

Worth More Than a Thousand Words

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Sherally Munshi, “*You Will See My Family Became So American*”: *Toward a Minor Comparativism*, 63 **Am. J. Comp. L.** 655 (2015), available at [SSRN](#).

Sherally Munshi has written a thoughtful and moving article about the relationship among race, citizenship, immigration, and the visual imagery of assimilation and difference. In “*You Will See My Family Became So American*,” she tells the story of Dinshah Ghadiali, a Parsi Zoroastrian born and raised in India who immigrated to the United States in 1911, became a U.S. citizen in 1917, and prevailed over the federal government’s effort to strip him of that citizenship in 1932. Along with Ghadiali himself—proud American, soldier, erstwhile inventor, political activist, and all in all memorable character with a larger-than-life personality—the protagonists in the story are a striking series of photographs Ghadiali submitted into evidence in his denaturalization trial. Munshi’s bold and ranging exploration of a variety of themes in the legal history of race, citizenship, and immigration culminates in a close reading of these photographs, in which she shows how the images reveal the tension between the “effortful displays of Americanization... and unwitting disclosures of racial identity.” (P. 693.)

Munshi frames her discussion with a central doctrinal precedent and a proposed theoretical framework. The precedent is the Supreme Court’s decision in [Thind v. United States](#), which in 1923 held that Bhaghat Singh Thind, “a high caste Hindu, of full Indian blood, born [in] India” was not “a white person” under the naturalization laws. Along with the previous year’s [Ozawa v. United States](#) (1922), which had held the same with respect to a Japanese man, Takao Ozawa (though with different reasoning—more on that below), the decision in *Thind* gave rise to efforts to denaturalize some who had become citizens before the decisions but were deemed ineligible afterwards, and formed the basis for Ghadiali’s (unsuccessful) denaturalization trial.

The theoretical framework is the “minor comparativism” of the article’s subtitle. Munshi briefly outlines what she takes to be the salient strengths and weaknesses of comparative law scholarship, and brings these insights to bear in proposing a version of a comparative approach to the study of history within, rather than across, national boundaries. The strength she has in mind is the “self-reflexive” orientation of comparative law scholarship, which “inclines the scholar outward, beyond her immediate world and towards the worlds of others with the anticipation that, through her study of another society, she might begin to question her own.” (P. 664.) The weaknesses are comparative law’s tendency, in spite of itself, to entrench statism; its focus on formal law; and its failure to treat the migrant as central, rather than peripheral, to the formation of the modern state. Munshi’s minor comparativism, in contrast, “adopt[s] the perspective of those who remain foreign *within* one’s own country,” and in this way brings a comparativist sensibility to the study of domestic history, which in turn “decenters the state,” replaces formalism with attention to “the unreported, unwritten, and often inchoate character of the law and its effects,” and places the migrant at the center of narratives of state formation. (Pp. 664-66.) While these are not novel approaches to the study of legal history, the idea that one should pursue “comparativism” within rather than across national boundaries is intriguing and refreshing, and contributes to a heightened awareness of what constitutes the “American” in “American legal history.”

At the center of the story are the images submitted by Ghadiali at his denaturalization trial and analyzed in detail by Munshi. Were we to base our historical understanding principally on sources like the Court’s decisions in *Ozawa* and *Thind*, we might conclude that what Ghadiali tried to do, and did successfully, was convince the judge in his trial that he was “white.” But what are the chances? More apt and illuminating is what Munshi suggests: “Perhaps having failed to convince the judge of his essential whiteness, Ghadiali sought to persuade him that, even if he did not look *white*, he did look *American*.” (P. 660.)

The series begins with a photograph of Ghadiali on a police report, of all things: he submitted it because in the relevant section, the report labeled him “White.” The next one shows his family: himself, his (also Indian) wife, and his two children, all wearing coats and hats (the wife, a scarf). The third shows him and his two children—no wife (she’d returned to India). The fourth shows him as a commander in the New York Police Reserve Air Service, alongside a few dozen men also in uniform (though not all commanders). The fifth shows his five children from his second marriage, all wearing the same outfits and little white hats and sitting on bicycles—no wife (though this time, he had one—a second wife—now German, and white, and a citizen herself), and no Ghadiali either.

I’m not going to summarize what Munshi says about all of these, but I will quote Ghadiali’s plea to the judge: “He explained that he was deserted by his first wife ‘because I would *become* a Citizen. Now America throws me out and my second wife will desert me because I did *not* become a Citizen. The government puts me in a funny position.” (P. 714.) Ghadiali did prevail and remain a citizen. Those photographs surely helped, though the judge ended up deciding the case on *res judicata* grounds, treating Ghadiali’s 1917 admission into citizenship as having settled the matter.

Ghadiali’s story serves as both anchor and springboard for the larger legal history of race, citizenship, and immigration Munshi offers in this piece. With each episode, she engages provocatively with relevant secondary literatures. Discussing *Ozawa* and *Thind*, she invokes Ian Haney Lopez on the legal construction of racial categories, and goes on to offer her own take, explaining what she finds most remarkable about the shift in the Court’s reasoning. In *Ozawa*, the Court seemed to rely principally on what was then the state-of-the-art science of race to conclude that a Japanese person was not “Caucasian” within the meaning of the naturalization statutes. But in *Thind*, it had to answer the argument that, as an Indian, Thind belonged squarely in the category of “Caucasians.” The Court couldn’t disagree, so it shifted emphasis and focused on common (read: white people’s) understandings of race instead of scientific ones, relying on those to reject Thind’s claim to citizenship as well. Munshi does not disagree—how could one?—that the two cases together are an especially blatant example of the law’s construction of race, but she turns our attention to what she finds even more intriguing about the Court’s reasoning in *Thind*: Justice Sutherland’s reliance on what he perceived as “instincts” about race. Munshi quotes Sutherland, explaining that “‘Hindus’ ‘racial difference’ was ‘of such character and extent that the great body of our people *instinctively* recognize it and reject the thought of assimilation.’” (P. 674.) This is not as much about common knowledge, Munshi observes, as it is about common “*sense*”—about something “visceral.” (Pp. 674-75.) “Here, the power to designate racial qualification for citizenship is withdrawn not only from the language of race experts *but from language altogether*.” (P. 674, emphasis added.) By force of the Court’s ruling in *Thind*, she adds—pushing herself and her reader just a little harder (as she does throughout)—the phrase “free white persons” itself “gains a flesh and corporeality” by virtue of the Court’s investing in “white persons” the power to interpret the phrase “white persons.” (P. 675.)

Munshi turns back to look at [Plessy v. Ferguson](#) (1896) and the “colorblind” Constitution, a discussion that yields among its insights the observation that “[c]olorblindness imposes a *visual management* of difference on the part of the observed, who is burdened with proving, over and over, that her difference does not disqualify her from equal membership.” (P. 679.) A discussion of [Elk v. Wilkins](#) (1884), which rejected the claim to citizenship of a Native American who had left his tribe and tried to register to vote, takes issue with the received understanding that the United States has always conferred *jus soli* citizenship, concluding from this and other histories of exclusion that “[i]n the United States, for much of the nineteenth century, a right of blood masqueraded as a right of soil.” (P. 687.) Also in this discussion, she proposes that for Native Americans, Congress devised a “contractual model of citizenship,” conditioned on “the destruction of tribal identity” (*Id.*)—a model that, revised, comes to play a role in Ghadiali’s trial. Elsewhere, she discusses a photograph of Thind in an army uniform. This photograph, she notes, is often printed without explicit analysis, “as if the image speaks for itself.” (P. 679.) Munshi then offers her own analysis, discussing “the apparent tension between racial or ethnic particularity, on the one hand, and the project of national unity, on the other.” (P. 680.) In other words, what “we” all know when we look at it is that Thind’s turban and beard signal his “difference” while his uniform signals his assimilation, and what Munshi argues is that this tension is crucial to what we imagine as an inclusive multiculturalism: “Thind can only project racial inclusiveness by first appearing to us as raced.” (P. 681.)

Along with all of the above—a compelling story, a memorable historical figure, rich primary sources, a fascinating series of legal developments, a useful theoretical framing—Munshi writes with sensitivity and empathy, such as when she observes that an account published by Ghadiali recounting his own denaturalization trial “expresses an anguish and alienation that was widely experienced by minorities in the United States but barely understood by the larger national community.” (P. 669.) The nature of law, the instability of boundaries, the relationship among persons, place, and the state—all of this, yes, and also, the things that make us want to cry: Munshi wants us to think hard about it all.

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