

Union by Law



Filipino Labor Activists, Rights Radicalism, and Racial Capitalist Empire 1900-2000

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Chapter One

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 Blackmun's strident protest underscores the deeply divided responses of U.S. Supreme Court justices to the claims of Filipino American-led workers who, during the mid-1970s, challenged pervasive institutional racism in the Alaskan salmon canning industry. Blackmun and his fellow dissenters charged the five justice majority led by Justice White¹ with ignoring both key factual evidence presented by the plaintiffs and important legal precedents that had developed to make the 1964 Civil Rights Act a potent resource for aggrieved minority race and female workers (Benton 2015; 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”² against challenge invokes the classic argument of scholar Robert Cover about

¹ We note the symbolically evocative clash of justices named “Blackmun” and “White.”

² Blackmun's use of the term “immunize” (at 662) is curious and suggestive. He no doubt had in mind the greatly increased “immunity” against legal claims challenging racial (and gender) discrimination that the Court's

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; Mills 2017). Indeed, a later chapter (Chapter Seven) will elaborate on how Justice White's majority opinion relied on fanciful hypothetical scenarios, legal abstractions, 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 mass media and, then, in scholarly publications (Lovell, McCann, Taylor 2016). Meanwhile, scholars who blithely dismiss litigation by social movements as a "hollow hope" further normalized the outcome as an episode of misdirected or wasted energies by litigants (Rosenberg 1991, 2009). In the process, a history of struggles for egalitarian rights and global justice by minority-race and female workers over the previous two decades, and more generally for over hundreds of years, was nearly expunged by the conventions of official legal knowledge. A willful posture of "racial innocence," as James Baldwin (1963; Mills 2017; Pierce 2012; Murakawa and Beckett 2010; Taylor 2015) labeled America's endemic cultural "crime," infused the highest law in the land.

The study that follows is the first systematic effort to document the little known social and legal history of the worker struggles that culminated in the *Wards Cove* case. Organized as a chronological narrative that spans most of the Twentieth Century, the account begins with the bloody U.S. invasion of the Philippines and extension of oppressive colonial rule at the dawn of the twentieth century. The chronicle then follows the migration of proletarianized Filipino workers to the U.S. metropole where they: worked seasonally in West Coast agricultural

reasoning provided to business interests. But the medicalized use of the term connotes protection against a disease. This meaning perhaps implies the majority's flip dismissal of the cannery workers' lawsuit as symptomatic of a malady infecting the body politic, invoking a language that developed in the 1980s by conservative jurists against an imagined epidemic of hyper-litigation by ordinary people, and especially by undeserving plaintiffs, against allegedly innocent business interests. See Haltom and McCann, 2004.

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 enforcing systematic exploitation of Filipino workers’ productive labor and marginal racial status in over many decades; second, in repressing the labor activists’ relentless campaigns challenging capitalism, racism, and imperialism; and, third, in the *Wards Cove* opinion continuing a long tradition of erasing that history. 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 briefly 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 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 US 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 elite 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 exploitive, 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 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 exploitive commodified work conditions of plantation capitalism insulated from 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” (1946: 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

³ Bulosan wrote elsewhere, in greater detail: “My father was a small farmer, but when I was five or six years old his small plot of land was taken by usury; and usury was the greatest racket of the ilustrado, and it still is although it is now the foreigners who are fattening on it. My father had a big family to support, so he became a sharecropper, which is no different from the sharecroppers in the Southern States. Years after, because of this sharecropping existence, my father fell into debts with his landlord, who was always absent, who had never seen his tenants—and this was absentee landlordism, even more oppressive than feudalism. Then my father really became a slave—and they tell me there is no slavery in the Philippine Islands!” Quoted in San Juan 2008.

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” (1946: xxiv).

Filipino colonial subjects slowly, unevenly began to gain formal standing as citizens, thus winning rights to 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 exploitive along racial as well as class lines. These workplace relationships and practices treating 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, 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 oft-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 1996: xxiii-xxiv).

Most important for our story, the cannery workers developed sophistication in mobilizing New Deal 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, anti-racist, anti-imperial, and overtly socialist agenda, 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 Longshore and Warehouse Union (ILWU). 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” (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 Filipinos bent on 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 had, and often along with, their fathers. These young militants mobilized civil rights law as a resource for challenging racially segregated job opportunities and exploitive 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 (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 support 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 U.S. officials.

The activists’ different campaigns culminated in a remarkable historical convergence of three important events during the late 1980s: 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 v. Atonio* (1989), the Court rejected the evidence that workers of color had presented to demonstrate racial disparities and announced new evidentiary standards that made it nearly impossible for minority race workers to prove invidious discrimination at the canneries, despite the stark segregation in job assignments, promotion opportunities, sleeping quarters, and mess

halls at the cannery. As noted in our opening lines, the ruling erased prior precedents of principle along with historical social facts and 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 the “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 subjugated low wage, largely non-white, 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 Lopez has aptly put it, “by law” (Haney Lopez 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, 501c3 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 over democracy 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 U.S. politics and law from the earliest days. In other words, the activists were constrained within official law, framed their aspirations 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 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 state over the Twentieth Century. Our narrative underlines in particular how fundamental changes in the American legal system determined the political constraints and opportunities experienced by Filipino workers in the racial capitalist metropole as well as to some degree were reshaped in turn by the workers' collective struggles, both successful and unsuccessful.

A closely related dimension of such attention concerns the tenuous inter-national 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 patron propping up the Philippine client state in the global capitalist order. That unequal imposition of colonial union between nations 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. Not only did this inter-national relationship dramatically shape Philippine political, social, and cultural history until the present, but it also substantially influenced the 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 WWI 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 US with 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 organizations representing cannery workers that evolved from the late 1920s across numerous changes in organizational form and affiliation, eventually in the 1950s becoming ILWU Local 37. Our historical narrative explores the political development of these multiple union organizations amidst the context of changing national laws regulating labor organizing, workplace relations, and civil rights. We underline that union membership in its first generation was almost exclusively male, as the overwhelming majority of Filipino migrants through the 1950s were men, most of them bachelors. This male identity of Filipino workers was relevant in a number of ways, including the substance of their fraternal male aspirational visions, the limited capacity of Filipinos to reproduce themselves biologically, and the fact that their frequent consorting with white women fed racialized anxiety and hostility from many white Americans.⁴ Moreover, the Filipino cannery workers on whom we focus from the start struggled to form union alliances with other Asian, African American, and Mexican American workers – including minority ethnic and white women (Ruiz 1987) -- who also labored in low-wage, physically demanding jobs. The potential challenges posed by these multi-racial, multi-ethnic, 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 solidaristic 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 (Katipunan ng Demokratikong Pilipino), was a transpacific radical organization that proved especially influential to 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, and anti-imperial transnational political networks in both the first and, especially, second generations of union activity.

⁴ It is worth noting here that the bulk of the workers were, as far as we know, heterosexual as well, and their overall visions and aspirations were imagined through a heteronormative lens. This is not to say that there was not a fair amount of sexualized inversion in their experience as exotic foreigners, which we note at various points. Moreover, Carlos Bulosan's chronicle of labor activism was not restricted to a masculine praxis of laboring brothers, but arguably aspired to an anti-patriarchal and anti-heteronormative posture. See Amorao 2014.

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 and their political allies. This oppositional consciousness evolved during years of resistance against Spanish and then US colonial domination, and then matured into a coherent social movement ideology through persistent struggles against manifold injustices in the racial capitalist order of the metropole and rule of strong-arm autocrats in the homeland archipelago. The vision uniting the activists at the heart of our narrative, we show, was fundamentally anti-racist, anti-capitalist, 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.

LAW & 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 in practice within ostensibly liberal constitutional regimes. That framework is conventionally known among scholars as "legal mobilization" theory (McCann 1994; Scheingold 1974; Lovell 2012; Cichowski 2007). Our concluding chapter 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, common sense 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: "The law is.... mobilized when a desire or want is translated into a demand as an assertion of rights" or other legal entitlement (1983: 700). 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 other times do not act when their perceived rights are violated (Engel 2017). 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 1984-5). 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 (Lovell 2012; Marshall 2017; McCann 1994). Thus, Zemans 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” (1983: 697). In 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.

This constructivist analytical framework relies heavily on recognizing 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 groups. 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 famous terms, the “haves” tend to come out ahead in routine legal interaction and mobilization practice (1974). The variable degrees of openness to, and constraints on, contestation define the dynamically paradoxical character of law’s hegemonic power in practice (McCann 2013).

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. "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" (Merry 2000, 17). 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 is manifest in both domestic national and international spheres, and in our story through both forms of colonial and post-colonial 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 mobilization theory on disputing underlines agency and instrumental contestation among actors, attention to structural factors of institutional and ideological power (McCann 2007, 2013) is 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. 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). Our study 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

While we build on the tradition of legal mobilization analysis, however, our account departs from the larger liberal legalist assumptions of most such studies. Starting with Scheingold's influential tome *The Politics of Rights* (2004), most studies of group based and social movement contestation over rights have presumed a context in which a "myth of rights" has been potentially available to all persons. The working assumption is that canonical odes to "legal equality for all" have simply been neglected or only selectively honored by hypocritical or beguiled elites throughout American history, thus creating a "gap" between widely shared liberal ideals and actual practices, to the detriment of many people. Scheingold's path breaking concept of the "politics of rights" referred to efforts by lawyers, interest groups, and social movements to mobilize around rights claims, in and out of courts, in order to close the gaps between legal rhetoric or rules and legal practice. This type of politics was catalyzed in particular by judicial precedents and legislation during the middle of the 20th Century in the US that invested greater legal authority and state enforcement of egalitarian principles. Academic studies of rights mobilization grew increasingly skeptical about the remedial effectiveness of legal mobilization by the 1990s, but critiques concentrated mostly on the limited power of judicial institutions and on the instrumental resistance or counter-mobilization of dominant interest groups.

Our analysis respects the liberal legalistic framework but instead focuses critical attention on the historical development of American law as inextricably, continuously, if variably embedded in hierarchical institutional and ideological structures that we, following others, call *racial capitalism* (Melamed 2011; Kelley 2017; Robinson 2000). This line of analysis begins by

recognizing that law in liberal capitalist orders from the start was committed above all to securing institutionalized protection for unequally owned private property, exchange based contractual relationships, and commodified differentiation of value regarding both human and non-human resources (Thompson 1975; Goldwin and Schambra 1982; Melamed 2011). As the young Karl Marx contended, the egoistic, acquisitive spirit institutionalized by rights to property ownership routinely trumps the basic promises of legalized citizen 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 “imaginary sovereignty” of the citizenry is “the *sophistry* of the political state itself” (Marx 1844). Indeed, critical scholars have emphasized the homologies between how both liberal legal and commodity forms objectify human subjects in abstract terms that normalize and enforce the alienating character of exchange relations and violently enforced differential valuation, sustaining the coexistence of formal legal standing for citizens with the “reality” of hierarchical social power (Balbus 1977; De Genova 201x; McCann 1989).

In the classic scheme of Marx, the key terms of differentiation were between social classes: on the one hand, the capitalists who own the social means of production and appropriate its surplus; on the other are the propertyless, exploited but legal free citizen workers who sell their labor power to survive. Less clearly recognized in the Marxist scheme but equally important to our analysis is the “expropriated” labor of wageless, dependent, unfree non-citizens and surplus populations – slaves, indentured servants, imported migrants, women, children, etc. – in the accumulation process (Fraser 2016).⁵ Overall, in this framework capitalism thus is viewed as driven by violent processes of relentlessly expansive accumulation that inherently produce complex relations of domination. And this violence of capitalism is authorized and enforced, both directly and indirectly, through official law.

We posit further that these inequalities of class power relations within capitalist societies historically have been integrally interrelated, or *intersectional*, with racial and gendered hierarchies from the start (Crenshaw 1989). Contrary to Marx, we recognize that such racial and gendered constructions of subjects historically preceded capitalism but developed their own

⁵ Fraser distinguishes the “exploited” labor of “free” citizen contract workers from “expropriated” labor of dependent non-citizens. The latter labor is conscripted rather than contracted, dependent rather than independent (Fraser 2016: 165).

independent dynamic as constitutive ideological and institutional forces shaping capitalist power relations (Kelley 2017; Robinson 2000). Indeed, property ownership, the “first object” of the constitutional order, initially was reserved for white males, so legally institutionalized property sustained white control while “whiteness” became a social signifier of privilege (Harris 1993; Williams 1992). On the one hand, these inherited conventions of racial and gender differentiation provided crucial markers for designating 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) workers whom capital exploits, thus driving a familiar structural wedge between subjectively entitled white wage-earning citizens and racialized (and gendered) non-citizens or second class citizens (Fraser 2016: 166). These power dynamics of differentiated value have been clearly embedded, directly and indirectly, in official law and legally authorized social practices. As Gomez has put it, “law and race construct each other in an ongoing, dialectic process that ultimately reproduces and transforms racial (and class, gender) inequality” (Gomez 2012: 47-8).

While liberal legalists are correct that capitalist regimes traditionally have invoked universalistic liberal legal language regarding political membership, therefore, from the very start most legal regimes, including the US, in practice *explicitly* excluded various racialized (and gendered) subject groups from full, equal rights status according to constructed ascriptive characteristics (Smith 1997; Haney Lopez 1997). The official American ideology espoused by ruling white males has stipulated that such “othered” subjects are undeserving of rights status – either *de jure* or *de facto* – because they lack the capacities for the disciplined, self-governance required of propertied, rights bearing citizens. 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/or dangerous. We invoke Nikhil Singh’s 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” (2005: 223).

We very importantly note further that racialized (and gendered) subaltern persons, who have provided the wageless and much of the low wage labor on which capitalist development depends, typically have been subjected to “repressive” rather than “liberal” forms of legal control (Nonet and Selznick 2001). *Repressive law* is inherently yet variably more arbitrary, discretionary, 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 violent enforcement of unequal productive power through the tropes of contract, market exchange, and freedom among citizens, repressive law administers “order management” among both semi-free wage laborers in civil society and unfree, disposable, internally and externally colonized populations necessary to capitalist production. Repressive law thus is more overtly transparent about its violent character and institutional role in enforcing hierarchies of differential value among persons. In the U.S., slavery was the archetypical institutional manifestation of repressive law practices in capital accumulation that have continued to haunt hierarchical relations over subsequent generations (Dayan 2013; Rana 2010). But legally authorized authoritarian control and repression of low wage as well as wageless, disposable workers have been the norm throughout the history of capitalist development. Overall, racial capitalist regimes thus have been organized around a patchwork of liberal and repressive legal forms, varying in different institutional sites and in enforcement among differently constructed subjects. The following narrative history of Filipino laborers shall 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 commonplace assumptions about the ubiquity of liberal legalism and stability of citizenship status. Like Rogers Smith (1997; see Ong 2006), we view national citizenship complexly on a continuum, from non-citizen to full citizen but with many intervening tiers of status, each connected 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 parallel and build on the important argument about the dual “racial orders” – labelled “white supremacist” and “egalitarian transformative” – in American history developed subsequently by Smith and Desmond King (2005). In particular, we recognize the

fundamental shift in the balance between racial orders after World War II central to their 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 politics among state elites in different institutional orders. Moreover, whereas King and Smith treat political economic factors of class differentiation as secondary and partisan political alignments as central, our approach underlines the interrelationship between *both* capitalism and race as mutually constitutive institutionalized orders shaping the changing historical contours of American law, legal practice, and rights contestation. In our framework, the brute violence of repressive law is intrinsic to capitalism, authorizing “private” imposition of harsh discipline in varying degrees on wage-based citizen-workers generally, while intensified violence brutalizes and disempowers even more extremely and widely racially differentiated, devalued, and disposable laborers in segmented sites of production (Fraser 2016). Both class and race-specific violence are broadly authorized by legal rules and principles grounded in propertied hierarchy.

Moreover, we very importantly disaggregate King and Smith’s conception of an egalitarian transformative order into two different if related traditions. On the one hand, the predominant mode to which they refer is the “formal equality” of liberal state law. Such liberal equality principles effectively militated against explicit white supremacist racial differentiation, most importantly in the post WWII era of the US. But, at the same time, liberal equality fortified and naturalized the social inequalities sustained by market exchange and historical violence intrinsic to capitalist accumulation processes (McCann 1989; Melamed 2011).⁶ This formal “legal equality to social inequality” has been the basis of the “racial liberalism” that prevailed in American national politics in the post-WWII era, and corresponds loosely to the liberal myths identified by Scheingold. In this view, liberal ideological norms privileging individualism, market exchange, and equal opportunity joined formal legal equality principles in monopolizing public discourse in ways that obscured or marginalized their inegalitarian implications during the racial liberal era (Melamad 2011, 2015). Moreover, we also underline how white supremacist and class agendas have persisted in a variety of newly reconstructed institutionalized forms of

⁶ We thus treat King and Smith as another variation on liberal legalism. While they fully recognize the long, strong traditions of inegalitarian, racist, illiberal law, they then to identify liberalism with “egalitarian transformation,” much as did Smith in his 1999 classic work. Our focus on capitalism is grounded in critical attention to liberalism’s guarantee of “formal equality” is complicit in capitalist inequalities and exploitation, for people of all stations, status, and races. See McCann (1989; 2014).

repressive law during the racial liberal and neoliberal post-World War II eras. Analysis of these new or expanded forms of repressive law – in criminal/penal control, suppression of activist political challenges, security state control of borders and legal citizenship, and discretionary capitalist control of “private” sites where both citizen workers and dependent non-citizens labor – will be developed by both our empirical narrative and theorization in later chapters.

On the other hand, we further distinguish formal equality from a third category of “radical egalitarian” legal traditions that aspire to transform citizenship equality ideals into an “alchemical” force for challenging and changing many manifestations of racial, capitalist, and gender hierarchy (Williams 1992; Bell 1987; Guinier and Torres 2014). Such *radical egalitarian* logics have been advocated in various forms by Left (mostly labor, race, and gender based) social movements since the origins of the republic, including by the Filipino labor activists at the center of our study. Although such movements 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. Overall, we thus fully acknowledge that the conceptual scheme of dueling racial orders formulated by King and Smith is very useful for some types of historical analysis of racial politics. However, we think that the more complex, intersectional racial capitalist structural framework better serves our analytical narrative of Filipino workers’ rights-based struggles, and those struggles of other workers, over the Twentieth Century offered in the following pages (Melamed 2011).

In further 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 abroad, international trade, transnational production supply chains, globalized markets, and supranational financialization as well as extensive organizational management by international legal agreements and military arrangements that are necessary to facilitate the multistate global system. The result has been an ongoing process of fundamentally differentiated racial valuation and status at two levels, both institutionalized by law. On the one hand, individual states are impelled to police their borders to maintain separation between legal citizens and non-citizens, advancing conceptions of membership that promote nationalism and

impede transnational alliance among exploited classes. Non-citizen transnational migrants who, often by recruitment, cross global borders to supply expropriated labor necessary for accumulation 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, as “deportability” is a critical implication of illegal criminal status and repressive control of disposable workers (DeGenova 2004). This is an important dimension of our study of Filipino worker history, and a key site of increased repressive law generally in the contemporary legal order.

On the other hand, the global capitalist system assumes an “imperialist geography of ‘core’ and ‘periphery,’” dividing “metropolitan citizens versus colonial subjects, freeman versus slaves,” northern European vs natives, whites versus non-whites, and Global North and 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 the settler era through US colonial rule in the Philippines and through subsequent imperial ventures of global capitalist development. This makes sense of why the democratic socialist project of Filipino labor activists persistently linked domestic egalitarian struggle 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 post-colonial and authoritarian state contexts, thus challenging familiar distinctions between liberal and illiberal law as well as contexts of North and South.

The following study of Filipino workers – who initially were colonial subjects, categorized as non-citizen nationals, exploited as proletarian laborers, informally but brutally criminalized, and eventually granted 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 a resource 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 various forms of liberalism after the

war that reorganized the forms of repressive law in new ways and with profound implications (Melamed 2011). 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 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 globalized capitalist order. We note that constructions of unequal gender and sexual status also traditionally have permeated official law in racial capitalist orders, thus sustaining and at times shaping the terms of contestation over economic, social, and political marginalization (Pateman 1988).⁷ Because Filipino migrants in the first generation were almost entirely male, gender and sexuality do figure into our story at various points, but we have chosen to limit our attention to those dimensions while emphasizing the intersection of capitalist and racial hierarchies.⁸

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 *temporal and spatial scope* of sociolegal empirical analysis. Most legal mobilization studies focus on a single episode of legal contestation, confined to a limited range of discrete policy issues, disputing actors, time period(s), and geographic location(s). Ethnographic and qualitative methods tend to reinforce these 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, and property law, among others;

⁷ Arguably, therefore, “racial patriarchal capitalist” order may be more apt for most studies. Some scholars tend to think that history supports use of the term “capitalist” as inherently signaling intersectional racial and gender hierarchies.

⁸ The intersection of economic class and racial constructions by law are captured profoundly in Cheryl Harris’s conception of “whiteness as property” (1993). See also Haney Lopez 1997; Gomez 2012.

- contestation within a wide variety of social spaces and legal jurisdictions, including multiple state and local sites up and down the US West Coast as well as in the Philippines and in transnational relationships between the U.S. 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 multi-sited 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. A more important general implication of this expanded field of empirical study, however, is to demonstrate how broadly and continuously law constituted the Filipino experience, 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 of violent domination inherent in capital accumulation as well as their changing forms through history. Moreover, in our broadly ranging, multi-sited story, the familiar sociolegal claim that law is “all over,” as an expression of enforced hierarchy as well as constrained contestation, is thoroughly evidenced and rendered meaningful in very expansive terms (Sarat 1991). As such, it is not surprising to learn that law heavily regulated the lives of migrant Filipino workers subject to both class and racial subjugation, like the welfare poor studied by Sarat, but our marginalized subjects might be considered a “least likely case” for findings of persistent group-based legal mobilization.

Finally, like most legal mobilization studies, our multi-sited historical study aims to contribute to generalizable assessments about how law 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 (McCann 1994; Lovell and McCann 2004; 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 (Thompson 1975). Contestation by subaltern groups is incessant if often relatively invisible, and sometimes those latter 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 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, producing legal forms that both reproduce hierarchy and insulate it from fundamental challenge. Discrete legal “wins” may sometime 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 multi-sited historical study thus helps to demonstrated how law is only relatively, or perhaps barely, autonomous from interrelated racial, class, and gendered hierarchal orders (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 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 calls “freedom dreams” (2002). 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 the last twenty years with support from a variety of grants, including especially a

multi-year 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 union(s) over the 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 UW who worked closely under our supervision and with the support of a trained 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. This web-based collection features a wide range of documents, photographs, interviews, oral histories selected from UW Special Collections or initiated by Project affiliates along with a number of student essays on various historical moments. This invaluable resource has been the starting point for many phases of our study.

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 Legal Education and Labor Organization (LELO), the Seattle-based, worker-led public interest law firm that represented cannery, construction, and farm workers for several decades. We stayed in contact with other key activists—especially Cindy Domingo

(KDP leader and sister to the murdered cannery activist leader Silme Domingo), Nemesio Domingo, brother to both and activist in LELO, Michael Woo (who connected Scott to the Filipino activists), Terri Mast (partner to Silme and president of ILWU 37 in the 1980s), and Mike Withey (celebrated progressive attorney who led the legal team that proved the conspiracy behind the 1981 murders and won a judgment against Marcos' estate). Another dozen or so more interviews, some with the previous interviewees but most with additional figures, were conducted in 2012-18.

Third, 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 semi-autobiographical novel is clearly fictional, but it is grounded in actual experiences of Bulosan – as an educated but persistently poor migrant, an exploited and often unemployed worker, and then a radical labor activist – as well as the experiences of fellow Filipinos that he witnessed. 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-Gidudici 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 accounts 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 non-academic books and a documentary file were published by people close to the activists or activists themselves on time periods we address (Churchill 1995; Chew 2012; Withey 2018; Domingo et al 2017). We wish we had completed our version earlier, but these books have inspired as well as informed us. Our project

is very different in its academic approach and aims, but our work is better for engagement with these other writings.

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 amazing 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 dissertation on the ACWA (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, while we have made an effort to concentrate explicit academic theorizing in the concluding Chapter Eight, we do integrate a great deal of sociolegal theory into the entire book, if often only implicitly. Those secondary sources are listed in our long bibliography.

Our hope is that integration of these various sources provides a well substantiated and richly textured history of socio-legal engagement by multiple generations of Filipino workers in the Alaskan salmon canneries and beyond. We frankly recognize, however, that all of this work 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 little known to legal 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 interpretive combination of mostly available data into a historical story about law and rights-based struggles for social justice that we claim as our most original and, we hope, important achievement.

BOOK ORGANIZATION, STYLE, AND EPISTEMOLOGICAL STANDPOINT

The historical narrative that unfolds in the remainder of the book covers a span of the entire Twentieth Century. Part One begins with the US invasion of the Philippines in 1898 and establishment of colonial rule by the US 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 (Chapter Two), and then struggled for workplace justice through union organizing, from the 1930s (Chapter Three) through the initial Cold War era of the late 1940s and 1950s (Chapter Four). 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."

Part Two focuses on the story of the second generation Filipino-led workers in ILWU Local 37 during the late Cold War era. The Prologue to Part Two focuses on political developments during the 1960s within and between the Philippines and the United States, which remain important background for the three following chapters. Chapter Five 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, culminating in a triumphant civil lawsuit to redress murders of two young radical union leaders, is the focus of Chapter Six. Chapter Seven documents the fate of the third antidiscrimination lawsuit, *Wards Cove v. Atonio*, in 1989 and portrays it as the culmination of the tragic historical quest for egalitarian civil rights and social justice. The changing character of macro-politics, including US-Philippines relations, will remain important to the context and content throughout the book. 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. That sad legal episode provides a powerful symbol and instrument of the neoliberal racial innocence, or what Charles Mills calls "racial ignorance" (2017), that has permeated American law in the decades while this book was in development.

We have labored to limit attention to expansive intellectual theorization in the narrative account of Chapters Two through Seven, choosing to put the big ideas to work in the interpretation of the history rather than making them a topic of direct, expansive attention. Academic theorizing about law, power, legal contestation and the like will remain more implicit than explicit until the concluding chapter, which aims to map out the larger, generalizable theoretical implications of our study for scholars who may be interested (Chapter Eight). A

primary aim of that theoretical project, we have noted, is to disrupt and rethink the familiar distinctions between liberal and repressive forms of law and their implications 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 relative segmentation of attention to analytical theory and story-telling 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 story telling” conventions of providing alternative, oppositional narratives by non-white, historically subjugated persons central to the CRT project (Bell 198x; Delgado 1989, 1995; Williams 1991). We specifically link our attention to radical egalitarian rights struggles to what Guinier and Torres label “demosprudence” (2014).

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 activists within the legally constituted relations of racial capitalism. In many ways,

though, this intervention also reflects 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 mostly focused 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 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 footnotes at various places topics 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 such 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 American racial capitalism and imagining alternative possibilities for a more just, egalitarian, democratic social order.