

1-1-1995

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Recommended Citation

Natsu Saito Jenga, Finding Our Voices, Teaching Our Truth: Reflections on Legal Pedagogy and Asian American Identity, 3 Asian Pac. Am. L.J. 81 (1995).

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FINDING OUR VOICES, TEACHING OUR TRUTH: REFLECTIONS ON LEGAL PEDAGOGY AND ASIAN AMERICAN IDENTITY

Natsu Saito Jenga*

Why do I want to teach law? Does teaching relate to my ethnic identity? Asked these questions just a few weeks after I started teaching, I had to stop and think about the relationship between law, teaching, and identity.

As a Eurasian *sansei* (third generation Japanese American) in a racially stratified society, I find it impossible not to be conscious of how I am defined by this society, and the influence of race and ethnicity on my identity. As a lawyer, I participate in a legal system that profoundly shapes social relationships, and I see the pervasive presence of the construct of race in that system. As a teacher, I find these elements converging, and I see the potential for the incorporation of Asian American identity into the teaching of law.

I would like to share with you three opportunities I see for us as Asian Americans¹ and as law teachers. First, we can add a substantive dimension—our narrative—to the discourse and encourage others to add theirs. Second, aided by the diversity within Asian American communities and by our “outsider” status, we can present alternate ways to view not only conflicts within a race- and class-based hierarchy, but the hierarchy itself. And finally, we can define ourselves in ways which are not limited by the structures we are given. Choosing to do so would, I believe, have an impact not only on the Asian American community, but on all those with whom we interact.

WHY TEACH?

I recently left a corporate law practice to teach full-time. When I told the lawyers at my firm that I was leaving, I got an almost uniform reaction: “But won’t you make less money?” And when I replied, “Yes, but it’s what I *really* want to do,” I was startled by how many faraway looks I got, often accompanied by the response, from someplace deep in thought, “I went to law school because I really wanted to do *such-and-such*. . . .” Most then shook that thought off, replacing it with the practicalities of mortgages and kids in college.

We all have, or have had at one time, a faraway look, a vision of the long term. For me, corporate law practice always seemed to focus on the immediate—close the deal, file the motion, settle the case, pick up the kids, pay the bills. It was not just

* Assistant Professor, Georgia State University College of Law. These remarks were initially presented as part of a panel on teaching and identity at the First National Conference of Asian Pacific American Law Professors held at Boston College Law School in October 1994.

I am grateful to the many friends and colleagues who shared their thoughts on this Essay with me. Special thanks go to Kathleen Cleaver, Andi Curcio, Steve Friedland, Angela Hsu and to my research assistant, Kenn Margolf.

1. By “Asian American,” I mean broadly those people, citizens or noncitizens, who reside in the United States and are of Asian or Pacific Island descent. I use this term interchangeably with “Asian Pacific American,” a more accurate, but also more awkward descriptor. We are in the early stages of defining ourselves as a community; in the course of this process I expect that we will find different identifiers appropriate at each stage.

hard to pursue my vision; sometimes I barely remembered that I had one. Teaching law, on the other hand, makes me remember and reconstruct my faraway look; a process which forces me to reexamine my identity and, thus, my ethnicity.

Part of my vision is to bring the truth of who I am to the teaching of law. But who am I? As Mari Matsuda and others have pointed out, we all have "multiple consciousness."² For me, this includes consciousness as not only a lawyer, a teacher, and an Asian American, but also as a woman, a mother, a person of color, a human being. How do I bring this consciousness to my teaching in a way that opens up each student to the richness and complexity of his or her own multiple consciousness?

And what does it mean to teach, or learn, *the law*? The legal system regulates so many aspects of our lives as individuals and as members of various social groups. It affects our most personal and intimate relationships, defining who we can marry, what kind of sexual activity we can engage in, whether we can have or raise children, whether we can choose to die. In our attempts to counter racism, we are often told not to look to the law, for "we can't legislate morality." But was it not the law that told us who we could eat with, or sit next to on the bus? Was it not Georgia law that told my Japanese American father and European American mother in 1950 that they could not legally marry?³ It is hard to find a time when our legal system has not legislated morality.⁴

The legal system also defines our national community by deciding who can cross or live within our borders, who can become a citizen, who can participate in the political process. It decides who can work, get health care or go to school. Laws divide us into groups based on their definitions of characteristics such as gender, race, capacity, national origin, or sexual orientation, and assign rights and privileges on the basis of those classifications.

Relationships between state and local governments, between states and the federal government, even between nation-states are defined and regulated by the law. International legal systems establish the rules of access to and control over the resources of our planet—the land and the minerals under it, the seas, the airwaves, the ozone. Our students will participate in all aspects of the law.

At this conference we have often noted that contemporary American society is *in its essence* racially stratified; *i.e.*, that racial divisions are a fundamental, structural element of our social and economic institutions, not simply an unfortunate remnant of our past. Since the beginning moments of our nation, racism⁵ has been interwo-

2. Mari Matsuda uses this term to encompass not simply a pluralistic approach to life, but "a deliberate choice to see the world from the standpoint of the oppressed." Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 WOMEN'S RTS. L. REP. 7, 9 (1989). See also Angela P. Harris, *Foreword: The Jurisprudence of Reconstruction*, 82 CAL. L. REV. 741, 768-70 (1994).

3. Many states did not repeal anti-miscegenation laws until well after *Loving v. Virginia*, 388 U.S. 1 (1967), in which the Supreme Court held that Virginia's miscegenation statutes violated the equal protection and due process clauses of the Fourteenth Amendment.

4. Not only behavior, but attitudes and opinions have been circumscribed by the law. For example, under some of the slave codes, it was illegal for an African American to appear "disrespectful" to a white person, and illegal for a white person to express opinions opposing slavery. See Pauli Murray, *Roots of Racial Crisis* 315, 344 (1965) (unpublished JSD thesis, Yale Law School). Murray quotes a Louisiana statute that "[f]ree people of colour ought never to . . . presume to conceive themselves equal to the whites. . . and never speak or answer them but with respect. . . ." *Id.* at 315. Murray also notes restrictions on the freedoms of speech and press of white persons opposing slavery. *Id.* at 344-47.

5. In contemporary American society, it is sometimes argued that a term as harsh as "racism" should be reserved for violence or hatred based on a perception of race. Here, I am using it more broadly to refer to any set of beliefs that ascribe to real or imagined genetic characteristics, a socially relevant character which is then

ven into our history and our institutions.⁶ This means that racism will not be eliminated without fundamental social restructuring and, conversely, that fundamental social change will not occur unless racism is addressed. The legal system is simultaneously an institution permeated by this racial stratification, a critical part of its perpetuation, and an avenue for social reconstruction.⁷ In teaching law, we do not simply convey a roadmap of the legal system; by training those who will *be* the system, we participate in and shape it as well.

Social stratification in the United States is dominated not only by racial hierarchy, but by a bi-polar, black/white structure. It is often said that the Kerner Commission's conclusion that "[o]ur nation is moving toward two societies, one black, one white—separate and unequal" is as true today as it was over 25 years ago.⁸ Asian Americans are often placed in the "middle" of this structure, a sort of yellow buffer zone between black and white.⁹ According to Mari Matsuda,

The role of the racial middle is a critical one. It can reinforce white supremacy if the middle deludes itself into thinking it can be just like white if it tries hard enough. Conversely, the middle can dismantle white supremacy if it refuses to be the middle, if it refuses to buy into racial hierarchy. . . .¹⁰

This middle position is illustrated by the "model minority" myth.¹¹ This stereotype designates Asian Americans as a racial minority, *i.e.*, less than European Amer-

used to rank or discriminate between social groups defined by race. I also use it to refer to actions or social institutions which promote such beliefs or perpetuate such discrimination. See PIERRE L. VAN DEN BERGHE, *RACE AND RACISM* 11-18 (1978).

6. Racial stratification has been a persistent theme in American history since the debates on slavery at the Constitutional Convention. In 1903, W.E.B. Du Bois noted that the "color-line" would be the primary political problem of the 20th century. W.E.B. DU BOIS, *THE SOULS OF BLACK FOLK* vii (1968). And Cornel West notes the primacy of the issue today:

Race is the most explosive issue in American life precisely because it forces us to confront the tragic facts of poverty and paranoia, despair and distrust. In short, a candid examination of *race* matters takes us to the core of the crisis of American democracy.

CORNEL WEST, *RACE MATTERS* 155-56 (1993).

7. At least nineteen states have formed commissions to study racial and ethnic bias in their judicial systems, and "all existing judicial bias commissions have found that their state's court systems mirror the problems of bias in the larger society." National Center for State Courts, Williamsburg, Virginia, Conference Materials for the First National Conference on Eliminating Racial and Ethnic Bias in the Courts, held in Albuquerque, New Mexico on March 2-5, 1995.

On the "reconstructive" potential of the law, see Mari J. Matsuda, *Voices of America: Accent, Antidiscrimination Law, and a Jurisprudence for the Last Reconstruction*, 100 YALE L.J. 1329 (1991); Harris, *supra* note 2.

8. REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 1 (1968) [hereinafter REPORT]. This Commission, chaired by Illinois Governor Otto Kerner, was appointed by President Lyndon Johnson in 1967 to investigate the causes of the urban uprisings in Watts, Newark, Detroit, Cleveland, and many other cities.

A 1992 Gallup Poll asked if people agreed with the statement: "Our nation is moving toward two societies, one black, one white, separate and unequal." Fifty-one percent of African American and 25 percent of white respondents agreed. LEE SIGELMAN & SUSAN WELCH, *BLACK AMERICANS' VIEWS OF RACIAL INEQUALITY: THE DREAM DEFERRED* 183 (1994). See also ANDREW HACKER, *TWO NATIONS: BLACK AND WHITE, SEPARATE, HOSTILE, UNEQUAL* (1992).

9. Because the basic model of U.S. social organization is a bi-polar one, it seems that Asian Americans are often put in the middle of the racial hierarchy—neither black nor white, but having some "racial" attributes in common with each. As such, we perform various functions *within* the hierarchy. At other times our race is linked to alienage and, based on race, we are perceived and treated as being *outside* the American social structure altogether. See Frank H. Wu, *Neither Black Nor White: Asian Americans and Affirmative Action*, 15 B.C. THIRD WORLD L.J. 225 (1995).

10. Mari Matsuda, *We Will Not Be Used*, 1 UCLA ASIAN AM. PAC. ISLANDS L.J. 79 (1993).

11. See *Asian-Americans: A 'Model Minority'*, NEWSWEEK, Dec. 6, 1982, at 39; David A. Bell, *The Triumph of Asian-Americans: America's Greatest Success Story*, NEW REPUBLIC, July 15 & 22, 1985, at 24;

icans, but also praises us as "model." For whom are we a supposed to be a model? Evidently for other groups designated as minorities. This concept places Asian Americans in the hierarchy "below" European Americans, but generally "above" African Americans and Latinos or Latinas. These groups are told, implicitly or explicitly, that if Asian Americans can make it, they should be able to as well, and that it is their own fault if they do not succeed. This is also the message being given to recent immigrants from Asia, including refugees from Vietnam, Laos and Kampuchea. Thus, to the extent that Asian Americans accept the model minority mantle, we reinforce the hierarchy by accepting that we are "less than" European Americans, and by participating in the subordination of other people of color.

However, we can also use this "middle" position to help dismantle the hierarchy, if we so choose. We can expose the model minority concept for what it is—a myth that reinforces the racial hierarchy, promotes antagonism between Asian Americans and other "minorities"¹², and masks the very real effects of discrimination and violence against all people of color, including Asian Americans.¹³

Teaching law allows us to look consciously at these dynamics that have so much influence on our identities, on Asian American communities and history, and on our social institutions. It allows us to examine the role of the legal system in creating and reinforcing these dynamics. But teaching provides room for more than the deconstruction of those aspects of the legal system which perpetuate hierarchies of subordination. Teaching also allows us to participate in the *re*-construction of a society that is not based on such hierarchies.¹⁴ Some of the ways in which we can participate in this reconstruction include: adding our voices and speaking our truth,

Anthony Ramirez, *America's Super Minority*, FORTUNE, Nov. 26, 1986, at 148; *60 Minutes: The Model Minority* (CBS television broadcast, Feb. 1, 1987).

12. I use the term "minorities" in this context because of the juxtaposition of groups created by the designation "model minority." However, I am troubled by the general use of this term for several reasons.

One is that "minorities" is most often used as a code word for people identified by this society as "non-white". But when convenient, the term is broadened to refer to all "disadvantaged" or relatively powerless groups, including women (who are not a numerical minority) and people with physical disabilities. Often this results in questions of racism being skirted. In addition, it creates tensions between groups, for it appears that an insistence on addressing one type of oppression or disadvantage is a discounting of the others. This problem also arises with the use of the term "diversity".

A second problem is the implication that, because a group is a numerical minority, its lack of political, economic or social influence is simply a necessary by-product of a majoritarian democratic process and need not be taken too seriously.

Finally, I am uncomfortable with the term because it raises so many other questions. In what context are we a minority? Like women, people of color certainly are not a minority in the world. And if we are talking about the United States, why are we a minority, either numerical or with respect to power? Because of our history of genocide and slavery and exclusion? Does that justify disparate treatment?

I think we are better off with terms that clearly address the issues of which we speak, whether race, power, or numbers.

13. The model minority myth has been identified by the U.S. Commission on Civil Rights as a primary factor contributing to discrimination and creating barriers to equal opportunity for Asian Americans. COMM'N ON CIVIL RIGHTS, CIVIL RIGHTS ISSUES FACING ASIAN AMERICANS IN THE 1990s 18-21 (1992) [hereinafter CIVIL RIGHTS ISSUES].

On the dangers of the model minority myth, see also RONALD TAKAKI, STRANGERS FROM A DIFFERENT SHORE: A HISTORY OF ASIAN AMERICANS 474-84 (1989); Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 1 ASIAN L.J. 3, 18-25 (1994); Neil Gotanda, *Asian American Rights and the "Miss Saigon Syndrome,"* in ASIAN AMERICANS AND THE SUPREME COURT 1087 (Hyung-chan Kim ed., 1992); Su Sun Bai, Comment, *Affirmative Pursuit of Political Equality for Asian Pacific Americans: Reclaiming the Voting Rights Act*, 139 U. PA. L. REV. 731 (1991).

14. On reconstructive potential, see Robert A. Williams, Jr., *Linking Arms Together: Multicultural Constitutionalism in a North American Indigenous Vision of Law and Peace*, 82 CAL. L. REV. 981, 1038-49 (1994); see also Matsuda, *supra* note 2, at 9; Harris, *supra* note 2, at 768-70.

bringing new perspectives and encouraging others to bring theirs, and developing identities that are not limited by the dominant system of racial classification, but are positive and inclusive.

ADDING OUR VOICES

Many legal scholars have noted the importance of narrative in moving beyond a one-dimensional view.¹⁵ Classroom teaching and academic writing give us opportunities to convey substantive knowledge and experiences; to tell our stories and to bring out the stories of others.

Asian American cultures are known for encouraging a sort of stoic silence in the face of adversity.¹⁶ While such silence may, at times, be critical to survival, it also has the potential to suffocate us, or to become a collective amnesia.

We are praised as the model minority on the one hand, yet face continuing anti-Asian violence and discrimination¹⁷ on the other. We must stop accommodating these phenomena because they both discount us.¹⁸ It is time to say who we are in our own words and on our own terms.

Our history in the United States is recent enough that we can still retrieve much of it. In this history, we see tens of thousands of Chinese immigrants, dreaming of "mountains of gold," planning to work hard, save money, and return proudly to their families in China. And we see the reality of how these immigrants died as they cleared a path for the transcontinental railroad through mountains and across swamps; how they were driven from the gold mines and away from the cities by lynch mobs and by legislation; how so many of them died in lonely bachelor communities in Chinatowns, too poor to return to China and prevented by immigration and exclusion laws from bringing their families to America.¹⁹

15. See, e.g., DERRICK BELL, *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE* (1987); Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411 (1989); Symposium, *Legal Storytelling*, 87 MICH. L. REV. 2073 (1989); Symposium, *Speeches from The Emperor's Old Prose: Reexamining the Language of Law*, 77 CORNELL L. REV. 1233 (1992).

16. Sometimes the stoicism (expressed in the Japanese concept of *gaman*) is combined with a sense of shame at having been mistreated, as in the reluctance of many *nisei* (second generation Japanese Americans) to talk about their incarceration by the United States government during World War II. See Chang, *supra* note 13, at 64-67.

Maxine Hong Kingston has noted that much silence has been externally enforced. MAXINE HONG KINGSTON, *CHINA MEN* 100-18 (1980). See also AHHHHHHH! AN ANTHOLOGY OF ASIAN-AMERICAN WRITERS 9 (Frank Chin et al. eds., 1974) ("Silence has been a part of the price of the Chinese-American's survival in a country that hated him."); TAKAKI, *supra* note 13, at 484 ("To confront the current problems of racism, Asian Americans know they must remember the past and break its silence.").

17. Anti-Asian violence has been documented by many historians. See, e.g., SUCHENG CHAN, *ASIAN AMERICANS: AN INTERPRETIVE HISTORY*, 45-61 (1991); TAKAKI, *supra* note 13.

A summary of recent incidents of anti-Asian violence can be found in NATIONAL ASIAN PACIFIC AMERICAN LEGAL CONSORTIUM, *FIRST ANNUAL REPORT, AUDIT OF VIOLENCE AGAINST ASIAN PACIFIC AMERICANS*, 1993 (1994). See also Jerry Kang, Note, *Racial Violence Against Asian Americans*, 106 HARV. L. REV. 1926 (1993); CIVIL RIGHTS ISSUES *supra* note 13, at 22-49; U.S. COMM'N ON CIVIL RIGHTS, *RECENT ACTIVITIES AGAINST CITIZENS AND RESIDENTS OF ASIAN DESCENT* (1986).

18. The speed and ease with which the "model minority" can become the "yellow peril" has been noted by several authors. Okiihiro says that the concepts "form a seamless continuum." GARY OKIIHIRO, *MARGINS AND MAINSTREAMS: ASIANS IN AMERICAN HISTORY AND CULTURE* 141 (1994). Keith Aoki likens the relationship to "the paradoxical topology of a mobius strip." Keith Aoki, *"Foreign-ness" & Asian American Identities: Yellowface, World War II Propaganda, and Bifurcated Racial Stereotypes*, 4 UCLA ASIAN PAC. AM. L.J. (forthcoming). And Frank Wu refers to the "Janus-like character" of the stereotype. Wu, *supra* note 9, at 229.

19. Asian American history generally dates back to the mid-1800s, when laborers were brought to work on plantations in Hawaii and in the mines, fields and railroads of California. About one million people from

It is only in the context of this history, I believe, that we can understand and help our students analyze current legal questions such as the government's refusal to allow ships carrying illegal Chinese immigrants to dock in the U.S.,²⁰ or the treatment of workers in sweatshops in the garment industry,²¹ or the racial dynamics of anti-immigrant efforts typified by California's Proposition 187.²²

In our history, we also see first generation Japanese American immigrants who, though prevented by law from becoming U.S. citizens,²³ worked long hours as gardeners and domestics and turned barren desert into productive farmland, all the while raising their children to be "good Americans." I grew up with my father's stories of his being the only Japanese American family in a small Washington town, of going to church and being a Boy Scout, of proudly reciting the pledge of allegiance. And I heard the stories of his shock at coming home one day in December 1941 to find his mother gone and the FBI ransacking their house, of being notified by posters on telephone poles to "All Persons of Japanese Ancestry" (as if there were any others in the town) of the curfew and the evacuation; of spending his teenage years in dusty barracks surrounded by barbed wire and guard towers in the California desert.²⁴

By introducing these contexts, we can help our students to see that the Constitution really is "a personal matter";²⁵ to examine critically restrictions on personal liberty in the name of national (or local) security; to analyze what strict scrutiny

Asia immigrated between the California Gold Rush of 1849 and the National Origins Act of 1924, which imposed a quota system virtually eliminating immigration from Asian countries. National Origins Act of 1924, ch. 190, 43 Stat. 153. See TAKAKI, *supra* note 13, at 5-7.

After the Immigration and Nationality Act of 1965, 79 Stat. 911, Asian immigration resumed. According to the 1990 census, the Asian American population in this country went from 3.5 million to 7.3 million between 1980 and 1990. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, ECONOMICS AND STATISTICS ADMINISTRATION, 1990 CENSUS PROFILE: RACE AND HISPANIC ORIGIN (1991).

20. One of the most visible instances was in 1993, when the Golden Venture smuggling ship ran aground on Long Island, N.Y., and ten people drowned trying to swim ashore. In other instances, ships have been intercepted by the U.S. Navy and passengers taken to camps in Guatemala or Honduras before being sent back to China. See Rone Tempest, *Chinese Exodus to U.S. Apparently Slowing*, L.A. TIMES, Oct. 23, 1995, at 17.

21. One journalist writes:

Earlier this year, a sweatshop in El Monte, Calif., that held more than 70 Thai nationals against their will was uncovered. The workers lived in an apartment complex surrounded by razor wire. They sewed for up to 115 hours a week for as little as \$1.60 an hour, under threat of rape or murder.

Ann LoLordo, *Clothing Workers Find Sweatshop Conditions in U.S. Back on the Rise*, CHI. SUN-TIMES, Oct. 30, 1995, at 14.

22. This ballot initiative, passed overwhelmingly by the voters in November 1994, will deny almost all social services and governmental benefits to anyone, including children, who cannot document the legality of their immigration status. It is currently being challenged in the courts. See *League of United Latin American Citizens v. Wilson*, 908 F. Supp. 755 (C.D. Cal. 1995) (holding certain portions to be an unconstitutional usurpation of Congress' plenary power over immigration matters).

23. Race-based restrictions on naturalization were not entirely removed until the passage of the Immigration and Nationality Act of 1952, Pub. L. No. 82-414, 66 Stat. 163.

24. Over 112,000 Japanese Americans, more than two-thirds of whom were U.S. citizens, were interned by the U.S. government during World War II. See ROGER DANIELS, *PRISONERS WITHOUT TRIAL: JAPANESE AMERICANS IN WORLD WAR II* (1993); PETER IRONS, *JUSTICE AT WAR: THE STORY OF THE JAPANESE AMERICAN INTERNMENT CASES* (1983); MICHIE WEGLYN, *YEARS OF INFAMY: THE UNTOLD STORY OF AMERICA'S CONCENTRATION CAMPS* (1976); *JUSTICE DELAYED: THE RECORD OF THE JAPANESE AMERICAN INTERNMENT CASES* (Peter Irons ed. 1989); Eugene V. Rostow, *The Japanese American Cases—A Disaster*, 54 Yale L.J. 489 (1945).

25. *A Personal Matter: Gordon Hirabayashi v. United States* is a documentary film about Hirabayashi's legal challenges to the internment. *A PERSONAL MATTER: GORDON HIRABAYASHI V. UNITED STATES* (Crosscurrent Media 1992).

should mean when the government creates distinctions based on race or ancestry; to consider the significance of citizenship.

All of our histories are important—not so that we can participate in a contest of relative oppressions, nor because they create some kind of entitlement to preferential treatment, but because they expose the patterns of our collective American reality. They show that instances of racial discrimination are not aberrations but the consequences of our social structures, and they illustrate ways in which our legal system supports those structures.

We are now being presented with statistics on Asian American “success”, and told that we are hurt by affirmative action and other programs designed to combat discrimination. We see how tempting it can be to embrace the immigrant’s dream of assimilation. We want to enjoy our successes and be praised for our hard work, for we have worked hard. We want to believe in the dreams of more recent Asian immigrants that if they, too, work hard and encourage their children to be “good Americans,” they will make it.

But if we succumb to these temptations and ignore the realities of our history, we run the risk that our silence will become amnesia. We may be lulled into believing that we can become, in the words of the former South African government, “honorary whites.”²⁶ And if the roots of the problem are not addressed, we may be just as surprised as our parents or grandparents were when confronted with discrimination; we may be incapable of helping recent immigrants from Asia or Africa, Central America or the Caribbean, to address issues of poverty, racism and violence; we may unwittingly contribute to tensions between Asian American and African American communities; we may find ourselves standing by when other groups are targeted, as Arab Americans have been in the wake of recent events the media associates with “terrorists.”

Because the legal system has been so closely involved in these historical developments, we have many opportunities to incorporate this history into our teaching. Many of the key constitutional, civil rights, immigration, and labor law cases involve Asian American history. Current debates on equal protection and discriminatory impact trace their origins to *Yick Wo v. Hopkins*,²⁷ one of the Supreme Court’s earliest interpretations of the Fourteenth Amendment. The strict scrutiny standard of review of race-based discrimination has its roots in *Korematsu v. United States*.²⁸

26. Although Asians were generally characterized as “colored” under the former South African government’s system of racial classification, when the government wanted to promote Japanese economic investment, it identified Japanese business people as “honorary whites”. According to Yuko Mizuno, a Japanese resident of Johannesburg, South Africa from 1974 to 1978, Japanese were allowed the privileges of white people while in the country, but were not allowed to obtain permanent resident status (a privilege evidently reserved for “real whites”). Telephone Interview with Yuko Mizuno (Jan. 6, 1995).

For such status to be considered an “honor” is, of course, ironic. It is interesting to note the “middle” position of those identified as “colored” in the South African racial hierarchy, and some of the parallels between the concepts of “model minority” and “honorary whites”.

27. *Yick Wo v. Hopkins*, 118 U.S. 356 (1886) (holding that a facially neutral San Francisco city ordinance unconstitutionally discriminated against Chinese laundries).

28. *Korematsu v. United States*, 323 U.S. 214 (1944). In *Korematsu*, the Supreme Court upheld the military orders excluding persons of Japanese ancestry from the west coast, citing to the rationale of *Hirabayashi v. United States*, 320 U.S. 81 (1943), which upheld the curfew on the grounds of military necessity. See also *Yasui v. United States*, 320 U.S. 115 (1943) (upholding conviction for curfew violation); *Ex parte Endo*, 323 U.S. 283 (1944) (ruling War Relocation Authority not authorized to hold a concededly loyal citizen after granting her leave clearance).

On petitions of *coram nobis* brought in the 1980s, the convictions of Fred Korematsu, Gordon Hirabayashi and Minoru Yasui were vacated. *Hirabayashi v. United States*, 828 F.2d 591 (9th Cir. 1987); *Yasui v.*

Asian Americans have been involved in key school desegregation cases from protests over the establishment of a segregated school for "orientals" in San Francisco in 1906²⁹ to current debates over affirmative action programs limiting Chinese American enrollment in San Francisco high schools.³⁰ Asian Americans have been involved in major employment law cases, from historical challenges to restrictions on job opportunities for "aliens ineligible for citizenship"³¹ to recent suits charging racial segregation and discrimination in Alaska canneries.³²

In other areas of the curriculum, Asian American experiences can be incorporated less directly, but just as significantly, through the cases we choose, the hypotheticals we pose and the real life illustrations we provide. Are Miranda rights effective if read to a person who does not understand English? Should measures of witness credibility take into account cultural differences about eye contact or deference to authority? Does the perception of Asian Americans as "foreigners" affect sentencing decisions in cases of anti-Asian violence? There are many questions we can ask.

BRINGING A NEW PERSPECTIVE

Sharing substantive knowledge, however, is not enough. Substance in a vacuum has no lasting impact, while information in context can affect all it touches. Presenting that context may turn out to be more important than any specifics we convey. Regardless of the subjects we teach, we can encourage all students to question assumptions and to look at the law from a fresh perspective; to begin to see that things are not just two dimensional, black and white, or linear, but rich, variegated, and rooted in history.³³ The richness within Asian American communities can help

United States, 772 F.2d 1496 (9th Cir. 1985); *Korematsu v. United States*, 584 F. Supp. 1406 (N.D. Cal. 1984). See PETER IRONS, *JUSTICE DELAYED: THE RECORD OF THE JAPANESE AMERICAN INTERNMENT CASES* (1989).

29. See TAKAKI, *supra* note 13, at 201-03.

30. *San Francisco NAACP v. San Francisco Unified Sch. Dist.*, 1993 WL 299365 (N.D. Cal. July 22, 1993) (allowing Chinese American students to challenge a 1983 desegregation order that limits their enrollment at an academically elite public high school because they are held to higher admissions standards than white, Latino or Latina, and African American students).

31. Only "free white persons" were initially eligible for naturalized citizenship under the terms of the 1790 Naturalization Act. Act of Mar. 26, 1790, ch. 3, § 1, 1 Stat. 103, *repealed by* Act of Jan. 29, 1795, ch. 20, 1 Stat. 414 (allowing naturalized citizenship for alien whites only, not nonwhites). Following passage of the Fourteenth Amendment, persons of "African nativity or descent" also became eligible. Using this distinction, which prevented Asians from becoming naturalized citizens, California and other states passed laws prohibiting "aliens ineligible for citizenship" from owning land, from entering into long-term leases of land, and from obtaining various kinds of occupational licenses. See TAKAKI, *supra* note 13, at 205.

32. In *Wards Cove Packing Co. v. Antonio*, 490 U.S. 642 (1989), a case brought by Asian and native Alaskan cannery workers, the Supreme Court held that statistical evidence of racial discrimination did not establish a prima facie case of disparate impact in violation of Title VII. Although the holding was reversed by the 1991 Civil Rights Act, the Act contained a specific exemption for the Wards Cove Company. Civil Rights Act of 1991, Pub. L. No. 102-166, sec. 402(b), 105 Stat. 1071 (1990).

33. See David Dominguez, *Beyond Zero-sum Games: Multiculturalism as Enriched Law Training for All Students*, 44 J. LEGAL EDUC. 175 (1994); see also Kimberle W. Crenshaw, *Foreword: Toward a Race-Conscious Pedagogy in Legal Education*, 11 NAT'L BLACK L.J. 1 (1989).

The pervasiveness of a Eurocentric world view, or what has been termed "whiteness as the norm," in the legal academy is discussed in Trina G. Grillo & Stephanie M. Wildman, *Obscuring the Importance of Race: The Implication of Making Comparisons Between Racism and Sexism (Or Other -isms)*, 1991 DUKE L.J. 397. The difficulties of addressing this in the academy are discussed in Jerome M. Culp, Jr., Comment, *Posner on Duncan Kennedy and Racial Difference: White Authority in Legal Academy*, 41 DUKE L.J. 1095 (1992). See also Chang, *supra* note 13. While the circumstances facing African American and Asian American law professors are by no means identical, they are similar enough that we can benefit greatly from the experiences and analyses of our African American colleagues.

us bring such perspectives. Often viewed from the outside as "generically Asian" communities, their ethnic diversity includes people speaking ten or twelve different languages, from cultures that may have been at war for centuries, with deep religious and political differences. "First wave/second wave" differences³⁴ also separate those whose families have been in the United States for several generations and those who are recent immigrants. In this context, "diversity" means much more than adding another color to the mix, and what we learn from trying to create unity out of such diversity may provide valuable lessons for society at large.

Being treated as outsiders also affects our perspective. Regardless of how long we have been in this country, Asian Americans face a powerful presumption of "foreignness."³⁵ Sometimes this is brought home to me by small things, like being told how well I speak English or noticing how often "American" is a code word for "white".³⁶ And sometimes it comes from events that sear the consciousness, such as the murders of young men like Vincent Chin, Navroz Mody and Yoshi Hattori.³⁷

This sense of being an outsider, or of having a different perspective, allows us not simply to add our personal experiences, but to encourage all of our students to contribute what they have learned from their experiences as well. One of the most useful exercises that I have ever done with students is to have them write down five characteristics most important to their self-definition.³⁸ The students compared their lists in small groups, which then reported to the class. Some significant social

34. "First wave" generally refers to those whose families arrived before the exclusionary provisions enacted between 1880 and 1924, while "second wave" refers to those arriving after the removal of immigration quotas in 1965.

35. The U.S. Commission on Civil Rights identifies the perception that all Asians are foreigners as a major factor in discrimination against Asian Americans. CIVIL RIGHTS ISSUES, *supra* note 13. See also Neil Gotanda, "Other Non-Whites" in *American Legal History: A Review of Justice at War*, 85 COLUM. L. REV. 1186 (1985) (reviewing PETER IRONS, *JUSTICE AT WAR* (1983)) (discussing the intertwining of the concepts of race and alienage).

Senator D'Amato's heavily accented "imitation" of Judge Ito's English illustrates this presumption of foreignness. See Cynthia Kwei Yung Lee, *Beyond Black and White: Racializing Asian Americans in a Society Obsessed with O.J.* 14-19 (unpublished manuscript, on file with the UCLA Asian Pacific American Law Journal). As one newspaper editorial noted, D'Amato's "decision to use a bogus Japanese accent to mimic Lance Ito . . . reveals that, deep down, he does not really believe that Americans who are of Asian ancestry are really Americans." Richard Matthews, *Denying People's Americanism: Is D'Amato Alone in His Bigotry about Ito?*, ATLANTA JOURNAL-CONSTITUTION, Apr. 13, 1995, at A16.

36. The presumption that "American" means, or should mean "white" runs throughout our history, from the 1790 Naturalization Act's restriction of naturalized citizenship to "white persons", to Justice Taney's opinion in *Scott v. Sanford*, 60 U.S. 393 (1857), to contemporary debates on immigration restrictions. See also JAMES BALDWIN, *THE EVIDENCE OF THINGS NOT SEEN* 31 (1985); DU BOIS, *supra* note 6, at 45-46; TONI MORRISON, *PLAYING IN THE DARK: WHITENESS AND THE LITERARY IMAGINATION* (1992).

37. Vincent Chin, a 22-year-old, fifth-generation Chinese American, was beaten to death in Detroit in 1982 by Ronald Ebens and Michael Nitz, who identified him as a "Jap" responsible for layoffs in the auto industry. The response to this incident underscores the role of the legal system in perpetuating racial hierarchies, for Chin's attackers were allowed to plead guilty to manslaughter, sentenced to probation and fined \$3,780 each. TAKAKI, *supra* note 13, at 481-84. Although federal civil rights charges were brought, Nitz was acquitted and Ebens' conviction overturned on procedural grounds. Ebens was subsequently acquitted on retrial. *United States v. Ebens*, 800 F.2d 1422 (6th Cir. 1986); CIVIL RIGHTS ISSUES *supra* note 13, at 26, n.36.

In 1987, a hate letter from a group in New Jersey calling itself the "Dotbusters" advocated attacks on Asian Indians. Shortly thereafter, Navroz Mody was beaten to death outside a Hoboken restaurant by teenagers chanting "Hindu, Hindu." TAKAKI, *supra* note 13, at 481.

Yoshi Hattori, a sixteen-year-old Japanese exchange student, was shot and killed in 1992 by a Louisiana homeowner when Hattori rang his doorbell in search of a Halloween party. Hattori's white companion was not hurt. The homeowner was acquitted of manslaughter, but later found liable for civil damages. See *Slain Pupil's Parents Want Gun Destroyed*, CHI. TRIB., Sept. 18, 1994, at 22.

38. I am grateful to Steve Friedland for suggesting this exercise.

dynamics were illustrated by this process; for example, the class noted that being white or male was often taken for granted and not listed, whereas being a woman or a person of color was generally high on the list. More significantly, the students began to see each other as multi-dimensional—as parents, or immigrants, or members of a religious group, or natives of Ohio; as hard-working or cheerful or shy. The students saw that they were capable of “multiple consciousness,” and began to apply it to their legal analyses and recognize it in the perspectives of others.

Why is adding these perspectives, this diversity, important? Is it just so that those of us who have sometimes felt excluded will have a legitimate place in American society? If one views society as static and progress as linear, diversity becomes negative, a distraction. It changes the *status quo* and disrupts what is perceived as progress. I believe, however, that society is organic, and that as such, it must grow or die.

Growth is a dialectical process.³⁹ It occurs through the confrontation of difference, and adaptation to that difference. Diversity fuels growth and provides the possibilities for new and creative developments to emerge.⁴⁰ By sharing our history, our diversity, and what we have learned by being treated as outsiders, we can contribute to a process of growth that benefits everyone.

DEFINING OURSELVES

Much of what we have addressed in this conference is the issue of inclusion in this society. How can we carve out *our* pigeonhole? How do we get past being invisible, except when the larger society needs an enemy?

Part of the answer, of course, is to build strong and unified Asian American communities. We can contribute to this effort by supporting pan-Asian community groups, bar associations and student organizations. We can encourage these groups to consciously recognize and appreciate their internal diversity, and to engage in internal cross-cultural education. This requires both the creation of a “safe space” within the group, where it is clear that there are no hidden agendas, and the time to share differing perspectives on some issue, whether it is community relationships with the police, the preservation of our languages and cultures, or proposed changes in immigration laws.

We can also help build our communities by encouraging educational programs which teach Asian American history both formally and through the sharing of the narratives of those in the community. The commonalities of our experiences show

39. By “dialectical” I mean that method of logic and reasoning articulated by Hegel, based on the concept of the contradiction of opposites (thesis and antithesis) and their continual resolution (synthesis). C.L.R. James describes Hegel’s conclusions:

Human society is an organism; and [Hegel] says that contradiction, not harmonious increase or decrease, is the creative moving principle of history. There must be opposition, contradiction—not necessarily contradiction amounting to antagonism, but difference, obstacles to be overcome. Without that there is no movement, there is only stagnation and decay.

C.L.R. JAMES, *MODERN POLITICS* 99 (1973).

40. In the biological context, this has been described as follows:

The stability of a particular ecosystem depends on its diversity. The more interdependencies in an ecosystem, the greater the chances that it will be able to compensate for changes imposed upon it.

LAKSHMAN D. GURUSWAMY ET AL., *INTERNATIONAL ENVIRONMENTAL LAW AND WORLD ORDER* 223-24 (1994) (quoting the First Annual Report of the United States Council on Environmental Quality). See also Mari J. Matsuda, *Voices of America: Accents, Antidiscrimination Law, and a Jurisprudence for the Last Reconstruction*, 100 YALE L.J. 1329, 1401 (1991) (noting the importance of cultural as well as genetic diversity).

us the need for unity, and our differences illustrate why we have distinct needs and responses to certain situations.

As we build these communities, we must be mindful of the role they play in the larger society. Toward this end we have been urged to "refuse to abandon communities of Black and Brown people, choosing instead to form alliances with them."⁴¹ Surely this is necessary. But it is hard to see how real alliances can be built unless we also define who we are for ourselves. It is not enough to carve out a pigeonhole in a society which has, from its inception, used race to divide and conquer. It is not enough to be grateful just to have a pigeonhole, or to stay in it, declaring that we're proud to be there. How can we build alliances with anyone else when we're each in our respective pigeonholes, and every interaction is mediated by the pigeon coop?⁴²

The ridiculous nature of the classifications which pervade so much of our lives was brought home to me at the birth of my daughter, who is of African American, Cherokee, Japanese and European descent. Because she was premature, we should have been focused on whether she could breathe properly. Instead, we were in the delivery room arguing with the nurse, who had decided that this little five-pound bundle should be classified as "white." After looking hard at my undeniably African American husband, she crossed out "white" and wrote "black" on the footprint card. "But it has to be the race of the mother," she remembered, scrutinizing me and crossing out "black" in favor of "Japanese."⁴³ Apparently it never occurred to her that people could be of more than one descent, or that she need not be limited by the boxes on the form, or even that babies might not need to be sorted and classified into such categories at all.⁴⁴

I would like to participate in developing a self-definition that is not limited by existing racial divisions or by the construct of "race" as it is presented to us.⁴⁵ In the

41. Matsuda, *supra* note 10, at 79.

42. For a discussion of such interactions, see Lisa C. Ikemoto, *Traces of the Master Narrative in the Story of African American/Korean American Conflict: How We Constructed "Los Angeles"*, 66 S. CAL. L. REV. 1581 (1993).

43. Classification according to the mother seemed an odd practice, given the prevalence of the "one drop" rule, which classifies anyone with discernable African ancestry as Black. "[J]ust one drop of negro blood makes a man colored. . . ." LANGSTON HUGHES, *SIMPLE TAKES A WIFE* 85 (1953). Several people have commented that it reminds them of slavery laws under which the child took the status of the mother. It should also be noted that under the law of slavery, race was often a proxy for slave status. "Historically, the categories of black and slave were not distinct." D. Marvin Jones, *Darkness Made Visible: Law, Metaphor, and the Racial Self*, 82 GEO. L.J. 437, 457 (1993).

Georgia has since added the category of "multiracial" to the available pigeonholes. Defined as "having parents of different races," this new classification promises to add layers of confusion to an already unmanageable system. See O.C.G.A. §§ 20-2-2040, 34-1-5, 50-18-135 (effective July 1994). For a discussion of the federal government's racial classifications and problems with the "multiracial" category, see Lawrence Wright, *One Drop of Blood*, THE NEW YORKER, July 25, 1994, at 46.

44. This is not to say that race is irrelevant. It has, in fact, a tremendous impact on our lives. My point here is to encourage us to recognize that "race" is not a pre-existing reality but is, instead, something we are continually constructing and re-constructing.

45. Anthony Appiah writes:

The truth is that there are no races. . . . Talk of "race" is particularly distressing for those of us who take culture seriously. For, where race works. . . it does so only at the price of biologizing what is culture, or ideology.

Anthony Appiah, *The Uncompleted Argument: Du Bois and the Illusion of Race*, in "RACE," WRITING, AND DIFFERENCE 21, 35-36 (Henry Louis Gates, Jr. ed., 1985).

The deconstruction of race has been addressed by many legal scholars. See generally BELL, *supra* note 15; PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* (1991); Neil Gotanda, *A Critique of "Our Constitution is Color-Blind"*, 44 STAN. L. REV. 1 (1991); Matsuda, *supra* note 7; Gerald Torres, *Critical Race Theory: The Decline of the Universalist Ideal and the Hope of Plural Justice—Some Observations and Questions of an Emerging Phenomenon*, 75 MINN. L. REV. 993 (1991); Kimberle W. Crenshaw, *Race, Reform, and Re-*

Japanese American community we hear a lot about the "out-marriage" rate⁴⁶—talk that is often accompanied by a sense that the pot of "real" Japanese Americans is being depleted as we marry people of other races.

The implication that we can only maintain our Japanese American identity and culture through "racial purity" is disconcerting. It reminds me of the way in which "white" has been defined historically, particularly under Jim Crow laws,⁴⁷ to exclude those with one-sixteenth, one thirty-second, even "one drop" of non-white blood.⁴⁸ This restriction of who is "white", and the concomitant expansion of "black" to include all persons with any African heritage, indicate to me that these are not identifiers based on common ancestry or cultural heritage, but classifications designed to enhance one group's domination or control over the other.

I prefer my father's view of the matter. One day I came home from kindergarten crying because someone had called me "ha-fu" (meaning "half," as in half-Japanese). He immediately cheered me up with his enthusiastic response, "No, of course you're not half, you're *double*!"⁴⁹ Unless we are trying to maximize some benefit or control some scarce resource, of what use is an exclusive definition? Why isn't an inclusive definition, such as my father's, preferable?

Looking at my daughter, most of us would not see "Asian."⁵⁰ Living in the South, she has experience in and close ties to both African American and European American communities. But she also feels strong ties to Japan and to the Asian American community. Now a teenager, she talks of becoming a civil rights lawyer and working for Dale Minami⁵¹ when she grows up. I do not want our community to lose that kind of potential by defining "Asian American" too narrowly, or by assuming that one must choose to identify with just one heritage.

In working through the concept of African identity, Anthony Appiah says:

"Race" disables us because it proposes as a basis for common action the illusion that black (and white and yellow) people are fundamentally allied by nature and, thus, without effort; it leaves us unprepared, therefore, to handle the "intra-racial" conflicts that arise from the very different situations of black (and white and yellow) people in different parts of the economy and of the world. . . .

If an African identity is to empower us. . . what is required is not so much that we throw out falsehood but that we acknowledge first of all that race and history and metaphysics do not enforce an identity: that we can choose, within

trenchment: Transformation and Legitimation in Antidiscrimination Law, 101 HARV. L. REV. 1331 (1988). For an overview of literature pertaining to Critical Race Theory, see Richard Delgado & Jean Stefancic, *Critical Race Theory: An Annotated Bibliography*, 79 VA. L. REV. 461 (1993).

46. While there is some disparity in the statistics, recent reports have put the number of Japanese Americans who marry people with no Japanese heritage as high as 65 percent. See Jill Smolowe, *Intermarried. . . With Children*, TIME, Fall 1993 Special Issue, at 64.

47. By "Jim Crow laws" I mean that elaborate system of segregation statutes enacted in the South after the withdrawal of federal troops in 1877, as well as the anti-miscegenation laws and the laws defining a person's race. See C. VANN WOODWARD, *THE STRANGE CAREER OF JIM CROW* 6-8 (1974).

48. See, e.g., *Doe v. Louisiana*, 479 So.2d 369 (La. App. 1985) (upholding racial designation based on a statute classifying anyone with more than one thirty-second "Negro blood" as "colored").

49. This theme is explored in Regge Life's film *Doubles*, a documentary about bi-racial Japanese Americans. *Doubles* (PBS television broadcast, Sept. 9, 1995).

50. An exception has been the many people from India who assume her to be Indian. On one occasion I found myself arguing with strangers, somehow compelled to convince them that this was, in fact, my child, and that I *knew* she was not from India.

51. A founder of the Asian Law Caucus and long-time civil rights activist, Dale Minami represented Fred Korematsu in his 1983 petition for a writ of *coram nobis*. See *Korematsu v. United States*, 323 U.S. 214 n.29 (1944).

broad limits set by ecological, political, and economic realities what it will mean to be African in the coming years.⁵²

We are now choosing what it will mean to be "Asian American" in the coming years.

As law teachers, we have many opportunities. Conveying substantive information, adding our narrative to the discourse, and encouraging a multi-dimensional approach, all contribute to the restructuring of a system of social relationships, mediated by racial classification and hierarchy. I hope that by refusing to be used to legitimize the existing hierarchy, by developing an identity that is not restricted by current concepts of race, and by bringing this perspective to the teaching of law, I will be participating in a redefinition of the whole.

This is why I teach.

52. KWAME ANTHONY APPIAH, *IN MY FATHER'S HOUSE* 176 (1992).

