

LAW / HISTORY

Starting in the early 1900s, thousands of native Filipinos were conscripted as laborers in American West Coast agricultural fields and Alaska salmon canneries. There, they found themselves confined to exploitative low-wage jobs in racially segregated workplaces as well as subjected to vigilante violence and other forms of ethnic persecution. In time, though, Filipino workers formed political organizations and affiliated with labor unions to advance their struggles for class- and race-based social justice. *Union by Law* analyzes the broader social and legal history of Filipino American workers' rights-based aspirational struggles, culminating in the devastating landmark Supreme Court ruling of *Wards Cove Packing Co. v. Atonio* (1989). The authors' narrative history documents and analyzes the many ways that law was mobilized over several generations both to enforce and to challenge race, class, and gender hierarchy at work.

"This is a powerful book, covering a long history of labor mobilization in the face of a racialized labor regime and a frequently exclusionary and hostile legal system. It clearly shows the power of the law to support the claims of less powerful groups from time to time as it is mobilized by social justice advocates, as well as the inevitable slippage and failure of the law to accomplish these ends at other times. It expresses both despair and a resurgent hope that the institutions of American law and politics might live up to their ideals."

—SALLY ENGLE MERRY, *New York University*

"*Union by Law* is a tour de force, a product of an immense amount of research and knowledge. It carefully and artfully follows the political and legal experience of Filipino Americans from initial US colonization to union mobilization to Cold War-era violent struggle to the *Wards Cove* decision at the end of the 1980s. Throughout an illuminating and beautifully written historical narrative, the authors carefully delineate the ways in which law enveloped the lives of these immigrant laborers, both in confining and offering certain momentary opportunities. It is another terrific addition to the canon of these two leading scholars of the field."—PAUL FRYMER, *Princeton University*

"*Union by Law* offers a magisterial and inspiring history of intergenerational and transnational struggle by Filipino migrants conscripted to work in the Alaska salmon canning industry. With rigor and care, the book examines the brutality of racial subordination, its ironclad linkage with worker exploitation, and the extent both rely on legalized forms of oppression. But from the margins, workers find the courage to reclaim power and rewrite the legal meaning of discrimination in a system of racial capitalism. That the system ultimately stymies the workers' boldest claims only underscores the necessity of their struggle. In this sense, it is a history that speaks with particular force to our current times."

—SCOTT CUMMINGS, *UCLA School of Law*

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Filipino American Labor Activists,
Rights Radicalism,
and Racial Capitalism

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with George I. Lovell

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We dedicate this book to the legacy of Silme Domingo and Gene Viernes, whose struggles for social justice have so inspired us and many others.

Rony 2003, xviii). We do not use the currently familiar construction Filipinx to overcome gender binaries for the same reason.

We also use the term *migrants* in two related ways. One meaning signals those persons who migrated from the Philippines or other nations to the United States. Many but not all migrants became immigrants who settled in America, and not all of the latter were naturalized as citizens. Another meaning of *migrant* refers to the migratory circuits of seasonal work that Asian American laborers traveled *within* the United States, mostly around the West Coast of North America but also more broadly around the Pacific Rim, including Hawaii and the Philippines. The two meanings are often concurrent and interrelated in many usages. We also recognize that many contemporary migrant workers are elite “astronauts” who hold multiple passports, travel the world comfortably, and benefit from the privileges of “flexible citizenship” (Ong 2006). But the focus of our study is low-wage migrant workers.

INTRODUCTION

The salmon industry as described by this record takes us back to a kind of overt and institutionalized discrimination we have not dealt with in years: a total residential and work environment organized on principles of racial stratification and segregation, which, as Justice Stevens points out, resembles a plantation economy. . . . This industry long has been characterized by a taste for discrimination of the old-fashioned sort: a preference for hiring nonwhites to fill its lowest level positions, on the condition that they stay there. The majority’s legal rulings essentially *immunize* these practices from attack under a Title VII disparate impact analysis. . . . One wonders whether the majority still believes that race discrimination—or, more accurately, race discrimination against nonwhites—is a problem in our society, or even *remembers* that it ever was.—JUSTICE HARRY BLACKMUN, dissenting in *Wards Cove Packing Co. v. Atonio*, 1989 (italics added for emphasis)

Justice Harry Blackmun’s strident dissenting opinion (quoted above) underscored the deep divisions among the US Supreme Court Justices in *Wards Cove v. Atonio* (1989), a class action civil rights case initiated by Filipino American and Native plaintiffs against an Alaska salmon cannery during the mid-1970s. A five-justice majority led by Justice Byron R. White rejected the claims by workers of color regarding pervasive invidious racial discrimination in the cannery and, in the process, issued a landmark ruling that significantly increased the obstacles for all plaintiffs seeking judicial remedies for institu-

tionalized racism and sexism. Blackmun and his fellow dissenters charged the White majority with ignoring both key factual evidence presented by the plaintiffs and important legal precedents that had made the 1964 Civil Rights Act a potent resource for aggrieved nonwhite and female workers (Belton 2014; McCann 1994). The most provocative claim by Blackmun, however, turned on his speculation that the majority of justices failed to remember—or, perhaps, willfully ignored—not just legal precedents but a long, dark, continuing history of legally enforced racial and class domination in America. This allegation of legal forgetting and “immunization”¹ against challenge evokes the classic argument of scholar Robert Cover about the fundamental ways that official law kills off challenges to status quo legal hierarchies and systematically diverts attention from its violence, thus erasing both legal rights claims and their authoritative rejection (Cover 1984; Charles W. Mills 2017). Indeed, a later chapter (chap. 6) will elaborate on how Justice White’s majority opinion relied on fanciful hypothetical scenarios, legal abstractions, elevation of procedural over substantive justice, and racial stereotypes to discount the material facts of institutionalized practice that long had exploited minority workers.

That erasure has been compounded by mainstream legal scholars who routinely, if unwittingly, validate as binding law the majority ruling that systematically privileged white business interests without acknowledging the many decades of abuse that led racialized working-class plaintiffs to file the lawsuit in the first place (Brigham 1991). The Supreme Court’s emphatic authorization of racial and class hierarchy at work as well as its embrace of neoliberal economic rationalization was so routine that it generated only modest critical commentary in the mainstream mass media and, then, in scholarly publications (Lovell, McCann, and Taylor 2016). Meanwhile, scholars who routinely characterize litigation by social movements as a “hollow hope” have further normalized the outcome as an episode of misdirected energies by litigants, thus discouraging efforts to explore seriously the activists’ goals and strategic actions (Rosenberg 1991, 2009). In the process, a history of struggles for egalitarian rights and global justice by minority and female workers over the previous two decades, and more generally for over hundreds of years, has been nearly expunged by the conventions of official legal knowledge. A willful posture of “racial innocence,” as James Baldwin (1963; see also Charles W. Mills 2017; Murakawa and Beckett 2010; Pierce 2012; Taylor 2015) labeled white America’s endemic cultural “crime,” infused the highest law in the land.

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The study that follows is the first effort to situate the infamous Wards Cove case in the broader social and legal history of racialized workers’ struggles for social justice that culminated in the lawsuit. Organized as a chronological narrative that spans most of the twentieth century, the account begins with the bloody US invasion of the Philippines and the extension of oppressive colonial rule at the dawn of the twentieth century. The chronicle then follows the migration of proletarianized² Filipino workers to the US metropole where they worked seasonally as wage laborers in West Coast agricultural fields and the Alaskan salmon canneries, formed a series of unions to represent their interests, and struggled persistently for class, race, and gender-based social justice throughout the Cold War political contexts of national security state development and global empire building.

Official American law was repressive in three senses—first, in upholding systematic exploitation of Filipino workers’ productive labor and marginal racial status over many decades; second, in repressing the labor activists’ relentless political campaigns challenging capitalism, racism, and imperialism; and third, in the Wards Cove opinion continuing a long tradition of erasing those interrelated histories. As such, our analytical narrative is very much intended to be an act of recovery—a reclamation of a long legacy of racial capitalist domination over Filipinos and other low-wage or unpaid migrant workers; of noble aspirational struggles for human rights by the workers over several generations; and of the many ways that law was mobilized both to enforce and to challenge race, class, and gender hierarchy at work.

While organized in chronological terms, the historical account that we offer is shaped by an ambitious and complex set of interrelated premises and themes. We begin below by outlining our core substantive themes and then the analytical framework that informs the narrative.

The Core Thematic Threads of the Historical Narrative

The Contradictory Power of Law

Our narrative social history of Filipino migrant workers focuses analysis on the complex character and role of law. This should not be surprising, given the book’s title and our already stated aim of providing a long history of struggles for rights and social justice leading up to a landmark Supreme Court case. But our project takes legal analysis in unconventional directions. In short, our

interpretive history underlines in particular the profoundly contradictory role of law in mediating contentious power relations between proletarianized Filipino migrant workers and the imperial racial capitalist order.

On the one hand, we document that the great majority of Filipinos were subjugated by the American legal order from the very moment in 1898 when the United States invaded the Philippine islands. Soon after the military conquest that left a half million or more Filipinos dead, the US imposed a constitutional scheme that secured rule by local oligarchs and institutionalized obstacles that worked to thwart democratizing forces over the following century. Moreover, US-sponsored land reform legislation forced large numbers of former subsistence farmers and peasants into exploitative, low-wage labor in mass agricultural production for commodity export in global commercial markets. Those Filipinos who subsequently traveled to the US West Coast in search of work, economic opportunity, and citizenship—the promises of the American legal culture taught in US colonial schools— found themselves in proletarian conditions that paralleled the colonized homeland. Most importantly, they discovered that their status as conscripted colonial national subjects accorded them few basic rights and opportunities for legally secured freedom, relegating them to a marginal position shared with other low-wage, racialized workers in the metropole. Moreover, Filipino agricultural and salmon cannery workers were routinely subjected to racial violence by white citizens as well as the exploitative commodified work conditions of plantation capitalism insulated from the restraints of liberal legal governance. Their vulnerability and powerlessness were exacerbated by the everyday reality or threat of criminalization, deportation, and dispossession imposed by legal officials.

Carlos Bulosan, the renowned literary chronicler of the Filipino experience, captured in memorable terms the brutal, precarious reality of Filipinos in both the “external” and “internal” American colonies. Early in his most famous book, *America Is in the Heart*, he repeatedly compared his young life in the colonial Philippines—“my father fighting for his inherited land, my mother selling bagoong to the impoverished peasants”³—with his later “swift and dangerous life in America” (Bulosan 1973, 56–57). “I know deep in my heart that I am an exile in America,” wrote Bulosan in the early 1940s. “I feel like a criminal running away from a crime I did not commit. And this crime is that I am a Filipino in America” (San Juan Jr. 1995, 173). Bulosan vividly documented an America where a large and diverse underclass suffered from severe racial and class domination enforced, directly and indirectly, by official law:

America is not a land of one race or one class of men. We are all Americans that have toiled and suffered and known oppression and defeat, from the first Indian that offered peace to the last Filipino peapickers. . . . America is also the nameless foreigner, the homeless refugee, the hungry boy begging for a job and the black body dangling from a tree. (Bulosan 1973, xxiv)

Filipino colonial subjects slowly, unevenly began to gain formal standing as citizens, thus winning rights to claim and exercise rights in the American metropole by the late 1940s. The change in status reflected in large part shifts in domestic US political alliances as well as the exigencies of American strategic international economic and military policy between the world wars. But the grant of citizenship status to Filipinos did not mean the end of legally sanctioned marginalization of subaltern Filipinos at and beyond work. Overt racism and institutionalized racial discrimination continued as foundational forces in American society. In particular, the organization of seasonal agricultural and salmon cannery work for Filipino migrant laborers remained segregated and exploitative along racial as well as class lines. These workplace relationships and practices that treated workers as disposable commodities continued through the 1970s, when young labor activists filed their civil rights suits leading to the Wards Cove ruling. Moreover, two generations of left-oriented Filipino union activists were harassed, surveilled, and subjected to violence by corporate, state, and state-supported social actors for challenging traditional race, class, and gender hierarchies in domestic workplaces as well as US imperial policies abroad. In short, the Filipino labor activists at the center of our story experienced American law over most of the century as an integral element in a tangled web of systematic domination.

On the other hand, legal doctrines, institutions, and processes as well as general legal ideals of civil and human rights proved enticing and episodically empowering assets for Filipino workers. In the first generation, Filipinos were forced to negotiate with and through law when they could not elude its repressive force. They learned the political arts of “pragmatic resistance”—how to endure, evade, and even challenge criminal prosecution, deportation for violations of immigration law, restrictions on property ownership, prohibitions on racial intermixing in social and personal life, exclusion from political participation, and exploitation at work (Chua 2014; McCann and March 1996). Eventually, as our historical narrative demonstrates, the workers learned how to creatively invoke the promises of legal rights and to muster scarce resources in struggles to moderate the repressive, illiberal features

of the US socio-legal order. This understanding was again central to Bulosan's often-cited aspirational embrace of "America." The writer repeatedly trumpeted the unrealized dreams and promises of equal rights to freedom, social and economic security, and democratic political participation for all persons that many derived from foundational American legal texts. "America is in the hearts of men that died for freedom; it is also in the eyes of men that are building a new world" (Bulosan 1973, xxiii-xxiv).

Most important for our story, the cannery workers developed sophistication in mobilizing New Deal-era labor law to facilitate their organizing efforts, forming a union that survived for many decades, across a series of changes in name and affiliation, as an important resource for empowerment. The union organizations developed by cannery workers were notable not just for their democratic, antiracist, anti-imperial, and overtly socialist agendas but also for their highly legalistic internal processes and commitments to workers' rights. This included a high level of activity around workers' grievance arbitration and litigation, routine demands for democratic accountability within the union, and high-profile, often successful constitutional and statutory challenges waged in US courts against various injustices. Through their struggles the activists developed an "oppositional" legal consciousness (Mansbridge and Morris 2001) committed to a capacious, transformative vision of egalitarian rights that promised social justice and democratic empowerment to all persons.

The union mobilized law against new forms of state repression in the 1950s when many of the leftist leaders, including Bulosan, became targets of McCarthy-era purges. Undaunted, union leaders and activists responded with a variety of defiant actions, creative legal challenges, and novel articulations of rights claims. Activist workers were aided by prominent Left civil liberties attorneys, some of them allied with the International Longshoremen's and Warehousemen's Union (ILWU).⁴ The workers themselves took pride in their own legal knowledge. For example, the ILWU Local 37 1952 Yearbook, edited by Carlos Bulosan during a late-life stint as union employee, powerfully challenged how workers were "forced by restrictive law" into unjust subordinate positions even as they expressed their own commitments to aspirational legal ideals of "human rights and liberties" that merged "the fundamental principles of our union and the continuation of the democratic spirit in America" (ILWU Local 37, 1952, 1). The Yearbook clearly evidences that Bulosan's familiar appeal to "America" was far more radical than reverential, as he and his fellow activists persistently strategized "to rearticulate the liberal discourse of civil rights toward a socialist direction" (San Juan Jr. 1995, 12).

The contingencies of World War II and continued democratic rights advocacy brought a mix of increased integration for many patriotic Filipino Americans inclined toward assimilation and new forms of persecution for Filipino cannery workers allied with leftist unions, creating tensions among the immigrants that continued for the next half century. The legacy of radical rights struggle was reborn in the early 1970s with a new generation of young Filipino Americans who worked in the same canneries as their fathers had, and often along with them. These young militants mobilized newly enacted civil rights law as a resource for challenging racially segregated job opportunities and exploitative work conditions in the canneries. The activists creatively used lawsuits filed under Title VII of the 1964 Civil Rights Act—two of which won at trial and produced favorable damages awards—to generate support from rank-and-file workers for ousting and replacing the corrupt, undemocratic union leadership that assumed power in the aftermath of Cold War state purges. Many of the activists were also members of the KDP (Katipunan ng Demokratikong Pilipino [Union of Democratic Filipinos]), a grassroots leftist organization that allied with radical social movements in the Philippines to challenge US imperialism and to end support for authoritarian rulers around the globe, including especially President Ferdinand Marcos. For many of them, as for their muse Bulosan, demanding democratic rights was a critical part of truly "revolutionary" socialist praxis (Toribio 1998). The historical legacy of initiating legal action to catalyze and leverage democratic socialist organizing proved invaluable in subsequent years. After two young leaders, Silme Domingo and Gene Viernes, were murdered in the Seattle union office in 1981, surviving activists generated widespread national and international support to win retributive justice. Suspecting that the murders were part of a broader conspiracy, the activists raised money to finance a civil lawsuit against Ferdinand Marcos, eventually demonstrating in federal court the details of a plot involving local thugs, the corrupt union boss, Marcos, and complicit US officials.

The activists' different campaigns culminated in a remarkable historical convergence of three important events in 1989: (1) Marcos fell from power in 1986 and died three years later; (2) the long developing civil trial exposed the nefarious domestic operations of both US and Philippine intelligence agencies supporting Marcos that were implicated in the murders of the two young Filipino American activists; and (3) the US Supreme Court issued the devastating ruling in the third civil rights lawsuit filed against the canneries. In *Wards Cove Packing Co. v. Atonio* (1989), the court disregarded the evidence that

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workers of color had presented to demonstrate racial disparities—including segregated job assignments, promotion opportunities, sleeping quarters, and mess halls—and announced new evidentiary standards that made it nearly impossible for workers of color to prove invidious discrimination at the canneries. As noted in our opening lines, the ruling erased precedents of principle along with historical social facts, and it reconstructed official law in ways that virtually killed the potential for future collective worker challenges to institutional racism and sexism in the workplace. The activists quickly began to mobilize as part of a new national coalition to pass legislation reversing the judicial retrenchment. However, the resulting 1991 Civil Rights Act fell short of reviving key elements of the disparate impact doctrine essential to class actions challenging systemic discrimination at work. The last decades of the century underlined the mix of legally imposed tragedy and periodic triumph that marked the entire history of Filipino labor activist radical egalitarian struggles for civil rights, democratic reform, and social justice.

The ambiguous preposition—*by*—connecting *union* with *law* in this book's title intentionally suggests the contradictory character of law. Perhaps most important, the identities, status, and standing of Filipino workers were constructed in important ways by the official legal system. The dominant order divided between white American capitalist privilege and racialized low-wage, largely nonwhite, subaltern laborers—and their various titles as colonial nationals, immigrants, migrant workers, criminals, communists, subversives, citizens, and the like—has been constructed and enforced, as Ian Haney-López has aptly put it, “by law” (Haney-López 1997; Gomez 2012). At the same time, the Filipino activists organized themselves by, or through, invoking and exploiting the contradictory logics of liberal law to defend themselves. They developed organizational forms (e.g., union constitution, collective bargaining, 501(c)(3) status, etc.) in accordance with law, mobilized legal claims and resources to advance their interests, and struggled to change many laws in the process. But they also knew that their aspirations as defiant subaltern radicals were often beyond, outside of—so “by” as in “besides” or “apart from”—and opposed to the narrowly individualistic legal principles privileging market relations and racial hierarchy over democratic principles that were generally enforced by US legal officials. One of the most distinctive features of the labor activists was their appeal to the socioeconomic promises of universal human rights to challenge narrow liberal constructions of rights and undemocratic capitalist traditions that have defined US politics and law from the earliest days. In other words, the activists were routinely subjected to the constraints

of official law, framed their aspirational claims by pushing the boundaries of authorized liberal law, and yet also imagined and acted on radical possibilities of rights and justice well outside of the borders of official American law. Filipino labor activism was thoroughly constituted, at many levels, by law.

The Multiple Dimensions of Historical Union

Another key substantive theme is expressed by our book title's evocative reference to legal *union*, or more accurately, a tangle of very different types of interrelated unions. The first, broadest, but still conventional referent is to our study of legally constituted unions at the nation-state level. This includes attention to the evolving American constitutional state committed to “a more perfect union” of its people as well the constitutional order that structured governance of the Philippines from the colonial era through its development as a semi-independent client state during the twentieth century. Our narrative underlines in particular how shifting currents in the American legal system structured the political constraints and opportunities experienced by Filipino workers in the racial capitalist metropole, which were reshaped in turn by the workers' collective struggles, both successful and unsuccessful.

A closely related dimension of such attention concerns the tenuous international union forged between US and Philippine polities throughout the twentieth century, from the periods of reluctant but repressive US colonial rule to its role as imperial patron propping up the Philippine client state in the global capitalist order. That imposition of imperial power was, again, crafted in large part through law—by constitutional legal principles institutionalized by US rulers, by contractual and commercial relations forged among public and private actors, and by a long line of legislation and treaties that structured the evolution into an interdependent bond between the two political economies. “The U.S. did what empires do: expanded the jurisdiction of the state to draw different territories, peoples, and cultures within its reach and then developed legal and political mechanisms for managing difference within its sovereign borders” (Altman 2013, 544). This hierarchical international relationship dramatically shaped Philippine political, social, and cultural history until the present, but it also substantially inflected the particular character and practices of American state development from settler nation to imperial global power (Frymer 2017; Kramer 2006). Relations with the Philippines, after all, were critical to development of American military and commercial power in the Pacific from World War I to the present. Moreover, decades of

US collaboration with Philippine elites to quash democratic rebels generated experimentation with many practices—secret surveillance and information gathering, use of rumors and lies to divide the opposition, guerilla jungle warfare, classic torture techniques—that became central to US repression of domestic subversives (including Filipino labor activists) during the Cold War and foreign enemies in hot wars abroad in Korea, Vietnam, Central America, Iraq, and Afghanistan (see McCoy 2009). In sum, our attention to these complex unions between the United States and the Philippines is critical to our account about the development of the contemporary American global empire.

By contrast, the most specific and obvious referent of legal union in our narrative is the labor associations representing cannery workers that evolved from the late 1920s through numerous changes in organizational form and affiliation and eventually becoming ILWU Local 37 in the 1950s. Our historical narrative explores the political development of these many union organizations amid the context of changing national laws and legal practices regulating labor organizing, workplace relations, and civil rights. We underline that the labor unions from the start were very much civil rights organizations that both conferred legal standing to noncitizen migrant workers in the first generation and provided organizational, financial, and solidaristic resources to support their continuing struggles for substantive rights causes, political transformation, and material empowerment through the contemporary period.

Moreover, the Filipino cannery workers' union on which we focus from the start struggled to form political alliances with other Asian, Native Alaskan, African American, Mexican, and white workers—including minority ethnic and, eventually in the second generation, white women (Ruiz 1987)—who also labored in low-wage, physically demanding jobs. The potential challenges posed by these multiracial, class-based unions greatly amplified the anxieties experienced by corporate employers and white Americans generally. Labor union organizing efforts forged connections of other sorts as well. Indeed, the migrant workers at the center of our story were engaged in a complex, ever expanding series of alliances with many other types of political actors, from the archipelago of Filipino American communities that developed across the West Coast to a host of political alliances with left-oriented activist groups, political advocacy organizations, and lawyers, including in the Philippines. The KDP, or Union of Democratic Filipinos, was a transpacific radical organization that proved especially influential on cannery activists in the 1970s and 1980s. Our narrative will demonstrate how rights-based activism was a

catalyst and a medium for a complex array of progressive, class-based, multi-racial, multi-issue, and anti-imperial transnational political networks—which harbingered what in later decades would be labeled “social movement unionism” (Engeman 2015; Rosenblum 2017; Turner and Hurd 2001)—in both the first and, especially, second generations of union activity.

Finally, we are especially interested in documenting and analyzing the aspirational visions, what we call the oppositional legal rights consciousness, that animated and united the leaders of the Filipino-led unions, union dissidents, and their political allies. This oppositional consciousness evolved during years of resistance against Spanish and then US colonial domination and eventually matured into a coherent social movement ideology through persistent struggles against manifold injustices in the racial capitalist order of the American metropole and the rule of strong-arm oligarchs in the homeland archipelago. The vision uniting the coalitions of activists at the heart of our narrative, we show, was fundamentally antiracist, anticapitalist, and anti-imperialist. Stated more affirmatively, the activists were united by commitments to racial inclusiveness, a democratically accountable socialist political economy, and a global order grounded in respect for human rights, including socioeconomic rights, of all persons. The union activists' pervasive faith in rights principles at once aimed for strategic “resonance” within dominant legal traditions and “radical” egalitarian transformation of the American and Philippine social orders (Ferree 2003).

Law and Legal Mobilization in the Racial Capitalist Order

Legal Mobilization Theory

This book chronicles the long history of select persons, institutional relations, and political struggles leading up to a single, narrowly divided but highly significant 1989 Supreme Court ruling on workplace civil rights. Yet our study also builds on and aims to develop in new ways a rich tradition of sociolegal analysis regarding how law works to shape political contestation practices within ostensibly liberal constitutional regimes. That framework is conventionally known among scholars as “legal mobilization” theory (McCann 1994; Scheingold 1974; Lovell 2012; Cichowski 2007). In our concluding chapter we will develop at greater length the many generalizable analytical implications of our historical empirical study for academic legal mobilization analysis. We present in this introductory chapter just a basic, commonsense summary of

conceptual premises that we put to work in the construction of the historical narrative.

The classic definition of legal mobilization was provided long ago by Frances Kahn Zemans (1983, 700): "The law is . . . mobilized when a desire or want is translated into a demand as an assertion of rights" or other legal entitlement. Legal mobilization analysts tend to focus on how people think and behave when they make claims of legal entitlement and status, especially when claiming rights leads to disputes with other parties. One related topic of interest for some scholars is why people sometimes do and at other times do not act when their perceived rights are violated (Engel 2016; Merry 2003). At one level the approach envisions law as a strategic resource available for instrumental "use" by social actors to advance their interests and causes (Nader 1984–1985). Zemans characterizes legal mobilization as a form of "democratic participation." At the same time, later versions of the theory portray law as a constitutive force that structures first the institutional and ideological context of instrumental action and second the intersubjective cognitive maps of "legal consciousness" through which people imagine, aspire, calculate, and make sense of that institutional context in which they are embedded (Ewick and Silbey 1998; Lovell 2012; A.-M. Marshall 2016; McCann 1994). Thus, Zemans (1983, 697) writes, "perceptions of desires, wants, and interests are themselves strongly influenced by the nature and content of legal norms and evolving social definitions of the circumstances in which the law is appropriately invoked." From this perspective people are at once legal subjects constructed and restrained by law and to some limited degree also situated agents who contest and reshape legal meaning in practical interaction.

Much sociolegal research focuses on legal mobilization by individuals, but other scholars focus on mobilization by groups or movements to effect broad social change, what Scheingold (1974) called the "politics of rights." This book fits the latter group-based approach. Virtually all scholars in this tradition follow Scheingold in underlining that litigation alone rarely achieves substantial social change and that legal mobilization need not even involve filing lawsuits, much less going to court. Rather, most scholars recognize that rights advocacy takes place in many sites and through many forms of action across state and society. Rights-based social movement advocacy commonly engages conventional and social media advocacy, demonstrations, protests, electoral campaigns, and other political maneuvers both with and without litigation in the mix.

The constructivist analytical framework adopted by most scholars of

group-based legal mobilization recognizes that legal norms, practices, and discourses are—like all language practices (Pitkin 1972)—relatively indeterminate, polyvalent, malleable, and contestable. Law by its very nature is manifest in social conventions that are variously constructed and disputed over time in different terrains of society, state, and beyond. In some times and places, the possibilities of creative legal construction and contestation by ordinary individuals and subaltern groups are relatively open. Generally, though, official law enforced by nation-states is highly constrained by the inherited structures and ongoing actions of dominant social, economic, and political actors. In most historical moments, legal representatives of those groups with the greatest social, economic, and political power severely delimit the range of acceptable constructions and enforcement of legal meanings generally to sustain the status quo and dismiss or "kill" off the rival claims and visions of other groups (Cover 1984). In Marc Galanter's (1974) famous terms, the "haves" tend to come out ahead in routine legal interaction and mobilization practice. The variable degrees of openness to and constraints on contestation define the dynamically paradoxical character of law's hegemonic power in practice (McCann 2014b).

But official law does not kill off rivals only symbolically or epistemically. Rather, our version of legal mobilization underlines that law's words authorize physical coercion and violence by both state and social actors (Cover 1986). Law "plays a critical cultural role in defining meanings and relationships, but it does so in the context of state power and violence," argues Sally Engle Merry (2000, 17); "the power of law to transform sociocultural systems is two-sided: it depends both on the direct imposition of sanctions, and on the production of cultural meanings in an authoritative arena." While legal meaning construction permits a wide range of discursive possibilities among contending groups, the exercise of law's violence to enforce official meanings tends to reduce significantly the repertoire of defiant actions realistically available to those aspiring to challenge or change official law. This capacity to exercise institutionalized power in the form of physical coercion and material incentives or penalties is manifest in both domestic national and international spheres and in our story through forms of both colonial and postcolonial rule.

The recognition of the unequal power relations in which legal conventions are contested and selectively enforced has led most legal mobilization theorists to emphasize analysis of the contingent features of social and political contexts in which legal disputing occurs. While the focus of legal mobiliza-

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tion theory on disputing underlines agency and instrumental contestation among actors, attention to structural factors of institutional and ideological power (McCann 2007, 2013) is considered essential to how we understand and assess how law works or matters. We follow earlier work in emphasizing that the configurations of power relations affecting legal mobilization by marginalized or subaltern groups, who are our focus, differ according to two types of factors.

One set of factors is often referred to as components of shifting opportunity structures, which refers to the relative vulnerability or stability of the overall hierarchical power structure. The key factor is the degree to which inherited structural arrangements are open or closed to challenge and change. Commonplace factors that increase vulnerability of dominant groups and their hold on official law include relative economic volatility or crisis, international military and diplomatic instability or war, rapid internal changes in population demographics or cultural trends, and emergencies of all types. When status quo hierarchical arrangements are especially vulnerable, dominant groups may find that their interests converge with those of traditionally less powerful groups and causes, thus leading the former to concede basic changes in legal arrangements (Bell 1980). But vulnerability and instability can also induce greater repression as well as openings for challenge. We will see both dynamics in the context of Filipino workers' struggles between the two World Wars and during the early and late Cold War periods.

The other key variables that affect possibilities for effective legal mobilization from below are often categorized as the unequally distributed organizational resources available to disputants. In our historical narrative, this includes especially Filipino-led unions and other union allies, solidaristic political advocacy coalitions, financial support, political elite support, and committed legal counsel (Epp 1998; McCann 1994). In the following study we will variously identify how such factors in the context of contestation by Filipino cannery workers and other subaltern groups matter greatly.

Law in Racial Capitalist Regimes: A Patchwork of Liberal and Illiberal Forms

Our study builds on but also complicates the tradition of legal mobilization analysis. Simply put, we reprise the focus on instrumental rights claiming by social movement activists aspiring to close the "gaps" between liberal egalitarian legal principles and those practices or policies that promote or permit

hierarchical social relations (Gould and Barclay 2012; Scheingold 1974). We go further, however, in underlining how the contradictory logic at the heart of liberal legality itself works both to institutionalize social arrangements and to construct variably subjects in ways that sustain radically asymmetrical social power relationships. Specifically, our analysis concentrates on the historical development of American law as inextricably, continuously, if variably constitutive—both producer and product—of hierarchical institutional and ideological structures that we, following others, call racial capitalism (Kelley 2017; Melamed 2011; Robinson 2000). This line of analysis recognizes that law in liberal capitalist orders from the start was committed above all to securing protection for unequally owned private property, exchange-based contractual relationships, and commodified differentiation of value regarding both human and nonhuman resources (E. P. Thompson 1975; Goldwin and Schambra 1982; Melamed 2011). The "protection of different and unequal faculties of acquiring property" is the "first object of government," James Madison ([1787] 1961, 79) intoned in "Federalist Paper #10." As the young Karl Marx contended, the egoistic, acquisitive spirit institutionalized by rights to unequal property ownership routinely trumps the promises of formal legal equality, rendering the latter an illusory "political lion's skin" incapable of advancing human emancipation, empowerment, or what many later have referred to as "social justice." The political citizen is "an imaginary member of an illusory sovereignty," so legal equality is "the sophistry of the political state itself" (Marx 1844; see also Balbus 1977; McCann 1989).

In the classic scheme of Marx, the key terms of differentiation undermining formal equality were classes: on the one hand, the capitalists, who own the social means of production and appropriate its surplus; on the other hand, the propertyless, who are exploited but legally free citizen workers who sell their commodified labor power to survive. Less clearly recognized in the Marxist scheme but equally important to our analysis is the differential valuation of wageless, dependent, unfree noncitizens and surplus populations—slaves, indentured servants, imported migrants, women in the reproductive sphere, children, and others—whose "expropriated" labor has been essential to the continuing processes of accumulation (Fraser 2016).⁵ Overall, in this framework, capitalism is viewed as driven by violent processes of relentlessly expansive development that inherently produce increasingly complex, hierarchically differentiated relations of domination. And this violence of capitalism is authorized and enforced, both directly (by the state) and indirectly (through property rights), by official law.

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We posit further that these inequalities of class power relations within capitalist societies have been integrally interrelated, or *intersectional*, with racial and gendered hierarchies from the start through the contemporary period (Crenshaw 1989, 1991). Contrary to Marx, we recognize that such racial and gendered constructions of difference among subjects historically preceded capitalism but developed their own independent dynamics as ideological and institutional forces shaping capitalist power relations (Kelley 2017; Robinson 2000). After all, property ownership initially was reserved for white males, so legally institutionalized property sustained white control while "whiteness" became a social signifier of privilege (C. Harris 1993; Williams 1992). There was, quite simply, no capitalism historically before or apart from racial and gendered differentiation (W. Johnson 2018). On the one hand, the inherited conventions of racial and gender differentiation provided crucial markers for designating devalued populations subjected to both unfree, wageless, dependent labor and exploited low-wage labor status as second-class citizens in the critical processes of capital accumulation (Fraser 2016). On the other hand, racialized subjection of unfree, dependent laborers also has served as a "hidden condition of possibility for the freedom of those" (white or whitened male) workers whom capital exploits, thus driving a structural wedge between subjectively entitled white wage-earning citizens and racialized (and gendered) noncitizens or second-class citizens (Fraser 2016, 166). These power dynamics of differential value again have been clearly constituted, directly and indirectly, by official law and legally authorized social practices. As Gomez (2012, 47–48) has put it, "law and race construct each other in an ongoing, dialectic process that ultimately reproduces and transforms racial (and class, gender) inequality." We will see these relationships play out again and again in our historical narrative.

While capitalist regimes traditionally have invoked universalistic liberal legal language regarding political membership, from the very start most liberal legal regimes, including the United States, in practice explicitly excluded various subject groups from full, equal rights standing and social status according to constructed ascriptive characteristics (Smith 1997; Haney-López 1997). The following pages will illustrate these historical practices with regard to many racialized groups, including African Americans and several waves of Asian and Mexican migrant workers, among others. The official American ideology espoused by ruling white males stipulated that such devalued, "othered" subjects are undeserving of rights status—either de jure or de facto—because they lack the capacities for the disciplined self-governance required

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of propertied, rights-bearing citizens, including exploited white wage laborers. Racial and gender hierarchies in particular have been rationalized by a host of stigmatizing markers designating intellectual, physical, moral, or cultural inferiority. Racialized outsiders, including the first generation of Filipino migrant workers, have been commonly marked as inherently deviant, criminal, violent, predatory, and dangerous. We thus invoke Nikhil Singh's (2005, 223) understanding of such racialization processes as "historic repertoires and cultural and signifying systems that stigmatize and depreciate one form of humanity for the purposes of another's health, development, safety, profit, or pleasure."

We note further that racialized (and gendered) subaltern persons who have supplied much of the expropriated wageless and exploited low-wage labor on which capitalist development depends have typically been subjected to "repressive" rather than "liberal" forms of legal control (Nonet and Selznick 2001). Repressive law is inherently yet variably more violent and punitive than liberal legality, which emphasizes due process, equal protection, and restrained force in regulating members of civil society. If liberal law tends to normalize and legitimate its enforcement of unequal productive power through the tropes of contract, market exchange, and freedom among right-ful citizens, repressive law administers "order management" among both semifree wage laborers and unfree, disposable, internally and externally colonized populations necessary to capitalist production. Repressive law thus is more overtly transparent about its targeted subjects, violently coercive character, and institutional role in enforcing hierarchies of differential value among persons. In the United States, slavery was the archetypal institutional manifestation of repressive law governance practices in early phases of capital accumulation (W. Johnson 2018; Dayan 2013; Rana 2010; Williams 1994). But legally authorized forms of authoritarian control and repression of low-wage as well as wageless, disposable, and surplus workers have been the norm throughout the history of capitalist development.⁶ Overall, racial capitalist regimes thus have been organized around a patchwork of liberal, repressive, and hybrid legal forms varying in different institutional sites and in enforcement among differently constructed subjects. The following narrative history of Filipino laborers will document in particular how the practices of repressive law persisted but took different institutional manifestations, combining in different hybrid forms, in the American racial capitalist order before and after World War II.

Our recognition of these different forms of law thus aims to disrupt com-

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monplace assumptions about the ubiquity of liberal legalism and stability of citizenship status. Like Rogers Smith (1997; see also Ong 2006), we view national citizen standing or status complexly on a continuum from noncitizen to full citizen but with many intervening tiers of status, each susceptible to different forms of legal treatment and access to rights protections in social practice. Furthermore, our recognition of the competing but interrelated or hybrid forms of repressive law and liberal law in some ways parallels and builds on the important argument about the dual, interacting "racial institutional orders"—labelled "white supremacist" and "egalitarian transformative"—in American history developed subsequently by Smith and Desmond King (King and Smith 2005). In particular, their recognition of the fundamental shift in the balance of power between racial orders before and after World War II is echoed in our account. One significant difference, however, is that our approach focuses on forms and practices of law that blur lines between state and society more than on partisan alignments among political elites. Equally important, whereas King and Smith treat economic factors of class differentiation as secondary and alignments of political coalitions around race as central, our approach underlines the interrelationship between both class and racial differentiation as social forces mutually constituting the changing historical contours of American law, legal practice, and rights contestation. In our framework, the violence of repressive law is intrinsic to capitalism, authorizing "private" imposition of harsh discipline in varying degrees on free wage earners generally, while more brutal, debilitating forms of order management are deployed to control racially differentiated, devalued, and disposable semifree and unfree laborers in and beyond segmented sites of production and reproduction (Fraser 2016). Both class and race-specific (and gendered) domination have been broadly authorized by legal rules and principles grounded in propertied hierarchy.

Moreover, we disaggregate King and Smith's conception of a single egalitarian transformative order into two different if related equality-based traditions: a liberal egalitarian tradition and a radical egalitarian tradition. The predominant mode to which King and Smith refer is the "formal equality" of liberal state law. Such liberal equality principles, which ruled political relations among the dominant white citizenry in earlier periods, were mobilized to challenge the most extreme forms of (male) white-supremacist racial domination before World War II. Most important, slavery and involuntary servitude were legally abolished by the Thirteenth Amendment, except as punishment for criminal conviction, which figures prominently for the legacy

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of continuing repressive law. Fourteenth Amendment guarantees of "equal protection" and Fifteenth Amendment prohibitions on racial discrimination in voting processes similarly advanced formal legal equality for many persons, although they posed only limited restraints on Jim Crow-era practices of racial segregation, discrimination, and labor exploitation, including for imported colonial workers.

These formally egalitarian principles then became the basis of the reconstructed legal order and broader antiracist, "racially liberal" social reform engineering projects in the post-World War II era. Such further advances for liberal equality in the civil rights era were undeniably "transformative," as King and Smith put it. Overt racism and sexism, what Justice Blackmun called "old fashioned" discrimination, receded in public life, and some segments of low-income white, racial minority, and female populations—including some Filipino Americans—rose into professional occupations, the ownership classes, political leadership, and cultural stature during the racial liberal era. At the same time, however, the fusion of universalistic formal equality principles with liberal ideological norms privileging individualism, contractual freedom, and equal opportunity generally worked to naturalize and normalize the intersectional race and class hierarchies of social power inherited from earlier periods of the capitalist accumulation process (Melamed 2011, 2015). The promises of citizen rights to race and gender-neutral, formally equal treatment thus remained severely compromised by unequal socioeconomic conditions that persisted in the racially liberal and neoliberal eras (McCann 1989). In fact, inequalities of wealth, political power, and class hierarchy actually grew over the decades after the 1960s (Hacker and Pierson 2010; Piketty 2014). Racialization practices in this period did become less rigidly grounded in phenotype (e.g., skin color) and more loosely tied to norm deviation, but the continuing effect of formal equality was to legitimate hierarchical relations to make structural inequality seem to be fair (Melamed 2011). This was the context in which the "racial innocence" exhibited by Supreme Court justices in the *Wards Cove* case ascended in American legal culture even as white-supremacist advocacy networks, politicians, and business elites continued and even escalated their campaigns for sustained domination.

We further underline how racial and class hierarchies were reinforced by newly reconstructed institutional forms of violent legal control during the postwar eras of racial liberalism and neoliberalism. This includes especially the ways that repressive law practices inherited from the white-supremacist era—in criminal/penal/police control, suppression of subversive politi-

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cal challenges, national security state regulation of borders and noncitizen residents, and especially authoritarian managerial control of "private" production processes where both exploited citizen workers and dependent noncitizens labor or languish—were reorganized and expanded into bureaucratically administered, ostensibly race-neutral, procedurally legalistic but de facto racially and class targeted protocols of control. While facially neutral and "color-blind," all of these institutionalized sectors of administrative-state violence have remained haunted by ghosts of earlier materialized forms and practices of racial and class domination (Dayan 2013). Multiple manifestations of bureaucratically reorganized, rule-bound repressive law will be on display in our historical narrative of second-generation Filipino laborers.

By contrast, we further distinguish principles of antiracist formal liberal equality from a third tradition of radical egalitarian legal traditions that aspire to transform citizenship equality ideals into an "alchemical" force challenging many material manifestations of racial, class, and gender hierarchy (Williams 1992; Bell 1987; Guinier and Torres 2014). Such materialized antiracist logics have been advocated in various forms by Left (mostly labor-, race-, and gender-based) social justice movements since the origins of the republic, including by the Filipino labor activists at the center of our study. Although such aspirational egalitarian movements have mobilized limited support and have only occasionally altered in substantial ways the prevailing official hybrid order of liberal and repressive law, they have left important imprints reshaping the legal administrative state and modifying the racial capitalist order in different eras.

In a final contrast to liberal legalist frameworks, our approach also underlines that processes of racial capitalist differentiation in value are geopolitical in character, thus highlighting our attention to "empire" (Fraser 2016). Because capitalist accumulation is inherently expansive, economic development thrives on continuous expropriation of natural and human resources beyond national borders, international trade, transnational production supply chains, globalized markets, and supranational financialization as well as extensive organizational management by international legal agreements and military investments that are necessary to facilitate the multistate global system. The result has been an ongoing process of fundamentally differentiated racial and class valuation and status at two levels, both institutionalized by law. On the one hand, individual states are increasingly impelled to police their borders to intensify separation between legal citizens and noncitizens, advancing conceptions of membership that promote nationalism and impede

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transnational alliance among exploited classes. Noncitizen transnational migrants who are conscripted to cross global borders to supply expropriated labor are especially subject to processes of racialized differentiation, marginalization, and criminalization. As such, the intrinsic "illegality" of migrant laborers is a spatialized socio-legal condition because "deportability" is a critical implication of illegal, semicriminalized status and repressive control of disposable workers (De Genova 2004). The various grades of relative citizen status again vary between the poles of full citizenship and noncitizenship, rightful (but socially unequal) freedom and rightsless unfreedom. This is an important dimension of our study of Filipino worker history and a key site of increased repressive legal administration and contestation generally in contemporary national politics.

On the other hand, the global capitalist system assumes an "imperialist geography of 'core' and 'periphery'" valuation, dividing "metropolitan citizens versus colonial subjects, freeman versus slaves," northern Europeans versus natives, whites versus nonwhites, and Global North versus South, among others (Fraser 2016). "Capitalism does not simply incorporate racial domination as an incidental part of its operations," Chen notes, "but from its origins systematically begins producing and reproducing 'race' as global surplus humanity" (Chen 2013, 6). These ongoing distinctions, we shall see, continued from before the settler era through US colonial rule in the Philippines and through subsequent imperial phases of global capitalist development. This point makes sense of why the democratic socialist project of Filipino labor activists persistently linked domestic antiracist, anticapitalist egalitarian struggles for migrant workers in the metropole to struggles in the Philippines and anti-imperialism around the globe. In our final chapter, we will briefly draw evocative generalizable comparisons between the workings of repressive law within racial capitalist orders and law in postcolonial and authoritarian state contexts, thus challenging familiar distinctions between liberal and illiberal law as well as contexts of North and South.

In sum, we thus fully acknowledge that the conceptual scheme of rival racial orders formulated by King and Smith (2005) is useful for historical analysis of racial coalition politics. However, we think that the more complex, intersectional, geopolitical racial capitalist structural framework better serves our analytical focus on the dynamics of hegemonic legal governance and Filipino workers' antiracist, rights-based struggles on that legal terrain over the twentieth century (W. Johnson 2018; Melamed 2011).

The following study of Filipino American workers—who initially were co-

summing up King & Smith

lonial subjects, legally categorized as noncitizen nationals, exploited as proletarian laborers, informally but brutally criminalized, and eventually granted US citizenship but recriminalized for political activity in the metropole—will document the various ways that such a patchwork of repressive and liberal law practices has both enforced and yet provided modest openings for contesting economic and racial exploitation at different moments. Our historical narrative will identify different forms of both legal rule and concomitant legal contestation through changing phases of racial capitalism, highlighting in particular the above-noted shifts from explicitly white-supremacist legal repression of racialized populations before World War II to varieties of liberalism after the war that reorganized the forms of repressive law in new, formally antiracist ways (Melamed 2011).⁷ The important interrelationship between developments within American borders and wider global economic, political, legal, and military entanglements will be granted continuous if, admittedly, secondary attention. Specifically, fundamental shifts in the status and power of imported workers within the metropole will be tracked by parallel changes in the economic and political status of the Philippines as it developed from dependent colony to semi-independent client state in the global capitalist order.

We recognize that heteronormative patriarchal constructions of unequal gender and sexual status also traditionally have permeated official law and social organization in racial-capitalist orders, thus sustaining and at times shaping the terms of contestation over economic, social, and political marginalization (Pateman 1988).⁸ We note in particular that the conscription of Filipino workers dramatically magnified the traditional capitalist division and distance between waged production by males (in the metropole) and non-wage female reproductive labor (largely left behind in the colonial islands). Gender and sexuality thus figure into our story at various points, not least because the first generation of mostly male Filipino bachelors was feared by anxious white Americans as sexual predators threatening patriarchal control and racial purity. Nevertheless, we have chosen to limit our attention to those dimensions of gender and sexuality while emphasizing the intersection of capitalist and racial hierarchies (Gomez 2012; C. Harris 1993; Leong 2013).

Expanding the Contours of Case Study

Our goal of mapping the changing racial-capitalist institutional and ideological context in which Filipino labor activists struggled has led us to expand

dramatically the empirical scope of sociolegal analysis. Most empirical “case studies” of legal mobilization focus on bounded manifestations of legal contestation usually confined to a restricted range of discrete policy issues, disputing actors, time period(s), and geographic location(s). Ethnographic and qualitative methods as well as aspirations for generating generalizable comparative theory tend to reinforce these conventional boundaries. Our study, by contrast, examines a plethora of rights mobilization episodes (Adam 2017; Merry 2000), entailing

- a wide range of contested national and local legal rules, policies, and practices, including immigration and citizenship law, civil rights law, labor law, contract law, property law, and personal injury law, among others;
- contestation within a wide variety of geographic locations and legal jurisdictions, including multiple sites up and down the North American West Coast as well as in the Philippines and in transnational relationships between the United States and the Philippines; and
- the changing terms of contestation at different times over the course of the twentieth century, as the United States evolved from an expanding white-settler society to global commercial and military empire.

This temporarily and spatially multisited approach reflects our interest in the dynamic historical experience of Filipinos forced to migrate across wide global circuits to find work in the first generation. The narrative trajectory increasingly focuses on the Seattle-Alaska circuit, but relationships of interdependence around the Pacific Rim remain salient even after the 1960s. At a theoretical level, the expanded field of empirical study also demonstrates how broadly and continuously law constituted the Filipino experience, how “law is all over” (Sarat 1990), at nearly every place and time in the development of the racial capitalist order. This is precisely the value of the racial capitalist analytical framework: to emphasize the continuities as well as changing forms of legally authorized domination inherent in historical processes of capital accumulation.

The fact that law so heavily regulated the lives of the racialized, migratory proletariat might seem to qualify our marginalized subjects, like the welfare poor studied by Sarat, as a “least likely case” for findings of persistent group-based legal mobilization. Quite the contrary is true, though. Our study suggests that it was precisely the more developed character of the administrative state in the American West that makes sense of why Filipinos were far more

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legalistic, even litigious, than Chinese and Japanese migrant workers before them in the less developed "wild west." The aggressive violence authorized by repressive law put more pressure on the third wave of Asian migrant workers to learn the arts of legal evasion, legal defense, and eventually offensive legal rights mobilization.

Finally, like most legal mobilization studies, our multisited historical study aims to contribute to generalizable assessments about how law actually matters for subaltern populations and especially how legal contestation does or does not contribute to advancing social justice and democratic transformation. Like many previous studies (Lovell and McCann 2005; McCann 1994; see also Albiston 2010; Barclay, Jones, Marshall 2011), we show that law overwhelmingly serves racial, class, and gender hierarchies, but it is not just an instrumental expression of the most powerful groups in society (E. P. Thompson 1975). Contestation by subaltern groups is incessant if often relatively invisible, and sometimes those groups actually prevail in courts, legislatures, and other sites of legally constituted social practices. "Law," Samuel Johnson once claimed, "supplies the weak with adventitious strength," although we again underline addition of the important qualifier *sometimes* (Zemans 1983, 694).

Nevertheless, we recognize that winning specific battles often produces limited positive change in hierarchical structures of power either in the larger society or in the lives of "ordinary" people and especially among racialized and gendered low-wage workers. Again, one reason is that the overall legal edifice is a product of unequal social power aggregated over history, yielding legal forms that both reproduce hierarchies and insulate them from fundamental challenge. Discrete legal "wins" may sometimes benefit subaltern groups in both direct and indirect ways (McCann 1994, 1996)—our analysis demonstrates both—but they rarely change the fundamental terms of the hegemonic order, whatever their aims. Our multisited historical study thus helps to demonstrate how law is only relatively, or perhaps barely, autonomous from interrelated racial, class, and gendered hierarchies (Balbus 1977).

It follows that our approach, focusing on manifold episodes of struggle by one small group of workers, renders no simple, clearly defined measure of relative "impacts" from legal mobilization efforts either individually or in the aggregate. Our account is replete with evidence of small material gains, occasional symbolic triumphs, and a great deal of tragedy, defining a complex legacy that defies simple terms of measurement even though we do offer lots of judgments about effects and implications of rights contestation at various moments. Our more fundamental aim is less to measure outcomes than to

make sensible the aspirations for realizing novel rights visions, democratic change, and social justice that animated the subjects in our story. Our subjects aimed for revolutionary change, but we see no reason to treat them as deluded or naive. Much like radical African Americans, Filipino labor activists were animated by what historian Robin Kelley (2002) calls "freedom dreams." Documenting and critically analyzing the record of their ongoing, protracted struggles on legal terrain is, we think, our primary contribution.

Data Sources and Methodology

The bulk of this book, we already have noted, is organized as a chronological social history. The historical narrative integrates a great deal of qualitative research that we have conducted over a twenty-year period with support from a variety of grants, including especially a multiyear National Science Foundation grant. Three types of original data form the core of our scholarly contribution.

The first is an expansive array of archival records, amounting to many hundreds of boxes, most of which were available to us in the Labor Archives of Washington (LAW), which is part of the Special Collections of the University of Washington Libraries. The largest collection provides a record of the cannery workers and their unions over the course of the twentieth century; other collections donated by over a score of specific individuals in the first and second generations of Filipino immigrants or allied activists add dramatically to this rich set of resources. We also have found useful records in the archival collections of the Filipino American National Historical Society and the Wing Luke Museum of the Asian Pacific American Experience, both in Seattle.

Most of the archival investigation has been conducted by trained graduate and undergraduate students in the Department of Political Science and Comparative Law and Society Studies Center at University of Washington who worked under our supervision and with the support of a professional labor archivist. Moreover, we have benefitted greatly by the Seattle Civil Rights and Labor History Project (SCRLHP) led over the last twenty years by our colleague Professor James Gregory, an eminent historian and affiliate of the Harry Bridges Center for Labor Studies, and his students, especially cofounder and project coordinator Trevor Griffey. This web-based collection features a wide range of documents, photographs, interviews, and oral histories selected from University of Washington Special Collections or initiated

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by project affiliates along with a number of student essays on various historical themes. This invaluable resource has been the starting point for many phases of our study.

^② *Interviews* A second, very important source of original data has been generated by personal interviews with many key actors in our narrative. To supplement the many oral histories and interviews on the SCRLHP website as well as in LAW, we have conducted personal interviews with roughly twenty activists and attorneys from the period of the 1970s forward. More than a dozen of the interviews were first conducted in the late 1990s. Among the most important of these were interviews with the extraordinary (and now deceased) African American activist Tyree Scott, who pioneered dynamic legal mobilization campaigns for black workers in the building trades around the nation in the early 1970s, mentored the young Filipino activists, and founded with them the (Northwest) Labor and Employment Law Office (LELO), the Seattle-based, worker-led, public interest law firm that represented cannery, construction, and farm workers for several decades. We have stayed in contact with these and other activists interviewed in that initial research and acknowledged in the preface. Another dozen or so more interviews, some repeats with previous interviewees but most with additional figures, were conducted from 2012 to 2018.

^③ *Cultural texts* For the third type of data, we draw on primary popular cultural texts from Filipino history to provide both empirical evidence and theoretical understanding. This includes, above all, ample reference to Carlos Bulosan's previously cited novel *America Is in the Heart* and other related writings, including his poems. The semiautobiographical novel is clearly fictional, but it is grounded in Bulosan's actual experiences—as an educated but persistently poor migrant, as an exploited and often unemployed worker, and then as a radical labor activist—as well as the experiences that he witnessed of fellow Filipinos. Bulosan's writings are important not just as dramatic accounts of select events but also as a revealing window into the experiences, understandings, and aspirations of first-generation Filipino migrant workers. He was praised by fellow Filipinos who “for the first time are depicted as human beings” (Mejia-Giudici 2003). Moreover, Bulosan's writings provided something of a historical lens, or “legend,” through which progressive Filipino American activists and scholars in the second generation, beginning in the late 1960s, came to make sense of their legacy and to forge their defiant political commitments (Gurtiza 2015; San Juan Jr. 1972; Pante and Nery 2016).

Our mixing of such quasi-fictional accounts with scholarly empirical ac-

counts is hardly novel, and other historians have inspired and instructed us about this convention (San Juan Jr. 1995). Moreover, we also give attention to other cultural texts, including especially the dramatic mock trial of Ferdinand Marcos constructed by young KDP activists, Filipino folklore, poems, and songs that were meaningful for the actors in our study as well as various films, documentaries, and printed narratives about their history. Between the time we started and completed this book, four very rich nonacademic books were published and a documentary film was released by people close to the activists or who were activists themselves in time periods we address (Churchill 1995; Chew 2012; Withey 2018; Domingo, Occena, and Cruz 2017). We wish we had completed our version earlier, but these books have inspired as well as informed us; we heartily recommend them to readers interested in insider personal accounts. Our project is very different in its academic approach and aims, but our work is better for engagement with these other texts.

Finally, of course, our empirical research has drawn on a wide array of secondary scholarly studies of the Filipino experience, labor unions, labor law and civil rights law, US colonial rule in the Philippines, and much more, including sociolegal and critical race theory. As our references attest, we draw heavily on noted historians—including especially Rick Baldoz, Mae Ngai, Alfred McCoy, Chris Friday, and E. San Juan Jr.—along with superb essays posted on the SCRLHP website by students at the University of Washington to construct the history of the first generation of Filipino migrant workers. Ligaya Domingo's PhD dissertation on the Alaska Cannery Workers Association (2010) and Trevor Griffey's dissertation on Tyree Scott and LELO (2011) were important resources documenting the 1970s activists when we resumed research for this book. Finally, we integrate a great deal of sociolegal theory into the construction of and meditation on our analytical narrative. Those sources are listed in our long bibliography.

Our hope is that drawing from these widely varied sources provides a well substantiated and richly textured history of socio-legal engagement by multiple generations of Filipino workers in the Alaska salmon canneries and beyond. We frankly recognize, however, that all of this research over many years has not unearthed a great deal of new historical information. Other scholars (some noted above) have told much of our story in small or partial bits, most of it in publications or outlets more familiar to historians than to sociolegal scholars. We do add some new factual details from various original sources, but that is not what we consider our primary contribution. Rather, it is the integration of mostly available data into a historical story about law

④ *Scholarly work on Filipino exp.*

and rights-based struggles for social justice that we claim as our most original and important achievement.

Book Organization, Style, and Epistemological Standpoint

243 The historical narrative that unfolds in the remainder of the book covers a span of the entire twentieth century. Part 1 begins with the American invasion of the Philippines in 1898 and the establishment of colonial rule by the United States over the island archipelago (prologue). We then focus attention on the first generation of Filipino workers who migrated as colonial subjects to the American metropole for seasonal work and fought on multiple fronts for basic citizenship rights (chap. 1), and then struggled for workplace justice through union organizing, from the 1930s (chap. 2) through the initial Cold War era of the late 1940s and 1950s (chap. 3). A key part of this story is the workers' development of skills in mobilizing law to escape or limit state repression and their eventual mobilization of law to empower union organizations for political leverage in the workplace and broader public spheres of the "internal colony."

4 5 Part 2 recounts the story of the second-generation Filipino-led workers in ILWU Local 37 during the late Cold War era. The prologue to part 2 outlines political developments during the 1960s within and between the Philippines and the United States, which remain important background for the three following chapters. Chapter 4 focuses on the young reform activists who, in the 1970s, aimed to revitalize the progressive democratic aspirations of the earlier generation by mobilizing civil rights claims in federal court, developing new political alliances to reform the union, and organizing with others around the Pacific Rim to depose Philippine president Ferdinand Marcos. The legal and political mobilization campaigns in the 1980s to redress the murders of two young radical union leaders, culminating in a triumphant civil lawsuit, are the focus of chapter 5. Chapter 6 documents the fate of the third antidiscrimination lawsuit, *Wards Cove v. Atonio*, in 1989 and assesses it as the culmination of the tragic historical quest for egalitarian civil rights and social justice. The changing character of macropolitics, including US-Philippines relations, will remain important to the context and content throughout the chronicle. To some extent, we repeat, this entire book can be viewed as a social history of the struggles of Filipino workers within and against American racial capitalist empire that the *Wards Cove* majority willfully ignored and erased from the official legal record.

We have labored to limit expansive intellectual theorization in the narrative account of chapters 1 through 6, choosing to put the big ideas to work in the interpretation of the history rather than making them a topic of direct, expansive attention. Extended academic theorizing about law, power, legal contestation, and the like will remain mostly episodic until the concluding chapter, in which we aim to map out the larger, generalizable analytical implications of our study for scholars who may be interested (conclusion). A primary aim of that theoretical project, we have noted, is to disrupt the conventional assumptions about the unitary character of liberal legalism and to explore the implications of identifying concurrent liberal, repressive, and hybrid forms of law for legal mobilization politics, especially by workers in racial capitalist orders. Our hope is that this backgrounding of theory in the historical narrative will make the rich, revealing story of the Filipino worker legacy more accessible to readers of all types.

The modest segmentation of attention to analytical theory and storytelling exposes some tensions in the epistemological foundation of this project, we admit. On the one hand, the historical narrative endeavors to be highly attentive to the stories, accounts, and normative perspectives of our primary subjects, the activist Filipino workers and their allies. Our efforts to represent the world views, aspirations, strategic calculations, and personal connections—all elements of what we call an oppositional legal consciousness—animating actors over many years express what we often call an "ethnographic leaning" in our historical narrative and analytical arguments. Like many legal mobilization studies, our angle of vision is grounded in the standpoint of activists whose endeavors we recount, relying heavily on their own accounts. This commitment inherently privileges their roles, voices, and critical positions against those of their adversaries in local, national, and international politics. The historical recovery of Filipino labor activist subjectivities thus will have a distinctly normative ring to it, as we write in a voice expressing their defiant, often radical aspirations and strategic gambits. In these regards, our methodology is substantially indebted to the tradition of Critical Race Theory (CRT) in the American academy. In constructing a narrative relying heavily on racially subaltern activists' voices, experiences, and aspirational struggles, we draw on and parallel the "legal storytelling" conventions of providing alternative, oppositional narratives by nonwhite, historically subjugated persons central to the CRT project (Bell 1987; Delgado 1989, 2003; Williams 1992). We specifically link our focus on radical egalitarian rights struggles to what Guinier and Torres (2014) label "demosprudence."

On the other hand, we the authors are not simply reporting in objective terms the aspirations, understandings, and practices of our subjects. We have constructed the story from our own standpoints as privileged white male affluent university professors interested in theory-driven research on law, politics, and power, with particular attention to race and class dynamics in American history. Our primary intervention is in analyzing the practices and understandings of Filipino rights activists within the legally constituted relations of racial capitalism.⁹ In many ways, this intervention again reflects our engagement with contemporary trends in CRT to “materialize” racial narratives by empirical study, and, in particular, to interrogate the intricately interrelated intersectional dimensions of racial, class, and gender differentiation mediated and contested through law (Barnes 2016; Crenshaw 1989; Delgado 2014a, 2014b; Obasogie 2013; Oh 2005; San Juan Jr. 2005). Our approach thus does not claim to be a politically or intellectually neutral rendering; rather, it is anchored in commitments to scholarly conventions that temper normative predispositions, privilege analytical rigor, and invite critical interrogation by others in many scholarly communities (Barnes 2016). And these commitments to critical understanding and analytical conventions shape how we tell the story, what we choose to include and exclude, and what we judge to be most significant. While direct, explicit attention to our guiding questions, ideas, and concepts is most developed in the opening and concluding chapters, the analytical project is manifest on every page, although we hope in mostly unobtrusive ways. We know that this endeavor makes the book as much our theory-driven narrative about how law works as the activists’ own stories about their history.

To some extent, this selective recounting is inevitable, because the archival data, secondary scholarship, and activists whom we interviewed are copious, diverse, and often in implicit or explicit disagreement about what our chosen subjects were trying to do, did, and accomplished. At times we acknowledge these differences both within and between generational cohorts, often offering our views about the relative merits of differing accounts. In any case, our assessments about which version to emphasize have been guided by different, competing standards: first, by what is most credible in view of the multiple sources of data, and second, by what seems most germane to our selective analytical account about law, power, and political struggle. We also point out in endnotes topics, evidence, or interpretations that we chose to omit or treat briefly in the interest of analytical coherence as well as narrative clarity and economy.

In our view, such strains among different positions of partiality are unavoidable. But these tensions also can be potentially productive. To some extent, our study reflects an ongoing engagement between ourselves and our various historical subjects and especially those with whom we have interacted personally while they are alive. The best we can do is to try to be honest about our explanatory interventions and selection biases, laboring to make the tensions among interpretive standpoints enhance the project. We hope that by underlining the encounter among different perspectives, we increase sensitivity to the complexity of events, relationships, and workings of power. As such, we maintain that identification with our subjects itself is as much an analytical enterprise as a normative commitment. Indeed, we call attention to these inevitable tensions in order to encourage more critical engagement with the challenges of developing significant analytical insights from complex historical empirical study. And whatever our differences with our historical subjects, we share a general commitment to providing a critical understanding about how law works in racial capitalist America and imagining alternative possibilities for a more just, egalitarian, democratic social order.