Am I That Race - Punjabi Mexicans and Hybrid Sensitivity, or How To Do Theory So That It Doesn't Do You

Faljuni A. Sheth

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I. INTRODUCTION

This paper explores the conceptual and racial status of "Punjabi Mexicans" at the turn of the twentieth century. I refer primarily to marriages between East Indian men and Mexican or Mexican-American women on the West Coast and in the Southwestern United States. The scant information available about these alliances has been uncovered by several historians and an anthropologist. In that literature, this group appears to be a "given," i.e., it is portrayed as a coherent identity that emerges from a simple set of circumstances. Yet, it is anything but a given; its existence and its collective and individual consciousness is created out of a complex nexus of legal, political, social, and natural environments that spurred the migration of East Indian men and Mexican women from their homelands and to their adopted lands. I am interested in
examining the collective consciousness of individuals who are located in the same moment, but who are living in distinct but overlapping contexts. The structural sources — laws, institutions, explicit and implicit prohibitions, cultural trends, and economic interests — converge to give this population its subjectivity. By subjectivity, I refer to the complex existence of human beings, whose self-understanding is found in the nexus of historical, political, and social circumstances; juridical and social institutions such as laws and government; as well as in their creativity and imagination in negotiating and resisting those circumstances in order to survive or flourish. In other words, as Michel Foucault says, “There are two meanings of the word ‘subject’: subject to someone else by control and dependence, and tied to his own identity by a conscience or self-knowledge. Both meanings suggest a form of power which subjugates and makes subject to.” 3 In other words, by understanding human beings as subjects rather than as individuals whose identities are constrained by monochromatic narratives of “rationality” or “irrationality,” we can understand their “subjectivity” as emerging from the complex interstices of power.

As I will go on to argue, this group can and should be understood as having a hybrid subjectivity, that is, one which places them in the interstices of multiple identities — as a racial group, as an ethnic population, as a “mixed-race” community — and can shift in and out of different contexts as they fit the objectives of legal institutions (as “aliens ineligible to citizenship” 4 and as property holders simultaneously), political institutions (as undesirable immigrants), and social institutions (as mixed race and non-white or brown folks). Hybrid subjectivity should be a category that can enable us as scholars, practicing attorneys, and as astute students of history, to understand the complex conceptual and existential location of a range of populations who do not fit easily into one category. In this case — as I discuss further on — Punjabi Mexicans can be seen in several categories simultaneously, and their existence as “subaltern cosmopolitans” can help us to challenge certain predominant categories that appear to be “neutral” when in fact they are laden with class-based, race-based, and other problematic theoretical biases.

This population has been missed — or remained unseen — in the theoretical frameworks within American race discourse, post-colonial studies, and subaltern studies. Three scholars have discussed Punjabi Mexicans in an extensive fashion. The informative method used by Karen Leonard is a standard anthropological approach which records and documents various features of this group’s existence through oral

interviews and primary documents such as county clerk records and marriage licenses. Nayan Shah's insightful work focuses on the some of the exigencies of the populations, utilizing a Foucaultian approach to understand how legal and regulatory structures have shaped subjectivity. Joan Jensen's careful research has gestured to this group during the course of a longer history about “Asian Indians” in California, again through various primary historical documents. Their research has been crucial to the documentation of this group’s existence. However, these scholars have not generally drawn on post-colonial theory, subaltern studies, or American race discourse, all of which have been considered helpful by scholars in American and Ethnic studies for highlighting the perspectives of diasporic subjects. Moreover, scholars who utilize post-colonial theory, subaltern studies, and American race discourses have not extensively explored the subjectivity of this particular population — by which I mean developing careful or extensive accounts of this group’s collective and hybrid consciousness. Consequently, in this article, I ask what might account for this eclipse and others like it in some of the most compelling scholarly literatures that focus on exploited, undervalued, or otherwise neglected populations. One way to do this would be to address the question of what it means to be Punjabi Mexican for the first generation partners in these alliances. I want also to consider some respectful new ways to understand such hybrid subjectivities that are missed through these filters.

II. ‘MEXICAN HINDUS:’ AN INITIAL SKETCH

The histories of these men and women are distinct. The men were from India, mostly from the Punjab region; most were Sikh, some Muslim, still others Hindu. Initially, they arrived in Vancouver, amidst much violence and controversy, to replace Chinese and Japanese workers who had already been the targets of exclusion laws. In many ways, the social situation and legal status of Asian Indians in the United States replicated the experiences of Chinese, Japanese, and Korean immigrants. Disfranchised after working on railroads and in lumber, and subject to mob

5. See Leonard, supra note 1.
7. See Jensen, supra note 1.
actions and riots, they were driven southwards from Vancouver, through Washington State and Oregon.\textsuperscript{12} Many finally settled throughout Northern and Southern California, from Marysville to Yuba City, and in the Imperial Valley.\textsuperscript{13}

The women were either from Mexico (Chihuahua and Mexicali, among other regions) or of Mexican descent and born in the United States.\textsuperscript{14} They migrated to or grew up in El Paso, Yuma, Las Cruces, Calexico, among other places Southwest.\textsuperscript{15} They were nearly all Catholic. Despite these differences of origin, and those of caste, class, and ethnic identity, Punjabi men and their spouses were referred to publicly as “Mexican Hindus,” as were their children,\textsuperscript{16} even though they were raised as Catholic by their Mexican mothers.\textsuperscript{17} Although we only have scant knowledge of this community, there is evidence that many in this group — men and women alike — understood themselves as “Hindu,” even when their backgrounds were Muslim, Sikh, Catholic, or Mexican.\textsuperscript{18}

How we should understand them should of course be highly dependent upon how they framed themselves.\textsuperscript{19} However, to a large degree, how they framed themselves had much to do with how they were recognized and shaped by United States immigration, criminal, military, property, and marriage laws,\textsuperscript{20} as well as by the needs of this population to try to remain “on the right side” of the law — to avoid being criminalized; little stood between them and jail, forced impoverishment, deportation, moral condemnation, and general hatred and vilification. In addition, their self-understanding was shaped by their needs for intimate companionship, social networks, and economic alliances, as well as their desire for economic security and property, political status, and psychic well-being.\textsuperscript{21}

Yet, how they recognized themselves and were recognized has nearly no place in some of the major theoretical frameworks by which we commonly understand the “Other.”\textsuperscript{22} In what follows, I want to explore the contours

\begin{itemize}
\item \textsuperscript{12} Jensen, supra note 1, at 29-32.
\item \textsuperscript{13} Id. at 34.
\item \textsuperscript{14} See Leonard, supra note 1, at 4, 63.
\item \textsuperscript{15} Id. at 63-78.
\item \textsuperscript{16} As Leonard notes, “[T]he children also answered to . . . ‘half and half.’” Id. at 4.
\item \textsuperscript{17} Id. at 92.
\item \textsuperscript{18} Id. at 4, 116.
\item \textsuperscript{19} Here I will follow Leonard’s practice of referring to the couples as “Punjabi-Mexican.” Id. at 5.
\item \textsuperscript{20} In this paper, I will discuss the broad structural outlines of the marriage and property laws that impelled Punjabi men and Latina/Mexican women together. Elsewhere, I discuss in more detail the property, immigration, military, constitutional, and conspiracy laws that served to racialize Asian-Indian men. See generally Falguni A. Sheth, Toward a Political Philosophy of Race 147-66 (SUNY Press 2009).
\item \textsuperscript{21} Leonard, supra note 1, at 70-71.
\end{itemize}
of this group by considering how they tried to remain invisible then and how they remain invisible today. The specific factors are different, but they have this in common: They were legally marginalized then, and they are eclipsed today for being the “wrong” race — one that has no proper place in the American race discourse nor in contemporary post-colonial and subaltern studies. With that, let me begin this story.

Somewhere between 5,500 and 7,000 South-Asian men — mostly Punjabi Sikhs — migrated to the western coast of the United States during the late nineteenth and early twentieth centuries.23 This population consisted of several classes of men. Some were students, some were political activists who, by the beginning of the twentieth century, were agitating for Self-Rule in India from the traditional political spaces of American university towns and other cities.24 Others were laborers who had come seeking higher wages and a chance to send remittances home or to build their lives anew on the North American continent.25 This essay focuses primarily on this last group; however, members of this group also occasionally overlap with the groups of students and political activists.26

Over that thirty-year period, Punjabi laborers managed to secure property, businesses, and farms throughout California and elsewhere in the Southwest.27 As their presence grew, they — along with their student and activist counterparts — were perceived as yet another controversial wave of dark people, this time as “Hindoos,”28 “coolies,” and “rag-heads,”29 who

23. It is difficult to discern the exact number because the tables record immigrant arrivals based on country of last permanent residence and country of birth. These figures estimate approximately 5,000 Asian Indians residing in the U.S. during this period. FROM INDIA TO AMERICA: A BRIEF HISTORY OF IMMIGRATION, PROBLEMS OF DISCRIMINATION, ADMISSION AND ASSIMILATION 88, Tbls. 2 & 3 (S. Chandrasekhar ed., 1982). Padma Rangaswamy estimates that 7,000 Indians entered the U.S. between 1904-1920. PADMA RANGASWAMY, NAMASTE AMERICA: INDIAN IMMIGRANTS IN AN AMERICAN METROPOLIS 42 (2000). These numbers are consistent with the estimates given by Jensen and Leonard. JENSEN, supra note 1, at 15-16; LEONARD, supra note 1, at 24. Shah estimates that the number of Indian immigrants around this time was as high as 25,000, although he includes both Canada and the United States. Shah, supra note 1, at 119. I have discussed this population’s movements in detail elsewhere. See Falguni A. Sheth, The Eclipse of Early Twentieth Century Asian Indian Immigration in American Racial and Post-Colonial Discourses, in PHILOSOPHY TODAY: SPECIAL EDITION ON ASIAN AMERICAN PHILOSOPHY (David Kim & Ronald R. Sundstrom eds.) (forthcoming).

24. This group has had a few scholarly admirers. See, e.g., HAROLD GOULD, SIKHS, SWAMIS, STUDENTS AND SPIES: THE INDIA LOBBY IN THE UNITED STATES 1900-1946 (Sage Publications 2006); JENSEN, supra note 1.

25. JENSEN, supra note 1, at 25.

26. See id. at 16.

27. LEONARD, supra note 1, at 55, 65-68.

28. There is some disagreement over whether the term refers to the religion or is a shortened term for “Hindustani.” Jensen suggests the former. See JENSEN, supra note 1. Leonard and Shah suggest the latter. See LEONARD, supra note 1; Shah, supra note 1. Most were Punjabi Sikhs who had converted from Hinduism under pressure in the British colonial army in India. The stylized spelling of the term suggests its polemical tone.

29. JENSEN, supra note 1, at 44.
had invaded the white provinces of North America. They were also perceived with hostility by other ethnic groups, and were targets of xenophobic organizations such as the San Francisco-based Asiatic Exclusion League, originally the “Japanese and Korean Exclusion League,” renamed in 1907 so as to include a broader range of targets.

By the beginning of the twentieth century, some portion of this group of men began to merge their economic and social resources to purchase farmland and other businesses throughout California, and due to legal hostility in the form of Alien Land Acts, moved to other parts of the Southwest. This population consisted almost entirely of men, who began to join forces with women from other ethnic or racial populations in marital partnerships. A small number of South-Asian men married Anglo women, when they were permitted. An even smaller group of Punjabi men forged partnerships with Black women. The bulk of Punjabi men who were involved in marital alliances did so with Mexican or Mexican-American women. It is difficult to estimate how many such alliances occurred. In California, between 1913 and 1949, there were at approximately 300 marriages between Asian-Indian men and Latina women, and approximately sixty marriages between Asian-Indian men and Black, Native-American, or Anglo women. According to Leonard’s remarks, it appears that as many as 2,000 such partnerships occurred throughout the western United States. Of the Latina women, I have been able — so far — to find very little. Many were migrating from Mexico, most likely due to the 1910 Mexican Revolution. They too were from agricultural families. Some of them migrated up to El Paso, others have found their way over to Calexico. Like their Punjabi counterparts, a number of these women had left spouses and families in Mexico. I will

30. Such as Japanese immigrants. Id. at 40.
31. Id. at 44.
32. LEONARD, supra note 1, at 71.
33. JENSEN, supra note 1, at 40; LEONARD, supra note 1, at 63-64.
34. LEONARD, supra note 1, at 67.
35. This group most likely consisted primarily of African-American women, although I have not been able to confirm this fact as of yet. “Black” was the description that was accorded to them in the media and legal statutes of the day. Id. at 67.
36. JENSEN, supra note 1, at 40; LEONARD, supra note 1, at 67.
37. LEONARD, supra note 1, at 67.
38. The number is based on Leonard’s research of 1,800-2,000 marriage licenses and the most common racial terminology used to refer to these partnerships (“brown”). Id. at 10. Her figure appears to include second-generation partnerships involving the children of such alliances and to include marriages that occurred until approximately 1960.
40. See JENSEN, supra note 1, at 40; LEONARD, supra note 1, at 63-64.
41. LEONARD, supra note 1, at 63.
42. Id.
43. Id. at 113-14.
return to the details of this population after considering the reasons for their invisibility in the post-colonial and subaltern studies literature.

There were several discernible reasons for these pairings. The foremost reason was the inability of Punjabi men to bring their fiancées or spouses from India, due to the difficulties in obtaining permission from the United States government. Indian men were hindered in their ability to marry freely within the context of United States miscegenation laws, although it is difficult to know precisely to what degree and purpose this factor worked, as these laws were primarily directed at partnerships between men of color and White women. The story is of course more complicated than simple prohibitions. As Peggy Pascoe observes of miscegenation laws,

[T]he laws were applied most stringently to groups like the Chinese, Japanese, and Filipinos, whose men were thought likely to marry white women. They were applied least stringently to groups like the Native Americans (who were inconsistently mentioned in the laws) and Hispanics (who were not mentioned at all), groups whose women were historically likely to marry white men.

Pascoe notes that while East-Indian men were technically Asians, they were not given the most prominent focus in the construction of anti-Asian miscegenation laws. The first exogamous marriages by Asian-Indian men appear to have occurred in the early 1910s in El Paso, Texas, where a number of Latina women settled after migrating during the Mexican Revolution. Other exogamous marriages occurred in California soon thereafter, but miscegenation laws passed in California or Arizona did not name Asian Indians either directly or indirectly until 1931. This “reprieve,” along with the fact that Mexican women were not considered to be a threat to the social engineering plans of U.S. politicians, enabled these alliances to be forged despite the watchful eyes of the state. While many of the West Coast miscegenation laws were placed on the books beginning at the turn of the twentieth century, those laws prohibited

44. A number of men had already been married and had children before arriving in the United States. See id. at 115.
46. LEONARD, supra note 1, at 64.
49. As evidenced by the fact that although women who married aliens were ineligible to citizenship became ineligible to citizenship, hence to property ownership, a few held land in their own names even while married to Asian-Indian men. LEONARD, supra note 1, at 57.
“mixed-race” marriages between whites (mostly women) and those of Mongolian, mulatto, colored, and (eventually) Malay (Filipino) descent. There does appear to be an additional stipulation that marriage licenses could only be awarded to those who were understood to be of the same race.

There were also a set of economic interests that might have led to the trend in partnerships between Asian-Indian men and Mexican or Mexican-American women. By 1920, two Alien Land Acts effectively disfranchised Japanese Americans and along with them, South Asians and other “aliens ineligible to naturalization” of the ability to own or hold land for more than short time periods, and prohibited them from establishing trusteeships in the names of friends or family to guard over the land. These laws would have impoverished thousands of Punjabis who had managed to pool resources and effectively purchases millions of dollars in California farmland throughout Yuba and Sutter counties and surrounding areas, and through much of the Imperial Valley.

Despite the ambiguous citizenship status of Mexican women under the 1848 Treaty of Guadalupe Hidalgo, they risked their citizenship by marrying “aliens ineligible to citizenship.” It seems that these Mexican women were not perceived to be enough of a threat to the state to have their citizenship or rights to own land stripped from them. Their Punjabi spouses managed to successfully transfer their titles to their wives, and ultimately to their United States born children, although not without contestation by the American government.

III. APPROACHES IN POST-COLONIAL AND SUBALTERN STUDIES LITERATURE: MYOPIAS AND ECLIPSES

Elsewhere I have discussed some of the relevant myopias of American race discourse. Here I will restrict my exploration to the post-colonial and subaltern studies literatures. Post-colonial literature in the United States reflects a model of diasporic citizenship that can be seen most vividly during the post-1965 immigration to the United States. It reflects the concerns of “Third World” diasporic subjects, many of whom were

50. Pascoe, supra note 47, at 49.
51. LEONARD, supra note 1, at 68.
55. See Pascoe, supra note 47, at 49.
57. See generally SHETH, supra note 20, at 147-66.
academics or otherwise professionally employed. Through the range of topics explored by these literatures, scholars in these discourses have begun to reflect on what it might mean to have a hybrid subjectivity. Generally they have done so through a particular template: for example, by exploring the cultural and political status of subjects in the post-colonial context — subjects who traverse back and forth across borders and geographic locations. Who they "are" at any given time depends in part on how they are understood and interpellated. As Alexander and Mohanty note of their existence in the United States, "We were not born women of color, but became women of color here [in the United States]." Similarly, the particular category that applies to a group will change depending upon the political, legal, and historical circumstances of the location in which they are found. However, it also depends in part on the conditions of recognition. For example, with whom must one be allied in order to be recognized — or conversely — from whom must one distance oneself in order to avoid being targeted by law? In the case of Punjabi men, as for Filipinos, Chinese, and Japanese immigrants, as long as they generally avoided the company of white women (and men), they could also avoid one instance of the wrath of law. Another question: how does one reposition oneself so as to live in the interstices — the shadows — of law? Mexican women — so long as their alliances were with other relatively marginalized people — could similarly avoid the harsh glare of criminality. It is certainly the case that Mexican women engaged in alliances with Anglo men during the latter half of the nineteenth century, avoided the intervention of the state, perhaps even "muting the ethnic hostility in other corners of the Southwest." But these partnerships were mainly between the upper-class daughters of California rancheros and "Hispanicized Anglos" who were "merchants and adventurers." Such partnerships often "smoothed the transition into American rule." In contrast, Punjabi men partnered with women from similar class backgrounds, usually those from agricultural or laboring backgrounds, who had left Mexico due to the

58. This literature is too wide-ranging and disparate to list definitively; however, the following is a sample of writings that reflect these traits and describe some of the writings that fall under the rubric of "post-colonial" theory. See, e.g., LEELA GANDHI, POST-COLONIAL THEORY (Columbia Univ. Press 1998); DIPESH CHAKRABARTY, PROVINCIALIZING EUROPE: POST-COLONIAL THOUGHT AND HISTORICAL DIFFERENCE (Princeton Univ. Press 2000); CHANDRA TALPADE MOHANTY, FEMINISM WITHOUT BORDERS: DECOLONIZING THEORY, PRACTICING SOLIDARITY (Duke Univ. Press 2003).


62. Id. at 337.
Mexican Revolution. Both were a part of marginalized populations, and, as I argue below, they often partnered in order to survive better the "ruling elite's" punitive dictums.

Post-colonial theorist Gayatri Spivak recognizes that in conventional historical and political discourses, "[w]hite men are saving brown women from brown men." And often, the tendency of post-colonial theory is to challenge this rescue narrative by "letting" the "subaltern" speak. Subaltern studies, taking its lead from this point, attempts to give voice to the subaltern and to attend to the relationship of power from the ground up. Thus, it attempts to find clues to the consciousness of the subaltern in the instances of rebellion, of insurgency, and of violence as this group rises up against colonial power. This construction of discourse is functional insofar as the subaltern in question is recognized or at least goes through some machinations in order to be recognized. This model works for studying, for example, the events surrounding the 1857 Sepoy Mutiny, or the political strategies and dynamics surrounding the famous Gandhian salt march of 1930. The subaltern population, though of different ethnic backgrounds, can be construed through this discourse as members of the same "subaltern" group, engaged in a concerted resistance practice that can be traced because of its public visibility. The above framework functions best for recognizing and "letting the subaltern speak," when subaltern subjects make their presence known through acts or moments that are designed to be visible, public, and explosive.

Here, however, the following question arises: Is it possible to cognize the subaltern in contexts in which she, he, or they are not the insurgents rising up, but are rather the "unlikely heroes" or invisible subjects? The predominant preconceptions by which subaltern subjects have been framed — e.g., as exploited or oppressed — offer little room to navigate and articulate one's agency within the parameters of a traditional resistance narrative. Through this lens, if the subaltern does not express resistance through an insurgency narrative, it becomes nearly impossible to recognize him or her as anything but a rebel. Perhaps because of the various myopias of the scholar, the subjects are not considered "authentic" or subjects who have a "coherent" identities, that is, identities that are legally, politically, or formally acknowledged. It is difficult to find recognition or protection in a legal system or even an intellectual framework that does not acknowledge

63. Leonard, supra note 1, at 63.
64. Spivak, supra note 8, at 120-30.
65. Taken from Dipesh Chakrabarty, A Short History of Subaltern Studies, in Habitations of Modernity: Essays in the Wake of Subaltern Studies 17 (Univ. of Chicago Press 2002) (citing Spivak, supra note 8).
the legitimate existence of an individual. In the situation under scrutiny, lack of legal acknowledgment can actually work to an individual's or group's advantage, in that one can exist within the "brown" shadows. To put it bluntly: What if Brown women and men are saving themselves from white men? What if these brown women are different from the brown women who were left behind by the other brown men? What if the second group of brown women and brown men saved each other? Quietly, unexplosively, and without the usual insurgencies, rebellions, and violence that often attend standard histories? And how are these brown women (and men) to be recognized when they do not fit neatly into a pre-existing framework that considers primarily obvious heroes rather than quiet survivors?

To return to Alexander and Mohanty, "[f]rom African American and United States women of color, we learned the peculiar brand of United States North American racism and its constricted boundaries of race," namely the practice of ignoring the existence of groups who are not linked to an obvious political or historical framework, such as that of Black-White relations or White-Brown dynamics. This "peculiar brand of racism" dominates the discourse in such a way that it conceals other variants, which themselves go unrecognized. To return to the case with which I began, Asian-Indian men sit squarely in the middle of a colonial era, moving through a range of sovereign and colonized regions to the United States. Similarly, Mexican women are moving from a nation whose borders and sovereignty are in conflict, colonized, and otherwise ambiguously marked. These men and women and their families are migrating, laboring, and surviving not merely in rebellion, but rather often in order to negotiate, navigate, and circumnavigate the conditions that seem to ensconce them.

As Deepika Bahri indicates, geographic location is one of the constitutive and ideological features of post-colonial theory:

The de facto prominence of the Third World as a geographically authentic place of origin [is predictable:] the term "native" [is] more readily associated with the darker races peopling the Third World. Of course, the Third World is also a conceptual and ideological space identified with marginality and/or subversion, as long as there is some socially recognizable coordinate — such as origin or race — with which this space can overlap.


70. DEEPIKA BAHRI, NATIVE INTELLIGENCE: AESTHETICS, POLITICS, AND POST-COLONIAL LITERATURE 18 (Univ. Minn. Press 2003).
Was India — one of the primary sites of the British colonial government in 1850, 1880, 1900, and 1920 — the “Third World” at that moment? Was Mexico the “Third World” in 1880? They were certainly stamped by colonial impositions, in terms of the British (in India) and the Spanish, France, and the United States (in Mexico) — this they have in common. But can they be accounted for — ideologically and temporally in relation to geography — by post-colonial theory? If we consider the Mexican women who partnered with Punjabi men, and how little work has been done on them, Bahri’s analysis may serve to explain why: not only are they not from a recognizable “Third World,” but they are the wrong kind of “native,” and again, within the context of American race discourse, the wrong kind of “race.”

South-Asian male farmers and laborers in the United States in the early 1900’s are not seen by theorists as post-colonial subjects, although they shared with their more traditional counterparts who are the subject of post-colonial studies the features of being colonial subjects. They were also expatriates, and in very subtle ways, rebels, in that they insisted on circumventing those laws designed to disfranchise and marginalize them. They are not recognized as such in the framework of post-colonial theory. Correlatively, the Mexican women were neither clearly colonial subjects nor expatriates — or they might have been both — but clearly, they were the incidental bystanders in an imperial trajectory beyond their control; one notable moment was the 1848 Treaty of Guadalupe Hidalgo, which ceded all of Texas, California, Arizona, New Mexico, parts of Colorado, and Wyoming to the United States. It also initially gave Mexican nationals residing in those areas dual Mexican and United States citizenship, and guaranteed the civil and property rights of Mexican landowners, on the condition that these subjects would have to elect to remain a citizen of one country or the other within several years. However, within several years the United States, which was generally hostile to the notion of property rights for Mexican nationals, expressed its hostility through a series of contradictory federal and state civil codes and equally conflicting case law that quickly rendered those protections null. In addition, although all Mexicans living within those territories were promised protection, Native Americans had no legal recognition under this treaty. Neither did Mexican women, even though they were recognized to have full property rights under Mexican law. As Maria Montoya points out, “[b]y refusing to recognize Mexican practices, U.S. courts stripped Mexican married women of these rights, re-creating them as common-law dependents of the

71. Such as the Alien Land Laws and anti-miscegenation laws.
72. 9 Stat. 922.
husband, master of the household.” For single women, these rights became even more dubious. Thus, the 1848 Treaty rendered the citizenship status of Mexican men and women fluid at best; ambiguous and unstable at worst. The 1910 Mexican revolution marked another politically ambiguous and tumultuous moment, displacing many peasants, and compelling men and women to migrate to Texas, New Mexico, and California.

These two events frame the search for financial, political, and social stability that characterize the situations of the Mexican women in question. Their struggles are conducted in the shadows of law, as migrants, agricultural workers, and laborers. These might overlap with the category of the peasant who forms the foundation of post-colonial studies, but they are not the insurgents who form the subjects of post-colonial studies. Although they are fundamentally marginalized subjects, they do not fall easily into the conceptual categories of post-colonial theory because their status as immigrants, non-citizens, and aliens render them even more ambiguous and unstable. They are fundamentally racial subjects, but because they are neither black nor white, they are not interpolated as such within American racial discourse, except in their own day when they were seen as “Hindu” or “brown” or even occasionally, as “white.” The “brown” people — such as I am speaking of — are difficult to theorize in the extensive frameworks of post-colonial theory, never mind American race theory and subaltern studies, because these narratives can only reflect what they have been primed to catch. They cannot see what they are prepared to filter out of the picture.

IV. HYBRID SUBJECTIVITY AND SUBALTERN COSMOPOLITAN SUBJECTS

How can these men and women be seen, and seen accurately? To this end, I want to propose the integration of the theoretical frameworks of transnational and post-colonial theories, subaltern studies, and critical race theory, in order to craft a theoretical lens designed to recognize subjects whose survival depends on a subtle existence, and whose resistance to efforts to disfranchise them politically and financially is neither aggressive nor volatile, but rather expressed through lawful acts. By drawing on Kimberlé Crenshaw’s notion of intersectionality, it becomes possible to focus on individuals whose subject-positions are formed by multiple and hybrid interests. Intersectionality, that is, looking through the lens of race and class and gender, allows us to try to understand working-class Mexican

74. See MONTOYA, supra note 73, at 48.
75. See generally RANAJI GUHA, ELEMENTARY ASPECTS OF PEASANT INSURGENCY IN COLONIAL INDIA (Duke Univ. Press 1999).
and Mexican-American women and the motivations for their migration to parts of Southwestern United States; we can apply a similar lens to Asian-Indian men. By integrating Crenshaw’s account of intersectionality with the lens of transnational feminist theory, which explores the location of subjects in relation to borders and nations, and with a major premise of subaltern studies (trying to see the subaltern on his or her own terms), we are better equipped to see the multiple and hybrid subjectivity of Punjabi Mexicans, whose citizenship, allegiances, and commitments shifted. They did so partially by choice, but also in response to their economic, political, and legal circumstances. Through the integration of these theoretical frameworks, I suggest a new category: That of the diasporic cosmopolitan subject, whom I will call the “subaltern cosmopolitan,”77 in order to distinguish this subject from the cosmopolitans of abstract liberal theory, for example, as proposed by Anthony Appiah,78 and to incorporate more of the critical dimensions of cosmopolitanism as described by Walter Mignolo.79

In the situation at hand, the men in question could be described as “cosmopolitan” in that they have certain traits that are associated with “cosmopolitanism.” Once they left India, these men often lived and worked in several countries around the globe under the expectation of earning remittances to send to their families who remained in India.80 They worked in a range of professions: “One son was sent out to earn money, as a policeman in Shanghai or Hong Kong or as a farm worker in the Philippines, Australia, Africa, Canada,”81 and in the case at hand, finally the United States. They probably spoke several languages — Punjabi, Mandarin, Spanish, and English — learned in the course of their travels and experiences. But they have very little in common with the cosmopolitan subjects of the post-1965 Indian diaspora.82 The former often gave up their ties to their motherland entirely — from their religious practices to their garb, and even their kinship ties.83 They had no citizenship, no claims to land in the country where they settled, and often had very tenuous ties to the partners whom they married: They were both

77. I have already used the term elsewhere but develop it substantially here. SHETH, supra note 20, at 163. Credit to Robert Prasch for coining this phrase.
78. See generally KWAME ANTHONY APPIAH, COSMOPOLITANISM: ETHICS IN A WORLD OF STRANGERS (W.W. Norton 2006).
80. JENSEN, supra note 1, at 24.
81. LaBrack & Leonard, supra note 39, at 527.
82. As represented by the characters in the writings of JHUMPA LAHIRI, THE NAMESAKE (Mariner Books 2004); M.G. VASSANJI, THE IN-BETWEEN WORLD OF VIKRAM LALL (Knopf 2004); SALMAN RUSHDIE, SATANIC VERSES (Henry Holt 1988).
'brown,' they appeared physically "similar," and they were legally proscribed from marrying each other. Their "cosmopolitanism" results not from a surplus of property, confidence, and definitive ties to other lands or ascending populations, but from a lack of access to all of these.

Thus, Subaltern Cosmopolitans are certainly diasporic subjects, but they are not era(c)ed in the way that post-colonial theorists seem to have been era(c)ed in the American imaginary — as non-raced and non-classed migratory subjects who can fit into a range of contexts. As Ann duCille points out: "The alterity of the Indian as post-colonial is generic, categorical, locational, but, interestingly enough, not racial or at least not racially specific. Race, it seems, is the proper attribute of black or African people." She continues, "In the United States, the racial status of Indians and several other minorities has varied with the political and social agenda of the historical moment."

V. SEEING ONESELF IN THE EYES OF THE OTHER

Subaltern cosmopolitanism, combined with the absence of the recognition of race, might begin to account why Punjabi immigrants and Mexican women in this context are ignored by both post-colonial and American race literatures. But I think there is more to the story of Punjabi Mexicans. We might begin to account for complex self-consciousness of this group during this period by considering how their hybrid subjectivities were shaped through the very conditions that brought them together: the anti-miscegenation laws and the notable absence of Asian Indians and Mexicans from this law. The 1901 California statute prohibited the marriages of “Negroes,” “Mulattoes,” and “Mongolians” to whites. In terms of the explicit recognition afforded under this statute, “Mongolians” were a reference to the Chinese population that had existed in California well before the arrival of Asian Indians. However, Koreans and Japanese, in addition to Chinese persons, were formally prohibited from marrying whites under this law.

While there was a culturally widespread ethos against the marriage of people from different races, Asian-Indian men and folks from Mexico or of Mexican descent were generally neither acknowledged nor considered threatening enough to be listed in this statute — at least until the 1920s and 1930s. Malayans (Filipinos) and Asian Indians ("Hindus") were not

84. Mexican women, as aliens eligible for citizenship, would lose their eligibility by marrying Punjabi men, who have been prohibited from owning land by the Alien Land Law. However, this technicality seems to have been ignored. See Pascoe, supra note 47, at 49.
85. The term "era(c)ed" serves to exhibit a certain important irony.
86. ANN DUCILLE, SKIN TRADE 131 (Harvard Univ. Press 1996).
87. Id.
88. BRETT MELENDY, ASIANS IN AMERICA: FILIPINOS, KOREANS, INDIANS 52 n.30 (Hippocrene Books 1977) (citing 1901 CAL. STAT. TIT. XI).
89. Referring to Filipino men.
officially prohibited from marrying white women under this statute until
1933.90 Prior to 1931, Asian-Indian-white couples who wished to marry
met with varying degrees of success, depending upon the general outlook
of the town clerk and on the region where they attempted to do so.91 These
statutes did not completely prevent white-"other" alliances; nor did they
seem as explicitly interested in preventing brown-black alliances.92
However, there was also the practical matter that those who wanted to
marry had to find a town clerk willing to list them as being of the same race
on the marriage certificate: whether Brown, Black, or White.93 Sometime
after 1933, Mexican women began to identify themselves as "Indian" or of
"Indian descent" on their marriage applications, indicating the increasing
difficulties of circumventing miscegenation law's requirement that both
partners be of the same race.94
And so why did they turn to each other as likely marital partners?
Often subjectivity is — at least partially — constituted through the
interstices of regulations and legal statutes, as Foucault writes.95 How one
understands oneself is often closely connected to how one is seen by the
law, the spaces where one is not seen by the law, and where (and how) it is
then safe to consider oneself. While Asian Indians may have been
tangentially understood as "Oriental," by and large this term was reserved
for East Asians. It is clear that "Hindus" were summarily perceived as the
worst of all immigrants in their turn, as the Chinese, Japanese, and Koreans
had been before them. However, "Hindus" were generally considered a
group by themselves, consisting not only of Hindus (of which there were
very few) but Muslims and Sikhs from the Indian subcontinent as well.96
Mexican women similarly were not openly perceived as a threat, or at least
not to same degree that their male laboring counterparts were — at least not
yet in this context. Most likely, there are several reasons for this, about
which we still have more to learn. Perhaps precisely because they were the
"implicit" background figures in the public perception of Mexican men —

90. And in Arizona, they were officially included in 1931. See Pascoe, supra note 47, at
49 n.13.
91. One of the more visible examples was of Dalip Singh Saund, who became the first
South Asian congressman from California after Indians were again deemed citizens in 1946.
Saund married a (White) "American woman" around 1928. See Jensen, supra note 1, at
280. Saund's wife, Marian Kosa Saund, was stripped of her citizenship for marrying an
alien. Portrait of Dalip Sigh Saund to be Unveiled in U.S., Times India, Oct. 29, 2007,
92. See Pascoe, supra note 47, at 49 n.13; Leonard, supra note 1, at 67.
93. Leonard, supra note 1, at 68.
94. See LaBrack & Leonard, supra note 39, at 558. Until then, "brown" was the primary
race of choice on marriage applications for Punjabi-Mexican alliances. Leonard, supra
note 1, at 10.
95. See generally Foucault, supra note 3.
as wives, mothers, sisters, homemakers, and “domestic managers” — it was not anticipated that they would opt to marry Asian-Indian men.

VI. RACIAL IDENTITY IN THE CONTEXT OF THE 1920s AND 1930s

Mae Ngai has argued that during the 1920s and 1930s, race and nationality were understood to a degree as interchangeable in the context of immigration laws. As such, if we begin to understand these couples within the context of the rhetoric and cultural ethos of the antimiscegenation statutes, we find, as they found, that they are similar phenotypically and in terms of skin color, which were the major public signifiers of the race of the day. This might mark the beginning of a self-understood racial similarity — indeed the beginnings of a “racialization” — whereby subject populations begin to transform into a race through both the very absence of racial recognition afforded them and their physical commonalities. This is not to say that this racialization was imposed upon this community solely due to those external pressures; rather, those pressures worked in concert with a self-conscious self-era(c)ure that took advantage of the ambiguities of law, the absence of recognition, and the difficulties of interpellation by blending into the “brown” shadows.

Very few ethnographic studies have been done on this population to date. A major study done by Karen Leonard managed to capture some of the thoughts of some of the Mexican women and Punjabi men, occasionally through their children’s recollections. What we know about them, if Leonard’s account can be trusted, is that both sides of these unions found themselves to have much more in common, in terms of skin color and phenotypically, than either group might have had reason to have with “Mulattoes,” Blacks, or East Asians, or whites.

By 1992, when Leonard’s account was published, the few remaining Mexican-Hindu couples were fairly aged or had passed away, and the much of the remaining testimony emerged from the recollections of their children. According to their accounts, Mexican-Hindu couples understood themselves to have much in common in terms of cultural characteristics and long-term goals despite barriers of language and religion. Culturally, both these men and women were almost exclusively from agricultural backgrounds. Their accounts point to the similarity of cuisine,
such as breads (tortillas and rotis), and spices.\textsuperscript{102} It is also the case that the women, once married, would begin to “cook” Hindu, by which I infer that they mean Punjabi cuisine.\textsuperscript{103} They point to similarities in culture\textsuperscript{104} and economic goals.

These commonalities are perhaps very important in understanding how they worked to give these partnerships a “common” subjectivity or consciousness, especially when contrasted to the rhetoric of race and miscegenation of the day: The origins of ‘miscegenation’ (defined as mixing of two genuses) connote blending or corruption.\textsuperscript{105} Mating would pollute the purity of a race, it would introduce unwelcome traits into a group that had hitherto been whole and clean and complete, namely the white race. The races — understood as such — were to be kept separate. Asian-Indians and presumably for Mexican women (and men) may not have been recognized or even already interpellated, but they knew generally that both the law and their surrounding communities were not necessarily all on their side. They also understood that, depending upon their actions, they stood to be penalized. And in many respects, they were — by civil mobs, and by lack of police protection from civic authorities, labor unions, xenophobic white neighbors and from their sympathetic law-enforcing friends and neighbors.

In this light, one can begin to see how Mexican women and Asian Indian men might begin to make sense of a potential union, whether they rationalized or sincerely thought that these commonalities had some more fundamental ground. They emphasized how similar they were to each other — perhaps similar enough to merge customs, language, cuisine, money, and labor. As they brought a new generation into the world, they forged a new culture that would begin to represent who they were and the logic of their symbiosis in a world that was hostile to the transgression of racial purity. In short, they began to see themselves as being of a similar — if not identical — peoples: of Mexican-Hindus. This is not to argue for some ideal notion of romantic love as the basis for these unions; if anything, the evidence suggests that the motivations for each half of these couples was the same as it has been for marriage alliances across centuries, geographies, and cultures: a combination of pragmatic, self-interested, and idealistic reasons. Indeed, these alliances were characterized by features similar to those in any other society: jealousy, treachery, deception, and self-protection, as well as an investment in the

\begin{itemize}
\item \textsuperscript{102} Id.
\item \textsuperscript{103} Id.
\item \textsuperscript{104} Id.
\end{itemize}
possibility of a less stark future marked by social, political, and economic security, if not prosperity.

In this sense, the Mexican-Hindu couples forged a set of community alliances and loyalties that served them constructively as the passage of two successive laws intended to disfranchise immigrants were passed: the 1913\textsuperscript{106} and 1920\textsuperscript{107} Alien Land Acts, along with several amendments. The 1913 Alien Land Act would work to disfranchise Punjabi farmers, along with other inhabitants of Japanese, Chinese, and Korean descent.\textsuperscript{108} They were in danger of losing the land that they had worked so hard to purchase. In addition, this law rendered it difficult to rent farmland for more than three years at a time. The 1913 Alien act was succeeded by a second land law:

The 1920 Initiative barred guardianships and trusteeships in the name of "aliens ineligible to citizenship" who would be prohibited from owning such properties, barred all leases of agricultural land, barred corporations with a majority of shareholders who were "aliens ineligible to citizenship" from owning agricultural land and classified sharecropping contracts as "interests in land."\textsuperscript{109}

These land acts, ostensibly aimed at the Japanese, caught Asian Indians in their dragnet as well. The acts barred them first from owning, then leasing for longer periods, then finally from passing their property on to sympathetic colleagues or associates who might hold them in trust for them.

Before the second Alien Land Act was passed, the 1917 Asiatic Barred Zone Act was passed, prohibiting immigration from most locales in Asia.\textsuperscript{110} After both land acts were passed, a 1920 deportation bill was passed,\textsuperscript{111} through which 100 Indians were deported — none of them the explicit target of the bill, which was aimed at aliens convicted of crimes during the war.\textsuperscript{112} In 1924, the Immigration Act (or the Johnson-Reed Act)\textsuperscript{113} was passed, barring Japanese, Filipinos, and other Asians (aliens "ineligible for citizenship") from immigrating. Finally, other various amendments were passed to bar Indians among other aliens from being naturalized and finally from inter-marrying (in 1931).

There is also another aspect to consider: the way that their social networks were formed through their kin and friendships. Mexican women

\begin{itemize}
  \item \textsuperscript{106} 1913 Cal. Stat. ccvi, \textit{reprinted in CAL. GEN. LAWS Act. 129} (Deering 1916).
  \item \textsuperscript{107} 1921 Cal. Stat. lxxxii.
  \item \textsuperscript{108} \textit{See} 1913 Cal. Stat. ccvi.
  \item \textsuperscript{109} Aoki, \textit{supra} note 52, at 57, 57 n.58.
  \item \textsuperscript{110} Immigration Act of 1917 (also known as the Asiatic Barred Zone Act), Pub. L. No. 64-01 (2003).
  \item \textsuperscript{111} \textit{JENSEN, supra} note 1, at 242.
  \item \textsuperscript{112} \textit{SHETH, supra} note 20, at 152.
  \item \textsuperscript{113} Immigration Act of 1924, Pub. L. No. 68-139 (2003).
\end{itemize}
married the friends or brothers of their sister’s Indian husband; similarly, the Indian male friends of Punjabi-Mexican couples might marry their Mexican “sister-in-law’s” friends, daughters or nieces. Among other implications, these men and women decided to forge intimate, economic, and social alliances that were based on dedication and loyalty — although not always observed by everyone.

Not all of these marriages lasted, but there are distinct records of a number that did, and in which Mexican women kept the property, titles, deeds, and accounts acquired by their spouses in their own names, as Punjabi men were forced to divest their names from their property until such times as their children were old enough to take over these responsibilities. Thus, they forged their collective-racial identities from the interstices of racial and miscegenation laws that appeared to overlook them; similarly, they also took their cues from patriarchal culture of inheritance in order to protect, sustain, and reproduce themselves, but also from certain “liberatory” laxities — their spouses appeared to admire their independence, their ability to take on “male” responsibilities.

These couples raised their children as Catholics. The children learned some Punjabi and spoke English and Spanish. They learned some Punjabi customs and ate Punjabi cuisine, even as they worked the land with their fathers, Indian “uncles,” Mexican friends and relatives, and white acquaintances. Mexican-Hindu daughters grew to learn some of the couture during “ethnic” heritage celebrations. And they took on the appellation of Hindu, even as it was a misnomer in the overwhelming majority of cases. It became a proxy term for the race that they “descended” from, in the way that Mexican Hindu was the term for the race that they would become.

But does this suffice to identify Mexican Hindus as a “race”? It is important to remember that even though the law overlooked them, it didn’t really. They knew that they existed on barely on the other side of being outcast and marginalized; how they acted to circumvent the law’s wrath would have much influence on how and whether they were able to sustain themselves, their futures, and their livelihood. Rather than attract attention by turning to those racial groups whose features — the primary evidence of one’s race — were markedly different from their own, they sought to stay in the shadows of the miscegenation laws by finding others with whom they would attract little attention. Indeed, some proof of their success can be found in the fact that even though women who married aliens ineligible

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114. LEONARD, supra note 1, at 90-95.
115. Id.
116. There were instances of adultery, treachery and deceit, as can be found in any community. See id. at 104.
117. See id. at 90-95.
118. See id.
for naturalization ran the risk of becoming ineligible to own property, the state did not enforce this prohibition against Mexican women.

Having argued that they transformed themselves into a racialized subjectivity, I want to point out that this racialization was neither clear-cut, nor long-lasting: there were in-fights and divisions among Punjabi men — who was lower caste, or who was Muslim and not Sikh. There were racially divisive distinctions transmitted from parents to children: Punjabi-Mexican children were warned not to talk to Mexican kids, or even other Punjabi-Mexican children who might have been poorer or Muslim. Combined with some of my other research, this tells me that at some point they felt comfortable enough having escaped the wrath of law that they did not need to see their commonalities with other brown folks.

That suspicion might be borne out by the fact the next generation sometimes did and sometimes did not marry other Mexican Hindus. In 1948, with the California Supreme Court’s decision in Perez v. Sharp, the first set of anti-miscegenation laws began to be repealed. In 1936, the Cable Act which stripped American women who married aliens ineligible for citizenship of their citizenship, was repealed. In 1952, the Walter-McCarran Act was passed, allowing first generation Asian Americans to apply for citizenship again. The Alien Land Acts were invalidated in 1946 by the U.S. Supreme Court. All this is to say that the population and collective consciousness of this particular group — which was induced, generated, and created by law — gradually faded, as Mexican Hindus as a group faded, and as new populations began to be ostracized, racialized, and held up for persecution. Laws change, but racialization — in some basic sense — never does.

Along with a historical telescope, perhaps, we can begin to find new ways to understand subjectivity — through the spaces where law does and doesn’t recognize certain populations. One way forward is to ask questions that are all too familiar to folks who work in Diaspora studies — although less familiar for philosophers, and even less so for legal theorists. These questions include some of the following: what is one’s sense of being (ill-being, well-being) when one is not recognized by law, where does one

119. LEONARD, supra note 1, at 97-99.
120. As I argue elsewhere, when those who have been the targets of persecution or racialized persecution are no longer under the same dire threat under the law, they will often become part of the dominant population that deploys tactics to marginalize others. See SHETH, supra note 20, at 129-45.
121. 32 Cal. 2d 711, 731.
stand when one is not interpellated? Does it mean that one doesn’t exist, or does it allow for the possibility that one’s existence can be found in connection to others who also stand in the shadows, in order to finally forge a new self-recognition, a new form of subjectivity, or even a new racial self-recognition? And finally, as scholars in Ethnic Studies often ask, what is the self-perceived relationship of one group to another population? Where do they see themselves standing — ahead or behind, above or below? How do such self-perceptions tie into other, more public, more common, perceptions? As we try to understand these populations, who have been covered up by history and by absence of proper theoretical lenses by which to recognize them as they should be understood, it might be time for a renewed attention to theory — to do theory so that theory doesn’t do us.