* Brennan Williams, *Mindy Kaling’s Brother Admits He Pretended To Be Black So He Could Get Into Medical School*, HUFFINGTON POST (Apr. 6, 2015, 5:52 PM), http://www.huffingtonpost.com/2015/04/06/mindy-kaling-brother-posing-black-man-medical-school_n_7011720.html. Moreover, even if Saint Louis University School of Medicine believed that Chokal-Ingam was Black, and even if that played a role in his admission, there would be nothing novel or surprising. It is well established that institutions of higher education, including medical schools, use race as an admissions factor, to the benefit of groups who are underrepresented at such institutions. Over the past forty years, the United States Supreme Court has on three occasions ruled that this is constitutional. *See Regents of the University of California v. Bakke*, 438 U.S. 265 (1978) (holding that race can be a “plus” factor in university admissions to achieve student body diversity); *Grutter v. Bollinger*, 539 U.S. 306 (2003) (holding that race can be a “plus” factor in university admissions to achieve student body diversity so long as it is applied in a flexible manner on an individualized basis); *Fisher v. Texas (I)*, 133 S. Ct. 2411 (2013) (affirming that race can be used as a “plus” factor in university admissions, if a university can demonstrate that it needs to use race to achieve student body diversity). However, the Court will

speculates that some medical schools may have doubted that he was Black and rejected him on that basis,¹⁵² there is no way to verify that claim.¹⁵³

In any case, the issue of interest here is the relationship between Chokal-Ingam's appearance—specifically his skin color—and his racial characterization. He reports that, when posing as Black, “[c]ops harassed me [and] . . . [s]tore clerks accused me of shoplifting.”¹⁵⁴ However, Chokal-Ingam's skin color did not change when he began presenting himself as “Black.” If these incidents of racial profiling occurred more frequently when Chokal-Ingam was “Black,” they were probably due to other visual or behavior cues that triggered racial stereotypes.¹⁵⁵ Unlike Abba Dolla, who in 1910 was deemed “White” largely because of his light skin,¹⁵⁶ Chokal-Ingam's Blackness seemed to be contingent on features other than skin color—his relatively dark skin may have been helpful or even necessary for him to feign a Black identity, but it was not sufficient.

once again consider the issue in its October 2015 term. *Fisher v. Texas* (II), 758 F.3d 633 (5th Cir. 2014), *cert. granted*, 83 USLW 3921 (U.S. June 29, 2015) (No. 14–981).

152. See Chokal-Ingam, *True Story*, *supra* note 141.

153. Chokal-Ingam is not the first South Asian American to claim to be Black on medical school applications. Rommel Nobay, a Princeton graduate whose ancestors were from Goa, India, claimed he was Black on his medical school applications. See Christine Hanley, *Student Who Lied Sues For Privacy Invasion—He's Upset Princeton Revealed His Deceitfulness*, SEATTLE TIMES (Apr. 16, 1998), <http://community.seattletimes.nwsourc.com/archive/?date=19980416&slug=2745515>. Nobay was accepted to several medical schools, but the acceptance offers were withdrawn after Princeton notified the medical schools of several discrepancies in his applications. *Id.*

Others have also made false claims of being Black. Professor Ian Ayres of Yale Law recounts that as a high school junior in 1975, he indicated on his PSAT/NMSQT that he wanted to be considered for a national scholarship program for outstanding Black students. See <http://acadiumscholar.org/about-ian-ayres/>. Professor Ayres later wrote an article for his high school newspaper clarifying his racial identity, which he submitted with his college applications to insure that schools were not misled. See Ian Ayres, *Black Like Me*, available http://acadiumscholar.org/wp-content/uploads/2013/11/Black_Like_Me_small.pdf. It is interesting to note that like Chokal-Ingam, Ayres initially opposed race-conscious affirmative action, but he later revised his stance to one of qualified support. See *About Ian Ayres*, <http://acadiumscholar.org/about-ian-ayres/>.

Recently, Rachel Dolezal, former President of the NAACP chapter in Spokane, Washington, claimed to be Black even though both of her biological parents identify as White. See Charles M. Blow, *The Delusions of Rachel Dolezal*, N.Y. TIMES (June 17, 2015), <http://www.nytimes.com/2015/06/18/opinion/charles-blow-the-delusions-of-dolezal.html>. Ms. Dolezal apparently even took measures to darken her complexion. *Id.* This incident briefly “sparked a national conversation about how race is constructed and enforced, to what extent it is cultural and experiential, and whether it is mutable and adoptable.” *Id.*

154. See Chokal-Ingam, *True Story*, *supra* note 141.

155. See *id.* for other visual and behavior cues, such as Chokal-Ingam's shaved head, that may have signaled his Blackness in these situations.

156. See *supra* note 47, at 50–51 and accompanying text.

IV. DOWN WITH BROWN

Brown is another color-designated identity claimed by South Asian Americans—particularly those who are younger and more politically progressive.¹⁵⁷ Although Professor Vijay Prashad’s groundbreaking book, *The Karma of Brown Folk*¹⁵⁸—modeled after W.E.B. Du Bois’s classic, *The Souls of Black Folk*¹⁵⁹—analyzes a variety of dilemmas that South Asian Americans face in defining their identities. Unlike Black or White, Brown has not been a formal racial category in the United States, and it is less common as an informal racial designation than either Black or White. Also, Brown is used to refer not only to South Asian Americans, but also to Latina/os,¹⁶⁰ and at times to African Americans.¹⁶¹ For South Asian Americans, claiming Brownness allows them to establish a separate racial identity for themselves—one that is independent of White and Black Americans, but parallels those groups by employing a color-designated identity. Alternatively, Brown can also imply a connection between South Asian Americans and other people of color in a show of solidarity.¹⁶² The term “coconut”—brown on the outside, white on the inside—is also used as an epithet against South Asian Americans¹⁶³ and Latina/os¹⁶⁴—typically by other members of their group who perceive the “coconuts” as assimilated and divorced from their cultural heritage.

Skin color does not appear to play a major role for South Asian Americans claiming a Brown identity. It is possible that darker-skinned South Asians are more likely to self-identify as Brown, but that color

157. See generally PRASHAD, *supra* note 10. Ironically, in the 1923 *Thind* case, the United States Supreme Court referenced the “brown Hindu.” 261 U.S. at 209.

158. See PRASHAD, *supra* note 10.

159. DU BOIS, *supra* note 1.

160. See Brown People, <http://www.brownpeople.org/>; Linda Martín-Alcoff, *Latinos and the Categories of Race*, LINDA MARTIN-ALCOFF, <http://www.alcoff.com/content/chap10latrace.html>. As another aspect of our racial ambiguity, South Asian Americans can also be confused for Latina/os. See Harpalani, *supra* note 12, at 71–72 (noting instances of being confused for Puerto Rican and Mexican). This confusion is augmented by the fact that there are some South Asians with last names such as DeCruz and Fernandez which are associated with Latina/os.

161. This is particularly true when referring to skin color rather than race: for example, with a term such as “brown-skinned.”

162. See PRASHAD, *supra* note 10.

163. Maher Hoque, *A Former Coconut’s Guide to Getting Cultured*, SAPNA MAGAZINE, Sept. 28, 2007, <http://web.archive.org/web/20070928122337/http://www.sapnamagazine.com/Fall06/articles/culture/f06-coconut.html>.

164. See Cristopher Rubio, *Brown on the outside, white on the inside*, BEING LATINO (Sept. 22, 2011), <http://www.beinglatino.us/cultura/brown-on-the-outside-white-on-the-inside/>.

designation does not have social meanings that are as known, salient, and established as the social meanings of Black and White.¹⁶⁵

There are also other ways in which South Asian Americans have been racialized. While these can involve skin color, they often relate to other racialized symbols, which are often religious in nature. Early twentieth-century American newspapers referred to Indian immigrants as “hated Hindoos” even though many of those immigrants were Sikh or Muslim.¹⁶⁶ In the 1980s, the “Dotbusters,” a Jersey City, New Jersey gang, targeted the local Indian-American community, committing several violent hate crimes, including the murder of recent immigrant Navroze Mody.¹⁶⁷ The term “dotbuster” derives from the *bindi*—the red dot many South Asian women wear on their foreheads as a sign of fidelity.¹⁶⁸ Local racial dynamics also play a large role in this racial animus: it is no coincidence that the “Dotbusters” formed in Jersey City, New Jersey, which has a relatively large South Asian population compared to most cities in the U.S.¹⁶⁹

Also, since the September 11, 2001 attacks, South Asian and Arab Americans have been jointly racialized as alleged terrorists.¹⁷⁰ This occurs

165. Of course, this may differ in South Asia and in South Asian diasporic communities where lighter skin is often valued and any connotation of darker skin can be viewed negatively. See SHADES OF DIFFERENCE, *supra* note 3, at 176 (noting that South Asian communities around the world are “the largest market for skin lighteners”). See also generally Radhika Parameswaran & Kavitha Cardoza, *Melanin on the Margins: Advertising and the Cultural Politics of Fair/Light/White Beauty in India*, 11 JOURNALISM & COMM. MONOGRAPHS 213 (2009); Shilpi Bhattacharya, *The Desire for Whiteness: Can Law and Economics Explain It?*, 2 COLUM. J. RACE & L. 117 (2012); Trina Jones, *The Significance of Skin Color in Asian and Asian-American Communities: Initial Reflections*, 3 UC IRVINE L. REV. 1105 (2013). Recently, Indian female tennis player Sania Mirza, who won the 2015 Wimbledon women’s doubles title with Martina Hingis, noted she was discouraged from playing tennis because her family thought she would become darker by spending too much time in the sun. See Ben Rothenberg, *Martina Hingis Returns to Top of Wimbledon, With Help From a Breakthrough*, N.Y. TIMES, July 12, 2015, at SP2, available at <http://www.nytimes.com/2015/07/12/sports/tennis/at-wimbledon-martina-hingis-and-sania-mirza-reach-the-top-from-disparate-paths.html>. There is also a Facebook page dedicated to eliminating colorism in India. See *Dark Is Beautiful*, FACEBOOK, <http://www.darkisbeautiful.in/>.

166. Harpalani, *supra* note 4, at 122–23, 158.

167. See Deborah N. Misir, *The Murder of Navroze Mody: Race, Violence, and the Search for Order*, 22 AMERASIA J. 55, 73 (1996).

168. See *id.* at 73.

169. See *id.* at 91 (noting that, in northern New Jersey, “Indians are no longer . . . anonymous or invisible”). See also Michael Marriott, *In Jersey City, Indians Protest Violence*, N.Y. TIMES (Oct. 12, 1987), <http://www.nytimes.com/1987/10/12/nyregion/in-jersey-city-indians-protest-violence.html?pagewanted=all> (quoting teenage boys from New Jersey as saying “it’s white people against the Hindus”).

170. Ironically, while they are jointly racialized as terrorists, unlike South Asian Americans, Arab Americans are formally classified as White. See Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity, 62 Fed. Reg. 58, 58,781, 789 (Oct. 30, 1997), available at

in part because of racialized symbols, such as the turban, which are common among both South Asians and Arabs generally, but worn for different reasons by different, specific religious and ethnic groups.¹⁷¹ In all of these cases, skin color plays a general role of marking racialized actors as non-White, but many other historical and political factors, along with the local environment, determine the specific manner in which the actors are racialized.

Other forms of religious racialization of South Asian Americans include their presumed association with morphed Hindu and Buddhist religious imagery and spiritual practices—most notably Western forms of yoga and meditation.¹⁷² These views are rooted in more benign assumptions,¹⁷³ but they are still oversimplified and stereotypical. Racialization in this context goes beyond skin color and draws upon stereotypes of the East as exotic and mystical.¹⁷⁴

CONCLUSION: RACING COLOR

This essay has analyzed the relationship between race and color in the racialization of South Asian Americans. The analysis here illustrates that, whether South Asian Americans are racialized as White, Black, or Brown, skin color usually plays a limited role. It is certainly relevant, particularly when marking South Asian Americans as non-White, but other factors such as social mores, political considerations, and cultural stereotypes play a larger role in determining the specific racial characterization. Local racial dynamics often determine how all of these factors come into play in racialization processes. While individual skin color essentially remains constant across local settings—except for variations due to sunlight exposure or cosmetic modification—the social construction of race often varies with local contexts.¹⁷⁵

Beyond showing that race and color are distinct, there are other important lessons to be garnered from this analysis. Demonstrating that race and color are distinct illuminates the social construction of the race

<http://www.gpo.gov/fdsys/pkg/FR-1997-10-30/pdf/97-28653.pdf>; JOHN TEHRANIAN, *WHITEWASHED: AMERICA'S INVISIBLE MIDDLE-EASTERN MINORITY* 37 (2009); Harpalani, *supra* note 4, at 161–62.

171. *See supra* note 116 and accompanying text.

172. Harpalani, *supra* note 4, at 159–61.

173. Western views of yoga were not always so benign. See Philip Deslippe, *The American Yoga Scare of 1927: How Traveling Yogis Toppled the Oklahoma State Government*, S. ASIAN AMER. DIGITAL ARCHIVE (Sept. 10, 2015), <https://www.saada.org/tides/article/20150910-4457>.

174. *Id.*; *see also* PRASHAD, *supra* note 10.

175. *See* Harpalani, *supra* note 4, at 181 (noting “how . . . microclimates are important in understanding how . . . racial ambiguity . . . plays out in particular contexts.”).

and the different social meanings associated with various racial statuses. If race is more than just color, then it is important to understand the other factors that go into constructing race, including racial stereotypes and social and historical context. Young children first learn about race by associating it with color,¹⁷⁶ but as they get older, they learn stereotypes and social meanings associated with race.¹⁷⁷ Eventually, these stereotypes become more salient for children's understanding of race than the color associations they learned much earlier.¹⁷⁸ Teasing out the distinctions between color and race can also shed light on how children learn racial stereotypes and the social meanings associated with race.

Further, while this Essay has largely highlighted color as one aspect of defining race, color and colorism also merit consideration as separate phenomena.¹⁷⁹ Colorism is long standing and well documented in South Asia, where skin lightening products are popular.¹⁸⁰ Moreover, for South Asian Americans, colorism can intersect with American racism in complex fashion. For example, Professor Taunya Lovell Banks notes that in Title VII discrimination claims by South Asian plaintiffs, "cultural nuances are being missed by American courts" due to lack of expertise on the relationships between race, color, national origin, and religion in various South Asian communities.¹⁸¹ Also, when a South Asian American woman, Nina Davuluri, was recently named Miss America 2014, her selection elicited two distinct reactions. First, many members of the American public posted overtly racist comments that referred to Davuluri as "Arab," "foreigner," "terrorist," "member of Al-Qaeda," and "Miss 7-

176. Vinay Harpalani, Khalid A. Qadafi & Margaret Beale Spencer, *Doll Studies*, in *Encyclopedia of Race & Racism* 2e 67-69 (Patrick L. Mason ed., 2013) (noting how children learn positive and negative connotations associated with colors and link those to race).

177. See Vinay Harpalani, *Racial Stereotypes and Achievement-Linked Identity Formation during Adolescence: An Investigation of Athletic Investment and Academic Resilience* 20 (Aug. 2005) (unpublished Ph.D. dissertation, University of Pennsylvania) (on file with Van Pelt Library, University of Pennsylvania) (noting prevalence and salience of racial stereotypes—particularly of stereotypes of Black Americans related to intelligence and athletic abilities).

178. See Vinay Harpalani & Margaret Beale Spencer, *What Does "Acting White" Actually Mean?: Racial Identity, Adolescent Development, and Academic Achievement among Black Youth*, in *MINORITY STATUS, OPPOSITIONAL CULTURE, AND SCHOOLING* 222 (John U. Ogbu ed., 2008) (discussing various behaviors that adolescents can associate with race, including speaking in particular ways, listening to particular forms of music, and wearing particular hairstyles).

179. See sources cited *supra* note 3.

180. See *supra* note 165. Beyond the salience of colorism, race is socially constructed differently in South Asia than it is in the United States. See generally PETER ROBB, *THE CONCEPT OF RACE IN SOUTH ASIA* (1997).

181. Taunya Lovell Banks, *Colorism Among South Asians: Title VII and Skin Tone Discrimination*, 14 WASH. U. GLOBAL STUD. L. REV. 665 (2015).

11.”¹⁸² Conversely, South Asian commentators noted that Davuluri was too dark-skinned to be named Miss India.¹⁸³

This kind of intersection between racism and colorism can also affect the everyday lives of other groups, such as African Americans and Latina/os.¹⁸⁴ American public discourse, however, focuses much more on racism than on colorism—perhaps obscuring the latter. In fact, scholars have argued that emphasis on racism can mask colorism and its effects.¹⁸⁵

Finally, the analysis here, in conjunction with the Global Perspectives on Colorism conference (“Conference”) more generally, shows that racism, colorism, and their intersections remain important issues to address. Understanding how race and color are related, but also distinct, is a part of this process. Hopefully, the Conference will be the first in a series of many in-depth dialogues on these pertinent issues.¹⁸⁶

182. 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/ryanhatethis/alot-of-people-are-very-upset-that-an-indian-american-woman>; Samhita Mukhopadhyay, *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>.

183. 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.

184. See Leonard M. Baynes, *If It’s Not Black and White Anymore, Why Does Darkness Cast a Longer Discriminatory Shadow than Lightness? An Investigation and Analysis of the Color Hierarchy*, 75 DENV. U. L. REV. 131 (1997).

185. See Jennifer L. Hochschild & Vesla Weaver, *The Skin Color Paradox and the American Racial Order*, 86 SOC. FORCES 643 (2007).

186. Vinay Harpalani, *Beginning the Dialogue: Global Perspectives on Colorism*, Lex lata, lex ferenda (Apr. 17, 2015), <http://law.wustl.edu/harris/lexlata/?p=475>.