

TANYA MONTHEY*

Differing from “Us” in Religion, Customs, and Laws: The Philippines, Labor Migration, and United States Empire

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* J.D. Candidate, 2023, University of Oregon School of Law. Tanya would like to thank her partner, Michael, for his unwavering support and much-needed humor during her legal education. She dedicates this Comment to the strong and resilient Filipino people seeking opportunities around the world. Your struggles and your contributions to international labor rights are not unnoticed—*Tuloy ang laban!*

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INTRODUCTION

In February 2021, National Nurses United (NNU) published findings regarding at least 3,233 healthcare workers, including registered nurses, who had died of COVID-19 and related complications.¹ While Filipino Americans (Filipinos) make up 4.5% of registered nurses (RNs) in the United States,² 26.4% of RNs who had died from COVID-19 were Filipino.³ Moreover, while nurses of color already made up the majority of those RNs who had died (54.1%), 48.8% of nurses of color who died before February 2021 were Filipino.⁴ Nevertheless, given the widespread staffing shortages amid the pandemic, health systems continue to recruit more nurses from the Philippines.⁵

In fact, many industries in the United States have historically relied upon and continue to recruit and exploit workers from the Philippines. This trend reflects the supply and demand structures of labor migration first established when the Philippines was a colonial holding of the United States.⁶ The development of the Philippine economy cannot be divorced from its colonial relationship with the United States. Even after formal Philippine independence, the United States controlled the government and economy of the islands. By examining the colonial relationship between the United States and the Philippines, this Comment attempts to explain why political action, popular support, and global sympathies have failed to result in meaningful legal

¹ NATIONAL NURSES UNITED, SINS OF OMISSION: HOW GOVERNMENT FAILURES TO TRACK COVID-19 DATA HAVE LED TO MORE THAN 3,200 HEALTHCARE WORKER DEATHS AND JEOPARDIZE PUBLIC HEALTH 9 (2021), https://www.nationalnursesunited.org/sites/default/files/nnu/documents/0321_Covid19_SinsOfOmission_Data_Report.pdf [https://perma.cc/JX37-KXCQ].

² Alexander C. Adia et al., *From Imperialism to Inpatient Care: Work Differences of Filipino and White Registered Nurses in the United States and Implications for COVID-19 Through an Intersectional Lens*, 28 GENDER, WORK & ORG. 1426, 1427 (Apr. 4, 2021).

³ NATIONAL NURSES UNITED, *supra* note 1, at 5. The study notes that percentages are of the 314 registered nurses for which race and ethnicity data were available. *Id.*

⁴ *Id.*

⁵ Mark Hicks, *Henry Ford Health System to Add Filipino Nurses to Fill Shortages*, CEO SAYS, THE DETROIT NEWS (Sept. 22, 2021, 8:17 AM), <https://www.detroitnews.com/story/news/local/wayne-county/2021/09/21/henry-ford-health-system-seeks-overseas-nurses-fill-staff-shortages/5807660001/> [https://perma.cc/33FN-WDP9].

⁶ See generally BALDOZ, *infra* note 34.

protections for Filipino laborers. Despite widespread and ongoing political action, Filipino laborers continue to be among the most exploited in the international labor market,⁷ a fact that is made glaringly obvious in the insecure times of a global pandemic.

This Comment proceeds in three parts. Part I establishes the historical context and dynamics of the colonial relationship between the Philippines and the United States. Despite public justification alleging the civilizing purpose of colonial administration, legal and societal hierarchies perpetuated an unequal and exploitative relationship between the United States and the Philippines.⁸ Because the foundations of this relationship influenced how the Philippines participates in global economic policy, Part I is the primary focus. Part II then examines contemporary Philippine policy and administration of its domestic employment market and overseas workers. To meet global demands, the Philippines operates several government programs that manage Overseas Filipino Workers (OFWs).⁹ These administrative agencies—as I argue in Part III—provide a strong foundation and method of implementing policies and bilateral treaties to protect Filipino labor migrants. This Comment concludes by suggesting a

⁷ See Chris Dite, *How Migrant Workers from the Philippines Power Modern Capitalism*, JACOBIN (May 16, 2022), <https://jacobin.com/2022/05/philippines-labor-export-ofws-marcos-duterte-exploitation> [<https://perma.cc/DJG4-JCMT>].

⁸ Merriam-Webster defines “colony” as “an area over which a foreign nation or state extends or maintains control.” See *Colony*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/colony> [<https://perma.cc/3H88-MAJJ>]. This is the relationship created by the United States, so this is the terminology I will be using.

⁹ OFWs contribute to one of the largest sources of foreign reserves to the Philippines—remittances. See Ramon Royandoyan, *Remittances Sustain Growth as Expats Help Ease Inflation’s Sting*, PHILSTAR GLOB. (Nov. 15, 2022, 12:00 PM), <https://www.philstar.com/business/2022/11/15/2223976/remittances-sustain-growth-expats-help-ease-inflations-sting> [<https://perma.cc/7RQK-CMUG>]. Remittances are money or goods sent back for migrant workers’ families. *Id.* Growing up, I remember regularly packing up *balikbayan* boxes filled with clothes, coffee, nonperishables, and treats to send back to my mother’s side of the family, who live on the island of Samar. A *balikbayan* box is named for the Tagalog word *balikbayan* (the Filipino visiting or returning to the Philippines after a period of living in another country). See Frank Shyong, *Must Reads: These Boxes Are a Billion-Dollar Industry of Homesickness for Filipinos Overseas*, L.A. TIMES (Apr. 28, 2018, 3:00 AM), <https://www.latimes.com/local/lanow/la-me-balikbayan-boxes-20180428-htmllstory.html> [<https://perma.cc/7VG4-ABMC>]. By December 2022, the country’s gross international reserves (GIR) reached 96,149 million according to the Philippine Central Bank, *Bangko Sentral Ng Pilipinas* (BSP). See *International Reserves: End-of-Period in Million US Dollars*, BANGKO SENTRAL NG PILIPINAS, https://www.bsp.gov.ph/Statistics/External/tab4_gir.aspx [<https://perma.cc/D3YN-NEE7>].

holistic approach to improving the lives of Filipino workers. Any solution must address both domestic and foreign labor policy.

I

HISTORICAL BACKGROUND OF THE PHILIPPINES-UNITED STATES (UNEQUAL) RELATIONSHIP

After acquiring the Philippines following a series of violent wars, the United States began governing islands on the other side of the world.¹⁰ Instead of incorporating the Philippines completely into the United States, as it had previously done with other territories, and instead of ceding control to Filipinos, the United States implemented colonial governance that established legal inequities for those living on the islands.¹¹ The public's racist insecurities and the interests of capital were sometimes in conflict, but both shaped American imperial policy. The Philippines offered a highly trained, English-speaking, and eager group of workers for American capital, and the Philippines became dependent on sending laborers abroad.¹² These migration trends continue today and are easily exploitable.

A. Contextualizing the Philippines in Its Colonial History

The Philippines is a large collection of islands several hundred miles off the coast of East Asia.¹³ As of 2020, the Philippines had a total population of 109,035,343 people.¹⁴ Long before Ferdinand Magellan came to the archipelago in 1521, East Asia served as a vital trading post between the southeast Asian mainland and surrounding islands.¹⁵ The Philippines first became a Spanish possession in the early sixteenth century.¹⁶ Recognizing the decline of the Spanish Empire, the United

¹⁰ See Frank Freidel, *Dissent in the Spanish-American War and the Philippine Insurrection*, 3 PROC. MASS. HIST. SOC'Y 81, 167 (1969).

¹¹ See generally Aziz Rana, *How We Study the Constitution: Rethinking the Insular Cases and Modern American Empire*, YALE L.J.F. 312 (2020).

¹² *Id.*

¹³ See *The Philippines at a Glance*, UNITED NATIONS, <https://www.un.int/philippines/philippines/philippines-glance#:~:text=the%20philippines%20is%20located%20in,port%20of%20entry%20is%20manila> [<https://perma.cc/T75F-PB9B>].

¹⁴ *Household Population, Number of Households, and Average Household Size of the Philippines (2020 Census of Population and Housing)*, PHIL. STAT. AUTH. (Mar. 23, 2022), <https://psa.gov.ph/population-and-housing/node/166426>.

¹⁵ John Enriquez Andres, *The Raiding of the Pearl: The Effects of Trade Liberalization on Philippine Labor Migration, and the Filipino Migrant Worker's Experience*, 10 RUTGERS RACE & L. REV. 523, 525 (2009).

¹⁶ MICHAEL BENEDICT ZUZIK, LABOR LAW AND PRACTICE IN THE PHILIPPINES 4 (1963).

States first engaged with Spain in 1898 after the *USS Maine* mysteriously exploded off the coast of Havana.¹⁷ After claiming victory, the United States annexed the territories of the Philippine Islands, Puerto Rico, and Guam.¹⁸

By the time the United States involved itself with the Philippines, Filipino revolutionaries had already made their intentions clear— independence free from colonial rule.¹⁹ After years of fighting the Spanish, the Filipino revolutionary government declared independence on June 12, 1898, establishing an independent Filipino government.²⁰ Though initially supportive of the Filipino independence movement against Spanish imperialism, U.S. imperial interests were eventually made clear, and Filipino revolutionaries shifted to fighting U.S. forces. The United States sought control over the islands for their strategic location near China and East Asia.²¹ The ensuing war was disastrous to the islands and to human life.²²

1. *The United States Empire*

While the United States was founded as a settler colonial society, overseas expansion in the Caribbean and Asia differed from previous expansion.²³ Previously, when the United States expanded westward

¹⁷ See DANIEL IMMERWAHR, *HOW TO HIDE AN EMPIRE: A HISTORY OF THE GREATER UNITED STATES* 65 (2019). Influenced by global trends of implementing colonies to secure the world’s waterways, the United States, under President Theodore Roosevelt, began envisioning empire. *Id.* at 64. In 1897, Roosevelt stated: “I should welcome almost any war, . . . for I think this country needs one.” *Id.*

¹⁸ MAE NGAI, *IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA* (2004).

¹⁹ Glen Anthony May, *Warfare by Pulong Bonifacio, Aguinaldo, and the Philippine Revolution Against Spain*, 55 *PHIL. STUD.* 449, 450 (2007).

²⁰ Stefan Aune, *Indian Fighters in the Philippines: Imperial Culture and Military Violence in the Philippine-American War*, 90 *PAC. HIST. REV.* 419, 426 (2021).

²¹ See Rana, *supra* note 11, at 312–13.

²² See John M. Gates, *War-Related Deaths in the Philippines, 1898-1902*, 53 *PAC. HIST. REV.* 367 (1984). Gates highlights the highly contentious debates over the number of Filipinos who died in combat and as a result of the Philippine-American War. *Id.* While some estimates are as high as three million, most historians estimate between two hundred thousand to six hundred thousand Filipinos died. See Aune, *supra* note 20. An estimated four thousand American soldiers perished during this violence. See Rana, *supra* note 11, at 313.

²³ See Rana, *supra* note 11, at 316. Rana explains that from the time of western contact and settlement of North America, the country shared many qualities of other colonial projects of the French, English, and Spanish, similar to Ireland, Australia, and South Africa. *Id.* The United States in particular, Rana argues, has always been a settler empire, because

across the North American continent, territories were incorporated into the contiguous country, with the intention that such territories were to become states.²⁴ Similarly, Alaska, purchased from Russia in 1867, and Hawai‘i, annexed in 1898, were incorporated into the United States according to the model of “continental expansion” established by the Northwest Ordinance of 1787.²⁵ The U.S. settler empire organized around efforts to displace indigenous communities and replace them with settler communities.²⁶ The focus of North American expansion was to control land and resources rather than to govern or absorb any indigenous nations.²⁷ Violence, forced removal to reservations, and, later, cultural assimilation characterizes U.S. policy toward indigenous peoples of North America. Statehood, which equipped citizens with full and equal legal status, was appropriate in this context because such rights were extended to the Western settler societies that displaced indigenous ones.²⁸

However, according to the United States, this settler colonialism approach was not feasible in the Philippines. The Philippine climate was largely seen as inhospitable to Western settlers, and concern quickly focused on the people of the former Spanish territories.²⁹ Statehood and citizenship for these non-European and “alien” people was unthinkable.³⁰ The population of Spain’s former island colonies was an estimated eight million between the Philippines, Puerto Rico, and Guam.³¹ Giving political representation to the entirety of these populations would threaten the White majority. While many did not want the rights and privileges of American citizens to flow toward the new colonies,³² the idea of imperialism did present a conundrum to the values of representative democracy touted by the United States.

of the centrality of continuous territorial conquest to its internal economic and political development. *Id.* at 317.

²⁴ See Denis P. Duffey, *The Northwest Ordinance as a Constitutional Document*, 95 COLUM. L.R. 929, 929–31 (1995) (stating the Northwest Ordinance was drafted alongside the Constitution and set a pattern for territorial governance and state-making).

²⁵ NGAI, *supra* note 18, at 97.

²⁶ See Rana, *supra* note 11, at 318.

²⁷ *Id.*

²⁸ *Id.*

²⁹ NGAI, *supra* note 18, at 98.

³⁰ *Id.*

³¹ See IMMERWAHR, *supra* note 17, at 79.

³² See, e.g., Abbott Lawrence Lowell, *The Status of Our New Possessions: A Third View*, 13 HARV. L. REV. 3, 155 (1899).

The model of growth for the United States relies on land, resources, and labor from indigenous and non-settler groups to support continuous and exponential development.³³ In 1899, President William McKinley created the Philippine commission to report and investigate the island’s material resources, inhabitants, commercial potential, and overall geopolitical value.³⁴ *The Census of the Philippine Islands*, published in 1903, provided an official source of information detailing the population characteristics of the entire archipelago.³⁵ The report categorized the various races of the Philippines—as determined by the White commissioners—and outlined the “physical type and qualities of mind” of each group.³⁶ In a very sterile report, the United States promoted both a highly racialized distillation of a potential workforce and a survey of the land and resources to be exploited.

2. *Legal Authority for American Empire*

Before the question of political rights within the territories came before the Court, the public debated whether the United States should engage in empire and, if so, whether the new territories should hold representative political power.³⁷ The *Harvard Law Review* published a note criticizing the extension of constitutional protections to the new territories, stating that “surely no provision ought to be given an interpretation which leads to an *irrational* result if the language will bear equally well a different construction.”³⁸ This line of reasoning argued that the Constitution could not be applied in the territories “without rendering the government of our new dependencies well-nigh impossible.”³⁹ According to the author, political and civil rights “are inapplicable except among a people whose social and political evolution has been consonant with our own.”⁴⁰ In an opposing view, “autocracy and liberty cannot dwell together in the same political household . . . we cannot rule autocratically [or] adopt the method of

³³ Rana, *supra* note 11, at 317.

³⁴ RICK BALDOZ, *THE THIRD ASIATIC INVASION: EMPIRE AND MIGRATION IN FILIPINO AMERICA, 1898–1946*, 23 (2011).

³⁵ PHIL. COMM’N, *CENSUS OF THE PHILIPPINE ISLANDS* 1, 412 (1903), <http://rso08.psa.gov.ph/sites/default/files/1903%20CPH%20vol1.pdf> [<https://perma.cc/H92V-F4EK>]. See also BALDOZ, *supra* note 34, at 34–35.

³⁶ PHIL. COMM’N, *supra* note 35.

³⁷ See, e.g., Lowell, *supra* note 32.

³⁸ Lowell, *supra* note 32, at 157 (emphasis added).

³⁹ *Id.*

⁴⁰ *Id.* at 176.

force.”⁴¹ Controlling the Philippines presented only two outcomes— independence or subjugation of its people.⁴² This view sees that there is no way to govern a colony democratically because imperialism is inherently opposed to democracy and liberty.⁴³

The United States Supreme Court ultimately did not see the incompatibility of democracy and empire. In a series of opinions known as the *Insular Cases*, the Court gave legal authority to racist insecurities.⁴⁴ These cases justified imperial governance and, in turn, refused to extend certain constitutional rights.⁴⁵ So-called incorporated territories, such as Alaska and Hawai‘i, would be under the protection of the Constitution as they eventually obtained statehood.⁴⁶ On the other hand, “unincorporated territories”—like those acquired from Spain—were under the plenary authority of the U.S. Congress, and the full protections of the Constitution did not operate there.⁴⁷

This line of reasoning differed from previous positions taken by the United States Supreme Court.⁴⁸ While the *Dred Scott* decision is one of the most despised in United States history, the case posited the idea that Congress did not wield discretionary power in the territories.⁴⁹ Rather, because territories were incorporated assuming future statehood, they were under the protection of the federal Constitution, and thus, Congress could not outlaw slavery in the new territories.⁵⁰

Early *Insular Cases* seemed inclined to adopt this precedent. For example, in *De Lima v. Bidwell*, the Court held that upon ratification of the treaty of peace with Spain, Puerto Rico ceased to be a foreign country and became a part of the United States.⁵¹ Also, cases like

⁴¹ Felix Adler, Can We Afford to Rule Subject Peoples?, Address Before the Society for Ethical Culture (Mar. 19, 1900).

⁴² *Id.* at 4.

⁴³ *See id.*

⁴⁴ While scholars differ on which cases officially make up the *Insular Cases*, the regularly cited cases are *De Lima v. Bidwell*, 182 U.S. 1 (1901); *Goetz v. United States*, 182 U.S. 221 (1901); *Dooley v. United States*, 182 U.S. 222 (1901); *Armstrong v. United States*, 182 U.S. 243 (1901); *Downes v. Bidwell*, 182 U.S. 244 (1901); *Huus v. New York & Porto Rico Steamship Co.*, 182 U.S. 392 (1901).

⁴⁵ *See Rana, supra* note 11.

⁴⁶ *See Frank Quimby, Fortress Guåhån: Chamorro Nationalism, Regional Economic Integration and US Defence Interests Shape Guam’s Recent History*, 40 J. PAC. HIST. 357, 358 (2011).

⁴⁷ *Id.* at 33.

⁴⁸ *See Dred Scott v. Sanford*, 60 U.S. 393 (1857).

⁴⁹ Rana, *supra* note 11, at 319–20.

⁵⁰ *Dred Scott*, 60 U.S. at 393.

⁵¹ *Downes v. Bidwell*, 182 U.S. 244 (1901).

United States v. Rice and *Fleming v. Page*, together, while addressing contrary sides of a scenario (military occupation of another country during war), complement each other.⁵² The Court held in *Rice* that duties could not be collected upon goods brought into a domestic port during a temporary occupation by an enemy, though the enemy subsequently evacuated.⁵³ In *Fleming*, the Court held that the temporary military occupation by the United States of a foreign port did not make it a domestic port and that goods imported into the United States from that port were still subject to duty.⁵⁴ Together, these opinions held that upon formal acquisition of a territory by treaty, the territory is incorporated as a domestic entity, while temporary military occupations of other countries do not make that country a domestic entity.⁵⁵

Another example is the *Cross* case, which considered an action to recover money paid to the port of San Francisco for duties on merchandise imported to California between 1848, the peace treaty date, and the creation of a formal territorial government in 1949.⁵⁶ The Court reasoned that the United States properly collected the taxes because it still governed California between the date of the treaty and the formal congressional establishment of a government.⁵⁷ According to the Court, the so-called “great law of necessity” justified this conclusion because “no civilized community could possibly desire to abrogate an existing government.”⁵⁸ Again, however, the signing of a formal treaty, even before the establishment of a formal state government, brought California into the domestic sphere of the United States.⁵⁹

De Lima’s roughly two-hundred-page opinion detailed both the Court’s precedent and historical practice of the United States in making a foreign territory domestic by ratification of a formal treaty.⁶⁰ *De Lima* notes that when it came to ceding California, Alaska, Florida, Texas, and Louisiana, there was no evidence for the practice of “holding that

⁵² See, e.g., *United States v. Rice*, 17 U.S. 246 (1819); *Fleming v. Page*, 50 U.S. 603 (1850).

⁵³ See *De Lima v. Bidwell*, 182 U.S. 1, 184 (1901) (summarizing *Rice*, 17 U.S. 246).

⁵⁴ See *Fleming*, 50 U.S. at 603.

⁵⁵ See generally *id.*

⁵⁶ See *Cross v. Harrison*, 57 U.S. 164 (1853).

⁵⁷ *De Lima*, 182 U.S. at 200–01.

⁵⁸ *Id.* at 184.

⁵⁹ See *id.*

⁶⁰ See generally *id.*

a district ceded to and in the possession of the United States remains for *any purpose* a foreign country.”⁶¹ Then again, in *Goetze v. United States*, the Court stated that their holding in *De Lima* controlled and the territory of Hawai‘i was not a foreign country for the purposes of tariff laws.⁶²

Bidwell, on the other hand, implicated the Constitution, which may account for the different ruling.⁶³ Decided on the same day as *Goetze* and *De Lima*, *Bidwell* addressed the appeal of S.B. Downes & Co. for duties paid in protest on oranges imported from Puerto Rico.⁶⁴ The United States collected the taxes under the Foraker Act, which temporarily created a civil government in Puerto Rico.⁶⁵ S.B. Downes & Co. challenged these duties under the Constitution’s uniformity clause which states that “vessels bound to or from one State cannot be obliged to enter, clear[,] or pay duties in another.”⁶⁶

Ultimately, the Court held that the Foraker Act’s tax structure did not violate the uniformity clause because, in fact, the uniformity clause’s tax provisions did not apply in these territories.⁶⁷ While the Court affirmed that Puerto Rico was not a foreign country, in line with recent cases, it then reversed decades-old precedent by declining to extend constitutional protections to these new territories, thus solidifying a legal stratification of citizenship.⁶⁸ Mirroring public sentiment, the majority noted that extending civil rights to these new territories was not as necessary as it had been for the territories on the contiguous continent, stating:

It is obvious that in the annexation of outlying and distant possessions grave questions will arise from differences of race, habits, laws and customs of the people, and from differences of soil, climate and production, which may require action on the part of Congress that would be quit[e] unnecessary in the annexation of contiguous

⁶¹ *De Lima*, 182 U.S. at 194 (emphasis added).

⁶² See generally *Goetze v. United States*, 182 U.S. 221 (1901).

⁶³ *Downes v. Bidwell*, 182 U.S. 244, 247 (1901).

⁶⁴ *Id.* at 247 (discussing the Foraker Act in the background section of the case).

⁶⁵ *Id.* For more on the Foraker Act, see generally LIBR. OF CONG., FORAKER ACT (June 2011), <https://www.loc.gov/rr/hispanic/1898/foraker.html#:~:text=On%20April%202%2C%201900%2C%20U.S.,the%20Organic%20Act%20of%201900> [https://perma.cc/JVX8-U3JN].

⁶⁶ *Downes*, 182 U.S. at 249.

⁶⁷ *Id.*

⁶⁸ *Id.*

territory inhabited only by people of the same race, or by scattered bodies of native Indians.⁶⁹

These “grave questions” that arose were to be addressed by Congress alone, and while natural rights were protected in the territories, “artificial or remedial rights . . . peculiar to our own system of jurisprudence” were not to be extended to the new territories.⁷⁰ The majority simplifies its conclusion as “the natural gravitation of small bodies towards large ones in others, the result of a successful war in still others, may bring about conditions which would render the annexation of distant possessions desirable.”⁷¹

To justify the break in precedent, the Court cited the power of Congress to make treaties and engage in foreign relations.⁷² The Court reasoned that “it is doubtful if Congress would ever assent to the annexation of territory upon the condition that its inhabitants, however foreign they may be to our habits, traditions and modes of life, shall become at once citizens of the United States.”⁷³ Put differently, Congress would not incorporate territories in the first place if the people—different than the White political majority of the United States—automatically gained political rights. Despite public justifications citing “civilizing” and “democratizing” elements of empire, in practice, the Supreme Court explained, the United States had no interest in establishing democracies across its colonies.⁷⁴

Members of the Court were not oblivious to this contradiction in case law. Justice Harlan opined that the idea that full Constitutional protections did not extend to territories contradicted long-established practice and precedent.⁷⁵ To Justice Harlan, the idea that government is simply a league of states, was incorrect because the government “is

⁶⁹ *Id.* at 282.

⁷⁰ *Id.* at 282–83 (“Large powers must necessarily be intrusted to Congress in dealing with these problems . . .”). Natural rights are those included in the Bill of Rights, such as freedom of expression and religion, while the “artificial rights” are those that come with rights of citizenship. *Id.*

⁷¹ *Id.* at 286–87.

⁷² *Id.*

⁷³ *Id.* at 279–80. The Court reasoned, “If those possessions are inhabited by alien races, differing from us in religion, customs, laws, methods of taxation and modes of thought, the administration of government and justice, according to Anglo-Saxon principles, may for a time be impossible . . .” *Id.* at 287. I emphasize “us” in the title of this Comment, because it highlights the implicit distance the Supreme Court placed on White Christian Americans and the so-called “others” who lived in the colonies.

⁷⁴ *See id.*

⁷⁵ *Id.* at 376.

a compact between the People of the United States among themselves as constituting in the aggregate the political community by whom the national government was established.”⁷⁶ This compact between the government and people—not states—extends “throughout the entire territory over which its jurisdiction extends.”⁷⁷

The *Insular Cases* held that Congress would create a wholly separate and distinct form of imperial governance over the “unincorporated territories.”⁷⁸ Instead of an organized federal agenda or approach to the colonies, the Court, and later the legislature, decided, case by case, how the colonies were to be governed.⁷⁹ According to the Court, territorial annexation was separate from territorial incorporation—with only the latter being entitled to civil rights.⁸⁰ In fact, the racist motivations of the Court were quite clear: these colonies, and the people who inhabited them, while under the control of the United States, were not Americans.

B. Filipino Labor Migration Historically

Soon after becoming a U.S. colony, Filipinos migrated in large numbers to the United States for work and opportunity.⁸¹ The U.S. government, motivated by the prospect of a labor source, created pathways for Filipinos to come to the states.⁸² Under the administration of the United States, the first clusters of Filipino immigrants arrived in the early twentieth century.⁸³ The United States first invited Filipino college students into the country under the auspices of the Pensionado Act of 1903.⁸⁴ The Pensionado Act established a student exchange

⁷⁶ *Id.* at 378.

⁷⁷ *Id.*

⁷⁸ See Juan Torruella, *The Insular Cases: The Establishment of a Regime of Political Apartheid*, 77 REV. JUR. U. P.R. 1 (2008).

⁷⁹ See generally *The Insular Cases*, *De Lima v. Bidwell*, 182 U.S. 1 (1901); *Goetz v. United States*, 182 U.S. 221 (1901); *Dooley v. United States*, 182 U.S. 222 (1901); *Armstrong v. United States*, 182 U.S. 243 (1901); *Downes v. Bidwell*, 182 U.S. 244 (1901); *Huus v. New York & Porto Rico Steamship Co.*, 182 U.S. 392 (1901).

⁸⁰ BALDOZ, *supra* note 34, at 32.

⁸¹ See Yen Le Espiritu, *Border Crossers: First Came the Americans*, UNIV. CAL. PRESS BLOG (Oct. 21, 2017), <https://www.ucpress.edu/blog/32171/border-crossers-first-came-americans/> [https://perma.cc/VM9E-JKC7].

⁸² See BALDOZ, *supra* note 34.

⁸³ *Id.* at 45. However, from its early years as a colony, Filipinos sought opportunities around the world, including what eventually became the United States. *Id.* For example, as early as 1763, while still a Spanish colony, Filipinos migrated to another Spanish colony—Louisiana. See FILIPINO LA., *About*, <http://filipinola.com/about/> [https://perma.cc/NL79-DDXT].

⁸⁴ Pensionado Act, Philippine Commission Act No. 854 (Aug. 26, 1903).

program, which sponsored an American education with the expectation that the students would promptly return to the Philippines to take leadership positions in the new colonial government.⁸⁵ These students came predominantly from elite families and were expected to implement their Western education to “Americanize” the Philippines.⁸⁶

Along with students, the United States needed laborers to can salmon in Alaska, harvest fruits and vegetables in California, and tend to sugar plantations in Hawai‘i.⁸⁷ The Philippines provided an abundance of eager laborers to fill this demand.⁸⁸ The U.S. military also provided another avenue for migration.⁸⁹ For example, Filipinos were admitted into the Navy in 1901.⁹⁰ Furthermore, despite being ineligible for United States citizenship, Filipino nationals were eligible for the draft to other military branches throughout the twentieth century.⁹¹

As an early U.S. colony, the Philippines also became a main source of medical workers.⁹² The United States instituted their first westernized medical training program in the Philippines in 1907.⁹³ The U.S. colonial period introduced nursing to the Philippines as part of an agenda aiming to modernize and westernize the islands.⁹⁴ These early medical programs mandated the study of English grammar and colloquial English.⁹⁵

With widespread English speakers, poor prospects of finding stable work on the islands, and a curriculum focused on Western medicine, the Philippines emerged as a reliable source of highly skilled nursing professionals ready to work in the United States and around the world.⁹⁶ Filipinos answered the calls of U.S. employers and migrated in great numbers to the United States. In the early twentieth century, multiple

⁸⁵ BALDOZ, *supra* note 34, at 45–46.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.* at 48.

⁸⁹ *Id.* at 46.

⁹⁰ *Id.*

⁹¹ See PEGGY PASCOE, *WHAT COMES NATURALLY: MISCEGENATION LAW AND THE MAKING OF RACE IN AMERICA 196–97* (2009).

⁹² See CATHERINE CENIZA CHOY, *EMPIRE OF CARE: NURSING AND MIGRATION IN FILIPINO AMERICAN HISTORY 42* (2006) (explaining that the implementation of this Americanized nursing curriculum is the most important precondition framing mass migration from the Philippines in the twentieth century).

⁹³ *Id.*

⁹⁴ *Id.* at 20.

⁹⁵ *Id.* at 43.

⁹⁶ See generally CHOY, *supra* note 92.

sectors relied heavily on Filipino labor. Filipino laborers, migrating to the United States in large numbers, were soon targeted by racist legal restrictions.

***C. Filipino Migrant Labor Organization in the Face of
American Backlash***

Migration follows empire, and domestic practices of racial exclusion collided with the United States' interests in overseas expansion. As industries actively recruited Filipino workers, U.S. lawmakers reacted by targeting Filipinos with racist legislation.⁹⁷ Despite being scapegoated by politicians, Filipino workers organized among themselves and across racial lines—continuing a history of worker solidarity.⁹⁸

While most states already enacted laws outlawing marriage between White and Black individuals, by the end of the nineteenth century many states—primarily those in the West—passed laws targeting Indigenous and Asian individuals.⁹⁹ Filipinos were often included in these statutes.¹⁰⁰ Later, approximately two thousand Filipinos returned to the Philippines under a federal repatriation program authorized by Congress in 1935.¹⁰¹

By 1920, Filipinos established themselves in impressive numbers at Hawai'i's many sugar plantations.¹⁰² In 1906, the Hawaiian Sugar Planters' Association (HSPA)—a powerful agribusiness federation representing all sectors of the sugar industry—secured an agreement with American colonial officials to promote migration of Filipino laborers.¹⁰³ Hawaiian sugar barons heavily recruited workers from the Philippines.¹⁰⁴ Hawai'i's sugar industry relied so heavily on Filipinos partly because, as American nationals, Filipinos could bypass the

⁹⁷ See BALDOZ, *supra* note 34.

⁹⁸ See, e.g., González, *infra* note 246.

⁹⁹ PASCOE, *supra* note 91, at 77–78.

¹⁰⁰ See, e.g., Leti Volpp, *American Mestizo: Filipinos and Antimiscegenation Laws in California*, 33 U.C. DAVIS L. REV. 795 (1999–2000) (tracing efforts in California to categorize Filipinos as “Mongolian” to prevent them from marrying White people under the state’s anti-miscegenation statute).

¹⁰¹ See NGAI, *supra* note 18, at 96. See also Philippine Repatriation Act of 1935, ch. 376, 49 Stat. 478.

¹⁰² See RICHARD P. TUCKER, *INSATIABLE APPETITE: THE UNITED STATES AND THE ECOLOGICAL DEGRADATION OF THE TROPICAL WORLD* 83 (1st ed. 2000).

¹⁰³ BALDOZ, *supra* note 34, at 49–50.

¹⁰⁴ *Id.* at 48. See also TUCKER, *supra* note 102. From the 1880s through the 1950s, sugar companies known as “The Big Five” dominated the land, economy, and politics of Hawai'i. *Id.* By 1910 the Big Five controlled 75% of Hawaiian sugar. *Id.*

immigration restrictions that prevented other Asians from immigrating to the United States.¹⁰⁵

Union activity also influenced sugar plantation owners to heavily rely on labor from the Philippines.¹⁰⁶ By 1909 Japanese workers made up 75% of sugar workers and had organized several strikes across the islands, including one in the spring where some seven thousand workers on Oahu walked off their plantation.¹⁰⁷ Rather than cede to the needs of their workers, HSPA lobbied the Bureau of Insular Affairs to secure Filipino workers by setting up a recruiting office in Manila.¹⁰⁸

Though Filipinos were initially recruited to avoid further union activity, this backfired, and Filipinos eventually organized with other groups of agricultural laborers for better working conditions.¹⁰⁹ In December 1919, the Filipino Federation of Labor (FFL) and the Japanese Federation of Labor (JFL) each submitted demands to the HSPA, seeking higher pay and improved working conditions.¹¹⁰ Three thousand Filipino workers answered the call and established picket lines at plantations across Oahu.¹¹¹ On February 1, 1920, 8,300 Filipino and Japanese strikers—77% of the entire plantation work force on Oahu—halted plantation operations.¹¹²

While industries heavily recruited Filipino workers, communities that witnessed increased migration reacted harshly.¹¹³ Repatriation and miscegenation laws targeted Filipinos.¹¹⁴ Filipinos were American nationals and served in the U.S. military, and yet still faced racism in the communities they were attempting to join.¹¹⁵ Despite these hardships, Filipinos organized to consolidate power and influence over their own labor.¹¹⁶

¹⁰⁵ BALDOZ, *supra* note 34, at 48.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 50.

¹⁰⁸ *Id.* In 1909, the United States transported 639 Filipinos to work on Hawaiian sugar plantations; in 1910, another 2,915 followed. *Id.*

¹⁰⁹ Marc-Tizoc González, *Critical Ethnic Legal Histories: Unearthing the Interracial Justice of Filipino American Agricultural Labor Organizing*, 3 U.C. IRVINE L. REV. 991, 1046 (2013).

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ See NGAI, *supra* note 18, at 96.

¹¹⁴ *Id.*

¹¹⁵ See PASCOE, *supra* note 91, at 196–97.

¹¹⁶ See González, *supra* note 109.

D. The Philippine Independence Act and the Creation of a Postcolonial Society

In 1934, Congress passed the Philippine Independence Act, also referred to as the McDuffie-Tydings Act.¹¹⁷ This Act set forth a ten-year “Commonwealth” period, where the United States would transition the Philippines from a colony to an independent country.¹¹⁸ However, strings were attached.¹¹⁹ For example, all citizens of the Philippine Islands owed allegiance to the United States.¹²⁰ Foreign affairs were to be under the supervision and control of the United States.¹²¹ Additionally, trade was to be enshrined between the two countries as outlined in the Act.¹²² The Philippines inherited surface-level independence and debt, while the United States exerted control over central aspects of governance, shaping the Philippines for decades to follow.¹²³

I. Negotiating the Terms of Independence

Pending complete independence, the Philippines was to commit to special trade relations with the United States.¹²⁴ The United States set the quota, price, and timeline for the export of sugars, coconut oil, and twine for the next ten years.¹²⁵ During the first five years of this commonwealth period, the United States secured a duty-free relationship for the import of these unprocessed goods, followed by a five-year transition period, where the Philippines could slowly implement an export tax on the United States.¹²⁶

While the islands were able to establish market rate taxes with other countries, the demanded quota from the United States for these enumerated goods left little for the Philippines to export elsewhere. All export taxes, from the United States and otherwise, were to be placed directly into a sinking fund, which was to be applied solely to repaying

¹¹⁷ Philippine Independence Act of 1934, ch. 84, 48 Stat. 456.

¹¹⁸ *Id.*

¹¹⁹ *See id.* § 2. In order for the Philippines to obtain independence, several mandatory provisions were to be implemented. *Id.*

¹²⁰ *Id.* § 2(a). Also, a system of public education was to be established, with instruction to be conducted primarily in English. *Id.* § 2(a)(8).

¹²¹ *Id.* § 2(a)(10).

¹²² *Id.* § 2(a)(5).

¹²³ *See id.* § 2.

¹²⁴ *See* 48 Stat. 456.

¹²⁵ 73 *Cong. ch. 84*, § 6.

¹²⁶ *Id.* § 6(e).

the Philippine debt.¹²⁷ The Philippine Independence Act outlined that the Philippines was to assume all its own debts right at the start of the Commonwealth period in 1933.¹²⁸ This unequal trade and debt regime did not place the Philippines in any position to control its own economy.

Furthermore, the independence plan mandated that “citizens and corporations of the United States shall enjoy in the Commonwealth of the Philippine Islands all the civil rights of citizens and corporations, respectively, thereof.”¹²⁹ Therefore, United States producers and exporters were able to get their products to the Philippines without paying taxes to the Philippines.¹³⁰ Ironically, while U.S. citizens were to enjoy the same rights in the Philippines as Philippine citizens, Filipinos were immediately subject to the Immigration Act of 1917—banning Asians from immigrating to the United States—and the Immigration Act of 1924—establishing a national origins quota from each country.¹³¹ The quota from the Philippines was set at the lowest for any country, fifty.¹³² At the same time that the United States solidified a corporate and capitalist advantage within the Philippines, legislation stateside ostracized Filipinos.¹³³

The United States recognized the military and economic advantage of having control over the Philippines and sought to continue a special relationship even after independence.¹³⁴ In a 1954 report to the President of the United States, the Secretary of State posited that the need for continued U.S. involvement in the Philippines was preferential because of its location in the Pacific.¹³⁵ The Secretary stated that a “free Philippines would be an inspiration to all the nations of Asia working out their own independence.”¹³⁶ In other words, the Philippines was to be a free and capitalist inspiration to the rest of Asia, which would

¹²⁷ *Id.* § 6(e)(5).

¹²⁸ 73 *Cong. ch. 84*, § 6.

¹²⁹ *Id.* § 2(a).

¹³⁰ *See id.*

¹³¹ *Id.* § 8(a).

¹³² *Id.* *See also* NGAI, *supra* note 18, at 97.

¹³³ *See id.*

¹³⁴ *See* 48 Stat. 456.

¹³⁵ REPORT TO THE PRESIDENT BY THE SECRETARY OF STATE, “The Philippine Rehabilitation Program,” Dept. of State Publication 561, Series 67, 3 (1954).

¹³⁶ *Id.* Daniel Immerwahr dubs the 1940s the Asian Spring. *See* IMMERWAHR, *supra* note 17, at 231. On August 15, 1945, Indonesia declared independence. *Id.* Vietnam declared independence on September 2, 1945, followed by the People’s Republic of Korea on September 6, 1948. *Id.* at 230.

undergo various independence struggles. So, too, the Secretary recognized the longstanding association between the two countries and held rehabilitation of the islands as a duty to the Philippine soldiers who fought valiantly alongside American soldiers.¹³⁷ The United States was also eager to be relieved of its military duties after World War II devastated the Philippines.¹³⁸

After the ten-year Commonwealth Era, the United States Congress passed the Philippine Trade Act of 1946,¹³⁹ known colloquially as the Bell Trade Act.¹⁴⁰ The agreement provided for free trade between the newly independent Philippines and the United States for a period of eight years from 1946 to 1954, then, for the remaining twenty years of the effective life of the agreement, gradually increasing tariffs.¹⁴¹ Again, quotas were set for Philippine exports to the United States of sugars, cordage, rice, cigars, tobacco, coconut oil, and buttons, all of which extended until 1974.¹⁴² During these twenty years, no export tax was to be collected by the United States on articles exported to the Philippines, thus giving United States producers an upper hand on manufactured goods.¹⁴³

The Bell Trade Act also secured American control over Philippine resources and the economy.¹⁴⁴ The free trade agreement provided that

the value of Philippine currency in relation to the United States dollar shall not be changed, the convertibility of pesos into dollars shall not be suspended, and no restrictions shall be imposed on the transfer of funds from the Philippines to the United States, except by agreement with the President of the United States.¹⁴⁵

¹³⁷ IMMERWAHR, *supra* note 17, at 230.

¹³⁸ *See id.* at 235. Nearly one million Filipinos died in World War II, and 10% of the country's buildings were lost. *Id.*

¹³⁹ Philippine Trade Act of 1946, H.R. 5856, 79th Cong. (1946).

¹⁴⁰ *See* Office of the President, Message of President Roxas to the Second Congress on Urging Ratification of Executive Agreement with the USA (June 21, 1946) (Phil.), <https://www.officialgazette.gov.ph/1946/06/21/message-of-president-roxas-to-the-second-congress-on-urging-ratification-of-executive-agreement-with-the-usa-june-21-1946> [<https://perma.cc/WSX2-SCDV>].

¹⁴¹ *Id.*

¹⁴² Philippine Trade Act of 1946, H.R. 5856, 79th Cong. §§ 211–214.

¹⁴³ *Id.* ¶ 223.

¹⁴⁴ *See* H.R. 5856, 79th Cong.

¹⁴⁵ *Id.* ¶ 342.

Another controversy was Section 341.¹⁴⁶ Filipinos did not welcome the thought of continued parity of imported goods from the United States or unfettered access to production and investment.¹⁴⁷ Philippines President Manuel Roxas stated as much to the Philippines Congress, urging it to ratify the trade act.¹⁴⁸ Acknowledging the widespread demonstrations against parity in the months preceding this vote, President Roxas stated: “There is no way of divorcing [section 341] from the Trade Act. If I could, I would remove it, not because of the alleged dangers it holds for us—I believe these to be non-existent—but rather because of the manner and form in which it is included.”¹⁴⁹

President Roxas does not clarify what he means in stating his opposition to the “manner and form” of the provision; presumably, he meant to convey his distaste toward the term “exploitation” in the Act.¹⁵⁰ However, he did urge, over the span of several paragraphs, the passage of the Act because of the United States’ “wholehearted and unselfish concern for [Filipino] welfare” and affirmed there was no risk of an “imperialistic deluge.”¹⁵¹

Prior to the introduction of this Act in the United States, the Philippine government had been attempting to amend the constitution to provide that 60% of each corporate business must be Filipino-owned.¹⁵² President Roxas was also under tremendous political pressure. In September 1945, two thousand Filipinos marched on Manila, demanding accountability for Japanese collaboration during the war.¹⁵³ President Roxas served in the Japanese-backed government cabinet and was a known collaborator.¹⁵⁴ The United States, however, fully supported President Roxas and introduced the Philippine

¹⁴⁶ Section 341 stated: “The disposition, exploitation, development, and utilization of all agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces and sources of potential energy, and other natural resources of the Philippines, and the operation of public utilities, shall, if open to any person, be open to citizens of the United States and to all forms of business enterprise owned or controlled, directly or indirectly, by United States citizens.” *Id.* § 341.

¹⁴⁷ See, e.g., *The Philippines: Two Freedoms*, TIME (Mar. 24, 1947), <http://content.time.com/time/subscriber/article/0,33009,887343,00.html> [<https://perma.cc/R7NA-MCKR>].

¹⁴⁸ See Office of the President, *supra* note 140.

¹⁴⁹ See *id.*

¹⁵⁰ See *id.*

¹⁵¹ *Id.*

¹⁵² *The Philippines: Two Freedoms*, *supra* note 147.

¹⁵³ See IMMERWAHR, *supra* note 17, at 234–35.

¹⁵⁴ *Id.* at 237.

Rehabilitation Act, also known as the Tydings War Damage Act.¹⁵⁵ The Act committed annual payments to the Philippines to recover from the havoc of World War II.¹⁵⁶

While the Philippines had played a relatively minor role in the war, the location of the islands was crucial for both the Americans and the Japanese, and the islands saw a fair amount of violent warfare.¹⁵⁷ To recover from the destruction of World War II, the Philippines relied on foreign aid in the rebuilding effort.¹⁵⁸ The United States conditioned its assistance on economic control.¹⁵⁹

Peasants and poor Filipinos were outraged by these options.¹⁶⁰ The *Hukbalahap* was a large guerilla army and peasant movement in the Philippines aimed at reducing economic and social inequality.¹⁶¹ Initially formed as a people's army against Japanese occupation, the "Huks" aligned politically with the leftist organization Democratic National Alliance.¹⁶² The Democratic Alliance won six seats in the Philippine Congress, but President Roxas refused to seat them.¹⁶³ This led to open warfare between the Huks and the Philippine government, known as the Hukbalahap Rebellion.¹⁶⁴ Without representation from the Democratic Alliance, the Philippine government ultimately voted to amend the constitution in the way the United States wanted.¹⁶⁵

¹⁵⁵ Philippine Rehabilitation Act of 1946, 79 Pub. L. No.370, 60 Stat. 128, 79th Cong., Ch. 243 (1946).

¹⁵⁶ IMMERWAHR, *supra* note 17, at 237. *See also* 79 Pub. L. No.370, 60 Stat. 128, 79th Cong., Ch. 243. With the support of the United States, President Roxas went on to grant amnesty for collaborators and targeted dissidents. *See* IMMERWAHR, *supra* note 17, at 237.

¹⁵⁷ *See* REPORT TO THE PRESIDENT BY THE SECRETARY OF STATE, "The Philippine Rehabilitation Program," Dept. of State Publication 561, Series 67, 3 (1954). Light, water, and communication systems were nearly destroyed entirely, buildings were leveled, and rubble filled the streets of the capital, Manila. *Id.*

¹⁵⁸ *See, e.g.*, 79 Pub. L. No. 370, 60 Stat. 128, 79th Cong., Ch. 243.

¹⁵⁹ *The Philippines: Two Freedoms*, *supra* note 147.

¹⁶⁰ *See, e.g., id.*

¹⁶¹ *See, e.g.*, CHRISTOPHER PAUL ET AL., PATHS TO VICTORY: DETAILED INSURGENCY CASE STUDIES 32 (RAND Corporation 2013).

¹⁶² Formed in 1945, initially as an anti-Japanese occupation organization, the Democratic Alliance included the Hukbalahap, the National Peasants Union, the Committee on Labor Organization, the Civil Liberties Union, and the Communist Party of the Philippines. *See* Abraham Chapman, *Note on the Philippine Elections*, 19 PAC. AFF. 2, 193–98, 195 (1946).

¹⁶³ *Id.* at 32.

¹⁶⁴ *See* PAUL ET AL., *supra* note 161.

¹⁶⁵ *Id.*

Shortly after the Philippine Congress ratified the Bell Trade Act, President Roxas narrowly survived an assassination attempt.¹⁶⁶

2. *Political Realities in the Republic of the Philippines*

The negative consequences of the Bell Trade Act were recognized immediately. An article published by the University of British Columbia in 1952 blamed the Philippines’ “baffling” unemployment and underemployment partly on the Bell Act.¹⁶⁷ Due to the Philippines’ reliance on the export of sugar, abacá and rope, and coconut products, the economy was particularly vulnerable to developments abroad, and any drop in demand for these products would “decrease the incomes of the people producing the goods in question [and] . . . also drastically reduce the foreign-exchange earnings of the country.”¹⁶⁸

Remember, however, these same products were mandated during the Commonwealth era to be produced and exported to the United States.¹⁶⁹ Focusing production on this narrow set of items forced the Philippines to spend an unsustainable amount on imports that could otherwise be produced domestically.¹⁷⁰ The Bell Act then placed Philippine production in the difficult position of being unable to compete with the duty-free import of mass-produced U.S. consumer goods.¹⁷¹ The Act further limited the Philippines’ tariff system by requiring duty-free entry on goods from the United States.¹⁷² While the Rehabilitation Act provided the Philippines with much-needed economic aid, it simultaneously devalued the Philippine currency by establishing an exchange rate of the peso-dollar two to one.¹⁷³ This

¹⁶⁶ Official Gazette, *Official Month in Review: March 1947* (Mar. 1, 1947) (Phil.), <https://mirror.officialgazette.gov.ph/1947/03/01/official-month-in-review-march-1947/> [<https://perma.cc/X2DA-9HQP>].

¹⁶⁷ M. Cuaderno, *The Bell Trade Act and the Philippine Economy*, 25 PAC. AFF. 323, 324 (1952).

¹⁶⁸ *Id.* at 326.

¹⁶⁹ See The Philippine Independence Act (Tydings-McDuffie Act), H.R. 7233, 72nd Cong. Sess. II. Ch. 11. § 6 (1933) [hereafter Tydings-McDuffie Act].

¹⁷⁰ Cuaderno, *supra* note 167, at 326.

¹⁷¹ *Id.* at 328.

¹⁷² *Id.* at 332. Cuaderno pointed out that “this arrangement deprives the government of substantial potential revenues and leaves local industry defenseless against the inflow of mass-produced consumer goods.” *Id.* Cuaderno further noted, “Historically speaking, it is hard to find any country, with the exception of Great Britain, which developed its economy without the aid of tariffs.” *Id.* at 331.

¹⁷³ Philippine Rehabilitation Act, 79 Cong. Ch. 243. 1946 (enacted). See also CHOY, *supra* note 92, at 70.

disparate economic devaluation continued over time, and by 1971 the United States dollar was worth approximately 6.25 Philippine pesos.¹⁷⁴ As of February 2023, one United States dollar equaled approximately fifty-four pesos.¹⁷⁵

While the United States established an unequal economic system with the Philippines during the Commonwealth era, the Bell Act ensured this lopsided relationship would continue. Rather than allow Filipinos more control over their own economy and foreign policy, the United States exerted its powerful influence to model the Philippine economy in a fashion that allowed United States capitalists unfettered access to the wealth of the islands. The devalued currency contributes to Filipinos' perceived necessity to leave the islands and work elsewhere.¹⁷⁶ Newly independent and saddled by debt, the Philippines remained unable to change its unsustainable economy. To confront this reality, the Philippine government leaned into an already existing practice—exporting human labor.

3. *Doubling Down on Labor Export*

With the passage of the Information and Education Act, the United States launched the Exchange Visitor Program (EVP) in 1948.¹⁷⁷ The espoused purpose of this Act was “to promote a better understanding of the United States in other countries.”¹⁷⁸ The underlying motivations are better understood within the greater context of Cold War-era politics. The various policies of labor export and immigration provided the United States with a highly trained and willing labor force. Between 1965 and 1988, an estimated twenty-five thousand nurses migrated from the Philippines to the United States.¹⁷⁹

The funds from the Bell Trade Act, along with preferential trade agreements, allowed some in the Philippines to enjoy relative economic success throughout the 1950s and 1960s, and the country became lauded as the “Pearl of the Orient.”¹⁸⁰ However, while some in the

¹⁷⁴ CHOY, *supra* note 92, at 70.

¹⁷⁵ *US Dollar to Philippine Peso*, W. UNION, <https://www.westernunion.com/us/en/currency-converter/usd-to-php-rate.html> [<https://perma.cc/9XUJ-MQ38>].

¹⁷⁶ *See id.* With the 1971 exchange rate, it would take a Filipino twelve years of work in the Philippines to earn what they would earn as a nurse in the United States in one year. *Id.*

¹⁷⁷ *See generally* U.S. Information and Educational Exchange Act, 80 Cong. Ch. 36 (1948). Sec. 201 (establishing a reciprocal exchange of workers and students between the United States and other countries).

¹⁷⁸ *Id.*

¹⁷⁹ CHOY, *supra* note 92, at 1.

¹⁸⁰ Andres, *supra* note 15, at 524–25.

Philippines were able to amass wealth, inequality was apparent, as unemployment, low wages, and poverty plagued much of the population.¹⁸¹ In the increasingly globalized world, “developing” states often embark on an export-oriented strategy as a means for generating foreign exchange.¹⁸² This is precisely the practice the Philippines has employed in upholding its economy.

In its early years as a commonwealth and independent state, the Philippines focused on exporting materials, partly because manufactured goods from the United States were imported duty-free, and domestic manufacturers could not compete.¹⁸³ Therefore, most of the country’s infrastructure revolve around foreign investment and the exporting of goods and labor.¹⁸⁴ The Philippines has seemingly been unable to break away from this cycle, resulting in a relatively weak economy, struggling labor market, and reliance on labor migration.¹⁸⁵

II

LABOR MIGRATION AND THE ADMINISTRATIVE STATE

While the United States established the framework to promote labor export from the Philippines, the Philippine government doubled down on this strategy and relies on capital secured from overseas workers.¹⁸⁶ Like many countries that operate administrative agencies to oversee the import and export of goods or agriculture, the Philippines operates administrations to oversee the export of human beings. To both secure the supply of workers willing to travel abroad and offer protections once they get there, the Philippines operates an extensive administrative agency.¹⁸⁷ The goals of the agency are promising, but actual protections are lacking, leaving Filipino laborers highly exploitable and relatively unprotected.

¹⁸¹ *See id.*

¹⁸² *See* Feina Cai, *The Labour Export Policy: A Case Study of the Philippines*, E-INTERNATIONAL RELS. (Aug. 24, 2011), <https://www.e-ir.info/2011/08/24/the-labour-export-policy-a-case-study-of-the-philippines-2/> [https://perma.cc/2GTU-3VBK] (discussing the economic stresses that lead poorer countries to focus on exporting laborers and the risks of becoming dependent on remittances).

¹⁸³ *See* Tydings-McDuffie Act, H.R. 7233, 72nd Cong. Sess. II. Ch. 11.

¹⁸⁴ *See* Cai, *supra* note 182.

¹⁸⁵ *See id.*

¹⁸⁶ *See* Royandoyan, *supra* note 9.

¹⁸⁷ *See About POEA*, PHIL. OVERSEAS EMP. ADMIN., <https://www.dmw.gov.ph/archives/programs/programs&services.html> [https://perma.cc/J9X5-J8Z4].

A. The Establishment and Expansion of the Philippine Overseas Employment Administration

Ferdinand Marcos became president of the Philippines in 1965.¹⁸⁸ During his time as president, he failed to mitigate corruption and human rights violations.¹⁸⁹ His leadership massively increased the country's debt and domestic inflation.¹⁹⁰ President Marcos, and subsequent leaders, also used the administrative state to export workers, which increased the country's reliance on remittances.

Marcos initially attempted to diversify the Philippine economy.¹⁹¹ Before World War II, 75% of all Philippine trade was with the United States.¹⁹² Under the Marcos regime, the Philippines—to the dismay of the United States—opened and increased trade negotiations with the Soviet Union and China.¹⁹³ To quell opposition or dissent, President Marcos implemented martial law in 1972.¹⁹⁴ Simultaneously, he pushed the Philippines further into its reliance on labor export, and formed agencies to assist the hundreds of thousands of Filipinos willing to pack up and work abroad.¹⁹⁵ President Marcos's government created the Philippine Overseas Employment Administration (POEA) in 1982.¹⁹⁶ The POEA proclaims to “connect[] to the world and in partnership with all stakeholders, facilitate[] the generation and preservation of decent jobs for Filipino migrant workers, promote[] their protection and advocate[] their smooth reintegration into Philippine society.”¹⁹⁷ The core function of the POEA is to engage in overseas recruitment for Filipino workers and facilitate their

¹⁸⁸ See Joseph Scalice, *[ANALYSIS] How Ferdinand Marcos' 1965 Election Campaign Turned Central Luzon into a War Zone*, RAPPLER (Mar. 5, 2022), <https://www.rappler.com/voices/thought-leaders/analysis-how-ferdinand-marcos-1965-election-campaign-turned-central-luzon-war-zone/> [<https://perma.cc/L5FW-TJWF>].

¹⁸⁹ See, e.g., Sascha Pfeiffer et al., *Filipino Archivist Races to Protect History of Abuses Ahead of Marcos Presidency*, NPR (June 17, 2022), <https://www.npr.org/2022/06/17/1105970811/filipino-archivist-races-to-protect-history-of-abuses-ahead-of-marcos-presidency> [<https://perma.cc/E9WB-VRXN>].

¹⁹⁰ Andres, *supra* note 15, at 524–25.

¹⁹¹ Gary Hawes, *United States Support for the Marcos Administration and the Pressures That Made for Change*, 8 CONTEMP. SE. ASIA 19 (1986).

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ See Katerina Francisco, *Martial Law, the Dark Chapter in Philippine History*, RAPPLER (Sep. 22, 2016, 11:00 AM), <https://www.rappler.com/newsbreak/iq/146939-martial-law-explainer-victims-stories/> [<https://perma.cc/V62Q-45L8>].

¹⁹⁵ Andres, *supra* note 15, at 526–28.

¹⁹⁶ Exec. Order No. 797 (May 1, 1982) (Phil.).

¹⁹⁷ *About POEA*, *supra* note 187.

employment abroad.¹⁹⁸ The Secretary of Labor under President Marcos stated:

[T]here is a global labor market available to qualified Filipinos, especially those who are unemployed or whose employment is tantamount to unemployment because of their very little earnings. We no longer apologize for the outflow of Filipino labor abroad under such labels as the brain drain. We have decided it in such a manner that it will redound to the national interest. We are scouting aggressively for job markets for excess Filipino skills in many countries of the world.¹⁹⁹

The focus on exporting workers coincides with the utter failure of the Philippine domestic economy. Between 1983 and 1986, the Philippines’ per capita income fell by 18%.²⁰⁰ Widespread poverty and malnutrition plagued the islands, and the country was billions of U.S. dollars in foreign debt.²⁰¹ Overseas workers’ remittances alleviated some of this debt, but, in turn, created a dependency on the export of foreign nationals.²⁰² Precarious domestic circumstances pushed people to consider working abroad, and the POEA attempted to help.

President Marcos’s corruption and violence gained international attention in 1983, after Rolando Galman assassinated the exiled opposition leader, Benigno S. Aquino Jr.²⁰³ Benigno “Ninoy” Aquino Jr. was one of President Marcos’s staunchest and most outspoken opponents.²⁰⁴ His assassination rallied support around the Marcos opposition, and Corazon Aquino, Ninoy’s wife, won the presidency in

¹⁹⁸ *Id.*

¹⁹⁹ Blas F. Ople, Trends and Principles in the Labor Code, Address Before the National Tripartite Conference on the Labor Code, Development Academy of the Philippines, Tagaytay City (Oct. 23, 1975), in *FRONTIERS OF LABOR AND SOCIAL POLICY: SELECTED SPEECHES* 217, 220.

²⁰⁰ ROBERT S. DOHNER & PONCIANO INTAL, JR., DEBT CRISIS AND ADJUSTMENT IN THE PHILIPPINES, *DEVELOPING COUNTRY DEBT AND THE WORLD ECONOMY*, NATIONAL BUREAU OF ECONOMIC RESEARCH 169 (1989).

²⁰¹ Hawes, *supra* note 191, at 18.

²⁰² Rochelle E. Ball, *A Nation Building or Dissolution: The Globalization of Nursing—The Case of the Philippines*, 27 *PILIPINAS* 68 (1996).

²⁰³ See Jodesz Gavilan, *Look Back: The Aquino Assassination*, *RAPPLER* (Aug. 20, 2016, 11:45 PM), <https://www.rappler.com/newsbreak/iq/143594-look-back-ninoy-aquino-assassination/> [<https://perma.cc/MZS7-X3XK>].

²⁰⁴ *Id.*

1986.²⁰⁵ Ousted from government, Marcos traveled to the Island of O‘ahu to live out his exile.²⁰⁶

Despite new leadership, the Philippine government continued to push overseas employment. In 1987, President Aquino signed an executive order reorganizing and expanding the role of the POEA.²⁰⁷ If the shift to labor export was a short-term solution to a struggling economy, contemporary policies enshrined the export of human beings into the fabric of Philippine reality. Throughout the latter half of the twentieth century, the Philippines continued to rely on the export of labor as a means of stabilizing its economy.

President Fidel Ramos then signed the Migrant Workers and Overseas Filipinos Act of 1995.²⁰⁸ The policies declared in this Act, as outlined by the Philippine Congress, were expansive and focused on protecting overseas workers; however, the contents of the Act included provisions to deregulate and phase out the regulatory functions of the POEA.²⁰⁹ Pursuant to the policy of the Ramos presidency, this Act sought to place labor relations solely within the realm of the “worker and his foreign employer,” and set out a five-year plan to deregulate the POEA.²¹⁰ Instead of regulating the POEA, this Act focused on policies to make accessing recruitment services more equitable and to provide social, economic, and legal services to migrant workers.²¹¹

About a decade later, under President Gloria Macapagal-Arroyo, the Philippine Congress reversed its course by repealing the 1995 Act’s

²⁰⁵ See Michael Bueza, *Marcos vs Aquino, and Past Snap Elections Around the World*, RAPPLER (Feb. 7, 2015), <https://www.rappler.com/newsbreak/iq/83177-marcos-aquino-past-snap-elections-world/> [<https://perma.cc/G5H9-TFHF>].

²⁰⁶ Liz Dee, *The End of an Era—Handholding Ferdinand Marcos in Exile*, ADST (Feb. 18, 2015), <https://adst.org/2015/02/the-end-of-an-era-handholding-ferdinand-marcos-in-exile/> [<https://perma.cc/GXZ4-5Q3V>].

²⁰⁷ President Corazon Aquino, Exec. Order No. 247, Reorganizing the Philippine Overseas Employment Administration and for Other Purposes (1987), <https://www.officialgazette.gov.ph/1987/07/24/executive-order-no-247-s-1987/> [<https://perma.cc/B4VF-T5D9>]. Executive Order 247 stated that “it has become necessary to institute changes in the functional structure of the Philippine Overseas Employment Administration in order to enhance its effectiveness in responding to changing market and economic conditions and to the call of the national development plan for the strengthening of the worker protection and regulation components of the overseas employment program.” *Id.*

²⁰⁸ Republic of the Philippines Congress, Third Regular Session, Republic Act No. 8042 (1995), https://www.poea.gov.ph/mandates/files/ra_8042.pdf.

²⁰⁹ *Id.* §§ 29, 30.

²¹⁰ *Id.*

²¹¹ *Id.* § 6.

provisions to actually deregulate and phase out the POEA.²¹² Explicit in this new law was a condition that the Philippines would deploy workers only to countries whose governments had concluded labor arrangements and guaranteed they would protect workers’ rights and comply with international laws and standards for migrant workers.²¹³ Again, the welfare of OFWs was seemingly a concern of the Philippine government, and this administration thought the POEA could resolve it.

Later, in 2010, the Philippine government promulgated a series of rules for the POEA.²¹⁴ Again, under the auspices of protecting the welfare of migrant workers and improving the standard of protection, this set of rules focused on preventing corruption within the agency and protecting workers.²¹⁵ Rule III announces that the state “shall allow the deployment of OFWs only in countries where the rights of Filipino migrant workers are protected.”²¹⁶ The Department of Foreign Affairs (DFA) determines whether a country meets this requirement and certifies the employer country.²¹⁷ In practice, ensuring that a country has the requisite legal protections for migrant workers does nothing to enforce these laws.

Rule IV attempts to crack down on illegal recruitment.²¹⁸ All recruitment is to be authorized by the POEA, and this rule criminalizes all illegal recruitment practices.²¹⁹ The penalties associated with illegal recruitment are steep, including imprisonment of not less than twelve years and one day but not more than twenty.²²⁰ Another rule disqualifies government officials from engaging in or profiting from labor recruitment, while Rule VI targets illegal recruitment programs.²²¹ This set of rules is extensive and offers a framework which attempts to consolidate power over labor relations in the

²¹² Congress of the Philippines, Thirteenth Congress, Third Reg. Sess. (Apr. 10, 2007), https://www.poea.gov.ph/mandates/files/RA_9422.pdf.

²¹³ *Id.* § 1.

²¹⁴ See Republic of the Philippines, Omnibus Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act of 1995, As Amended by Republic Act. No. 10022 (July 8, 2010), <https://owwa.gov.ph/wp-content/uploads/2021/11/Also-known-as-the-Migrant-Workers-and-Overseas-Filipinos-Act-of-1995-As-Amended.pdf>.

²¹⁵ *See id.*

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Id.* at r. IV.

²¹⁹ *Id.* at r. IV § 5(a).

²²⁰ *Id.*

²²¹ *Id.* at r. VI, Anti-Illegal Recruitment Programs, 13–18.

Philippine government. However, continued exploitation of workers and poor working conditions create doubt in the effectiveness of agencies like the POEA.

Labor laws often do not protect migrant domestic workers.²²² In 2012, the Philippine Congress passed The Domestic Workers Act, or *Batas Kasambahay*, specifically addressing concerns of domestic workers.²²³ This Act established a set of rights and privileges for domestic workers, including minimum standards for treatment, lodging, and a right to outside communication.²²⁴ The Department of Labor and Employment is responsible for implementing these measures.²²⁵ The Act also establishes minimum age and wage requirements, prohibits debt bondage, and mandates a daily and weekly rest period.²²⁶ The necessity of these minimum standards highlights the poor working conditions of domestic workers.

The Philippine government saw its role in protecting OFWs differently throughout the late 1900s and early 2000s. More recently, the Philippines has designated broad authority to its administrative agencies in overseeing worker employment and protection. While the Philippine Government expends significant resources to oversee OFWs, particularly given that millions of Filipinos are abroad, the COVID-19 pandemic recently highlighted poor working conditions suffered by migrant workers.

B. Shortcomings of the State

While the Philippine government operates agencies to manage overseas workers, the actual influence and power of these systems are unclear. An OFW, like any solitary worker, is not always in the best position to bargain for improved working conditions. Currently, the Philippine government embraces the administrative state in implementing rules and oversight over OFWs. Not only does a continued focus on labor exporting fail to address the struggling

²²² See, e.g., Jo Becker, *Why Global Labor Reforms Are Vital to Protect Vulnerable Workers*, HUM. RTS. WATCH (Jan. 10, 2013, 5:07 PM), <https://www.hrw.org/news/2013/01/10/why-global-labor-reforms-are-vital-protect-vulnerable-workers#> [<https://perma.cc/U3RR-J4P9>] (explaining that “the International Labour Organization says that nearly 30% of the world’s domestic workers are completely excluded from national labor laws,” and they usually earn around 40% of what other workers earn).

²²³ An Act Instituting Policies for the Protection and Welfare of Domestic Workers, Rep. Act No. 10361, S. No. 78, H. No. 6144 (Jan. 18, 2013) (Phil.).

²²⁴ *Id.* art. II.

²²⁵ See *id.*

²²⁶ *Id.* art. III–IV.

domestic labor market in the Philippines, but also employers continue to exploit these workers and subject them to poor working conditions.

1. Exploitation of Overseas Workers

The United States satisfied Rule III of the promulgated rules, and the Philippines sends a large population of OFWs to the United States; however, workers are still exploited and subject to harsh working environments—even illegal trafficking.²²⁷ For example, the Philippine government sued recruitment agencies operating in the United States for defrauding the government and its recruits.²²⁸ In one case, after being promised a teaching job, dozens of teachers were forced to sleep on a bare mattress on the floor, pay exorbitant “fees,” and “out of the 273 recruits, fewer than 100 had an actual teaching job waiting for them when they arrived.”²²⁹ Later, the recruiter threatened to confiscate the migrant workers’ passports or deport them if they complained.²³⁰

Alarming contemporary examples such as this are reminiscent of labor recruitment practices in the early twentieth century aimed at undermining organized labor and maintaining precariously low wages.²³¹ After over one hundred years of recognizing the value the United States and other countries place on Filipino labor, Philippine labor agencies should find ways to enact greater protections for its exploited citizens.²³²

²²⁷ See, e.g., *United States v. Tolentino*, No. EP-04-CR-2091-KC, 2008 WL 2783511 (W.D. Tex. May 21, 2008) (stating that defendant and multiple codefendants pleaded guilty to conspiracy to defraud the United States, in association with practices involving recruiting, transporting, and employing Filipino teachers).

²²⁸ See *id.*

²²⁹ See Maki Somosot, *Part 2 | Cycle of Debt: How Migration Business Abets Abuse of Pinoy Teachers in US*, RAPPLER (July 31, 2020, 10:00 PM), <https://www.rappler.com/news-break/in-depth/part-2-cycle-of-debt-how-migration-business-abets-abuse-pinoy-teachers-us/> [<https://perma.cc/6KLY-NUU8>].

²³⁰ *Id.*

²³¹ See BALDOZ, *supra* note 34.

²³² In this Comment, the United States draws particular scrutiny for its influence over the creation of the Philippine labor export system. However, many other countries are unfortunately known abusers of foreign laborers. For example, many countries in the Middle East employ tens of thousands of Filipino OFWs—in 2017 the POEA reported 998,706 Filipino workers were employed in the Middle East, mostly in Saudi Arabia. See generally PHIL. OVERSEAS EMP. ADMIN., *Deployed Overseas Filipino Workers by Country/Destination (Total) 2017 vs 2016*, <https://www.dmw.gov.ph/archives/ofwstat/compendium/2016-2017%20deployment%20by%20country.pdf> [<https://perma.cc/BPA3-PQ2L>]. The Philippine government has shown little influence in bargaining for fair and reasonable working conditions for its overseas workers. Employers regularly and unilaterally change

2. *The Precarious Domestic Labor Market*

Another factor that contributes to the high rate of labor migration from the Philippines is the domestic labor market. In September 2021, the Philippine Statistics Authority reported unemployment at 8.9% and underemployment at 14.2%.²³³ While the Philippine government attempts to rectify issues associated with overseas employment and exploitation through administrative agencies, its administrative state does nothing to address the precarious nature of the Philippine domestic labor market that initially influences the decision to work abroad. United States intervention in the Philippine economy during the Commonwealth era and in the years following, coupled with war recovery and increasing debt, stagnated the domestic labor market in the Philippines.

One concerning aspect of the Philippine domestic labor market is the widespread use of Export Processing Zones (EPZs). EPZs are industrial districts established to encourage enterprise by importing raw processing materials and components for export without paying duties and with minimum customs regulations.²³⁴ While the idea of EPZs in the Philippines dates back to the 1920s, government-sponsored EPZs were first developed in the 1970s.²³⁵ A proposal to establish Mariveles²³⁶ as a port to serve as the first free trade zone in the Philippines was signed into law on June 21, 1969, by President Marcos.²³⁷ The Export Processing Zone Authority (now the Philippine

the terms of the contract after the Filipino worker arrives. See Dan Gaymaytan, *Death and the Maid: Work, Violence, and the Filipina in the International Labor Market*, 20 HARV. WOMEN'S L.J. 229, 240–41 (1997). Other OFWs have been denied wages, arbitrarily reprimanded, or illegally deported. *Id.* Filipina domestic workers have been imprisoned, beaten, and sentenced to death after experiencing employer abuse, in some of the most heartbreaking of circumstances. See, e.g., *id.* at 232.

²³³ *Unemployment Rate in September 2021 Is Estimated at 8.9 Percent*, PHIL. STAT. AUTH. (Nov. 4, 2021), <https://psa.gov.ph/content/unemployment-rate-september-2021-estimated-89-percent> [https://perma.cc/2X2M-PEQZ].

²³⁴ Mayumi Murayama & Nobuko Yokota, *Revisiting Labour and Gender Issues in Export Processing Zones: Cases of South Korea, Bangladesh and India*, 44 ECON. & POL. WKLY. 73 (2009).

²³⁵ Elizabeth M. Remedio, *Export Processing Zones in the Philippines: A Review of Employment, Working Conditions, and Labour Relations* 3 (Int'l Lab. Off., Working Paper No. 77, 1996).

²³⁶ Mariveles is a municipality in the province of Bataan, Philippines. See *A Brief History of Mariveles*, MUN. OF MARIVELES, <https://www.bataan.gov.ph/mariveles/> [https://perma.cc/9YNB-LQPD].

²³⁷ Remedio, *supra* note 235, at 3.

Economic Zone Authority (PEZA)) was to oversee this zone.²³⁸ In creating this agency, the government declared its policy was

to encourage and promote foreign commerce as a means of making the Philippines a center of international trade, of strengthening our export trade and foreign exchange position, of hastening industrialization, of reducing domestic unemployment, and of accelerating the development of the country, by establishing export processing zones in strategic locations in the Philippines.²³⁹

By 1997, the Philippines operated thirty-five EPZs.²⁴⁰ EPZs span industries of assembly, simple processing, logistics centers, and even tourist resorts.²⁴¹ EPZs are alarming because, according to the International Labor Organization, the Philippine government provides no system of labor regulation in relation to these economic zones.²⁴² While some zones have established a level of stable labor-management relations, a number of private zones have adopted anti-trade-union policies, which conflict with domestic labor laws.²⁴³

The deregulation used by the Philippine government to promote these zones ultimately influenced the domestic labor and employment market, further creating spaces of precarity and labor vulnerability. While the various factors and lack of data make the relative benefit to the host country unclear,²⁴⁴ EPZs have long drawn attention for human

²³⁸ *Id.*

²³⁹ Creating the Export Processing Zone Authority and Revising Republic Act No. 5490, Pres. Dec. No. 66, § 1 (Nov. 20, 1972) (Phil.), <https://www.officialgazette.gov.ph/1972/11/20/presidential-decree-no-66-s-1972/> [<https://perma.cc/C5FT-TDQ6>].

²⁴⁰ Press Release, Int'l Lab. Org., Export Processing Zones Growing Steadily (Sept. 28, 1998), https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_007997/lang--en/index.htm#:~:text=So%20What%20is%20Wrong%20with%20EPZs&text=Women%20not%20only%20make%20up,arduous%20nature%20of%20the%20work [<https://perma.cc/7QF5-MWRD>].

²⁴¹ Murayama & Yokota, *supra* note 234, at 74. Tourist locals in the Philippines are also highly important in EPZs. See generally, e.g., *Special Economic Zones in the Philippines*, PEZA, https://training.itcilo.org/actrav_cdrom1/english/global/frame/epzppi.htm [<https://perma.cc/WLU7-QLYM>].

²⁴² Press Release, *supra* note 240.

²⁴³ *Id.*

²⁴⁴ See Andrew Lang, *Trade Agreements, Business and Human Rights: The Case of Export Processing Zones* 16 (Corp. Soc. Resp. Initiative, Working Paper No. 57, 2010) (explaining how the World Bank has concluded the number of jobs created within the EPZs themselves as marginal, and the International Labor Organization estimates EPZs account for less than 0.5% of global employment). See also Murayama & Yokota, *supra* note 234, at 74. The study further noted that, through the 1970s and 80s, the wages at the Bataan EPZ were lower than those outside the zone. *Id.* An ILO study from the 1980s described the

rights violations. The unattractive labor market, and stunted domestic labor market in general, influences the desire of people to work outside the Philippines.

C. Labor Organizing and Popular Movements

Despite the precarious labor market, at home and abroad, Filipinos have consistently mobilized efforts to improve their circumstances. Filipinos have been active in many different labor sectors throughout history. This history of worker activism is necessary for the future of migrant worker protection because any successful government program depends on the input of workers.

Filipino labor organizing is long prominent in the agricultural sector. Many are familiar with the Delano Grape Strike in the 1960s, but fewer know that the strike first started through the organization of Filipino workers.²⁴⁵ On September 8, 1965, over one thousand predominantly Filipino workers associated with the Agricultural Workers Organizing Committee (AWOC) went on strike against grape growers in Delano, California.²⁴⁶ Workers demanded improved working conditions and refused to work for less than \$1.40 an hour.²⁴⁷ In an attempt to undermine the strike without addressing the poor working conditions, farm owners shut off the electricity and gas to worker bunkhouses, barricaded Filipino strikers inside their homes, and employed “scab” workers—including Mexican braceros.²⁴⁸ Recognizing the similar plight of all farmworkers, AWOC’s Filipino organizers Modesto “Larry” Dulary Itliong and Andy Imutan met with leaders from the National Farm Workers Association (NFWA).²⁴⁹ On September 16, 1965, NFWA leaders called a meeting where over one thousand farmworkers voted in solidarity with the AWOC strike, thus beginning the Great Delano Grape Strike.²⁵⁰

“super” exploitative nature of EPZ employment, insofar as the intensity of the work and the wages received, as far worse off than similar jobs in industrialized countries. *Id.*

²⁴⁵ See generally Inga Kim, *The 1965-1970 Delano Grape Strike and Boycott*, UNITED FARM WORKERS (Mar. 7, 2017), <https://ufw.org/1965-1970-delano-grape-strike-boycott/> [<https://perma.cc/ACL7-2A5K>].

²⁴⁶ See Marc-Tizoc González, *Critical Ethnic Legal Histories: Unearthing the Interracial Justice of Filipino American Agricultural Labor Organizing*, 3 UC IRVINE L. REV. 991, 992–93.

²⁴⁷ *Id.*

²⁴⁸ *Id.* at 993–94.

²⁴⁹ *Id.* at 995. (including César Chávez, Dolores Huerta, and Gilbert Padilla in NFWA leadership).

²⁵⁰ *Id.* at 996.

Larry Itliong organized strikes long before he worked in Delano.²⁵¹ Born on the island of Luzon in 1913, Itliong migrated to Seattle, Washington, in 1929.²⁵² In 1930, Itliong participated in a lettuce strike in Monroe, Washington, and again with spinach cutters in Salinas, California.²⁵³ Itliong also participated in strikes with asparagus growers in Stockton and was elected Vice President of the United Cannery, Agricultural, Packing, and Allied Workers of America (UCAPWA), while working as a salmon canner in Alaska.²⁵⁴ Long before Larry Itliong met with Cesar Chavez, he was well versed in the strategy of labor organization.²⁵⁵

Filipino nurses have also organized for increased respect and job security—with mixed results. For example, in 1977, over one hundred Filipino nurses and activists formed the National Alliance for Fair Licensure of Foreign Nurse Graduates (NAFL-FNG).²⁵⁶ Hospitals across the United States heavily recruited nurses and other medical staff from the Philippines.²⁵⁷ To meet the demand for nursing services, individual states implemented policies easing licensure and practice requirements for foreign-trained nurses—for example, by endorsing licenses obtained in other countries.²⁵⁸ Starting in the 1970s, however, states shifted from an endorsement system to requiring foreign nurses to pass the State Board Test Pool Examination (SBTPE).²⁵⁹ The majority of foreign-trained nurses failed this new requirement.²⁶⁰ The SBTPE was culturally biased, placed an added financial burden, and, in some areas, the failure rate among Filipinos was ninety percent.²⁶¹

²⁵¹ See *Larry Itliong: A Legacy of Leadership*, SEIU LOC. 1000, <https://www.seiu1000.org/notification/larry-itliong-legacy-leadership> [<https://perma.cc/2VNH-2JT4>].

²⁵² See González, *supra* note 246, at 1043.

²⁵³ *Id.*

²⁵⁴ See *Larry Itliong: A Legacy of Leadership*, *supra* note 251.

²⁵⁵ For more on Larry Itliong, *see id.*

²⁵⁶ See CHOY, *supra* note 92, at 181.

²⁵⁷ *Id.*

²⁵⁸ *Id.* at 168 (offering the example of New York in the 1960s, where the state offered a temporary work permit to foreign nurses to give them time to complete any additional educational requirements).

²⁵⁹ *Id.* at 169.

²⁶⁰ See *id.* at 169–183 (explaining that many nurses were not informed by their recruitment agency of the additional examination requirement).

²⁶¹ See *id.* at 169. A 1980 report indicated that the SBTPE was racially biased against not just Filipinos. *Id.* at 182. According to the report, 45% of Asians, 62% of African Americans, 55% of Filipinos, 40% of Latinos, and 40% of Native Americans failed the examination. *Id.* Meanwhile 12% of White test takers failed. *Id.*

Not only was failing this examination a devastating experience, but Filipino nurses' visas depend on their employment.²⁶² As a result, many foreign-trained nurses were forced to take lower-paying jobs as medical assistants, where they would work unpopular shifts and end up filling in for nurses' duties anyways.²⁶³ To make things worse, racist opinions circulated in the nursing field. One American nurse wrote in the *American Journal of Nursing*: "Nurses in this country are fighting for a new image, for better salaries, and for other things, and here is the ANA, our representative, helping undermine our efforts. These foreign nurses are not members of our professional organization. They do nothing to further our professional cause!"²⁶⁴ These comments highlight an us-versus-them dichotomy that ignores the aligning interests of all laborers and focuses, instead, on where someone is from. However, the letter's author clearly holds legitimate concerns—low salaries and a lack of respect are concerns held by all nurses, regardless of where they come from.

Recognizing that these racist stereotypes and licensing requirements were detrimental to the solidarity of all nurses and to patient care, NAFL-FNG attempted to advocate for a change in the examination process and assistance to nurses while they prepared for the test.²⁶⁵ In 1979, local Philippine Nurses Associations formed a national organization, in part, to address the transnational concerns of unfair licensing and employment practices.²⁶⁶ Then, in the late 1970s, Filipino nurses organized the Foreign Nurse Defense Fund to defend the rights of foreign nurses in the United States through the enforcement of preexisting civil rights legislation.²⁶⁷

Despite legal obstacles, racism, and the burden of leaving their home, Filipinos have organized for improved working conditions. Although labor activists have long been outspoken and active in their fight for fair treatment, global working conditions for migrant workers still have room for improvement. Global capitalists who benefit from low wages and the precarity of working people are working to undermine worker protections. To move forward as a society that protects the rights and dignity of workers, individuals and states must collectively enforce substantive protections.

²⁶² *Id.*

²⁶³ *Id.* at 174.

²⁶⁴ *See id.* at 175.

²⁶⁵ *Id.* at 181–83.

²⁶⁶ *Id.* at 176–81.

²⁶⁷ *Id.* at 183.

III

THE POWER OF LABOR AND A PATH FORWARD

Moving forward, the Philippine government can assert more power and influence over worker migration. If a country refuses to enforce the minimum standards of protections, Philippine employment agencies could sanction that country until a time when it could be determined that workers are protected. Countries who benefit from migrant labor must accept the responsibility of protecting and compensating those workers.

A. The Possibilities of the Philippine State

It is clear the POEA has support from both the executive and legislative branches of the Philippine government, and the administration has potential to promote and enforce actual protections for OFWs.²⁶⁸ The Philippine government has, on multiple occasions, made efforts to enhance protections for overseas workers.²⁶⁹ Furthermore, Filipinos have a long and rich history of labor organizing and promoting worker dignity and power.²⁷⁰ By embracing this legacy, the Philippine government has the necessary tools to implement and enforce expansive worker protections.

OFWs are isolated in foreign countries where their livelihoods and those of their families back home rely on foreign employment.²⁷¹ Such precarious circumstances demand the heavy hand of the state. Under the current organization of agencies charged with the welfare of OFWs, I see two ways to enhance protections of migrant laborers. Neither option necessarily requires much restructuring. First, the Philippine government can more stringently enforce its existing regulations and refuse to allow Filipino laborers to migrate to countries which do not meet high labor standards. Second, further legislative action can strengthen the existing administrative structures and organizations attempting to assist OFWs.

Speaking to the former, the Philippine government can enforce existing migrant worker protections and refuse to send workers to

²⁶⁸ See, e.g., President Corazon Aquino, Exec. Order No 247, Reorganizing the Philippine Overseas Employment Administration and for Other Purposes (1987); Exec. Order No. 797 (May 1, 1982) (Phil.); Republic of the Philippines Congress, Third Regular Session, Republic Act No. 8042 (1995).

²⁶⁹ See, e.g., *id.*

²⁷⁰ See González, *supra* note 246.

²⁷¹ See, e.g., Somosot, *supra* note 229.

countries that fail to meet high standards. For example, the Philippine government can enforce Rule III of the 2010 promulgated rules and refuse to permit workers to migrate to certain countries that fall below established standards.²⁷² The Philippines government has done this before, and if countries who benefit from migrant labor do not enforce legitimate protections, this should remain a viable option.

In January of 2018, the Philippines Department of Labor and Employment (DOLE) issued a temporary ban on Filipinos migrating to Kuwait for work, pending an investigation into seven deaths of domestic workers in the country.²⁷³ A month later, the Philippines issued a total ban on migrants working in Kuwait.²⁷⁴ The Department of Foreign Affairs worked to repatriate the workers still employed in Kuwait.²⁷⁵ In 2021, Kuwait employed 5.9% of the world's overseas workers.²⁷⁶

While this is a legitimate response to the increasing incidents of violence against domestic workers in Kuwait, it still falls short. Kuwait's *kafala*, or sponsorship system, ties migrant workers' visas to their employers—prohibiting workers from leaving or changing jobs without consent.²⁷⁷ Rather than repatriate the over one hundred thousand workers, some human rights organizers argued the Philippines should work with Kuwait's government to “confront the outcry” over the deaths and reform the *kafala* system.²⁷⁸ Employment bans like this can be ineffective and may lead to even less safe black-

²⁷² See Omnibus Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act of 1995, *supra* note 214, at 6.

²⁷³ *Kuwait/Philippines: Protect Filipino Migrant Workers; Migration Ban Increases Abuse Risk*, HUM. RTS. WATCH (Feb. 21, 2018, 12:00 AM), [https://www.hrw.org/news/2018/02/21/kuwait/philippines-protect-filipino-migrant-workers#:~:text=\(Beirut\)%20%E2%80%93%20The%20Philippines%20Human%20Rights%20Watch%20said%20today](https://www.hrw.org/news/2018/02/21/kuwait/philippines-protect-filipino-migrant-workers#:~:text=(Beirut)%20%E2%80%93%20The%20Philippines%20Human%20Rights%20Watch%20said%20today) [https://perma.cc/349A-TRF6]. The seven Filipino workers said to have died in Kuwait were identified as Liezl Truz Hukdong, Vanessa Karissha L. Esguerra, Marie Fe Saliling Librada, Arlene Castillo Manzano, Devine Riche Encarnacion, Patrick Sunga, and Mira Luna Juntilla—all of whom were working as household service workers. See *DOLE Suspends OFW Deployment to Kuwait*, RAPPLER (Jan. 19, 2018, 10:36 PM), <https://www.rappler.com/nation/194073-bello-suspends-ofw-deployment-kuwait/> [https://perma.cc/ZU7P-RHDE].

²⁷⁴ See Aika Rey, *Philippines Bans Workers' Deployment to Kuwait*, RAPPLER (Feb. 12, 2018, 10:36 PM), <https://www.rappler.com/nation/195827-philippines-total-deployment-ban-ofws-kuwait/> [https://perma.cc/AR99-A5FP].

²⁷⁵ *Id.*

²⁷⁶ *2021 Overseas Filipino Workers*, PHIL. STAT. AUTH. (Dec. 2, 2022), <https://psa.gov.ph/content/2021-overseas-filipino-workers-final-results>.

²⁷⁷ *Kuwait/Philippines: Protect Filipino Migrant Workers Migration Ban Increases Abuse Risk*, *supra* note 273.

²⁷⁸ *Id.*

market migration.²⁷⁹ To avoid this, viable opportunities for workers must be available at home—in the Philippines or elsewhere. Without access to safe alternatives, workers may be willing to illegally migrate to Kuwait for work, risking abuse and trafficking.²⁸⁰

Second, the Philippine government could pass more worker protection statutes. This may lead to healthy competition between countries to have the highest protections for migrant workers and thus be the most sought after. The Domestic Workers Act of 2012 offers a roadmap for potential legislation the Philippine government could pass to protect a broader range of workers.²⁸¹ The government should also demand minimum wage requirements, union support, required rest hours and days, and rights to privacy and personal belongings for all migrant workers. The Philippine Congress could consider legislation similar to that of the *kasambahay* for all OFWs.

It cannot be forgotten that these administrative agencies oversee the movement and welfare of human beings. Raising standards for safety and compensation should be the highest priority. Migrant labor is critical to the Philippine economy and has been prioritized as such, but the domestic labor market also requires investment to ease the precarity of all workers. Filipino workers enter difficult and sometimes deadly working conditions in hopes of opportunities better than those available at home. A holistic approach to the Philippines’ domestic and overseas labor market is required to address workers’ needs.

B. International Responsibilities to Migrant Workers

Attempts to promulgate and enforce substantive worker protections will struggle if countries that benefit from this labor force continuously undermine these efforts. A first step is for the Philippines to demand strict worker protections in all host countries. Worker protections should reflect how deeply these countries depend upon migrant workers in a variety of industries. While countries should institute these protections independently, international institutions could offer necessary pressure and influence.

An example of international pressure influencing labor practice is the 2011 Domestic Workers Convention of the International Labour

²⁷⁹ *See id.*

²⁸⁰ *Id.*

²⁸¹ *See, e.g.*, Rep. Act No. 10361, S. No. 78, H. No. 6144 (Jan. 18, 2013) (Phil.).

Organization.²⁸² Recognizing the important role domestic workers have in society, this convention promulgated minimum standards of protections.²⁸³ These, of course, are lofty commitments, but only thirty-five countries have ratified this convention.²⁸⁴ Notably, the United States, Saudi Arabia, and the United Arab Emirates, all countries who have long relied on Filipino migrant domestic work, have not ratified.²⁸⁵

Substantive protections for Filipino migrant workers, and all migrant workers, require domestic enforcement and international cooperation. While employers have always recognized the value of Filipino labor, as evidenced through various recruitment measures, meaningful protections and fair compensation are not similarly valued. Administrative agencies like the POEA, which work with and protect migrant workers, have union organizations as resources. If the agencies implement measures supported by labor organizations, perhaps more substantive protections will result. Countries that employ migrant labor must, in turn, respect those protections if they expect to keep benefiting.

CONCLUSION

The Philippines throughout both its colonial and postcolonial periods relied heavily on sending workers abroad.²⁸⁶ Today, Filipinos constitute a large portion of the world's migrant laborers.²⁸⁷ Despite global reliance on Filipino migrant laborers and a history of organized labor, Filipinos working abroad continue to face exploitation and dangerous working conditions.

The precarious situations Filipino workers find themselves in is no doubt due, in part, to United States involvement in governance of the Philippines. The United States institutionalized pathways for obtaining migrant laborers.²⁸⁸ Agriculture, domestic work, and the medical field are among the many sectors that all historically rely upon and benefit

²⁸² Ratifications of C189 - Domestic Workers Convention, 2011, June 16, 2011, 189 I.L.O.

²⁸³ *Id.*

²⁸⁴ *Id.*

²⁸⁵ *See id.*

²⁸⁶ *See* Andres, *supra* note 15.

²⁸⁷ *See generally* INTERNATIONAL LABOUR ORGANIZATION, ILO GLOBAL ESTIMATES ON INTERNATIONAL MIGRANT WORKERS RESULTS AND METHODOLOGY 11 (2021).

²⁸⁸ *See* BALDOZ, *supra* note 34.

from Filipino migrant labor.²⁸⁹ The economic system implemented by the United States in the years after the Philippines’ independence also limited the domestic economy and labor market, continuing the unequal and exploitative relationship between the two countries.

The Philippines sends large sections of its population abroad to work.²⁹⁰ Any solution must be a holistic approach. Migrant laborers are so easily exploitable, in part, because they have limited resources and options. Policies strengthening the domestic economy and labor market in the Philippines are necessary in conjunction with strengthened OFW protections. Any solution also must work in tandem with labor organizers. Filipino laborers have a long legacy with labor organization and will understand the protections truly necessary to create substantial and long-lasting change.

²⁸⁹ *See id.*

²⁹⁰ Recently, at any given time there are over two million OFWs. *See* PHIL. STAT. AUTH. OVERSEAS EMP. AGENCY, *Survey on Overseas Filipinos 2019*, <https://psa.gov.ph/sites/default/files/2019%20Survey%20on%20Overseas%20Filipinos.pdf>.

